

Bilateral Investment Treaties Of Uzbekistan: Investor-State Dispute Resolution

ELDOR TULYAKOV, MP[†]

TABLE OF CONTENTS: 1. Introduction; 2. Available Forums for the Settlement of Disputes Under Uzbek Bits; 3. Uzbekistan's Tendency of Concluding Bits; 4. Source of Uzbekistan's Consent to Arbitration; 5. Waiting Periods and Amicable Settlement; 6. "Fork in the Road" Provision; 7. Most-Favoured-Nation and Umbrella Clauses; 8. Final Awards; 8.1. Costs of Arbitration; 8.2. Diplomatic Interference; 8.3. Operation of Bits in Practice; 9. Summary and Recommendations.

ABSTRACT: The main purpose of this paper is to familiarise the reader with how foreign investors are protected in Uzbekistan under its BITs. Thus, the paper will analyse BIT clauses of Uzbekistan and investor-state dispute resolution mechanisms available under Uzbek BITs. Throughout the following paper, the reader will notice that although Uzbek BITs contain some provisions inherent in modern BITs in terms of investor-state dispute settlement there is still room for improvement. Therefore, recommendations for improvement will be provided at the end of this article.

KEYWORDS: *Investment; BIT; Uzbekistan; Protection; International Law; Investor-State Arbitration; Dispute*

JEL CODES: *K33, K41*

UNIVERSITY OF BOLOGNA LAW REVIEW

ISSN 2531-6133

[VOL.4:1 2019]

This article is released under the terms of Creative Commons Attribution 4.0 International License

1. INTRODUCTION

Any rational person who is considering making direct investments abroad wants to make sure that these will be safe. Of course, there are many risks inherent in such investments, such as, market risks, currency exchange risks, political risks, legal risks some of which are measurable while some of them are not, and some of which are manageable while some of them are not. But the bottom line is that a rational investor carefully assesses all these risks before making his final decision. They normally decide to invest only if a return that they expect from the investment would justify the risks taken. If a host country's risk profile is lower, it will be easier and cheaper for the country to attract foreign investment because in this case investors will have access to relevant information for them to take the decision on making the investment. Therefore, it may reduce the time and cost of some otherwise necessary due diligence.

Bilateral investment treaties (hereinafter BITs) play an important role in this paradigm.¹ They often provide some level of comfort against political and legal risks for foreign investors. They reflect agreements between two countries (the so-called "host" and "home" countries) containing reciprocal undertakings for the promotion and protection of private investments made by nationals of both signatory countries in each other's territories. These agreements provide the terms and conditions under which nationals of a home country invest in the host country, including their rights and protections. As the BITs' terms vary and they differ in the protections they provide, investors often check the

[†] B.A. (Hons.), University of Westminster, 2008, LL.M., Institute for Law and Finance, 2011. The author is currently a Member of the Committee on Budget and Economic Reforms, Legislative Chamber of Oliy Majlis (Parliament) of the Republic of Uzbekistan. The views expressed in this article belong to the author and do not reflect the view of the Parliament of the Republic of Uzbekistan.

¹ According to the U.N.C.T.A.D., in 2016, countries concluded thirty-seven new International Investment Agreements (hereinafter I.I.A.): thirty bilateral investment treaties (BITs) and seven treaties with investment provisions (hereinafter T.I.Ps.). In addition, twenty-six I.I.As. entered into force. This brought the size of the I.I.A. universe to 3,324 agreements (2,957 BITs and 367 T.I.Ps.) by year-end UNCTAD, WORLD INVESTMENT REPORT 2017, INVESTMENT AND DIGITAL ECONOMY, U.N. SALES NO. E.17.II.O.3 (2017), http://unctad.org/en/PublicationsLibrary/wir2017_en.pdf.

availability of such treaties and their provisions. BITs typically include rights and protections such as: (a) National and Most-Favoured Nation Treatment, (b) Protection against Expropriation, (c) Fair and Equitable Treatment, (d) Full Protection and Security, (e) Free transfer of investment-related payments, returns and movable property, (f) Umbrella clauses, (g) Compensation for Losses, and (h) Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party, all of which have the effect of reducing risks for the foreign investor.²

Briefly stated, these protections help ensure that foreign governments treat investors from the other BIT signatory country in the same way as domestic companies (“national treatment”), and guarantee that investors in the host country are given the same types of benefits that other foreign investors receive (“most-favoured nation treatment”). Through BITs, host governments often agree to treat investors from the home country on a “fair and equitable” basis in accordance with international law. This can, for example, protect investors from licensing requirements that do not apply to other, domestic or foreign companies or from discriminatory treatment.

BITs also protect investors in a number of other ways. For example, some BITs limit foreign governments from nationalising or otherwise expropriating an investor’s investments. Where an expropriation occurs, BITs often provide that the government must offer fair and timely compensation to the investor.

Perhaps the most important protection that many BITs provide is access to arbitration against the host government where a dispute arises.³ Among other things, providing access to dispute resolution against the host government, this provision can be very useful in countries where the legal system is not favourable to foreigners or where the legal system is not transparent or well-developed.

² See also PETER T. MUCHLINSKI, *MULTINATIONAL ENTERPRISES & THE LAW* (2nd ed. 2007).

³ In 1969, I.C.S.I.D. published a series of model arbitration clauses for use in BITs.

Therefore, it is important for a host country to honour its commitments made in BITs. At the end of the day, these commitments are relied on by investors.⁴ It is also very important for an investor to be able to dispute the matter if the host state breaches its commitment. This leads to the main theme of this paper – the investor-state dispute settlement under bilateral investment treaties of Uzbekistan. The purpose of this paper is to familiarise the reader with investor-state dispute resolution mechanisms available under Uzbek BITs. Throughout the following paper, the reader will notice that although Uzbek BITs contain some provisions inherent in modern BITs in terms of investor-state dispute settlement there is still room for improvement. Therefore, recommendations for improvement will be provided at the end of this article.

