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A BRIEF ANALYSIS OF UZBEKISTAN BIT PRACTICE: INVESTOR AND STATE DISPUTE RESOLUTION

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Abstract. *The primary objective of this research is to demonstrate the bilateral investment treaty (BIT) practice of Uzbekistan and illustrate the protection of foreign investors in the country. Therefore, the present work will examine Uzbekistan BIT clauses and investor-state dispute resolution system within Uzbekistan BITs. In order to ensure a constant flow of FDI, Uzbekistan has to undergo effective reforms that assists to reinforce investors' confidence. It is highly recommended for Uzbekistan to increase the use of an amicable system of dispute resolution before referring to formal mechanisms. Moreover, the model BIT of the host country depicts its investment policy and legal framework more clearly and transparently. Therefore, Uzbekistan has to draft its model BIT. Due to its natural resources, Uzbekistan is generally viewed as an eye-catching venue for foreign direct investment (FDI). Yet, on account of the deficiency of transparent and consistent national legal settings, some barriers exist effecting inward flow of FDI. In recent years, Uzbekistan has undergone extensive transformations, attempting economic liberalization. The investment climate of the country is steadily improving because of massive reforms of investment legislation. Uzbekistan eventually intends to provide a translucent and foreseeable investment conditions while simultaneously maintaining social responsibilities. The current research highlights some aspects of the Uzbekistan BIT clause that need to be reformed.*

Keywords: *BIT, Uzbekistan, Investment Law, Investor-State Arbitration.*

O'ZBEKISTONNING IKKI TOMONLAMA INVESTITSIYA SHARTNOMALARI (BIT) AMALIYOTI QISQACHA TAHLILI: INVESTOR VA DAVLAT O'RTASIDAGI NIZOLARNI HAL QILISH

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Annotatsiya. *Ushbu tadqiqot maqsadi O'zbekistonning ikki tomonlama investitsiya shartnomalari (BIT) amaliyotini ko'rsatib berish hamda mamlakatda xorijiy investorlar huquqlarining himoyasini misollar bilan izohlashdan iborat. Ushbu maqolada O'zbekiston BIT qoidalari va O'zbekiston BITlari*

doirasida investor va davlat nizolarini hal qilish tizimi ko‘rib chiqiladi. O‘zbekiston to‘g‘ridan to‘g‘ri investitsiyalarning doimiy oqimini ta’minlash uchun sarmoyadorlar ishonchini mustahkamlashga yordam beradigan samarali islohotlarni o‘tkazishi kerak. Rasmiy mexanizmlarga murojaat qilishdan avval O‘zbekistonga nizolarni hal qilishning do‘stona tizimidan foydalanishni kuchaytirish tavsiya etiladi. Bundan tashqari, qabul qiluvchi davlatning BIT modeli uning investitsiya siyosati va qonunchilik bazasini yanada aniq va shaffofroq tasvirlaydi. Shuning uchun O‘zbekiston o‘zining BIT modelini ishlab chiqishi kerak. Odatda O‘zbekistonga tabiiy resurslari sabab to‘g‘ridan to‘g‘ri xorijiy investitsiyalar (FDI) uchun jozibador joy sifatida qaraladi. Shunga qaramay, milliy qonunchilik tizimida shaffoflik va izchillik yetishmayotgani bois xorijiy investitsiyalar oqimiga ta’sir qiluvchi ba’zi to‘siqlar mavjud. So‘nggi yillarda O‘zbekistonda iqtisodiyotni liberallashtirish yo‘lida keng ko‘lamli o‘zgarishlar amalga oshirildi. Investitsiya qonunchiligidagi ko‘plab islohotlar tufayli mamlakatimizda investitsiya muhiti izchil mustahkamlanib bormoqda. O‘zbekiston oxir-oqibat ijtimoiy mas‘uliyatni o‘z zimmasiga olgan holda shaffof va oldindan ko‘rsa bo‘ladigan investitsiya sharoitlarini ta’minlash niyatida. Maqolada O‘zbekiston BIT shartnomalari bandlarining ba’zi jihatlarini isloh qilish yuzasidan takliflar berilgan.

