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RESOLUTION OF CORPORATE DISPUTES IN INTERNATIONAL COMMERCIAL ARBITRATION IN GERMANY AND UZBEKISTAN: A COMPARATIVE LEGAL ANALYSIS

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Abstract. *Germany has a reliable system of corporate dispute resolution. There is no division into international commercial arbitration and domestic arbitration in the country: the system is regulated by a single regulatory legal act – Book 10 of the German Code of Civil Procedure (Zivilprozessordnung, ZPO). The government of Uzbekistan is making significant efforts to expand the scope of international arbitration. In 2018, the Tashkent International Arbitration Institute (TIAC) was established as Uzbekistan's first international arbitration institution. The main goal is to facilitate the resolution of disputes between business entities in different countries, in particular those related to investments, intellectual property and blockchain technology, through international arbitration. In this study, we analyze these two jurisdictions by discussing the specific features of each and relevant advances in German experience. We support my analysis by studying the legal literature, legislation, legal commentaries and case law.*

Keywords: *corporate disputes, international arbitration, comparative law, Uzbekistan, Germany, dispute resolution*

GERMANIYA VA O'ZBEKISTON XALQARO TIJORAT ARBITRAJLARIDA KORPORATIV NIZOLARNI HAL ETISH: QIYOSIY HUQUQIY TAHLIL

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Annotatsiya. *Germaniyada korporativ nizolarni hal qilishning ishonchli tizimi mavjud. Bugungi kunda mamlakatda xalqaro tijorat arbitraji va ichki arbitrajga boʻlinish yoʻq: tizim yagona meʼyoriy-huquqiy hujjat – Germaniya Fuqarolik protsessual kodeksining 10-kitobi (Zivilprozessordnung, ZPO) bilan tartibga solinadi. Oʻzbekiston hukumati xalqaro arbitraj koʻlamini kengaytirish boʻyicha katta saʼy-harakatlarni amalga oshirmoqda. 2018-yilda Toshkent xalqaro arbitraj instituti (TIAC) Oʻzbekistonning ilk xalqaro arbitraj inshooti sifatida tashkil etilgan. Uning asosiy maqsadi – turli mamlakatlardagi tadbirkorlik subyektlari oʻrtasidagi, xususan, investitsiyalar, intellektual mulk va blokcheyn texnologiyalari bilan bogʻliq nizolarni xalqaro arbitraj orqali hal qilishga yordam berishdir. Ushbu tadqiqotda mazkur ikki yurisdiksiya tahlil qilinib, har birining oʻziga xos xususiyatlari va nemis tajribasidagi tegishli ilgʻor jihatlar muhokama qilindi. Tahlil yuridik adabiyotlar, qonun hujjatlari, huquqiy sharhlar va sud amaliyotini oʻrganishga asoslangan.*

Kalit soʻzlar: *korporativ nizolar, xalqaro arbitraj, qiyosiy huquq, Oʻzbekiston, Germaniya, nizolarni hal etish*

РАЗРЕШЕНИЕ КОРПОРАТИВНЫХ СПОРОВ В МЕЖДУНАРОДНОМ КОММЕРЧЕСКОМ АРБИТРАЖЕ В ГЕРМАНИИ И УЗБЕКИСТАНЕ: СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ

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Аннотация. *Германия обладает устойчивой и надёжной системой разрешения корпоративных споров. В стране отсутствует разделение на международный коммерческий арбитраж и внутренний арбитраж: вся система регулируется единым нормативным актом – Книгой 10 Гражданского процессуального уложения Германии (Zivilprozessordnung, ZPO). В Узбекистане государство предпринимает значительные усилия по расширению сферы международного арбитража. В 2018 году был создан Ташкентский международный арбитражный центр (TIAC) – первое международное арбитражное учреждение Узбекистана. Его основной целью является содействие разрешению споров между субъектами предпринимательской деятельности из разных стран, в частности связанных с инвестициями, интеллектуальной собственностью и технологиями блокчейн, посредством международного арбитража. В данном исследовании проводится сравнительный анализ двух юрисдикций, рассматриваются их специфические особенности, а также соответствующие достижения германского опыта. Анализ основан на изучении правовой литературы, законодательства, юридических комментариев и судебной практики.*

