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IMPROVING THE INVESTMENT DISPUTES
CONSIDERATIONS: EXPERT OPINION

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Abstract: *This material is devoted to expert analysis of the improvement of the consideration of investment disputes in the Republic of Uzbekistan, in connection with the introduction of the draft concept of the creation of an International Commercial Court in Tashkent (TICC) by state bodies in Uzbekistan.*

Keywords: *Tashkent International Commercial Court (TICC) International Arbitration, Investment Disputes, Administrative Disputes, Administrative Justice, Convention, Concept, Public Investment Disputes, Private Investment Disputes, Commercial Disputes.*

In his Address to the Oliy Majlis (Parliament) and the nation Shavkat Mirziyoyev, the Head of the State, outlined the need to develop measures for reliable protection of human rights and freedoms as a constitutional obligation of the state, as well as addressing issues of ensuring justice, improving the quality of administration of justice, raising the activities of administrative courts to a new level, and noted that ***the defender of property and investments is not any khokim (governor) or the minister, but only the Constitution, the law and the court.***

And as the Head of the State noted, "...practical work has already begun in this direction on organizing an International Commercial Court in Uzbekistan" and "all the above-mentioned innovations should be enshrined directly in the Constitution."¹

¹ Message of the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Oliy Majlis and the people of Uzbekistan for 2023 (president.uz)

In this regard, reputable foreign experts have prepared and submitted to the relevant state bodies of the republic a draft Concept for the establishment of the Tashkent International Commercial Court (TICC).

This conceptual document notes that "... as part of the Roadmap of measures aimed at stimulating economic development, improving the efficiency of public administration and international cooperation, certain measures are proposed to improve the legal system and investment climate in Uzbekistan, including improving investment dispute resolution mechanisms to resolve outstanding investor disputes, as well as an analysis of the feasibility of implementing the project." introduction of common law in Uzbekistan".²

"Development of the regulatory framework" is a crucial factor in the development of economic growth, in particular the ability to attract foreign investors. Investors carefully assess the risks associated with entering a new market, including whether the legal and regulatory framework supports their business development, and whether their rights as investors are protected as an effective and efficient dispute resolution system in place.

Access to an efficient and effective dispute resolution system is a key concern for any investor. Even when the "laws in the books" are clear, and contracts are drawn up in accordance with international standards, these issues, as the developers of the concept note, do not matter at all, when contracts cannot be executed in the event of a dispute. It is at this point that the rule of law and the investor's trust in the rule of law are tested."³

Economic reforms and increased foreign investment bring innovation to the local economy, accompanied by complex cross-border contracts between foreign and local parties in the areas of finance, capital markets, and equity investment. Many of these contracts will be governed by foreign law (most often British law), in addition to Uzbek law, which may apply to certain aspects of the judicial process (for example, property and corporate law). Currently, disputes are

² See: from the text of the draft concept "On the creation of Tashkent International Commercial Court (TICC)" from August 18, 2022.

³ Draft concept "On the creation of Tashkent International Commercial Court (TICC)" from August 18, 2022.

settled in international arbitration outside of Uzbekistan or in a foreign court. This will ensure an independent judicial process and predictable application of the law. However, international arbitral awards and court decisions are not easily enforced against colleagues in Uzbekistan, and this leaves a large element of uncertainty, as noted in the draft concept. "About creation Tashkent International Commercial Court (TICC)»⁴

This concept paper for the establishment of the Tashkent International Commercial Court (TICC) aims to build investor confidence while supporting ongoing reforms of the existing judicial system in Uzbekistan, of which the TICC will be a part. According to the developers of the Concept, the Tashkent International Commercial Court (TICC) should complement the Tashkent International Arbitration Center (TIAC), which accepts international standards for international arbitration in the country.

Recognizing the importance of legal certainty for improving the investment climate of our country, it is necessary to draw the attention of the developers of the Concept and interested state structures to the issues that arise when carefully considering the Concept.