Kalit so‘zlar: *BIT, O‘zbekiston, Investitsiyalar to‘g‘risidagi qonun, investor-davlat arbitraji.*

КРАТКИЙ ОБЗОР ПРАКТИКИ BIT В УЗБЕКИСТАНЕ: РАЗРЕШЕНИЕ СПОРОВ МЕЖДУ ИНВЕСТОРОМ И ГОСУДАРСТВОМ

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Аннотация. *Основная цель данного исследования – продемонстрировать практику двусторонних инвестиционных договоров (BIT) в Узбекистане и защиты иностранных инвесторов в стране. Таким образом, в настоящей работе будут рассмотрены в отношении Узбекистана положения BIT и система разрешения споров между инвестором и государством. Чтобы обеспечить постоянный приток прямых иностранных инвестиций (FDI), Узбекистану рекомендуется провести эффективные реформы, которые помогут укрепить доверие инвесторов. Важно активно использовать дружественную систему разрешения споров, прежде чем обращаться к формальным механизмам. Кроме того, отмечено, что типовой BIT принимающей страны отображает её инвестиционную политику и правовую базу более чётко и прозрачно. Поэтому предлагается разработать типовой BIT для Узбекистана. Благодаря своим природным ресурсам Узбекистан обычно рассматривается как привлекательная площадка для FDI. Тем не менее недостаточно прозрачная и последовательная национальная правовая база препятствует притоку прямых иностранных инвестиций. В последние годы Узбекистан предпринял масштабные реформы, направленные на экономическую либерализацию. Стабильно улучшается инвестиционный климат страны благодаря реформам инвестиционного законодательства. В конечном итоге Узбекистан нацелен на обеспечение прозрачных и предсказуемых инвестиционных условий, одновременно сохраняя социальную ответственность. Текущее исследование освещает некоторые положения BIT Узбекистана, которые необходимо реформировать.*

Ключевые слова: *BIT, Узбекистан, инвестиционное право, государственный арбитраж инвесторов.*

Introduction

It is obvious that a reasonable individual who is pondering about establishing direct investments to foreign country would like to ensure that these will be protected. Naturally, there have been numerous risks intrinsic to direct investments. The risks can be associated with political or legal issues, industry-related, foreign currency exchange, and so on. Some of these risks can be predictable and manageable, but at the same time, a number of them are extremely difficult to foresee. However, a reasonable investor thoroughly analyzes each of these potential risks prior to stepping forward. In general, investors consider investing when the expected return is justifiable compared to the threats undertaken. When the risk profile is reduced, it would be considerably easy for the host country to attract foreign investment.

Material and methods

The study used methods of comparative legal analysis, system-structural, historical, formal-logical, complex study of scientific sources, concrete-sociological, induction and deduction, analysis of empirical materials, statistical data and others.

Results and discussion

Bilateral investment treaties (hereinafter BIT) perform a crucial position from an economic perspective. BITs commonly present a certain degree of convenience for foreign investors to secure against political and legal risks. BITs represent agreement where two states incorporate their reciprocal endeavors for the advancement and security of private investments in each other's region. Uzbekistan has been accomplishing continuous development in encouraging inward FDI since the destruction of the former Union of Soviet Socialist Republics (hereinafter USSR). After getting independence on August 31, 1991, Uzbekistan developed investment-friendly legislation in order to enhance investment inflows. On the flip side, due to the inadequate consistency and transparency of investment legislation, their efficacy is doubtful. If the legal framework is not substantially the increased, inappropriate regulatory structure of the host country and the obstacles to investment in Uzbekistan will certainly remain.

BITs offer protection to investors in several different means. On the top of this, the incorporation of the access to international arbitration is probably the most significant security that the majority of BITs grant. As a result, investors can address to impartial dispute resolution mechanism once a conflict occurs with the host government. Access to arbitration can be immensely advantageous in countries where legal environment is not transparent and not beneficial to foreigners. Ultimately, a host country is highly recommended to respect its obligations under BITs. It should be noted that the investors made their decisions assuming that the host state would accomplish its obligations (UNCTAD, 2009, Series on International Investment Policies for Development United). Therefore, when a dispute arises stemming from a breach of the host country's commitment, the investor can claim against it to the impartial system of arbitration. One of the goals of this research is to present and evaluate investor-state dispute resolution mechanisms within Uzbekistan BIT practice.