2. AVAILABLE FORUMS FOR THE SETTLEMENT OF DISPUTES UNDER UZBEK BITS

In general, according to the BITs signed by Uzbekistan, an investor has a choice of national courts, ad hoc arbitration, or the World Bank's International Centre for the Settlement of Investment Disputes (hereinafter I.C.S.I.D.), when the dispute is with the government. It is well known that I.C.S.I.D. awards enjoy recognition and enforcement in all I.C.S.I.D. member states, whether or not they are parties to the dispute.⁵ Along with 161 signatory states, Uzbekistan is a member of the I.C.S.I.D. Convention⁶ and a signatory to the 1958 United Nations

⁴ See U.N.C.T.A.D., THE ROLE OF INTERNATIONAL INVESTMENT AGREEMENTS IN ATTRACTING FOREIGN DIRECT INVESTMENT TO DEVELOPING COUNTRIES, U.N. SALES NO. E. 09.II.0.20 (2009); see also Kenneth J. Vandeveld et al., THE EFFECT OF TREATIES ON FOREIGN DIRECT INVESTMENT: BILATERAL INVESTMENT TREATIES, DOUBLE TAXATION TREATIES, AND INVESTMENT FLOWS (Karl P. Sauvant & Lisa E. Sachs eds., 2009).

⁵ Nevertheless, one should also admit that due to certain particularities in practice sometimes difficulties may also arise in enforcing the award. See, e.g., the case of Hösgsta Domstolen [HD] [Supreme Court] 2011-07-1 p. 12 No. Ö 170-10 (Swed.). (Mr. Sedelmeyer fought the Russian government for over a decade and launched over eighty different disputes to try to recover an S.C.C. arbitration award he had received against the Russian government).

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter New York Convention).⁷ The importance of the New York Convention can be seen from the stated objectives which encompass common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards.⁸ Additionally, one should also note that the Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges parties to ensure such awards are recognised and generally capable of enforcement in their jurisdiction, in the same way as domestic awards.

For instance, with regard to settlement of disputes according to the Austria-Uzbekistan BIT, dispute settlement is divided into two parts. An investor is provided with a number of means of settlement to choose from, unless the dispute is settled by negotiation or consultation. The BIT also requires that sixty days' notice must be provided to the host state before filing a Request for Arbitration. An additional requirement is that the dispute should be submitted not later than five years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute. Exceptions to these requirements are not foreseen.

The Uzbekistan-Israel BIT only lists I.C.S.I.D. as means of investor-state dispute resolution.⁹ This is of course different in relation to other BITs discussed which provide the investors with other options.

⁶ See I.C.S.I.D., List of contracting states and other signatories of the Convention, I.C.S.I.D./3 (Aug. 27, 2018). Of these, only 153 states have ratified the Convention. Uzbekistan is a member of the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (hereinafter I.C.S.I.D. Convention) since March 17, 1994 and it is in force for Uzbekistan since August 25, 1995; Uzbekistan ratified the New York Convention on February 7, 1996 and it has been in force for Uzbekistan since May 7, 1996.

⁷ U.N.C.I.T.R.A.L., CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, JUN. 10, 1958, Vol.15-05576.

⁸ *Id.*

⁹ See Agreement on the Reciprocal Promotion and Protection of Investments, Isr. - Uzb., art. VIII, Jul. 4, 1994 1997 U.N.T.S. 1-34213.

3. UZBEKISTAN'S TENDENCY OF CONCLUDING BITS

In conformity with its commitment to respect international practice of dispute resolution between investors and states, Uzbekistan is ratifying and implementing international treaties¹⁰ and concluding more and more BITS with states that foresee arbitration as a neutral and the most appropriate way of resolving disputes to guarantee the protection of investments made by foreign nationals and states. Hence, Uzbekistan has been actively involved in concluding BITS since the early stages of its independence¹¹. In fact, more than 60% of Uzbekistan's BITS were signed between 1992 and 1999, about 30% were signed between 2000 and 2010, and 10% were signed after 2011. Currently, Uzbekistan is a party to around fifty BITS which are concluded with states such as; Austria, Azerbaijan, Bangladesh, Belgium and Luxembourg, China, Czech Republic, Finland, France, Germany, Hungary, Pakistan, the Russian Federation, the United Kingdom, and the United States, although not all of these treaties have been ratified and/or entered into force.¹²

4. SOURCE OF UZBEKISTAN'S CONSENT TO ARBITRATION

We know that international arbitration is a voluntary and consent-based method of dispute resolution. However, unlike in commercial arbitration, in investment treaty arbitration, a unilateral offer of consent to arbitration

¹⁰ At the C.I.S. level, Uzbekistan also ratified the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, CIS, Jan.22, 1993, Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR, Vol. 4, 2007 and the Kiev Convention on settling Disputes related to Commercial Activities, CIS, Mar. 24, 1992.

¹¹ Following the breakup of the Soviet Union, it declared independence as the Republic of Uzbekistan on 31 August 1991.

¹² For example, despite the fact that the Treaty concerning the encouragement and reciprocal protection of investment, U.S. - Uzb., Dec.16,1994 S. TREATY DOC. No. 104-25 (1996). has been signed on December 16, 1994, it has not been ratified yet. See also U.N.C.T.A.D., *Database on BITS. of Uzbekistan*, INVESTMENTPOLICYHUB.UNCITAD.ORG, <http://investmentpolicyhub.unctad.org/IIA/CountryBits/226>.

is given by the contracting states. Investors, on the other hand, typically express their consent to arbitration by filing a request for arbitration. As such one may ask where the host state's consent to arbitration is usually expressed. One source of consent may be found in a contract between the foreign investor and the host state. The second source can be the state's national legislation. A third place where one might find the consent of the state is in the state's BITs. (or more generally I.I.As.).¹³

