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Drafting effective arbitration clauses for cross-border contracts involving central asia: practical considerations

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Аннотация. So‘nggi o‘n yillikda O‘zbekiston, Qozog‘iston, Qirg‘iz Respublikasi va Tojikiston bilan bog‘liq xorijiy investorlar va savdo hamkorlari o‘rtasidagi transchegaraviy tijorat bitimlari hajmi sezilarli darajada oshdi, biroq ko‘plab shartnomalarda hamon mintaqaning huquqiy muhitiga moslashtirilmagan, boshqa shartnomalardan olingan arbitraj bandlari qo‘llanilmoqda. Ushbu maqolada O‘zbekistonning “Xalqaro tijorat arbitraji to‘g‘risida”gi qonuni, shuningdek mintaqaning YUNSITRAL Namunaviy qonuni va Nyu-York konvensiyasiga rioya qilishini o‘z ichiga olgan Markaziy Osiyoda xalqaro tijorat arbitrajini tartibga soluvchi qonunchilik asoslari tahlil qilinadi hamda bandning samarali ishlashi va ijro etiladigan qarorga olib kelishini belgilovchi amaliy tanlovlar nizolar doirasi, arbitraj joyi, muassasa, til, qo‘llaniladigan huquq, arbitrlarni tayinlash tartibi va ko‘p bosqichli nizolarni hal qilish mexanizmlari aniqlanadi.

Калит сўзлар. arbitraj bandi, transchegaraviy shartnomalar, Markaziy Osiyo, O‘zbekiston, YUNSITRAL Na’munaviy qonuni, Nyu-York konvensiyasi, arbitraj joyi, institutsional reglament, nizolarni hal qilish, qarorlarni ijro etish.

Аннотация. За последнее десятилетие объем трансграничных коммерческих сделок между иностранными инвесторами и торговыми партнерами с участием Узбекистана, Казахстана, Кыргызской Республики и Таджикистана значительно вырос, однако во многих контрактах до сих пор используются заимствованные из других договоров арбитражные оговорки, не адаптированные к правовой среде региона. В данной статье анализируется законодательная база, регулирующая международный коммерческий арбитраж в Центральной Азии, включая Закон Узбекистана «О международном коммерческом арбитраже», а также соблюдение регионом Типового закона ЮНСИТРАЛ и Нью-Йоркской конвенции; кроме того, определяются практические решения, обеспечивающие эффективную работу оговорки и вынесение исполнимого решения: сфера охвата споров, место арбитража, институт, язык, применимое право, порядок назначения арбитра и многоступенчатые механизмы разрешения споров.

Ключевые слова. арбитражная оговорка, трансграничные договоры, Центральная Азия, Узбекистан, Типовой закон ЮНСИТРАЛ, Нью-Йоркская конвенция, место арбитража, институциональный регламент, разрешение споров, исполнение решений.

Annotation. Over the past decade, the volume of cross-border commercial transactions involving foreign investors and trading partners in Uzbekistan, Kazakhstan, the Kyrgyz Republic, and Tajikistan has grown significantly; however, many contracts still use copy-pasted arbitration clauses that are not tailored to the region's legal environment. This article analyzes the legal framework governing international commercial arbitration in Central Asia, including Uzbekistan's Law "On International Commercial Arbitration" as well as the region's compliance with the UNCITRAL Model Law and the New York Convention, and identifies practical choices that ensure the clause functions effectively and leads to an enforceable award: scope of disputes, seat of arbitration, institution, language, applicable law, arbitrator appointment procedure, and multi-tier dispute resolution mechanisms.

Keywords. arbitration clause, cross-border contracts, Central Asia, Uzbekistan, UNCITRAL Model Law, New York Convention, seat of arbitration, institutional rules, dispute resolution, enforcement of awards.

Introduction. Cross-border commercial activity connecting Central Asian economies, including Uzbekistan, Kazakhstan, the Kyrgyz Republic, Tajikistan, and Turkmenistan, with foreign investors, contractors, and trading partners has expanded markedly since the mid-2010s, driven by infrastructure projects along regional transport and energy corridors, growing foreign direct investment in energy, mining, agriculture, and textiles, and a wave of domestic legal reform aimed at improving the investment climate. As commercial relationships with the region deepen, so does the frequency of disputes arising from supply agreements, joint ventures, construction contracts, and cross-border financing arrangements. Arbitration remains the preferred mechanism for resolving such disputes, principally because it allows parties to select a neutral forum, avoid the perceived unpredictability of litigating before the courts of a counterparty's home jurisdiction, and rely on the New York Convention’s near-universal framework for the recognition and enforcement of awards.