Dispute settlement practice under Uzbekistan BITs

Uzbekistan has signed more than fifty BITs (Investment Policy Hub, 2024). Although most of them are bilateral investment agreements, it should be noted that they are also multilateral agreements, such as the Energy Charter Treaty or the Organization of Islamic Cooperation Investment Agreement. Although Uzbekistan has not been a party of a dispute to these multilateral agreements, it is worth noting

that the number of disputes based on the Energy Charter, which calls for international arbitration, is growing every year. It also shows the importance of working in accordance with the Energy Charter for our country, which is rich in energy resources and investments in this area.

Another feature of BITs created by Uzbekistan is that most of them are old model BITs of the 1990s, and the new generation of BITs includes the 2008 agreement with Japan. There are significant differences between these two types of BITs. For example, the substances in older generation of BITs are few, generally described, and often very similar to each other. The new generation BITs, on the other hand, are more detailed, with specific substantial and procedural rules, market liberalization commitments for investment inflows, and even concessions to each other at the end of the transaction. This is also a clear indication of how powerful a weapon BITs can be in the hands of arbitrators during an investment dispute between countries. Because where there is a legal relationship, it is natural for conflicting opinions and different interpretations of a contract clause in practice. Therefore, it is quite natural that such conflicts arise in the implementation of more complex foreign investment projects. Uzbekistan is no exception. As one of the countries with the largest investment potential in Central Asia, our country has been embroiled in several investment arbitration disputes. According to the disclosed data, a total of 10 cases have been filed in the country so far, 2 of which have been resolved by agreement, 4 cases have been considered by investment arbitration, and the remaining 4 cases are still pending (Umirdinov, 2018).

Table 1

Cases initiated by the investor against the Republic of Uzbekistan*

Name of the case	Treaty	Forum	Result
1. Romak S.A. v. Uzbekistan	Switzerland-Uzbekistan BIT	PCA Case No:AA280	Decided in favor of State
2. Metal-Tech Ltd v. Uzbekistan	Israel-Uzbekistan BIT	ICSID Case No: ARB/10/3	Decıded in favor of State
3. Oxus Gold v. Uzbekıstan	United Kingdom – Uzbekistan BIT	UNCITRAL	Decıded in favor of investor
4. Spentex v. Uzbekistan	Netherlands- Uzbekistan BIT	ICSID Case No: ARB/13/26	Decided in favor of State
5. Newmont USA Limited v. Uzbekistan	Investment Law	ICSID Case No: ARB/06/20	Discontinued
6. Mobile Tele Systems OJSC v. Uzbekistan	Investment Law	ICSID Case No: ARB(AF) 12/7	Discontinued
7. Kim and others v. Uzbekistan	Kazakhstan-Uzbekistan BIT	ICSID Case No: ARB/13/6	Pending
8. Güneş Tekstil and others v. Uzbekistan	Turkey-Uzbekistan BIT	ICSID Case No: ARB/13/19	Pending
9. Federa Elektrik Yatırım and others v. Uzbekistan	Energy Charter Treaty, Investment Law	ICSID Case No: ARB/13/9	Pending
10. Bursel Tekstil and others v. Uzbekistan	Turkey-Uzbekistan BIT, Investment Law	ICSID Case No: ARB/17/24	Pending

* (UNCTAD, n.d., Investment Dispute Settlement Navigator).