A comprehensive and in-depth analysis of various aspects of the Concept shows the need to address relevant organizational and legal issues related to the establishment of the Tashkent International Commercial Court, in particular: about financial sources of material and technical support for the organization and operation of TMKS; about categories of disputes, terms of consideration of claims, grounds for termination of their legal proceedings and leaving them without consideration, legal status in judicial acts based on the results of the case consideration; on the procedure for evaluating evidence, on the procedure for involving representatives of other organizations and entities in court proceedings; on the procedure for fees charged when filing claims, the procedure for entry into force of decisions of the TMKS, the appeal mechanism, as well as the procedure and grounds for their execution (within and outside the country); on the procedure for involving translators, experts and other specialists in the

⁴ See there.

TMCS and covering the cost of the project. on determining the requirements for the status and position of a judge, the procedure for terminating the powers of TMKS judges, etc.

In this regard, it is necessary, of course, to develop proposals on appropriate organizational and legal measures for the development and improvement of the mechanism for resolving investment disputes based on the analysis of foreign experience of specialized commercial courts (France, Germany, the Netherlands), specially created for the consideration of international commercial disputes and taking into account the opinion of leading scientists, specialists, employees of the justice legal settlement, extension of foreign (British) law to investment disputes (Private law) in Uzbekistan.

However, first of all, it should be emphasized that the partial implementation of British common law in the legal system of Uzbekistan is a rather difficult and complex task that requires a comprehensive assessment of the risks and likely consequences. The experience of foreign countries shows that some measures of unification of legal regimes, whether it is the rules of consideration of commercial disputes with a foreign element, or administrative procedures, all this is always preceded by serious scholarly research and doctrinal discourse. Note that in many countries, the rule of law is at an unshakable level. In other words, such measures are taken in the context of a developed legal statehood, and not in the context of dismantling outdated post-Soviet legal institutions and replacing them with modern ones, which in itself is not easy. In the conditions of our country, such serious steps should be doubly calculated and comprehensively weighed.

Investment disputes, of course, require reliable guarantees of a fair trial. However, it is extremely important to distinguish between private and public disputes. Public investment disputes are disputes in which the party is an administrative body of the Republic of Uzbekistan acting in its public status within its competence (the Government, state administration bodies, and local executive authorities). Such disputes are disputes arising out of public legal relations, or *administrative* disputes. They address the public interests of Uzbekistan, not just the interests of individuals. If the extension of foreign law to

private disputes can still be regulated by law, then the subordination of public disputes to foreign law is fundamentally unacceptable! This would in fact mean encroachment on national sovereignty in this area.

For reference purposes:
<p>According to official statistics, as of October 1, 2022, the number of enterprises with foreign capital participation in our republic amounted to 14,768, including 6,267 joint ventures and 8,501 foreign ones.</p> <p>We believe that a significant, if not most, part of the legal disputes that may arise from these enterprises will be related in one way or another to the administrative and legal activities of the administrative bodies of Uzbekistan. In other words, these disputes will have the character of administrative disputes, or disputes arising from public legal relations. These include disputes arising from public agreements delegating certain public functions to enterprises with foreign investment (for example, in the field of public utilities), public-private partnership agreements involving foreign investors, concession agreements, disputes over public procurement procedures, state control, and supervision cases, and other administrative matters.</p>

Therefore, leaving the question of the expediency of applying British common law to resolve private investment disputes to “civilists”, we believe that legal justice certainty can and should be achieved by other means in relation to public investment disputes. A reasonable alternative would develop mechanisms of pre-trial administrative justice under the President of the Republic of Uzbekistan, on which relevant analytical materials have been prepared. The experience of France shows that administrative justice, established within the public system, is quite successful in resolving administrative disputes. Therefore, we believe that this experience should also be studied and thoroughly understood.

An important advantage of pre-trial administrative justice is that it can largely compensate for the shortcomings of the current justice system by resolving most

disputes before they go to court, and the results of such a reform can be achieved already in the near future and without any risk of institutional and legal collisions.

Sources:

1. Message of the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Oliy Majlis and the people of Uzbekistan for 2023.
2. Draft concept "On the creation of Tashkent International Commercial Court (TICC)" from August 18, 2022.