

# Uzbekistan Adopts Law on International Commercial Arbitration

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Since 2016, the Government of the Republic of Uzbekistan has been implementing significant political, legislative, judicial, economic, and social reforms with the aim of developing the country, enhancing its investment climate, and improving the lives of its citizens at a much more rapid pace than before.<sup>[fn]</sup> The authors were the lead international arbitration experts and resources for the Asian Development Bank (the “**ADB**”) in its provision of technical assistance on the ICA Law to the Government of Uzbekistan. The authors would like to thank Lyaziza Sabyrova, Christina Pak, and Bobir Gafurov from the ADB for their assistance throughout the process.<sup>[/fn]</sup>

One important aspect of the legislative reforms is the introduction of new laws based on modern practical legislation, which, in some cases, would be based on internationally-respected, high-quality model laws. As part of this process, Uzbekistan has recently adopted a new Law on International Commercial Arbitration (No. O’RQ-674) (the “**ICA Law**”), which is in line with the UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006 (the “**UNCITRAL Model Law**”). Indeed, the UNCITRAL Secretariat has already recognised the ICA Law as being based on (i.e., compliant with) the

text of the UNCITRAL Model Law.

After its passage by the Uzbek Parliament, the ICA was signed by the President of Uzbekistan on 16 February 2021. Pursuant to Article 56 of the ICA Law, the ICA Law will come into force in Uzbekistan six months from the date of its official publication (17 February 2021). The ICA Law will co-exist with the current Law on Arbitration Courts (No. O'RQ-64) (the "**Domestic Arbitration Law**"), which came into effect on 1 January 2007 and will continue to apply to domestic arbitrations in Uzbekistan.

The ICA Law will help establish Uzbekistan as a reliable seat for dispute resolution in the Central Asia region and beyond. It is also an important development for Uzbekistan in that it will help Uzbekistan attract foreign investment for infrastructure, human capital, and tourism development, among other sectors. The ICA Law will also help improve investor confidence and the business climate, reduce the cost of doing business, and improve Uzbekistan's international standing in various indices and rankings.

This article will provide a brief overview of the arbitration framework in Uzbekistan and the ICA Law, highlighting a number of its key provisions.

## **Arbitration Framework**

Under the existing legal regime, all commercial arbitrations (international and domestic) in Uzbekistan are governed by the Domestic Arbitration Law.

While many provisions of the Domestic Arbitration Law could be considered to be in line with the UNCITRAL Model Law, a number of provisions of the Domestic Arbitration Law significantly differ from the UNCITRAL Model Law. For example, under Article 10 of the Domestic Arbitration Law, during arbitral proceedings, arbitral tribunals are required to exclusively apply the legislation of Uzbekistan. Furthermore, Article 27 of the Domestic Arbitration Law prescribes that, unless the parties agreed otherwise, the default language of an arbitration must be the official language of Uzbekistan — the Uzbek language.

Additionally, some aspects of arbitral proceedings under the Domestic Arbitration Law are presently governed by certain provisions of Uzbekistan's Economic

Procedure Code (No. O'RQ-461) (the "**EPC**") that came into effect on 1 April 2018.

## **The ICA Law**

Having regard to the provisions of the Domestic Arbitration Law and the relevant provisions of the EPC, the existing arbitration framework in Uzbekistan is much more suitable for domestic arbitration rather than the resolution of international commercial disputes. This state of affairs was not in line with Uzbekistan's legislative agenda aimed at reforms that would increase Uzbekistan's attractiveness in the context of global trade.

As a result, in 2019, several ministries of Uzbekistan, including the Ministry of Investments and Foreign Trade and the Ministry of Justice, several representatives of Uzbekistan's legislative bodies, the Chamber of Commerce and Industry of Uzbekistan, and the Tashkent International Arbitration Centre (the "**TIAC**"), with the assistance of the Asian Development Bank (the "**ADB**") and its external legal experts, commenced preparation of a draft ICA Law focussed on dispute resolution by international commercial arbitration in Uzbekistan. As noted above, the ICA Law has now been adopted and will come into force six months from the date of its official publication. We highlight some of the key provisions.