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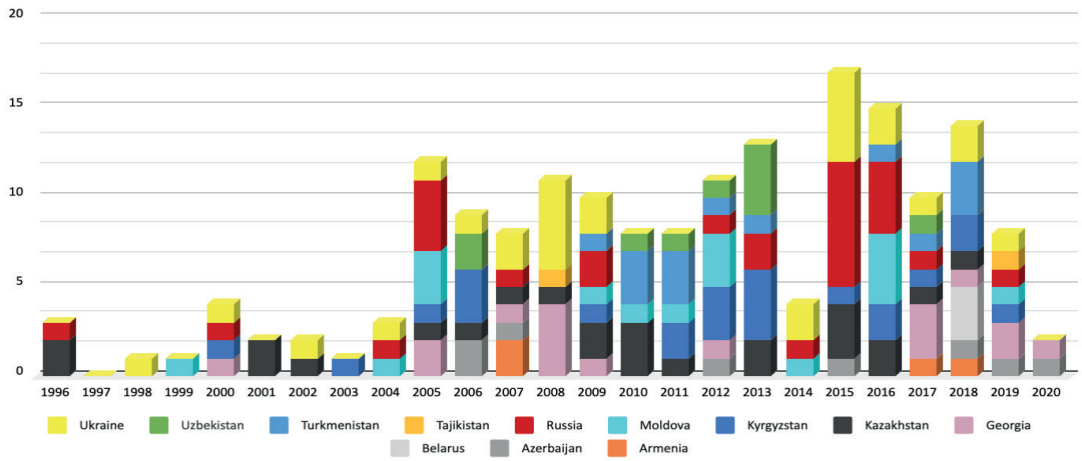
Normally, an investor has the option to address their dispute with the host government to national courts or ad hoc arbitration, or alternatively, apply to the World Bank's International Center for the Settlement of Investment Disputes (hereinafter ICSID). Certainly, awards of ICSID recognized and enforced in all member states of ICSID.

Uzbekistan is a member state to the ICSID Convention (Database of ICSID (1994, March 17) and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 1996, February 7) (hereinafter New York Convention). The significance of New York Convention is to ensure the recognition and enforcement of foreign arbitral awards in member states. For illustration, the Austria-Uzbekistan BIT determines that an investor has several options to settle a dispute, except if the dispute is settled by consultation or negotiation. Prior to filing a request for arbitration, the BIT stipulates the sixty days' notice period that should be provided to host state. Moreover, the investor has to claim about the dispute not later than five years when the investor first has known about the disputed event or has to be known (Investment Policy Hub, 2000). Interestingly, the Israel-Uzbekistan BIT provides that ICSID has exclusive jurisdiction for dispute settlement (Agreement between the Government…, 1994). This is particularly different form other BITs.

Practice of CIS countries

As Uzbekistan is a member of Commonwealth of Independent States (hereinafter CIS) the analysis of investor-state dispute settlement within CIS region aids to evaluate investor-state dispute settlement of Uzbekistan in a wider picture. The data covers the period commencing from 1996 until June 2020. Starting from the mid of 1990s investor-state tribunals settled a moderate number of cases. It should be noted that from 2000s investor-state disputes rose noticeably. The lowest number of disputes claimed in the late of 1990s. The largest number of investor-state disputes reported in Ukraine, Russia, and Kazakhstan, which are the biggest economies in the CIS region (Kryvoi & Pröpstl, 2020). Unsurprisingly, in 2020, the cloud of COVID-19 resulted in the lowest number of cases since the last decade. Regarding Uzbekistan, investor-state disputes constituted a substantial amount in 2006. Throughout three years, including 2010–2012, investor-state disputes increased moderately and climbed its peak in 2013. Afterwards, 2017 witnessed a relatively significant number of investor-state disputes.



* Empirical data on ISDS in the CIS.

Figure 1. Concluded ISDS cases year

In the CIS region, the investors succeed in 47% of total number of treaty-based investment cases against the state. Compared to the global investor-state disputes where they constitute only 29%, the figures of CIS countries are considerably high.

