

## ANALYSES OF ADR IN INVESTMENT DISPUTE RESOLUTION

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### ABSTRACT:

Given the perceived benefits of alternative dispute resolution (ADR) processes such as negotiation and mediation and their importance, it seems that it is an adequate option for investment dispute to opt for. This paper will point out to the fact that opting for ADR that provides speedy, cheap, effective, and flexible resolution. However, it still does not mean to ignore the point that there is a room for risks associated with using these alternatives.

One of the main areas in which it is necessary to introduce legal reforms in Uzbekistan is to achieve greater success in the use of alternative methods of prompt and effective settlement of disputes that have arisen. In accordance with the Decree of the President of the Republic of Uzbekistan in order to improve the system of protecting the rights and legitimate interests of individuals and legal entities, expanding alternative options for resolving disputes, as well as dramatically increasing the role of the institution of mediation, arbitration courts and international arbitration in optimizing the volume of work in courts it is necessary to take drastic measures to apply alternative legal methods for resolving investment disputes.

In this article, the author examines the term and general classification of alternative methods of settling investment disputes, its formation and development in Uzbekistan, and also gives the expected results that can be achieved with more active use of alternative methods of settling disputes in the Republic of Uzbekistan.

**KEY WORDS:** Alternative dispute resolution  
- ADR, mediation, dispute settlement.

### INTRODUCTION:

Participants in the Investment-state contracts when arising the conflicting situation should seek to consolidate their relationship with each other in order to ensure the continuity of their project. To achieve this end, players always fortify their agreement with a number of clauses dealing with dispute matters (Clark, 2004). Furthermore, they will generally strive to put into place processes which are speedy, efficient, private, and are designed to cause minimum disturbance to working processes and maintaining relationship between the contracting parties (Ross, 2007). Hence, parties in these industries are disposed in favour of agreed dispute resolution processes-whether personal to their contract (such as negotiation and meditation or as laid down by international instrument (such as arbitration)-rather than placing reliance upon the procedures of the national courts (Saleh Al-Barashdi, 2016).

One of the priority directions for the implementation of legal reforms in Uzbekistan is the introduction of a system of alternative methods for resolving investment disputes, which will ensure transparency, efficiency and effectiveness in resolving cases between the parties to an investment agreement.

The term "Alternative Dispute Resolution" or "ADR" refers to a wide range of dispute resolution mechanisms that are alternatives to litigation. The term can be used to refer to a variety of dispute resolution mechanisms, ranging from facilitated settlement negotiations, in

which the parties to a dispute are encouraged to negotiate directly before resorting to other legal dispute resolution mechanisms, to arbitration, which can be very similar to a trial.

The main advantages of ARS are:

Saving time and money;

Return to the parties of control over the conflict situation;

To avoid litigation that could adversely affect the partnership relations x between the parties;

Flexibility.

The Alternative Dispute Resolution System (ADS) is a set of tools and mechanisms that form the procedures for resolving and out-of-court settlement of disputes arising between the subjects of legal relations. Moreover, the ultimate goal of using ARS is to resolve the conflict at the lowest cost for all its participants.

In its most general form, alternative dispute resolution can be divided into:

Negotiation, as one of the most typical forms of alternative dispute resolution, aims to create an environment in which the parties to a dispute encourage direct negotiations without the involvement of a third party. This is a process during which the parties voluntarily work out a mutually beneficial agreement to resolve a general dispute. Unlike ADR with the involvement of a third party, negotiations allow the disputing parties to independently control the process and the decision.

Reconciliation and mediation are very close to each other in that they involve a third party to mediate a particular dispute or to reconcile a relationship. Mediators or mediators can facilitate communication or can help structure the settlement, but they are not empowered to issue a verdict. At the same time, in mediation, meetings with the parties are held separately in order to make efforts to establish mutual understanding and identify the reasons for the dispute, and thus to create

the basis for a solution in a friendly, consistent manner. Reconciliation, on the other hand, is a voluntary and informal process in which the disputing parties choose a neutral third party (one or more persons) who will assist them in reaching a mutually acceptable solution. Unlike judges or arbitrators, a mediator does not have the authority to issue a binding decision to the parties. In return, the mediator contributes to the formation of a solution that will satisfy the interests of all parties. The role and process of reconciliation can be very specific and depend on the nature of the dispute and the approach of the mediator. The mediator can use a wide range of techniques, for example, to facilitate effective communication between the parties and the development of cooperation between them; determination of the real interests of the parties; defining and narrowing the number of questions; transmission of messages between the parties; suggest possible solutions and represent the consequences of not finding solutions.