Ключевые слова: *корпоративные споры, международный арбитраж, сравнительное право, Узбекистан, Германия, разрешение споров*

Introduction

Germany has a sound system of resolving corporate disputes. The attractiveness of Germany as a venue for cross-border disputes to be settled by arbitration increased following the reform of the legal framework for arbitration carried out in Germany in 1998. The aim and result of the reform was to bring German legislation into line with the UNCITRAL Model Law on International Commercial Arbitration of 1985 (hereinafter referred to as the UNCITRAL Model Law), which also entailed progressive changes to the rules of arbitration institutions. This reform was carried out not only for the purpose of harmonizing legal regulation in the field of international commercial arbitration, but also with the aim of increasing the country's friendliness to arbitration. Today, there is no division in the country between international commercial arbitration and domestic arbitration: regulation is governed by a single normative legal act – the 10th Book of the Civil Procedure Code of Germany (Zivilprozessordnung, ZPO, hereinafter referred to as the CPC of Germany) (Böckstiegel, et al., 2015). Additionally, the presence of fairly equivalent arbitration institutions (such as Court of Arbitration of the Hamburg Chamber of Commerce, Frankfurt International Arbitration Center, and German Arbitration Institute (DIS)) in several cities of the country makes arbitration fairly attractive.

The government of Uzbekistan is making major efforts to broaden the scope of international arbitration. In 2018, the Tashkent International Arbitration Facility (TIAC) was founded as Uzbekistan's inaugural international arbitration facility. The primary objective is to facilitate the resolution of disputes between business entities in various countries, namely concerning investments, intellectual property, and blockchain technology, via international arbitration. The passage of the Law on International Commercial Arbitration was another significant milestone. If both sides agree, any disagreements that come up in business dealings, whether they are contractual or not, can be sent to international commercial arbitration.

There are significant differences between the practices of Germany and Uzbekistan. The significance of this topic lies in the fact that all types of corporate disputes are subject to arbitration in Germany. As Uzbek arbitration practice is undergoing a transitional phase, unlike in Germany, some corporate disputes are still required to be resolved in national courts. Corporate disputes involving state-owned enterprises and regulatory matters continue to face obstacles when it comes to arbitration.

In this research, we will analyze these two jurisdictions by discussing the peculiarities of each and the relevant best practices of the German experience. The analysis will be supported by legal literature, statutory materials, legal commentaries, and case law.

Main part

German perspective

The focus of this paragraph is the peculiarities of the corporate disputes in Germany. As we know, the notion "corporation" is not used as classification for the legal entity in Germany. In contrast, the following organizational legal form are widely used: joint-stock company (Aktiengesellschaft), limited liability company (Gesellschaften mit Beschränkter Haftung), entrepreneurial company (Unternehmergesellschaft), partnership (Personenhandelsgesellschaften) and others. (From, 2017) Approximately 80-90% of foreign trade contracts of German legal entities contain an arbitration clause. About a third of arbitration proceedings in Germany are corporate disputes (Böckstiegel, et al., 2015).

I. Corporate disputes in Germany

"Disputes resulting from unlawful acts by participants or members of a company's management bodies that infringe upon the rights and legitimate interests of other participants of the entity or the company as a whole are known as corporate disputes." Thus, corporate law covers any organizational forms (civil law companies) created to achieve certain common goals (Markert, 2015).

Corporate disagreements are often categorized into three groups based on their subjective composition:

1) disagreements occurring among company members;

2) problems occurring between members and the firm;

3) disputes arise between the firm and its entities.

German law lacks a statutory definition of corporate conflicts. Several factors can shed light on this. It's hard to put all the different types of corporate disputes into one single idea. These kinds of disputes can be about anything from the payment of initial contributions to authorized capital or the distribution of profits to questions about whether managers are responsible for the decisions they make (Markert, 2015). Second, corporate conflicts are complicated because German law recognizes many different types of businesses, each with its own set of rules. This indicates that Germany does not have a single law that says how to settle business disputes. Instead, the courts rely on specific laws and past decisions made by other courts. Thirdly, large companies can include a huge number of participants, which also leads to the emergence of corporate disputes of varying subject matter.