Table 2

Cases

State	Total Number of Cases	Cases Won	Cases Lost	Cases Settled
Ukraine	28	8	8	3
Russia	27	2	12	1
Kazakhstan	24	7	6	1
Kyrgyzstan	23	1	7	5
Georgia	17	1	4	4
Moldova	17	6	5	0
Turkmenistan	14	3	2	2
Uzbekistan	10	3	2	1
Azerbaijan	8	1	0	2
Armenia	4	1	0	1
Belarus	3	0	0	2
Tajikistan	2	0	0	0

Table 3

The descent of investors in CIS region*

	State of Investor Origin	Number of Cases
1	USA	29
2	Russia	20
3	Turkey	20
4	Netherlands	16
5	Ukraine	11

* (Kryvoi & Pröpstl, 2020).

Grounds for addressing arbitration as a dispute settlement mechanism

It is obvious that international arbitration is based on the parties' consent to arbitrate. Compared to commercial arbitration, a unilateral offer of consent to arbitrate is required under international investment treaty arbitration. In most cases, the investors display their consent by submitting a request for arbitration. The consent of a state can be indicated in (i) in a contract between an investor and the state, (ii) in national legislation of a country or (iii) in the BIT between an investor and the host state.

The BITs are the main sources of consent of Uzbekistan to arbitrate. According to Article 63 of the law of Uzbekistan "On investments and investment activities" investment disputes related to foreign investment and arising in the course of investment activities of a foreign investor in the territory of the Republic of Uzbekistan shall be resolved through negotiations. If the parties to an investment dispute are unable to reach an amicable settlement through negotiation, such a dispute should be settled through mediation. An investment dispute that is not settled through negotiations and mediation must be resolved by the relevant court of the Republic of Uzbekistan. In case of impossibility to resolve investment disputes in the manner provided above, a dispute may be settled through international arbitration when the international agreement of the Republic of Uzbekistan and (or) the agreement between the investor and

the Republic of Uzbekistan provides for an appropriate and mutual arbitration agreement. A dispute can be resolved in arbitration only if there is the written consent of the Republic of Uzbekistan in the framework of signed and existing international agreements and (or) the agreement concluded between the investor and the Republic of Uzbekistan.

The states' consent to arbitrate in BITs can be reflected in different ways, i.e., expressly, impliedly, agreement to render consent in the future, and reservation of consent to arbitrate (Newcombe & Paradell, 2009). The analysis of Uzbekistan BITs reveals that the majority of the BITs incorporated implicit consent to arbitrate. For example, the Japan-Uzbekistan BIT (Investment Policy Hub, Japan – Uzbekistan BIT, 2008,) provides that "a dispute can be resolved through consultations within three months commencing from the date of written request for consultations. If the consultations failed to settle dispute, the investor can address to conciliation or arbitration." In the Uzbekistan BITs practice, there are also some BITs that clearly express consent to arbitration. For instance, the Greece-Uzbekistan BIT contains explicit consent to arbitrate. Under Article 9 of the same BIT, "the investor can file a claim in the competent courts of the Contracting Party or to international arbitration" (Greece – Uzbekistan BIT, 1997) both parties consented to submit a dispute to arbitration (Singapore – Uzbekistan BIT, 2003).

It is clear that in some cases, diplomatic relationships between countries can worsen and even end. Therefore, sunset clauses in BITs provide protection for the investors when perhaps the countries terminate diplomatic or consular relation between each other. Under Uzbekistan BIT practice, the duration of "survival clauses" or "sunset clauses" is in most BITs ten years, which ensures that the terms of the treaty keep on being in effect even when the treaty is denounced. Uzbekistan BITs with Malaysia, Turkey, Latvia, Georgia, the United Arab Emirates, Russia, Turkmenistan, and Poland include ten-year "sunset clauses." Noticeably, the German-Uzbekistan BIT contains a twenty-year duration period after its denouncement (Germany – Uzbekistan BIT, 1993). Moreover, the law of the Republic of Uzbekistan on "Investment and investment activities" provides protection for the period of ten years from the date of investment when the subsequent legislation of the Republic of Uzbekistan adversely worsens the investment conditions. The investor has the right to apply the conditions of the new legislation, which promotes the investment environment.