Notwithstanding this preference, a striking number of contracts involving Central Asian parties still contain arbitration clauses copied wholesale from unrelated precedent agreements, drafted without regard to the specific legal, linguistic, and institutional environment of the region. Clauses of this kind create a familiar set of pathologies: clauses that name a non-existent institution, ambiguous seat designations that expose the agreement to conflicting supervisory jurisdictions, silence on the language of proceedings in a region where Uzbek, Russian, Kazakh, Kyrgyz, Tajik, and English may all be relevant, and multi-tiered dispute resolution mechanisms drafted so loosely that a party can indefinitely delay arbitration by disputing whether pre-arbitral steps have been exhausted. Each of these defects can be avoided through careful drafting informed by an understanding of the applicable legal

framework.

This article addresses the practical considerations that should inform the drafting of arbitration clauses in cross-border contracts involving Central Asian counterparties. It proceeds in several parts. First, it outlines the statutory and treaty framework governing international commercial arbitration in the region, with particular attention to Uzbekistan's Law on International Commercial Arbitration. Second, it identifies the core elements that any effective arbitration clause must address. Third, it examines considerations that are specific to the region, including the treatment of state-owned counterparties, language and translation issues, and currency of payment. Fourth, it compares regional and international seats and institutions available to contracting parties. Fifth, it addresses the enforcement of awards under the New York Convention as it operates in Central Asian jurisdictions, before concluding with a practical drafting checklist.

Legal Frameworks Governing International Commercial Arbitration in Central Asia. The legal infrastructure for international commercial arbitration across Central Asia has been substantially modernised over the past two decades, though the pace and depth of reform vary by jurisdiction. Uzbekistan adopted its Law "On International Commercial Arbitration" No. ZRU-674 on February 16, 2021, becoming the eighty-fifth country to enact legislation based on the UNCITRAL Model Law on International Commercial Arbitration of 1985, as amended in 2006. [1] The Law applies to arbitrations seated in Uzbekistan, recognises the principles of party autonomy, competence-competence, and separability of the arbitration agreement, restricts judicial intervention to the grounds expressly enumerated in the Law, and governs the recognition and enforcement of arbitral awards consistent with Uzbekistan's obligations under the New York Convention, to which the country acceded in 1995. [2] The adoption of the ICA Law was accompanied by a companion statute amending the Economic Procedure Code, which clarified which categories of arbitration-related applications fall within the jurisdiction of the Economic Courts and codified the disqualification of a judge who has previously served as arbitrator in a related dispute. [3] Uzbekistan's broader reform agenda, articulated in the Decree of the President of the Republic of Uzbekistan approving the Development Strategy of New Uzbekistan for 2022-2026, identifies the improvement of the investment climate and the country's standing in international rankings as strategic priorities, a context within which the modernisation of arbitration legislation should be understood. [4]

Kazakhstan's Law "On Arbitration" No. 488-V of April 8, 2016, replaced the country's previous, more fragmented legislative regime and, together with amendments adopted in 2019, is widely regarded as one of the more arbitration-friendly statutory frameworks in the region. [5] The Law establishes the Arbitration Chamber of Kazakhstan as a self-regulatory body for permanent arbitral institutions and articulates rules on the recognition and enforcement of both domestic and foreign arbitral awards. The Astana International Financial Centre, established in 2018 with its own common-law-based court and an affiliated International Arbitration Centre, offers a further, internationally oriented forum operating largely in English and applying rules modelled on those of leading international financial centres [6].

The Kyrgyz Republic's Law "On Arbitration Courts in the Kyrgyz Republic," adopted in 2002, draws substantially on the UNCITRAL Model Law, although the Kyrgyz Republic has not formally adopted the Model Law as such. [7] A distinctive feature of the Kyrgyz framework is that an arbitral award seated in the Kyrgyz Republic cannot be set aside by the competent court, which retains only the power to refuse enforcement on the limited grounds available under the Law. [8] Tajikistan's arbitration framework remains comparatively less developed, and the country's accession to the New York Convention occurred substantially later than that of its neighbours, a factor discussed further below. Turkmenistan enacted domestic legislation based on the UNCITRAL Model Law in 2016 and has, since 2022, been a party to the New York Convention, providing a further, albeit less tested, statutory foundation for arbitration within the region. [2]

Core Drafting Elements of an Effective Arbitration Clause. An arbitration clause performs several distinct legal functions simultaneously: it records the parties' consent to arbitrate, defines the scope of disputes submitted to arbitration, and displaces the jurisdiction of national courts, all while needing to remain sufficiently precise to be enforceable and sufficiently flexible to accommodate disputes that the parties may not have anticipated at the time of contracting. Several elements deserve particular attention.

First, the scope of the clause should be drafted broadly, typically covering any dispute, controversy, or claim arising out of or in connection with the agreement, including its existence, validity, interpretation, performance, breach, or termination, in order to avoid disputes about whether a particular claim, such as a tort claim arising from the same facts as a contractual claim, falls within or outside the clause. [9] Narrow clauses referring only to disputes arising under the contract have generated substantial satellite litigation in numerous jurisdictions and should be avoided.