Dr.N. Schmidt-Arends and Alessandro Covi, in their work, confirm that neither German statutory law, nor German judicial practice, nor German literature provides a clear and comprehensive definition of what types of disputes are classified as "corporate disputes." However, they note that it is generally accepted, in particular, to classify the following types of disputes under this category: (Schmidt-Ahrendts & Covi, 2014)

Disputes may arise from corporate contracts. They can also occur in the context of mergers and acquisitions (M&A), for example, when there is a disagreement over whether the seller of shares has breached one of the warranties in the share purchase agreement. Conflicts often emerge between joint venture partners, such as when one partner intends to exit the joint venture. Shareholder disputes can also result from a shareholders' agreement; for instance, when a minority shareholder claims the right to exercise a "put option" and sell their shares at fair market value. Issues may also relate to compensation following a "squeeze-out" procedure, which involves the majority shareholder mandatorily buying out minority shareholders without their consent. Additionally, disputes may occur between shareholders that require a binding decision applicable to all shareholders (the "erga omnes" effect), such as in cases challenging shareholder resolutions.

Recently, the issue of introducing amendments to Book 10 of the German CPC (ZPO) on "Arbitration Proceedings" based on the DIS Arbitration Rules (DIS) has been discussed in German legal literature. However, due to the specificity of the DIS Arbitration Rules, particularly those applicable only to the aforementioned categories of disputes, it is currently considered unacceptable to give these rules a normative character. Nevertheless, proponents of incorporating these rules into the German ZPO believe that it could offer more opportunities for ad hoc arbitration and contribute to the "revitalization" of arbitration clauses that have become unenforceable since the adoption of the "Arbitrability II" doctrine (Wolff, 2016).

Uzbekistan's perspective

Since achieving independence, Uzbekistan has seen substantial modifications in its internal legislation, especially with the regulation of foreign economic activities. Local businesses being able to take part in global economic activities, joint ventures being formed, and more foreign investment are all making it easier for countries to work together and create new opportunities for growth.

In Uzbekistan, the prerequisites for initiating arbitration procedures have been fulfilled, resulting in an increase in both the number of permanent arbitration tribunals and the civil disputes they adjudicate. However, because arbitration courts are not part of the government, they do not have any public authority and cannot force people to follow their decisions or take other actions. Furthermore, in some instances, the parties engaged in arbitration are required to challenge the rulings of the arbitration tribunals. The lack of a solid arbitration mechanism renders this process far more complex than in state courts.

Uzbekistan's transition to market relations at the close of the 20th century, along with the acknowledgment of private property rights, economic liberty, and entrepreneurship, established the groundwork for the resurgence of arbitration in the nation. This transition resulted in an increase in both the quantity of permanent arbitration tribunals and the cases they adjudicate. Consequently, Uzbekistan has established and is continually enhancing its legislative framework governing the functioning and administration of arbitration courts.

Parties to a dispute can freely establish and modify the arbitration rules since the Law of the Republic of Uzbekistan "On Arbitration Courts" and the regulations regulating arbitration courts are typically quite flexible. They may agree to these provisions either inside the arbitration agreement or during the dispute process.

Uzbekistan enacted the "Law on International Commercial Arbitration" on February 16, 2021, based on the 2006 modifications to the UNCITRAL Model Law. This legislation becomes effective on August 17, 2021.

According to Article 21 of the new law, arbitral tribunals have the authority to determine their own jurisdiction, including the validity or existence of the arbitration agreement. The law also emphasizes the independence of the arbitration agreement from the underlying contract.

By adopting this law, Uzbekistan takes an important step towards advancing international commercial arbitration in the country. It positions the nation as an arbitration-friendly jurisdiction, which is likely to make it more appealing for foreign investment and business activity.