Like most other states, the main source of Uzbekistan's consent to arbitration is reflected in its BITs. However, the fact that Uzbekistan's law "On Guarantees and Measures for Protection of Rights of Foreign Investors" (hereinafter R.F.I.L.) contains explicit consent of the state to arbitration was disputed in the past. In fact, the Constitutional Court of Uzbekistan held that R.F.I.L., does not reflect Uzbekistan's explicit consent to arbitration.¹⁴ In this decision, the Court interpreted article 10(1) of R.F.I.L which states that a dispute, directly or indirectly concerning foreign investments (hereinafter investment dispute), can be resolved upon the agreement of the parties by means of consultations between them.¹⁵ Furthermore, the article foresees that if the parties are not able to reach a consensus, such a dispute should be resolved by the economic court of the Republic of Uzbekistan or by means of arbitration according to the rules and procedures of the international treaties (agreements and conventions) on resolution of investment disputes which the Republic of Uzbekistan has joined.¹⁶ Accordingly, the Constitutional Court of the Republic of Uzbekistan delivered a decision that article 10(1) of the R.F.I.L. did not include the notion of "agreement of

¹³ UNCTAD, Special Update on Investor-State Dispute Settlement: Facts And Figures, IIA Issue Note, No. 3, (2017).

¹⁴ DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF UZBEKISTAN, "ON INTERPRETATION OF THE PART ONE, ARTICLE 10 OF THE LAW OF THE REPUBLIC OF UZBEKISTAN "ON GUARANTEES AND MEASURES FOR PROTECTION OF THE RIGHTS OF FOREIGN INVESTORS"" (Nov. 20, 2006).

¹⁵ Law of the Republic of Uzbekistan "On Guarantees and Measures for Protection of the Rights of Foreign Investors" (1994) (amended 1995), available in Russian at <http://lex.uz/docs/8522>.

¹⁶ *Id.*

the parties” within its meaning.¹⁷ The Court further stated that the part of the provision that prescribed the resolution of investment disputes by means of arbitration in accordance with the rules and procedures of international agreements (treaties and conventions) on resolution of investment disputes that Uzbekistan has joined, could not be equated with the expression of agreement of the Republic in accordance with the I.C.S.I.D. Convention.

The Justifications given with regards to this decision were that the provision only provided options on the resolution of investment disputes and did not include the written consent of either party for the resolution of the disputes by any of those means of dispute resolution stated, whereas, in reference to Article 25 of the I.C.S.I.D. Convention, obligatory written consent of the parties of the investment dispute is required for an I.C.S.I.D. tribunal to resolve the dispute. Thus, the Court noted that the provision of the article set common rules with no reference to any concrete agreement or Convention.¹⁸ As such, Global Arbitration Review (hereinafter G.A.R.) also noted that the Uzbek Constitutional Court said, with regard to the article 10(1) of the R.F.I.L. which provides for international arbitration “is not an expression of consent” in any particular case.¹⁹

From the point of view of a state’s consent, it is widely accepted that BITs can be classified into several groups such as: explicit consent, implicit consent, agreement to provide consent in the future and reservation of consent to arbitration.²⁰

By analysing the BITs of Uzbekistan one can see that most of them contain implicit consent to arbitration, as shown, for example in the Uzbekistan-Japan BIT :

¹⁷ *Uzbekistan Court Queries Treaty Consent*, GLOBAL ARBITRATION REVIEW (Dec. 8, 2006).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See ANDREW NEWCOMBE Lluís Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* 44 (2009).

Article 16. . . . 3. If the investment dispute cannot be settled through such consultations within three months from the date on which the investor requested the consultation in writing, the investment dispute shall at the request of the investor concerned be submitted to either:

(1) conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington D.C. on March 18, 1965 so long as the Convention is in force between the Contracting Parties, or conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes so long as the Convention is not in force between the Contracting Parties

Nevertheless, explicit consent is also agreed in some Uzbek BITs, including the Uzbekistan-Greece BIT . According to Article 9 :

2. If such disputes cannot be settled within six months from the date either party requested an amicable settlement, the investor concerned may submit the dispute either to the competent courts of the Contracting Party in the territory of which the investment has been made or to international arbitration.

Each Contracting Party hereby consents to the submission of such dispute to international arbitration.²¹

Regarding the duration of consent or so-called “survival clauses” or “sunset clauses” most of the Uzbekistan BITs contain expressly agreed

²¹ See also Bilateral Investment Treaties, Uzbek. – Poland, art. X, Jan. 11, 1995 and Agreement between the Government of the Republic of Singapore and the Government of the Republic of Uzbekistan on the Promotion and the Protection of Investments, Sing - Uzbek., art. XIII, July 15, 2003, respectively.

terms which guarantee that the provisions of the treaty remain in effect for ten years even if it is denounced, as stated in, among others, the BITs with Poland, Russia, Turkey, Malaysia, United Arab Emirates, Latvia, Portugal, Georgia, Turkmenistan. However, what is more interesting and a sign of long time consistency, is that the Uzbekistan-Germany BIT contemplates that the BIT will remain in effect for an additional twenty years after it has been denounced.²² We should acknowledge that due to certain geopolitical issues, diplomatic relations between states may come to an end. Therefore investors may fear losing investments due to the complications beyond their control. Whereas, according to Article 13 of Uzbekistan-Germany BIT investors are additionally protected under the BIT even in absence of a diplomatic or consular relation between the states.²³ Moreover, the BITs between Uzbekistan and Switzerland, Finland, Sweden, Netherlands and Greece provide for a sunset clause of fifteen years.

Additionally, in order to benefit foreign investors, Uzbekistan's "Law on Foreign Investments" (hereinafter 1998 FIL) also fixed the period during which the investor would be protected from any legislation that "adversely affects the conditions of investment" at a full ten years.²⁴ Thus, if the subsequent legislation of the Republic of Uzbekistan was to worsen the conditions for investment, then the laws applicable at the date of investment will continue to be applicable for the next ten years. In addition to that, foreign investors will have the right to apply the provisions of the new legislation that improve the conditions of their investments. Accordingly, even though a state may unilaterally terminate

²² Gesetz zu dem Vertrag vom 28. April 1993 zwischen der Bundesrepublik Deutschland und der Republik Usbekistan Ober die Forderung und den gegenseitigen Schutz von Kapitalanlagen [Law of the 28 April 1993 Treaty between the Federal Republic of Germany and the Republic of Uzbekistan on the Claim and Mutual Protection of Capital Investments], Germany - Uzbek., art. XIV, Apr. 28, 1993.