Second, the clause must unambiguously identify the arbitral institution, if any, and the rules that will govern the proceedings. A clause that refers vaguely to arbitration in accordance with international commercial arbitration rules, without naming an institution, risks being treated as pathological, since no institution administers proceedings under generic international rules. Where the parties intend to use an institution active in the region, such as the Tashkent International Arbitration Centre or the AIFC International Arbitration Centre, the clause should reproduce the institution's own model clause without material alteration. [13, 14, 15]

Third, the seat, or place, of arbitration must be specified, since the seat determines the procedural law applicable to the arbitration, the courts with supervisory jurisdiction over the proceedings, and the courts before which any application to set aside the award may be brought. [10] The seat is a legal concept distinct from the physical venue of hearings, which may be held elsewhere for convenience; well-drafted clauses should make this distinction explicit, particularly where hearings are expected to take place partly in a Central Asian jurisdiction and partly abroad.

Fourth, the clause should specify the number of arbitrators, commonly one for lower-value disputes and three for higher-value or more complex disputes, the method of their appointment, and a default appointing authority to break any deadlock, since the absence of such a mechanism can delay the

constitution of the tribunal by months.

Fifth, the language of the arbitration should be expressly designated. In a region where contracts are frequently executed in Uzbek, Russian, Kazakh, Kyrgyz, Tajik, and English versions, sometimes with an express order of precedence between language versions and sometimes without one, failure to specify the language of the arbitral proceedings, as distinct from the language of the contract, is a common and avoidable source of early procedural dispute and translation cost.

Sixth, the governing law of the contract and the governing law of the arbitration agreement itself should both be addressed, since these need not coincide, and a growing body of arbitral and judicial authority treats the two questions as analytically distinct. [16] In the absence of an express choice, tribunals typically default to the law of the seat as the governing law of the arbitration agreement, a rule that reinforces the importance of a deliberate seat selection.

Practical Considerations Specific to Central Asian Counterparties. Several considerations recur with particular frequency in contracts involving Central Asian counterparties. Where the counterparty is a state-owned enterprise or a government entity, common in the energy, mining, transport, and utilities sectors across the region, the contract should address the counterparty's capacity to enter into an arbitration agreement and should, where possible, include an express waiver of sovereign immunity from both suit and execution, since domestic legislation in several Central Asian states restricts the assets of state entities that may be subject to enforcement measures. Parties should also verify, at the time of drafting, that the proposed subject matter of the contract is arbitrable under the law of any jurisdiction whose courts might later be asked to enforce the award, since certain categories of disputes involving state property or natural resource concessions may be treated as non-arbitrable or subject to mandatory local jurisdiction under domestic law.

Currency and payment mechanics also warrant attention. Central Asian jurisdictions have at various times imposed currency conversion controls and repatriation requirements affecting the enforcement of monetary awards, and contracts should specify the currency of any award and, where relevant, address the mechanics of currency conversion and cross-border transfer, to reduce the risk that a nominally successful award becomes difficult to realise in practice.

Confidentiality is a further point of divergence from parties' expectations. Unlike institutional rules such as those of the LCIA and the SCC, which impose confidentiality obligations by default, [14, 15] several Central Asian arbitration statutes, including Uzbekistan's ICA Law, do not impose a general statutory confidentiality obligation on the parties or the tribunal. Where confidentiality is important to the parties, it should be addressed expressly in the arbitration clause rather than left to the default rule of the chosen institution or the law of the seat.

Finally, translation and authentication of documentary evidence deserve early attention. Evidence originating from Central Asian counterparties is frequently produced in Uzbek, Russian, or another regional language, and contracts anticipating a significant volume of such evidence should address, at the drafting stage, whether certified translations will be required, who bears

the cost of translation, and whether documents apostilled or legalised in one jurisdiction will be accepted without further authentication in the seat of arbitration.

Choosing the Seat of Arbitration: Regional and International Options. The choice between a regional seat, such as Tashkent, Almaty, Astana, or Bishkek, and an established international seat, such as London, Paris, Geneva, Stockholm, or Singapore, depends on a range of factors specific to each transaction. A regional seat offers lower costs, greater familiarity among local counsel, and closer proximity to evidence and witnesses, and may signal goodwill towards a Central Asian counterparty in the negotiation of the contract. An established international seat, by contrast, offers a deeper body of judicial precedent on the supervision of arbitration, a more predictable approach to the setting aside of awards, and, in some cases, greater comfort for foreign parties less familiar with the courts of the region. The Astana International Financial Centre occupies an intermediate position: it is located within Central Asia but operates a common-law-based court system, conducts proceedings in English, and applies rules closely modelled on established international arbitration practice, making it, for many foreign parties, a workable compromise between regional proximity and procedural familiarity [6].

