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Note on the Law of the Republic of Uzbekistan “On International Commercial Arbitration”

On February 16, 2021 President of the Republic of Uzbekistan has approved the Law “On International Commercial Arbitration” (hereinafter – the “Law”). As a result, Uzbekistan became 85th country and 118th jurisdiction to enact legislation based on the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) on International commercial arbitration (hereinafter – the “UNCITRAL Model Law”). The Law was approved by the UNCITRAL.

Main aim of the Law is to establish a separate legal regime applicable to international commercial arbitration, to maximize the effectiveness of arbitral proceedings, and to minimize judicial intervention, making Uzbekistan a truly ‘arbitration-friendly’ country.

The Law recognizes such generally accepted principles of international commercial arbitration as the principle of consent, the principles of autonomy and equality of the parties, the principle of separability, etc.

The Law applies only to international commercial arbitration, the seat of which is in the Republic of Uzbekistan. Disputes arising from all relations of commercial nature can be referred to international commercial arbitration. Although the Law does not define what constitutes a dispute of ‘commercial’ nature, article 4 establishes a broad scope of the applicability of the Law, i.e in regards to commercial disputes arising both from contractual and non-contractual relations. Importantly, this was the approach recommended to countries by the authors in the UNCITRAL Model Law.

The Law grants immunity to arbitrators and other participants in the arbitral proceedings from liability for acts or omissions, unless proven that such act or omission was intentional. In addition, article 8 of the Law prohibits national courts of the Republic of Uzbekistan to interfere in arbitral proceedings, except in cases expressly provided for in the Law.

The Law also contains detailed procedure for the appointment of arbitrators, challenge of an arbitrator, and the termination of the arbitrator's mandate. Parties to the dispute have a freedom to determine the rules of procedure of the arbitral tribunal themselves.

Among other important norms, the Law also regulates the procedure for ordering interim measures, as well as making a decision by the arbitral tribunal, termination of arbitral proceedings and recognition and enforcement of arbitral awards, regardless of the seat of arbitration.

Article 50 defines the application to the court by one of the parties to set aside an arbitral award as the exclusive means of appeal against the arbitral award and prescribes the grounds for such action. It is important to note that national courts of the Republic of Uzbekistan are authorized to set aside an arbitral award only if the seat of the arbitral tribunal which made the award has a seat in the territory of the Republic of Uzbekistan.

Article 12 of the Law defines an arbitration agreement as an agreement between the parties to submit to arbitration all or certain disputes that have arisen or may arise between them in connection with a particular legal relationship.

In addition, the UNCITRAL Model Law provided countries with two options of defining the form of an arbitration agreement. The first option requires the arbitration agreement to be in writing, but the term "in writing" also covers electronic communications of any means. Accordingly, by choosing this option, countries recognize the possibility of entering into an arbitration agreement orally, provided that its content is recorded electronically or in writing. On the other hand, the second option provides a general definition of an arbitration agreement, without establishing any requirement in regards to its form. Uzbekistan chose the first option of defining the form of the arbitration agreement and the respective provision is now incorporated in article 12 of the Law.

It should be flagged that the Law was developed on the basis of the UNCITRAL Model Law and, accordingly, most of the provisions in the Law contain rules identical to those of the UNCITRAL Model Law.

Of the minor differences between the Law and the UNCITRAL Model Law, it is worth highlighting the norm enshrined in the Law on the conduct of cases by parties in arbitral proceedings through own authorized representatives. Parties may also engage foreign organizations and citizens to represent them in arbitral proceedings.

In accordance with article 51 of the Law, the party applying for enforcement of an award shall submit, apart from the original arbitral award or a copy thereof (as prescribed in the UNCITRAL Model Law), also the original arbitration agreement or a copy thereof.

Despite the Law contains provisions on formation of ad-hoc arbitral tribunals for resolution of disputes by the parties, the Law does not set forth the procedure and norms for the establishment of permanent arbitration institutions in the territory of the Republic of Uzbekistan. In fact, UNCITRAL Model Law also does not establish the procedure for establishment of permanent arbitration institutions. However, the practice of the countries shows that most of them have existing legislation regulating the establishment of permanent international arbitration institutions.

At the same time, the procedure for establishment of permanent arbitration institutions is not in any way regulated by the legislation of the Republic of Uzbekistan. This, consequently, causes difficulties with the recognition of newly established arbitration institutions as properly established and legitimately existing institution in accordance with the legislation of the Republic of Uzbekistan.

Nevertheless, permanent arbitration institutions can still be established on an individual basis by the decisions of the President or the Government of the Republic of Uzbekistan. Clear example is the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan, which is established by the Resolution of the President of the Republic of Uzbekistan No. PP-4001 dated November 5, 2018.

The Ministry of Justice of the Republic of Uzbekistan, the Chamber of Commerce and Industry of the Republic of Uzbekistan and other concerned entities are tasked with implementing and explaining to the public the essence and meaning of this Law.

The Law comes into force after six months from the date of its official publication.

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We hope that this Note will be helpful for you.
Should you have any queries with respect to any aspect described above,
please, do not hesitate to contact us at your convenience.

Respectfully submitted,

A handwritten signature in black ink that reads "GRATA Law Firm". The letters are cursive and slightly slanted to the right.

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