²³ Similar provisions are also foreseen in Bilateral Investment Treaties, Uzbek-Kuwait, art. XI, Jan. 19, 2004.

²⁴ Law of the Republic of Uzbekistan "On Foreign Investments", No. 609-I (1998) (as amended by the Law of the Republic of Uzbekistan No. 832-I of August 20, 1999), available in Russian at [s/7452http://lex.uz/docs/7452](http://lex.uz/docs/7452).

a BIT, its consent to investor-state arbitration and privileges provided for the investors will not usually terminate at the same time.²⁵

5. WAITING PERIODS AND AMICABLE SETTLEMENT

Almost all BITs of Uzbekistan in the initial stage provide for an investor-state resolution of disputes by friendly means like negotiations, consultations and through diplomatic channels. For example, the BIT between Uzbekistan and the Belgium-Luxembourg Economic Union²⁶ apart from the above mentioned means of negotiations also sets forth settlement by means of third-party expert opinion.

Similarly, the Uzbekistan-France BIT also foresees dispute settlement by means of friendly negotiations. We should note that these procedures are often not formal and thus legal rights and obligations are not emphasized unlike strict procedural laws and regulations in the courts. Accordingly, parties may attract a neutral third party who aims to help the parties reach consensus. Often this person is highly qualified in the area of investments or speaks the same language²⁷ of the parties. Therefore, as long as the solution reached is just and reasonable, the parties may adhere to it.

Furthermore, almost all BITs of Uzbekistan set a requirement for reaching the dispute settlement by peaceful means within six months. A three-month period has been agreed on, only with Oman, Japan, United

²⁵ It should be noted that as of 20th of October 2018 government of Uzbekistan has announced of its completed work on the concept paper regarding the draft law on further substantially strengthening the available rights and guarantees of foreign investors.

²⁶ Accord entre l'Union économique belgo-luxembourgeoise, d'une part, et le Gouvernement de la République d'Ouzbékistan, d'autre part, concernant l'encouragement et la protection réciproques des investissements [Agreement between the Belgo-Luxembourg Economic Union and the Government of the Republic of Uzbekistan concerning the Reciprocal Promotion and Protection of Investments], BLEU - Uzbek., Apr. 17, 1998.

²⁷ By that we mean not only the common language the parties speak but also all the particularities which may arise during the communication due to various factors like the background of the parties, tradition, culture, business and technical terminology, etc.

Kingdom and Finland. Although a six-month period is common in BITs and seems to be realistic, in most circumstances this period is still not sufficient. A three-month period might be even too short. One might wonder how an amicable settlement is possible within such a short period of time and what the communication will be like between foreign partners. Additionally, decision-making processes within the host government may take longer, especially if the dispute is over a significant investment in terms of financial amount and/or close partner or if the investment is made in a strategic sector.

Despite the fact that amicable ways of dispute settlement can help to save time and money, find a mutually acceptable solution, prevent escalation of the dispute and preserve a workable relationship between the disputing parties, still one can see that BITs of Uzbekistan with Kazakhstan, Turkmenistan, Azerbaijan, Kyrgyzstan, Latvia, Bangladesh, Moldova, Netherlands, Israel, and Georgia do not foresee or require dispute resolution by friendly means at the initial stage. Notwithstanding this fact, Uzbekistan enjoys a good relationship with many of these states, particularly with neighbouring countries such as Kazakhstan. As a result, disputes between parties under these investment treaties will be typically resolved using amicable means of dispute resolution. It would not be surprising if the relevant BITs were amended to memorialize this practice in writing.

6. "FORK IN THE ROAD" PROVISION

Despite the fact that most investment treaties do not require an investor to exhaust local remedies, and permit an investor to have direct recourse to international arbitration, the investor-state dispute resolution part of the Republic of Uzbekistan-United Arab Emirates BIT provides that upon failure to resolve the dispute by friendly means within six months, at the

request of the investor, the dispute should be submitted to the court where the investment is made.²⁸ Though paragraph 3 further provides recourse for I.C.S.I.D. arbitration only after twenty-four months have elapsed, as such this period is available to the local court to resolve the dispute.

Here we should also mention that there are many advantages to having the case heard in a national court. The first and most important one is that it may be easier and faster to enforce a court decision in Uzbekistan rather than an award of an international arbitral tribunal. Because, to take a simple example of a language barrier, one can already face certain complications translating judicial decisions into the official language of Uzbekistan for them to be recognized and enforced. Of course, nowadays it is not really hard to find a proper translator, but it may cost the parties additional time, money and efforts. Other advantages can be cost and time savings, at least in terms of international flights, legal counsel, interpreters, and arbitration costs.²⁹ This will especially work and be beneficial for both parties when the non-Uzbek party has an office and personnel in Uzbekistan, including legal personnel (also local lawyers with proper national legislation background) to handle the case. This might eliminate the need to travel internationally and thus save resources. Also, court proceedings may allow parties to control the confidentiality of the case and thus avoid harm to their reputation be it a host state or the foreign investor.³⁰ This is especially important when a dispute is over a significant or sensitive matter. In some cases details of

²⁸ Agreement between the Government of The United Arab Emirates and the Government Of The Republic Of Uzbekistan for the Promotion and Reciprocal Protection of Investments, United Arab Emirates - Uzbek., Oct. 26, 2007.

²⁹ Because national courts are available for a reasonable fee only. Additionally, according to article 330 of the Tax Code of Uzbekistan business entities are exempted from payment of state duty to the courts when applying to the courts over the decisions of state and other bodies, actions (inaction) of their officials, violating the rights and legal interests of business entities in relation to the implementation of entrepreneurial activities. See TAX CODE art. 30, No. ZRU-136 (2008).