Selecting Arbitral Institutions and Rules. Table 1 compares several institutional options available to parties contracting with Central Asian counterparties across criteria most relevant to the drafting decision. The International Chamber of Commerce and the London Court of International Arbitration remain among the most frequently selected institutions in cross-border contracts with Central Asian parties where at least one party is based outside the region, owing to their long institutional track record and the international recognition of their awards. [13, 14] The Arbitration Institute of the Stockholm Chamber of Commerce has historically played a significant role in disputes involving parties from the former Soviet space, including Central Asia, owing to its geographic and cultural proximity and its accumulated experience with the relevant legal traditions. [15] Regional institutions, including the Tashkent International Arbitration Centre and the AIFC International Arbitration Centre, offer lower costs and increasing institutional capacity, and merit serious consideration for disputes of moderate value or where both parties are based within the region.

Multi-Tiered Dispute Resolution Clauses and Governing Law. Many contracts involving Central Asian counterparties include multi-tiered dispute resolution clauses requiring the parties to attempt negotiation or mediation before resorting to arbitration. Such clauses can be valuable in preserving commercial relationships, but they must be drafted with precision: the clause should specify a fixed time period for the pre-arbitral step, an objective trigger for its commencement, such as a written notice of dispute, and an express statement that failure to complete the pre-arbitral step within the specified period does not bar a party from commencing arbitration. [16] Clauses that condition the tribunal's jurisdiction on the exhaustion of vague or open-ended pre-arbitral procedures have generated substantial jurisdictional litigation and should be avoided in favour of clauses that treat the pre-arbitral step as a contractual obligation whose breach sounds in damages or costs rather than

as a jurisdictional precondition.

The choice of governing law for the substance of the contract should be made independently of the choice of seat, and parties should resist the temptation to default to the law of one contracting party's home jurisdiction purely as a negotiating concession. Where the contract's governing law is that of a Central Asian jurisdiction, foreign parties should obtain local law advice on mandatory provisions, particularly in relation to currency control, licensing, and public procurement, that may apply regardless of the parties' choice of law.

Enforcement of Arbitral Awards in Central Asia under the New York Convention. All five Central Asian states are now parties to the New York Convention: Uzbekistan and Kazakhstan acceded in 1995, the Kyrgyz Republic in 1997, Tajikistan in 2012, and Turkmenistan most recently, acceding on May 4, 2022 and becoming the Convention's one hundred and seventieth state party. [2] Tajikistan's accession is subject to reservations limiting the Convention's application to awards made after its entry into force for Tajikistan and excluding disputes relating to immovable property, while Turkmenistan's accession is subject to the standard reciprocity reservation and a further reservation limiting its application to disputes considered commercial under Turkmen law; [11] parties contracting with Tajik or Turkmen counterparties should account for these reservations when assessing the enforceability of a prospective award. The arbitration statutes of Uzbekistan, Kazakhstan, and the Kyrgyz Republic each provide for refusal of recognition and enforcement on grounds consistent with Article V of the New York Convention, including incapacity of a party, invalidity of the arbitration agreement, lack of proper notice, awards exceeding the scope of the submission, irregular composition of the tribunal, and conflict with public policy. [17] In practice, the public policy exception has been the ground most frequently invoked by award debtors resisting enforcement in the region's courts, and practitioners should ensure that the underlying contract and the arbitral procedure comply strictly with mandatory local rules capable of being characterised as public policy, including rules on the capacity of state entities and restrictions on the arbitrability of disputes involving state property.

Conclusion. The steady growth of cross-border commercial activity involving Central Asian counterparties has not been matched by a corresponding increase in the sophistication of the arbitration clauses used to govern the resulting disputes. Uzbekistan's Law on International Commercial Arbitration, together with the comparable statutory frameworks of Kazakhstan and the Kyrgyz Republic, provides a modern and broadly UNCITRAL-consistent legal foundation for arbitration seated in the region, while the Astana International Financial Centre offers an additional, internationally oriented forum located within Central Asia itself. Effective drafting nonetheless requires more than reliance on a favourable statutory environment: it requires a clause that unambiguously specifies the scope of disputes covered, the arbitral institution and rules, the seat, the number and method of appointment of arbitrators, the language of proceedings, and the governing law of both the contract and the arbitration agreement, together with express provision for the practical issues, including sovereign immunity, currency, confidentiality, and translation, that recur with particular frequency in transactions involving the region. Parties who address each of these elements deliberately, rather

than through the uncritical adoption of precedent clauses drawn from unrelated transactions, substantially reduce the risk of costly jurisdictional disputes and materially improve the prospects of obtaining an enforceable award.

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