### ***Scope of Application of the ICA Law***

Article 4 of the ICA Law prescribes that it applies to international commercial arbitration, subject to any agreement in force between Uzbekistan and any other state or states. Article 4 defines the scope of the ICA Law in terms set out in the UNCITRAL Model Law, using the broad definition of "commercial" as follows: *"disputes arising from all relationships of a commercial nature, whether contractual or not, can be referred to international commercial arbitration by agreement of the parties."*

Article 4 also provides a list of circumstances that would enable an arbitration to be characterised as "international." For example, the places of business of parties to an arbitration agreement must, at the time of the conclusion of the agreement,

be in different states to qualify as an international arbitration.

### ***Immunity and Independence of Arbitrators***

Article 6 of the ICA Law provides for the immunity of arbitrators, experts appointed by the tribunal, and arbitral institutions and their employees from liability for any actions or inactions in relation to arbitral proceedings, unless it is proven that such an action or inaction was intentional. Article 6 also protects such individuals from being called as witnesses in court or other legal proceedings resulting from an arbitration. Apart from these immunity provisions, the ICA Law also has a special article dealing with the independence of arbitral tribunals and non-interference with their activities in general.

### ***Reasonable Opportunity to Present Case***

Like Article 18 of the UNCITRAL Model Law, Article 33 of the ICA Law provides that the parties are to be treated with equality. Unlike Article 18 of the UNCITRAL Model Law, however, Article 33 provides that parties shall have a “*reasonable opportunity*” rather than a “*full opportunity*” to present their case in order to avoid so-called due process paranoia during the arbitration proceedings.

### ***Representation in Arbitration***

Article 38 of the ICA Law on representation in arbitral proceedings broadens the scope for parties to select their representatives in arbitration proceedings and provides a user-friendly environment for foreign qualified lawyers. In particular, Article 38 allows the parties in international commercial arbitral proceedings to represent themselves or be represented by duly-appointed representatives, including “*international organisations and citizens.*”

### ***Copy of the Arbitration Agreement During Recognition and Enforcement***

Article 51 of the ICA Law deviates from the UNCITRAL Model Law in that it requires

the presentation of the original arbitration agreement or its properly certified copy at the stage of recognition and enforcement of an award. However, this requirement is also in Article IV(1)(b) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”), so it should not be considered as significant deviation from international practice.

## **Conclusion**

For the ICA Law to fully function, relevant amendments to the Economic Procedure Code of the Republic of Uzbekistan and other laws are planned. This work is underway, and these changes will hopefully be introduced soon.

Of course, laws are only as good as those that enforce them. In this regard, it is hoped that the state-of-the-art ICA Law will be enforced by Uzbekistan’s judiciary in a manner that will demonstrate Uzbekistan’s pro-arbitration approach to the international arbitration community. Among other things, this will assist with promoting the TIAC, an arbitration centre established in Uzbekistan in 2018 by Presidential Decree (No. PQ-4001), as a go-to regional arbitration centre.

To facilitate the implementation and enforcement of the ICA Law, the ADB and other organisations are presently preparing capacity-building exercises in Uzbekistan, including arbitration-specific training for Uzbekistan’s judges, which should improve the courts’ support for arbitral proceedings and facilitate appropriate recognition and enforcement of arbitral awards, including in accordance with the New York Convention.

In the future, the Government of Uzbekistan may consider annulling the Domestic Arbitration Law and amending the ICA Law to apply to domestic arbitrations in order to meet international best practices. Overall, however, the adoption of the ICA Law is a significant step forward in the development of arbitration in Uzbekistan and a long-awaited instrument for the arbitration community in Uzbekistan and beyond. The ICA Law will also help Uzbekistan attract foreign investment by providing for an effective cross-border commercial dispute resolution regime in Uzbekistan.