³⁰ Local court will also often have the authority to order more varied types of relief, such as declaratory or injunctive relief, in addition to monetary damages. We should note that although these types of relief are of course also available to arbitrators, they may be less likely to award such types of damages than courts.

the arbitration can be available to the public; whereas, Uzbek legal proceedings (unlike court proceedings in some other countries) are guaranteed to be confidential. For example article 8 of the Economic Procedural Code foresees that the hearing of the case in a closed session is allowed when it is necessary to preserve the state secret or commercial secret. As such, to avoid harm in the market (for example, stock prices of the investor, investment reputation of the state or others) parties may sometimes consider referring their disputes to national courts.

Nonetheless, if there is a lack of trust in the local court's independence, impartiality and competence, a "fork in the road" provision³¹ may inhibit the fair resolution of the dispute, because a foreign investor might feel a local court would be biased toward the host state. Therefore, it may take a longer time period to reach a fair decision (at least from the point of view of the investor) which may deteriorate the investment and diminish or destroy its value.

7. MOST-FAVOURLED-NATION AND UMBRELLA CLAUSES

Analysis of the BIT clauses show that where a matter is governed simultaneously, both by the BIT and by another international agreement to which both Contracting Parties are parties, the investor is free to take advantage of whichever rules are the more favourable to his case.³² The Uzbekistan-Korea BIT and Hungary-Uzbekistan BIT also provide that where a matter is governed simultaneously both by the BIT and by

³¹ Preventing duplicative claims i.e. "Fork-in-the-road" clauses require investors to choose between domestic courts and international arbitration at the outset. Once an investor starts domestic proceedings, it loses the right to resort to arbitration, and vice versa. See U.N.C.T.A.D., *Investor - State Dispute Settlement - UNCTAD Series on Issues in International Investment Agreements II*, UNCTAD/DIAE/IA/2013/2 (2014), 86. for more information. Available at [en.pdfhttp://unctad.org/en/PublicationsLibrary/diaeia2013d2_en.pdf](http://unctad.org/en/PublicationsLibrary/diaeia2013d2_en.pdf).

³² This is of course only true where the other international agreement provides for international arbitration.

another international agreement to which both Contracting Parties are parties, nothing in the BIT shall prevent an investor of one Contracting Party who owns investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favourable to his case. Furthermore, BITs of Uzbekistan also foresee that if the laws and regulations of the other Contracting Party provide more favourable treatment than the BIT concluded, more favourable treatment shall be accorded.³³

8. FINAL AWARDS

Another issue of concern is the matter of the final awards. For example, differences between the BITs can be seen in directly agreeing to the fact that the arbitral awards shall be final and binding for both parties to the dispute and enforced in accordance with the domestic laws of the Contracting Party concerned. One can see that these issues are agreed in the BITs with the Russian Federation, Sweden, China, Lithuania, Greece, Poland, Kuwait, Bahrain, Oman, Hungary, Bulgaria, Saudi Arabia, BLEU, Finland whereas other ones do not contain such provisions.

8.1. COSTS OF ARBITRATION

Arbitration historically was considered to be a prompt and inexpensive way of dispute resolution. However, one should note that these factors may not always be the case nowadays. Because of the changes within the

³³ See for further examples Agreement between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan for the Promotion and Reciprocal Protection of Investments, Uzbek- ROK, art. XII, June 17, 1992; Agreement between the Government of the People's Republic of Bangladesh and the Government of the Republic of Uzbekistan for the Promotion and Reciprocal Protection of Investments, Uzbek-BD, artt. IV, X, XI, July 18, 2000; Agreement between the Government of the Hellenic Republic and the Government of the Republic of Uzbekistan for the Promotion and Reciprocal Protection of Investments, Uzbek- GR, artt. IX, X, Apr. 1, 1997.

society and the business environment, arbitration might take longer than litigation. The advancement of technology, legislation requirements and the complications in the business are factors that may delay arbitration proceedings. Therefore, costs of arbitrating must be carefully considered before referring to it for dispute resolution. The remuneration of arbitrators alone can amount to a sizeable part of the overall arbitration costs.³⁴ Subsistence allowances and reimbursement of travel expenses may also be extensive. Under the United Nations Commission on International Trade Law (hereinafter U.N.C.I.T.R.A.L.) Rules, costs can be even higher, as arbitrators generally set their own fees taking into account the monetary amount in dispute, the complexity of the subject-matter, and the amount of time spent by the arbitrators. Here we could also refer to Professor Kreindler's findings and implement the most suitable approach for the country where he states that tribunals have taken at least seven different approaches to costs: (1) costs follow the event — victor takes all; loser pays all costs of the arbitration and all attorneys' fees; (2) costs follow the event "pro rata" — loser pays all costs and prevailing party's attorneys' fees proportional to the outcome; (3) costs follow the event "modified" — loser pays all costs but does not pay prevailing party's attorneys' fees; (4) costs shared equally, including attorneys' fees and irrespective of differences in their amount; (5) costs shared equally, but attorneys' fees borne by the party retaining the attorneys; (6) the "American Rule" — each party bears its own costs and attorneys' fees; (7) the "American Rule" exception — if there is manifest fraud, corruption, or the like, the culpable party would bear some or all of the costs of arbitration and/or some or all of the opposing side's attorneys' fees³⁵.

³⁴ In the I.C.S.I.D. system, arbitrators' fees are set according to the schedule — currently US\$3,000 per day per arbitrator. See for further information at I.C.S.I.D., <https://icsid.worldbank.org/en/Pages/icsiddocs/Schedule-of-Fees.aspx>, (Mar. 26, 2018).

³⁵ Richard Kreindler, *Final Rulings on Costs: Loser Pays All?*, TRANSNATIONAL DISPUTE MANAGEMENT, (Jan. 10, 2018), <https://www.transnational-dispute-management.com/article.asp?key=1505>.