Arbitration provides for a third party to reach a verdict on a dispute between the parties. It is important to distinguish between mandatory and optional forms of ADR. Negotiation, conciliation and mediation are optional forms of ADR and depend on the willingness of the parties to reach an amicable settlement. The arbitration proceedings can be either mandatory or optional. Compulsory arbitration ends with a third party issuing an award, which is binding on the parties even if they disagree with the award. The non-binding arbitration proceedings also result in a third party making an award, which, however, the parties may reject.

In Uzbekistan, the ADR system began to develop relatively later. One of the first stages of the ADR's enforcement was the adoption of the Law of the Republic of Uzbekistan "On Arbitration Courts", which entered into force on January 1, 2007[1]. In accordance with the

law, the applicable law of arbitration can only be the legislation of Uzbekistan, state authorities and management cannot be parties to the arbitration, only a citizen of Uzbekistan can be an arbitrator. The law was adopted taking into account the fact that arbitration courts will primarily consider internal disputes and does not take into account the specifics of arbitration, in which the parties may belong to states with different legal, economic and social systems.

These rules effectively limit the ability of foreign investors to use the arbitration system as international commercial arbitration. [2]

In addition, a legal framework has been created in Uzbekistan, consisting of a number of interrelated laws and bylaws, where the central place is occupied by the laws "On foreign investments", "On guarantees and measures to protect the rights of foreign investors", "On investment activities", Provisions "On the procedure for concluding and implementing investment agreements" and other by-laws (more than 50).

Foreign investors and the enterprises they create in Uzbekistan can turn to institutional mechanisms to resolve investment disputes and protect their rights and interests. Intergovernmental agreements on mutual protection and promotion of investments ensure the relative stability of the legal framework for foreign investment and provide an additional tool for investors to protect their rights and interests.

However, remain problems s investmen t activities in the Republic of Uzbekistan in ensuring their rights in a number of which include insufficient efficiency of traditional institution s and the system of relationships and the absence of an alternative dispute resolution system, capable of providing the complementation rights protection mechanisms.[3]

A legal analysis of the current legislation and law enforcement practice shows the absence of a wide practice of resolving disputes by alternative methods on the territory of Uzbekistan - arbitration, stabilization clauses in investment contracts or mediation.

In foreign countries, foreigners justifiably avoid resolving disputes in state courts, which tend to make decisions in favor of the local side.

In such a situation, very often the Uzbek side, not having sufficient information about all the mechanisms for resolving a dispute and the consequences of choosing one or another mechanism, agrees with the terms of dispute resolution offered by the foreign partner, which, as a rule, are not beneficial for it, or, when concluding an agreement, tries to include a clause on the resolution of disputes in the economic court of Uzbekistan, not foreseeing that in the future, even if a decision is made in favor of the Uzbek side, this decision, due to the absence of relevant international agreements, will not be recognized and enforced on the territory of any foreign state .[4]

In this regard, in accordance with the analysis and proposals of international organizations, more active use in Uzbekistan of alternative forms of dispute resolution with the participation of foreign investors, such as international arbitration, conciliation, mediation, will allow solving the following tasks and problems:

- Provide the parties to the dispute with greater freedom to choose a forum to resolve a future or arisen dispute;
- Will provide a more efficient dispute resolution for the parties (in terms of time and material costs, the quality of consideration, preservation of reputation and business relations);
- Will create in the future an institutional basis for the development of international arbitration in the country for the consideration

of international disputes (including as a neutral forum) and the development of the system of arbitration law, including the doctrine;

- Solve possible problems of the Uzbek side with the subsequent implementation of the decision abroad;
- Will increase the number of disputes resolved at the pre-trial stage;
- will unload the state judicial system with all the ensuing consequences and compensate for the difficulties in creating additional links of economic courts.[5]

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- 8) Analytical report "Improvement of the system of resolution of investment disputes in Uzbekistan" UNDP. 2008 r.
- 9) According to research UNDP 2008 the year and a analysis and the authors on the basis of statistics of economic justice in Uzbekistan.
- 10) Box. The Force of Foreign Arbitral Awards and Judgments in Uzbekistan Since February 1996, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (New York Convention) entered into force for Uzbekistan, establishing the rule of compulsory recognition and enforcement on its territory (using the mechanism of enforcement of decisions of national courts) decisions of international arbitration courts without reconsideration of the dispute on the merits. The recognition of arbitral awards within the framework of the said Convention is carried out by submitting a relevant petition to the economic courts of Uzbekistan. "Each Contracting State recognizes arbitral awards as binding and enforces them in accordance with the procedural rules of the territory where recognition and enforcement of these awards is sought" (Article 3 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards) Enforcement in Uzbekistan decisions of foreign state courts are carried out in accordance with agreements on legal assistance concluded with the CIS countries and some other countries.
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