Waiting period and amicable settlement

Virtually every BIT of Uzbekistan incorporates amicable ways of dispute settlement, *i.e.*, negotiations, consultations, and through diplomatic channels in the preliminary phase. If we glance at the Belgium-Luxembourg Economic Union and Uzbekistan BIT (Belgium – Luxembourg Economic Union-Uzbekistan BIT, 1998), it provides third-party expert testimony as a means of dispute resolution along with other amicable methods of dispute settlement. In addition, approximately all BITs of Uzbekistan established a six-month period for achieving a friendly solution of a dispute. However, some BITs provide only a three-month period for amicable settlement of the dispute. For instance, BITs of Uzbekistan with Oman, Finland, the United Kingdom, and Japan (Oman – Uzbekistan BIT, 2009; Finland – Uzbekistan BIT, 1992; United Kingdom – Uzbekistan BIT, 1993) set merely a three-month period. Even though a six-month timeframe is normal in BITs and seems to be practical, in most situations, this period is actually inadequate.

Undoubtedly, a friendly approach of dispute resolution facilitates to settle

disputes in a short time and in a cost-effective way. It also aids to further a feasible partnership between disputing parties. However, not all BITs consider amicable dispute resolution system at the preliminary phase. For instance, Uzbekistan BITs with Kazakhstan, Turkmenistan, Azerbaijan, Georgia (Kazakhstan – Uzbekistan BIT, 1997; Azerbaijan – Uzbekistan BIT, 1996; Georgia – Uzbekistan BIT, 1995), and some others do not incorporate an amicable dispute resolution approach at the initial level.

"Folk in the road" provision

The majority of investment treaties do not necessitate an investor to address local courts and empower them to directly recourse to arbitration. Interestingly, the Uzbekistan-United Arab Emirates BIT specifies that if the parties cannot mutually resolve their dispute through amicable ways in six months, then an investor should request to the local court where the investment is made (Tulyakov, n.d.). If the dispute still exists, after twenty-four months from the date of notification of other required procedures, an investor can apply for ICSID arbitration in order to resolve the dispute. This period (24 months) allows the local court to settle dispute (United Arab Emirates – Uzbekistan BIT, 2007).

"Fork in the road" clause restricts duplicative claims and, before commencing a claim, requires an investor to choose between local courts or arbitration. When an investor opts for local court proceedings, it loses its right to recourse to arbitration and vice versa (UNCTAD, 2014). For example, the Uzbekistan-Turkey BIT provides that "once the investor has submitted the dispute to one or the other of the dispute settlement forums mentioned in paragraph 4 of this Article, the choice of one of these forums shall be final."

Most-favored-nation and umbrella clause

Evaluation of the BIT clauses reveals that when an issue is regulated concurrently, both by BIT and an international agreement where both contracting parties are members, an investor can select either rules of them which grants more favorable treatment. For example, in the BIT of Uzbekistan with Korea (Republic of Korea – Uzbekistan BIT, 1992), it is stated that an investor can take advantage of the more favorable regulations between BIT or other international treaty where both contracting parties are members. Additionally, BITs of Uzbekistan also envisage that when the legislation and rules of the other contracting party grant more favorable treatment than the BIT agreed, more favorable treatment will be accorded. Moreover, the Turkey-Uzbekistan BIT limits the effective use of the most favored nation clause and excludes the investor-state investment dispute settlement clause.

Final awards

One of the major problems of investor dispute settlement is the final awards. Some BITs provide that the arbitral award will be final and binding to both parties and will be enforced by the national regulations of the contracting party concerned. These provisions are incorporated in the BITs of Uzbekistan with Oman, China, Russia, Poland, Kuwait, Saudi Arabia, Finland, and others, but at the same time, a number of other BITs do not have such condition.

Cost of arbitration

The cost of arbitration is one of the important aspects that should be primarily addressed before applying for dispute resolution. Uzbekistan BIT with Poland, Bulgaria, and China provides that each party has to bear its own cost of representation and arbitrator; the cost of presiding arbitrator and other expenses are covered equally by both parties. Not all BITs explicitly regulate this matter. Pursuant to the Uzbekistan-China BIT (China – Uzbekistan BIT, 1992) the tribunal might award a higher proportion of the costs to one party of a dispute. Additionally, BIT incorporates cost allocation

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regarding frivolous claims. However, there is no precise rule on the allocation of costs.

