DISPUTES ARISING FROM JOINT VENTURE AGREEMENTS IN UZBEKISTAN

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In accordance with Uzbek legislation, as stipulated in Article 43 of Civil code, a legal entity acts on the basis of a charter, or a memorandum of association (constituent agreement) and a charter, or only memorandum of association. While charter remains, the document approved by the shareholders regulating general rules for the governance of a company, memorandum of association, after the registration of the company, is considered fulfilled and generally loses its significance. Subsequently, it is used very limitedly, for example, when a notary reveals the grounds for the participants to acquire their shares in the authorized capital of the company

Uzbek legislation lacks the instruments for defining the operations of the company, rights and obligations of shareholders, commonly known as shareholders agreement.

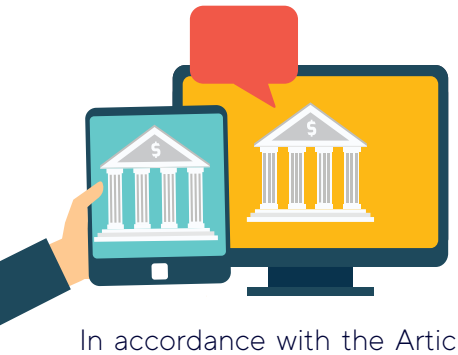
First steps in introducing shareholders agreement were taken in 2019 by the Order of the President No. 5464 dated April 5, 2019. [1] The Order No. 5464 established that as part of the improvement of civil legislation, it is envisaged to introduce a "corporate agreement", which has the force of a corporate act and is binding on third parties. Later by the Resolution of the President No. PP-415 dated November 8, 2022 [2] Ministry of Justice, Ministry of Finance and State Assets Management Agency were directed to draft laws on determining the rights of participants in business companies and the legal basis for concluding a corporate agreement.

The very concept of corporate agreement is common for Russian Law. The Civil code of the Russian Federation defines corporate agreement as an agreement on the exercise of corporate rights, according to which shareholders undertake to exercise the rights in a certain way or to refrain (refuse) from exercising them, including voting in a certain way at the general meeting of the company's participants, to coordinately carry out other actions to manage the company, to acquire or alienate shares in its authorized capital at a certain price or upon the occurrence of certain circumstances, or refrain from alienating shares (interests) until certain circumstances occur.

Corporate agreement is divided into two main types - an agreement on the exercise of the rights of participants for an LLC and a shareholders agreement for a JSC (hereinafter the term 'shareholders agreement' will be used in a manner applicable for both LLC and JSC).

Despite the absence of a clear designation and regulation of such an instrument as a shareholders agreement in Uzbek legislation, the conclusion of such agreement in practice is widely accepted.

[1] https://lex.uz/ru/docs/4272619
[2] https://lex.uz/ru/docs/6277774



Article 354 of the Civil Code of Republic of Uzbekistan grants the freedom of an agreement for citizens and legal entities. Further the Article states that the parties may conclude an agreement not provided for by law, which determines the possibility of concluding a shareholders agreement. However, another important issue in concluding a shareholders agreement is its subordination to the laws of a particular country.

In accordance with the Article 1189 of the Civil code, the agreement is governed by the law of the country chosen by agreement of the parties, unless otherwise provided by law. By this analogy, it could be argued that a shareholders agreement in Uzbekistan can be governed by the law of any country upon choice of its parties. However, dispositive nature of governing law in shareholders agreements was challenged by several scholars.

On this matter notable will be case precedents in Russian Federation. The trial in the Megafon case is indicative (Resolution of the Federal Antimonopoly Service of the West Siberian District dated March 31, 2006 No. F04-2109 / 2005 (14105-A75-11), F04-2109 / 2005 (15210-A75-11), F04-2109 /2005(15015-A75-11), F04-2109/2005(14744-A75-11), F04-2109/2005(14785-A75-11) in case N A75-3725-G/04-860/2005). In its decision, the court emphasized that "since the regulation of the legal status of national legal entities is the sovereign right of the Russian Federation, the rules of foreign law, including the rules of Swedish law, cannot be applied to these legal relations."

It can be difficult to agree with this position, since if the legal regime of entities was the subject of exclusive sovereign law, then a serious question would arise about the existence of international private law as a whole. However, the courts adhered to the same position in subsequent similar situations (Decision of the Moscow Arbitration Court dated December 26, 2006 in case No. A40-62048 / 06-81-343).

In Uzbekistan, the main arguments for claiming that shareholders agreement can be governed only by the law of Uzbekistan include:

- Article 1191 stating that the law of the country where the legal entity is established shall apply to an agreement on the establishment of a legal entity with foreign participation;
- Article 1175 stating that the law of a legal entity is the law of the country where this legal entity is established; and
- Article 1164 stating that foreign law is not applied in cases where its application would be contrary to the fundamentals of law and order (public order) of the Republic of Uzbekistan. In these cases, the law of the Republic of Uzbekistan applies.

Article 1191 regulates the application of Uzbek legislation to (1) an agreement on the establishment of a legal entity and (2) the entities with foreign participation. On this matter Ministry of Justice has provided that shareholders agreements are not meant by 'an agreement on the establishment of a legal entity,' thus, the Article 1191 is not applicable to shareholders agreements. However, the question of application of foreign law to shareholders agreements for entities without foreign participation remain subject to further discussions.

In accordance with Order No. 5464, shareholders agreement in Uzbek legislation is entitled to have a force of a corporate act. Corporate act, regulating internal relations in a corporate organization, as a rule, is governed by the law of a legal entity. In its turn the law (personal law) of a legal entity, according to Article 1175, is the law of the country where this legal entity is established, in the current case, Uzbek law. The said Article is a unilateral imperative norm, which, as a general rule, excludes the possibility of applying other criteria for determining the personal law of a legal entity. Hence, one may argue that shareholders agreement can be governed only by Uzbek law.

However, due to the fact that shareholders agreements are not defined and regulations of them is not established by Uzbek legislation, it can be argued that the law of a legal entity is not applicable to shareholders agreement. Further, it should be noted that Articles 354 and 1189 guarantee the freedom of an agreement and governing law.

The same course of discussion can be applied to the argument on public order. First, from the point of view of logic, a causal relationship between the conclusion of a shareholders agreement under foreign law and a violation of public order is not obvious. For example in Russian Federation, in its information letter No. 156 dated February 26, 2013, the Presidium of the Supreme Arbitration Court of the Russian Federation emphasized that the fact of using foreign law does not violate the public order of the state. Secondly, the protection of public order is an ex post control measure, so if certain risks arise when concluding a shareholders agreement, then they must be eliminated or minimized at the time of signing, and not after. Thus, the reference to the protection of public order does not give a precise explanation of the inadmissibility of the application of foreign law.

In conclusion, while the concept of a shareholders agreement is not explicitly defined in Uzbek law, the freedom to enter into agreements not provided for by law is the rights of any individual or an entity granted by the Civil code. The governing law of a shareholders agreement can be chosen by the parties, as stated in Article 1189 of the Civil Code, but the dispositive nature of governing law in shareholders agreements remains a topic of debate among scholars. Ultimately, the lack of clear definition and regulation of shareholders agreements in Uzbek law leaves room for interpretation.

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