I. Corporate disputes in Uzbekistan

Article 30 of the Economic Procedure Code lists only 7 types of corporate dispute cases. At the same time, this article stipulates that other disputes may be included in the scope of corporate dispute cases in accordance with the law. The Economic Procedure Code of Uzbekistan stipulates that corporate conflicts encompass:

Issues pertaining to the formation, reorganization, and dissolution of a legal entity are considered corporate disputes. Disputes related to the ownership of shares, interests in the authorized capital of economic companies and partnerships, and shares of cooperative members – as well as the identification of encumbrances on these assets and the exercise of associated rights – are also included, except when they concern the distribution of inherited property or the shared property of spouses, even if these include shares and interests in the authorized capital of economic entities. Additionally, disputes may arise from claims made by participants (founders or members) of a legal entity seeking to declare transactions executed by the entity null and void and to apply the consequences of such nullity. Disputes involving securities are also covered, such as disagreements over decisions made by the issuer's management, transactions related to the placement of securities, and reports or notifications about the results of their issuance or additional issuance. Further, disputes may stem from the actions of nominal custodians of securities, especially concerning the accounting of rights to shares and other securities and the fulfillment of legal rights and obligations related to their placement and circulation. Disputes regarding the conduct of a general meeting of a legal entity's members and the appeal of decisions made by its management bodies are included as well. Other disputes may also be recognized as corporate disputes according to applicable law.

Corporate relations include interactions between the members of a corporation (shareholders) and the governing body of the corporation (the board of directors), interactions among shareholders themselves, interactions between employees of the corporation and the board of directors, as well as interactions between the corporation and external parties such as the state, government bodies, creditors, citizens, and other organizations (Saidov, 2021).

To qualify a dispute as a corporate dispute, two prerequisites must be met. First, the dispute must arise from the activities of the corporation. Such disputes must not stem from labor relations – for example, those between an employer and an employee concerning hiring, dismissal, granting of leave, assigning additional duties, wage payments, determination of material liability, and similar matters. Second, the corporation to which the dispute relates must be state-registered and must have the status of a legal entity.

According to the Resolution of the Plenary Session of the Supreme Economic Court of the Republic of Uzbekistan dated June 20, 2014, No. 262, titled "On Certain Issues of Resolving Corporate Disputes by Economic Courts," paragraphs 3 and 4 state that a founder of a business company or society is a legal entity, an individual, or their authorized representative who has signed the founding agreement and has undertaken the obligation to establish the company or society.

Any legal entity or individual is termed a participant in the company or society if they possess a stake, interest, or contribution once it is legally registered by the state and gains legal entity status.

When someone or a business makes a certain entry in a joint-stock company's bank account, that person or business is considered a shareholder. This happens in a set way. As required by law, this clause allows for more types of conflicts to come up in corporate dispute cases. An examination of statistical data (Appendix 1) throughout the half year in 2018 indicates that corporate disagreements exhibit variability. In particular, some case categories in this group have grown at certain times while others have shrunk, or the other way around.

Comparison

According to the above discussions, a corporate dispute resolution in Germany has several distinctive features. First, arbitration is a prevalent mechanism for settling corporate conflicts, mostly owing to its effectiveness, impartiality, and adaptability. The German Arbitration Act (Zivilprozessordnung) regulates arbitration processes in commercial disputes, encompassing corporate matters. Parties are required to consent to settle conflicts by arbitration, often specified in the company's articles of organization, an arbitration clause in the main contract, or a distinct agreement on arbitration.

The German Institution of Arbitration (DIS), one of the major arbitral institutions in Germany, offers rules and runs arbitration processes. For companies worried about public disclosure of sensitive issues, arbitration offers a neutral forum and secrecy, which is especially crucial. Germany, as a signatory to the New York Convention (1958), implements arbitral rulings in accordance with international norms, ensuring security and stability for enterprises.

Arbitration frequently resolves shareholder disputes, contract violations, or joint venture matters in Germany. It offers an expedited procedure for settling commercial disputes without the public scrutiny of a court trial.

In Uzbekistan, corporate dispute resolution is exclusively the jurisdiction of the economic courts, but there is no clear restriction on arbitration.

Arbitration has gained prevalence, particularly following the nation's law reforms aimed at enhancing its investment environment and streamlining company activities. Arbitration in Uzbekistan is regulated by the Law on Arbitration (2016) and the Law on International Commercial Arbitration (2021), both of which conform to international norms and the UNCITRAL Model Law on International Commercial Arbitration. The legislation establishes a definitive framework for arbitration, guaranteeing that corporate conflicts are managed efficiently and equitably.

Similar to Germany, corporate entities in Uzbekistan are required to formally consent to resolve conflicts through arbitration. Contracts, joint venture agreements, or a company's foundational documents can articulate this.