Article 42(1) of the UNCITRAL Arbitration Rules (2010) the cost of arbitration will be awarded to the unsuccessful party or parties (UNCITRAL Arbitration Rule, 2010). However, by considering specific conditions of the case, the tribunal can allocate cost between the parties. For example, in *Romak v. Uzbekistan* case (Romak S.A. (Switzerland) v. Republic of Uzbekistan, n.d.) there was no provision of apportion of the cost in BIT between Switzerland and Uzbekistan. Thus, the arbitral tribunal addressed to the Article 38–40 of the UNCITRAL Arbitration Rules (2010) and allocated the arbitration costs equally to both parties.

In *Metal-Tech Ltd. v. Republic of Uzbekistan* case (Metal-Tech Ltd v. Republic of Uzbekistan, n.d.), the tribunal provided that the cost of arbitration, including expenses and fees of the tribunal and ICSID, should be equally divided between both parties. Moreover, the tribunal concluded that each party should bear its own legal expenses of arbitration. Besides, the tribunal determined that the right of investor against the host country cannot be protected as the investment tainted by illegal activities.

Diplomatic interference

One of the features of the BITs of Uzbekistan with the United Arab Emirates, Portugal, and Kuwait (Portugal – Uzbekistan BIT, 2001; Kuwait – Uzbekistan BIT, 2004) is that the parties cannot resolve disputes, which were referred to arbitration, through diplomatic channels until the final arbitral award is rendered and a party failed to comply with the award. Additionally, the Uzbekistan-Kuwait BIT provides that any informal exchange of diplomatic messages for assisting dispute settlement does not comprise diplomatic protection.

Practical functioning of BITs

The BITs are the sources of advance consent of states to the arbitration. Therefore, the states usually do not choose forum of arbitration and leave this right to the claimant. Hitherto, out of ten investment claims files against the Republic of Uzbekistan, eight of them were addressed to ICSID Convention Arbitration Rules and two of them were claimed under UNCITRAL Arbitration Rules (Romak S.A. (Switzerland) v. Republic of Uzbekistan, n.d.; Oxus Gold v. Republic of Uzbekistan, n.d.).

Typical Uzbekistan BIT refers to "any disputes" or "any legal disputes" (Oman – Uzbekistan BIT, 2009); India – Uzbekistan BIT, 1999; Hungary – Uzbekistan BIT, 2002; Finland – Uzbekistan BIT, 1992; Agreement between the Government of the State of Israel..., n.d.) in an investor-state dispute resolution clause. This formula is quite wide and can extend to contractual and treaty claims within the investment (Muminov & Jedrzej, 2019). However, the Turkey-Uzbekistan BIT provides a restricted formulation to this clause. Article 10 of the Turkey-Uzbekistan BIT states that "this article shall apply to dispute … relating to a breach of obligation of the former under this Agreement, which causes loss or damage to the investor or investments, as well as relating to the size, conditions, and order of the payment of the compensation … and the transfer of payments" (Turkey – Uzbekistan BIT, 2017). This clause contains the claims related to order, conditions, and size of the compensation linked to expropriation.

One of the famous cases against Uzbekistan was *Romak v. Uzbekistan* case. The claim raised the issue of definition of "investment" and the claimant alleged that investment dispute secured pursuant to the Switzerland-Uzbekistan BIT. The issue was filed under UNCITRAL Arbitration Rules. Contrary to the claimant's allegations, the tribunal determined the term of "investment" in a different way and settled the dispute in favor of the State (Romak S.A. (Switzerland) v. Republic of Uzbekistan, n.d.). The Romak