Accordingly, in BITs with China, Poland and Bulgaria it is agreed in the written form that each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings and the cost of the President of the arbitration board in discharging his or her duties and the remaining costs of the arbitration board shall be borne equally by the Contracting Parties. Other BITs do not expressly regulate the issue. The Uzbekistan-Poland BIT also sets an exception to the rule. This BIT envisages that the arbitral tribunal may allocate the expenses incurred by one of the sides based on a different proportion, and that the decision is mandatory for both. According to the Uzbekistan-China BIT the arbitral tribunal may award one disputing party to bear a higher proportion of the costs. Thus, exceptions to the provision have also been foreseen in the BIT itself. The BIT goes further regarding the fate of cost distribution in case of frivolous claims. Thus, it establishes the norm that if the tribunal deems that the claim or the objection of one disputing party is frivolous, it may order the losing party to bear reasonable costs as well as the attorney's fee incurred by the prevailing party which opposed the objection with a reasonable cause.

We should note that there is no uniform rule with respect to the final allocation of costs by the tribunal. Some arbitral rules contain presumptions about the allocation of costs. For example, Article 42(1) of the U.N.C.I.T.R.A.L. Rules (2010) provides that: "The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case."

An illustrative example would be the *Romak* case.³⁶ As stated in the award, the BIT was silent with respect to the allocation of the arbitration costs and the costs of legal representation of the parties. Therefore, the tribunal applied provisions on costs contained in Articles 38 to 40 of the

³⁶ Romak S.A. (Switzerland) v. The Republic of Uzbekistan, U.N.C.I.T.R.A.L. PCA Case No. AA280 (2009) available at <https://www.italaw.com/sites/default/files/case-documents/ita0716.pdf>.

U.N.C.I.T.R.A.L. Arbitration Rules. Thus, the arbitral tribunal fixed the costs of the arbitration in the amount of EUR 293,462.27 (including VAT).³⁷ When deciding how the arbitral costs should be apportioned between the parties, the arbitral tribunal noted its discretion in allocating costs and expenses in accordance with the U.N.C.I.T.R.A.L. Rules. As a result, the tribunal firstly noted that the Respondent had prevailed entirely as a matter of jurisdiction.³⁸ The question therefore became whether the Claimant should bear more than half of the arbitration costs and/or pay the Respondent's legal fees and expenses. The tribunal ordered that the parties should bear the arbitration costs of EUR 293,462.27 in equal shares, to be satisfied out of the advance on costs already paid by the parties. The tribunal also ordered that each party should bear its own costs for legal representation and assistance.³⁹

Similarly, in *Oxus Gold* the arbitral tribunal recalled Articles 40 and 42 of the U.N.C.I.T.R.A.L. Arbitration Rules which were the relevant provisions regarding costs.⁴⁰ The Claimant claimed total fees and expenses (including those for witnesses and experts and its Hearing expenses) of USD 9,546,369.53. Respondent's total fees and expenses (including those for witnesses, experts, translation and the hearing) amounted to USD 15,672,698.10 and EUR 28,852.50. Considering the wording of Article 42(1) of the U.N.C.I.T.R.A.L. Arbitration Rules and the cases discussed in the award, the arbitral tribunal therefore considered that where there is not a clear winner or loser, costs should in principle be awarded "following the event", i.e. taking into account the parties' relative success regarding their claims and defenses. In limited circumstances, a party's conduct during the proceedings such as deficiencies in its presentation of the case or obstructive behavior may justify a deviation from that principle. The tribunal determined that the

³⁷ Said amount included both arbitrators' fees and the expenses of the arbitral tribunal.

³⁸ Romak S.A. (Switzerland) v. The Republic of Uzbekistan, *supra* note 36.

³⁹ *Id.*

⁴⁰ *Oxus Gold plc v. Uzbekistan, U.K. - Republic of Uzbekistan* U.N.C.I.T.R.A.L. (ad hoc tribunal) IIC 779 (2015) https://www.italaw.com/sites/default/files/case-documents/italaw7238_2.pdf.

Respondent failed in its attempted jurisdictional defense against the Claimant's standing, its other jurisdictional and admissibility objections as well as the Respondent's counterclaims. It also rejected the Claimant's claims in their essential part. The tribunal also found that the parties were equally at fault for any aggravation or complexity of the arbitration. In light of this and because it determined the parties' success and defeat were "equally distributed", the tribunal concluded that each party should pay half of the arbitral tribunal's fees and expenses and should bear its own fees and expenses, including those for witnesses and experts.⁴¹

In *Metal-Tech Ltd. v. Republic of Uzbekistan*⁴² the Claimant's total costs incurred in connection with the proceedings amounted to USD 1,687,966.86, comprising legal fees and expenses of USD 1,112,966.86 and payments to I.C.S.I.D. of USD 575,000.00. The Respondent's costs in connection with the arbitration were USD 7,985,954.95, comprising legal fees and expenses of USD 7,435,954.95 and payments to I.C.S.I.D. of USD 575,000.00. Each party requested that their costs be borne by the other party. The tribunal decided that the costs of the proceedings, including the fees and expenses of the tribunal and the fees of I.C.S.I.D., should be borne by the parties in equal shares. Additionally, it was decided that each party should bear the legal fees and other expenses it incurred in connection with the arbitration. The reasoning of the tribunal on the allocation of costs was essentially the following:

It is true that the Respondent prevails. At the same time, it is also true that the Claimant sought to minimize the costs of the proceedings, which is not the case of its opponent, as the disparity of the cost figures shows. The choice not to bifurcate jurisdiction and liability, but only quantum, does not plead against the tribunal's apportionment. Indeed, if jurisdiction was not bifurcated it is because the Respondent's objections addressed facts that related to both jurisdiction and merits. More important, the tribunal's determination is linked to the ground for denial

⁴¹ *Id.*

⁴² *Metal-Tech Ltd v. Republic of Uzbekistan*, I.C.S.I.D. Case No. ARB/10/3, <https://www.italaw.com/sites/default/files/case-documents/italaw3012.pdf>.

of jurisdiction. The tribunal found that the rights of the investor against the host State, including the right of access to arbitration, could not be protected because the investment was tainted by illegal activities, specifically corruption.⁴³

8.2. DIPLOMATIC INTERFERENCE

Research shows that another difference lies in the fact that BITs with Portugal, Kuwait and United Arab Emirates foresee that neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and until a Contracting Party has failed to abide by or to comply with the award rendered by the arbitral tribunal. Nevertheless, it is worth noting that the Kuwait BIT also provides a positive exception by stating that an unofficial exchange of diplomatic writings for the purposes of facilitating the process of dispute settlement does not constitute diplomatic protection envisaged in that paragraph.⁴⁴

8.3. OPERATION OF BITS IN PRACTICE

It was mentioned above that states give their advance consent to all of the forums/rules in several ways; for what concerns for Uzbekistan we noted that BITs serve as a main source for that. Therefore, states typically have no influence on the choice of the arbitral forum/rules when a dispute arises. The forum is usually chosen by the claimant alone.