The Tashkent International Arbitration Centre (TIAC), founded in 2018, is a prominent arbitration institution in Uzbekistan. TIAC ensures professionalism in managing corporate conflicts by overseeing both local and international arbitration proceedings.

Uzbekistan provides the option for both international and domestic arbitration. For business disputes that span borders, international arbitration is very important. The International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA) are two well-known global arbitral institutions that are often chosen.

Uzbekistan is a member of the New York Convention on the Recognition and Execution of Foreign Arbitral Rulings (1958). This makes it easier for arbitral decisions made in other countries to be recognized and carried out, which gives international legitimacy and assurance.

Uzbekistan extensively employs arbitration to adjudicate disputes concerning shareholder disagreements, violations of commercial contracts, and economic transactions. Arbitration is appealing to businesses in the country because it is flexible and quick. Businesses want to avoid long court hearings as much as possible.

Germany and Uzbekistan have established comprehensive legislative systems that facilitate business dispute resolution via arbitration. Germany has a well-established and respected arbitration system that is supported by groups like the DIS and is marked by a high level of international cooperation. Even though Uzbekistan has only recently started using arbitration as a common method of dispute resolution, it has made a lot of progress in creating arbitration laws (most notably by creating TIAC) and making sure they are in line with international standards to help settle disputes. Both countries stress how important it is to have an arbitration agreement, understand how arbitral institutions work, and follow through on decisions. These are all important parts of resolving corporate disputes in a private and effective way.

Conclusion

Germany possesses a well-established and comprehensive legislative framework for arbitration, especially for corporate conflicts. The German Arbitration Act (ZPO) delineates explicit protocols for the speedy resolution of disputes. Germany views arbitration as a reliable and efficient alternative to judicial processes. It provides impartiality, secrecy, and expedited remedies for corporate conflicts, which is very attractive to enterprises.

Germany is a significant participant in international arbitration, using its alignment with global norms, such as the New York

Convention. This advantage renders it an appealing location for both domestic and international corporate conflicts.

Organizations such as the German Institution of Arbitration (DIS) offer specialized assistance for business arbitration, guaranteeing professionalism, efficiency, and adherence to international arbitration standards. Arbitration is often used to resolve various business disputes in Germany, like disagreements between shareholders, contract breaches, and problems in joint ventures, allowing these issues to be settled privately instead of in public court.

While relatively new to extensive arbitration, Uzbekistan has greatly expanded its arbitration rules, particularly through the Law on Arbitration (2017), which accords with UNCITRAL Model Law norms. This improvement makes the country more appealing for enterprises interested in international commerce and investment.

By joining the New York Convention and establishing arbitration institutions such as the Tashkent International Arbitration Centre (TIAC), Uzbekistan has made efforts to integrate with international arbitration norms. This arrangement guarantees the government is prepared for both domestic and international arbitration proceedings.

The focus on developing its arbitration system makes Uzbekistan a desirable jurisdiction for settling international company disputes. This facility is particularly useful for enterprises operating in Central Asia or with links to the region.

The TIAC plays a significant role in delivering arbitration services, establishing trust in the system, and creating a neutral and professional platform for settling corporate disputes. Its formation signifies an important step toward boosting Uzbekistan's arbitration capabilities.

Similar to Germany, arbitration in Uzbekistan gives firms a speedier, more confidential mechanism for settling corporate disputes. This advantage is especially critical for organizations that desire to avoid protracted and perhaps ruinous judicial processes. Germany has a well-established, highly trusted arbitration system, benefiting from decades of experience and international integration. It offers firms a reliable and effective way of resolving corporate disputes, with recognized institutions and legal frameworks that assure fair and unbiased decisions.

Uzbekistan, on the other hand, has made great gains in establishing its arbitration system, notably recently. Although it is still expanding compared to Germany, the country has shown a significant commitment to harmonizing with global arbitration norms and modernizing its legal environment. With the formation of the TIAC and an emphasis on luring foreign enterprises, Uzbekistan is becoming an increasingly appealing choice for settling corporate disputes, particularly for corporations with interests in Central Asia.

In conclusion, both nations have powerful arbitration procedures for settling corporate conflicts. Germany has a more established and widely recognized system, whereas Uzbekistan is quickly developing and modernizing its arbitration standards, making it an attractive location for international corporate dispute resolution in the area.

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