defined the term "investment" based on several BITs of Uzbekistan with different states; afterwards, the tribunal concluded that Romak's claim does not constitute an investment claim. In 2006, Newmont, the US gold mining company operating in Uzbekistan, filed two investment claims against the Republic of Uzbekistan. The first case regarding the expropriation of assets was referred to ICSID and the next case related to a joint venture agreement was addressed to the Arbitration Institute of the Stockholm Chamber of Commerce. According to Newmont, the dispute arose when Uzbekistan expropriated that stake without compensation. At the same time, Uzbekistan provided that Newmont failed to cover tax amounted to 48 million USD. Within a year, Newmont and Uzbekistan reached "an amicable and durable agreement" (Reuters, 2007, August 10). Another renowned case against Uzbekistan is Metal-Tech Ltd. v. the Republic of Uzbekistan. The ICSID tribunal unitedly dismissed the Israeli investor's claim against Uzbekistan. The investors based their claim on the Israel-Uzbekistan BIT. The Tribunal concluded that it lacked jurisdiction to hear the dispute because Metal-Tech's investment was related to corruption under Uzbekistan law (Gasanbekova, 2015).

Conclusion

Overall, BITs of Uzbekistan differ from each other to some extent. For instance, the length of BITs, dispute settlement mechanism, cost allocation, procedural issues, and some other provisions vary within BITs. In order to ensure a constant flow of FDI, Uzbekistan has to undergo effective reforms that assists to reinforce investors' confidence. It is highly recommended for Uzbekistan to increase the use of amicable system of dispute resolution before referring to formal mechanisms. As Uzbekistan has institutional capacity for this, such as Business Ombudsman and the Chamber of Commerce and Industry of the Republic of Uzbekistan. If these institutional organizations aid to settle an issue, the dispute can be resolved at the initial stage, and it will also help to foresee the prospects of arbitration. Moreover, some scholars also suggest that the procedural rules of dispute resolution ought to be more concrete in some BITs. To be more specific, vividly determined prerequisites can facilitate investors with a clear mind whether to refer to local court or arbitration.

It should be noted that the recent Degree of the President of Uzbekistan "On additional measures for the further improvement of the operations of courts and increasing the efficiency of justice" established that the Judicial Panel in Supreme Court has jurisdiction as a first instance to solve issues of investment and competition law if the amount of investment is above 20 million USD. In other words, the above-mentioned Degree empowers the Judicial Panel to consider investment and competition disputes arising between individuals or legal entities (who have made investments in the amount of at least the equivalent to twenty million US dollars) and government agencies. The Decree established the panel's jurisdiction on certain investment dispute. In this case, investment and competition dispute of investors who invested above 20 million USD to the host state. However, Law of the Republic of Uzbekistan "On investment and investment activity" is the foundation for establishment for the panel to find its subjective jurisdiction. Moreover, it is not clarified whether this provision applies only to foreign investor or domestic investor. Therefore, in general, it can be interpreted that it is applicable to both domestic and foreign investors.

More interestingly, the investor-state dispute settlement clause in typical Uzbekistan's BITs refers to any disputes and any legal disputes. The term "any disputes" is a broad formulation of dispute settlement clause which can be seen as contractual

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and of treaty claims arising out of the same investment. For example, Article 63 of the Law "On investment and investment activity" describes the investment dispute as the dispute related to foreign investment and arising in the course of investment activity of a foreign investor in the territory of the Republic of Uzbekistan. Furthermore, the Israel-Uzbekistan BIT provides the investment dispute as following "*any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former*". Consequently, it can lead to a misinterpretation of how to define an investment dispute and a different definition of investment dispute between domestic law and BIT.

In addition, Uzbekistan does not have its own Model BIT. The Model BIT of the host country depicts its investment policy and legal framework more clearly and transparently. Therefore, Uzbekistan has to draft its model BIT. Besides, the cost allocation provision should be defined explicitly, leaving no room for confusion. For instance, the Uzbekistan model BIT can incorporate either each party has to bear costs and fees of dispute resolution or the losing party has to bear all expenses. BITs of Uzbekistan contain a choice of law clause for dispute resolution. It is also clearly defined that international law provisions shall prevail when any international treaty envisages more beneficial stipulations for the investor. Currently, Uzbekistan is going through huge reforms to become an investment-friendly country and a faithful economic partner across the globe.

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