So far, out of ten investment claims brought against Uzbekistan eight of them were brought under I.C.S.I.D. Convention Arbitration Rules (I.C.S.I.D. Additional Facility - Arbitration Rules) and two under U.N.C.I.T.R.A.L. Arbitration Rules.⁴⁵ In I.C.S.I.D. cases, the instruments

⁴³ *Id.*

⁴⁴ See generally Bilateral Investment Treaty, Uzbekistan-Kuwait, art. 9, Jan. 1, 2004.

⁴⁵ See, e.g., Romak S.A. (Switzerland) v. The Republic of Uzbekistan, *supra* note 36; Oxus Gold plc v Uzbekistan, *supra* note 40.

invoked included: in three cases the Turkey - Uzbekistan BIT (1992), in two cases the 1998 FIL, in one case the Netherlands - Uzbekistan BIT (1996), Uzbekistan - Kazakhstan BIT (1997) and Israel - Uzbekistan BIT (1994), respectively. In the two U.N.C.I.T.R.A.L. cases, the instruments invoked were the Switzerland - Uzbekistan BIT (1993) and United Kingdom - Uzbekistan BIT (1993).⁴⁶ Regarding the status of the cases, six out of ten were concluded and four of them are currently pending. It is worth noting that among the concluded cases one was resolved in favour of the investor⁴⁷, two in favour of the state⁴⁸, for one, data is not available⁴⁹ and for two the tribunal issued a procedural order taking note of the discontinuance of the proceedings.⁵⁰

Analysis of the subject matters raised in investor-State disputes involving Uzbekistan include: Textile Enterprise, Textile manufacturing activities, Retail enterprise, Oil, Gas & Mining, Cement production enterprise, Telecommunications enterprise, Molybdenum plant and Gold extraction enterprise.

The most renowned case against Uzbekistan was *Romak vs. Uzbekistan*. The claim was brought under the rules of U.N.C.I.T.R.A.L. and it did touch upon the issue of defining the term "investment" and the claimant initially claimed an investment dispute protected under the Switzerland-Uzbekistan BIT. However, the arbitral tribunal issued the award, where it clarified how "investment" should be understood in contradiction to the claimant's view and resolved the case in favour of the Republic of Uzbekistan, thereby making an essential contribution to

⁴⁶ We should note that unlike arbitration under the I.C.S.I.D. Convention, arbitration under U.N.C.I.T.R.A.L. Rules can be subject to greater confidentiality. For example, the very existence of a dispute can be kept secret if both parties so wish.

⁴⁷ See *Oxus Gold plc v. Uzbekistan*, *supra* note 40.

⁴⁸ See *Metal-Tech Ltd. v. Republic of Uzbekistan*, *supra* note 42, and *Romak S.A. (Switzerland) v. The Republic of Uzbekistan*, *supra* note 36.

⁴⁹ See *Spentex Netherlands, B.V. v. Republic of Uzbekistan*, I.C.S.I.D. Case No. ARB/13/26.

⁵⁰ See *In Newmont USA Limited and Newmont (Uzbekistan) Limited v. Republic of Uzbekistan*, I.C.S.I.D. Case No. ARB/06/20, the tribunal issues an order taking note of the discontinuance of the proceedings pursuant to I.C.S.I.D. Arbitration Rule 43(1) on July 25, 2007. In *Mobile TeleSystems OJSC v. Republic of Uzbekistan*, I.C.S.I.D. Case No. ARB(AF)/12/7, the tribunal issued a procedural order taking note of the discontinuance of the proceedings pursuant to Article 49(1) of the Arbitration (Additional Facility) Rules on November 14, 2014.

investment treaty arbitration. The facts of the case are widely known and the decision of the tribunal is also openly available.⁵¹

The fact that *Romak* relied upon various provisions of the BITs of Uzbekistan with other states⁵² was also irrelevant in the end as these references concerned "investment" issues, whereas *Romak's* claim was found not to be an investment claim. In the end of 2006, Newmont, the world's second largest gold producer, brought two investment claims against Uzbekistan. The first claim was filed at I.C.S.I.D. and covered the alleged expropriation of assets. The second claim was launched at the Arbitration Institute of the Stockholm Chamber of Commerce and related to a joint venture agreement. Newmont Mining was operating in the gold mining industry in Uzbekistan. It entered into a joint venture with two Uzbek state entities in 1992 - the State Committee for Geology and Mineral Resources and the Navoi Mining and Metallurgical Combine of Uzbekistan. Newmont's stake was worth US 450 million. The dispute arose when, according to Newmont, Uzbekistan expropriated that stake without compensation. Uzbekistan claimed that Newmont failed to pay taxes in the amount of US 48 million.⁵³ Newmont and Uzbekistan reached a settlement less than a year after the arbitration claim was initiated and the details of the proceedings have been kept secret. Accordingly, throughout the arbitration, the process could not be observed by interested persons, especially external analysts and investors. However, the good news was that the parties were pleased that they could reach an

⁵¹ See The Award of the tribunal is available at: <https://www.italaw.com/sites/default/files/case-documents/ita0716.pdf>.

⁵² See generally Agreement between the Government of the Italian Republic and the Government of the Republic of Uzbekistan on the Promotion and Protection of Investments, Uzbek. - Italy, Annex B art. II (c), Sept. 17, 1997; Accord entre le Gouvernement de la République Française et le Gouvernement de la République d'Ouzbékistan sur l'Encouragement et la Protection Reciproques des Investissements [Agreement between the Government of the French Republic and the Government of the Republic of Uzbekistan for the Promotion and Protection of Investments], Uzbek. - France., art. III(1), Oct. 27, 1993; Agreement between the Republic of Austria and the Republic of Uzbekistan for the Promotion and Protection of Investments, Uzbek. - Austria, art. IV (1), June 2, 2000.

⁵³ See GLOBAL ARBITRATION REVIEW, *Tribunals Constituted in Newmont Claims*, GLOBALARBITRATIONREVIEW.COM (Apr. 17, 2007), <http://www.globalarbitrationreview.com/news/article/13825/tribunals-constituted-newmont-claims/>.

amicable and durable agreement. Although no financial details were given, based on filings with the US Securities and Exchange Commission, G.A.R. estimated that Newmont was to receive \$80 million as part of the settlement.⁵⁴

Another case was *Metal-Tech Ltd. v. Republic of Uzbekistan*. In that case, an I.C.S.I.D. panel unanimously dismissed an investment claim by an Israeli investor filed pursuant to the Israel-Uzbekistan BIT against Uzbekistan. In the award,⁵⁵ the tribunal found that it lacked jurisdiction to hear the parties' claims and counterclaims brought under the Israel-Uzbekistan BIT and Uzbek law due to corruption related to Metal-Tech's investment in Uzbekistan. In particular, the tribunal found that payments of approximately USD 4 million made by Metal-Tech to several individuals, while presented as remuneration for various consultancy services, in fact constituted corruption and were illegal under Uzbek law.⁵⁶

9. SUMMARY AND RECOMMENDATIONS

In conclusion, it can be said that there is some degree of difference within BITs of the Republic of Uzbekistan. These differences can be specifically observed in terms of length of the BITs, dispute settlement provisions that either provide only one option or several options or even have "fork in the road" provisions. Moreover, differences in procedural matters also exist as some BITs provide a time bar issue and some others do not; also, some BITs provide for cost allocation and others do not.

⁵⁴ See GLOBAL ARBITRATION REVIEW, *Goldminer Settles with Uzbekistan*, GLOBALARBITRATIONREVIEW.COM (Aug. 3, 2007), <http://www.globalarbitrationreview.com/news/article/13976/goldminer-settles-uzbekistan/>.

⁵⁵ See The BIT and award are available online at <https://www.italaw.com/cases/227>.

⁵⁶ See ALBINA GASANBEKOVA, *Metal-Tech Ltd. v. Republic of Uzbekistan*, CISARBITRATION.COM (Nov. 17, 2015), <http://www.cisarbitration.com/2015/11/17/metal-tech-ltd-v-republic-of-uzbekistan>.

Accordingly, to ensure a continued flow of FDI, Uzbekistan should adopt several measures to help further strengthen investor confidence. First, we have mentioned above the role of amicable ways of dispute settlement, including its advantages. For that reason, before referring the dispute to formal ways of dispute settlement taking into account all the advantages it has, we should consider amicable ways of dispute resolution or alternative dispute resolution (A.D.R.). It is worth noting that Uzbekistan has an institutional basis for that. For example, Uzbekistan could use the services of the Business Ombudsman⁵⁷ and the Chamber of Commerce and Industry of Uzbekistan for those purposes. If organizations like these take the lead when a conflict with an investor arises, this can help resolve investment disputes early on, as well as assess the prospects of international arbitration.

Second, procedural rules on dispute settlement should be more specific and detailed in some BITs in order to set a clearer mechanism for dispute resolution. In other words, it should be stated in the BIT that the investor can either go to a local court to protect his or her rights, or refer to arbitration. Investors should not be confused as to which mechanism comes after which. Prerequisites should be clearly identified to properly refer to any means of dispute settlement.

Third, time limit issues to bring a claim should be taken into consideration while concluding agreements on protection of investments. It is advised that there should be a time limit set to restrict bringing a claim if more than a certain period of time (usually from three to five years) has elapsed. This practice is for example observed in the Austria-Uzbekistan BIT⁵⁸ or the United States model BIT, under which no claim may be submitted to arbitration if more than five and three years

⁵⁷ See Decree of the President of the Republic of Uzbekistan "On establishing the Institute of Authorized Body on the Protection of the Rights and Legal Interests of the Subjects of Entrepreneurship under the auspices of the President of the Republic of Uzbekistan".

⁵⁸ See Agreement between the government of the People's Republic of China and the government of the Republic of Uzbekistan on the promotion and protection of investments art. 12, China-Uzbekistan, Apr. 19, 2011.

have respectively elapsed from the date on which the claimant first acquired knowledge of the alleged violation of the agreement.⁵⁹

Fourth, taking into account the wide reforms in all sectors happening now in Uzbekistan, the state should have a properly drafted model BIT ready for further negotiations with its partners and increase the number of concluded BITs.⁶⁰

Fifth, measures should be taken to promote encouraging investors to seek local remedies for a variety of reasons, including state reputation, confidentiality issues, and saving financial, human resources, time, etc. For that purpose, Uzbekistan should first of all take all possible measures to make its judicial system completely independent so that anyone, including foreign investors and our partners, has no doubt on the independence and impartiality of the judges. Here, it should be noted that although all required guarantees for reaching this aim are provided in the laws of the country, further practical measures should be taken so that they properly work in the real life. For instance, establishing complete financial independence of the judges by increasing their salaries substantially would be a way to start because currently their salaries are not market based. Furthermore, strengthening the role of the recently established Supreme Council of Judges of the Republic of Uzbekistan in nominating, appointing and later protecting the judges from external threats may be another means to achieve this goal.

Sixth, cost allocation mechanisms should be clear and concise. Because if they are of a confusing character the process may be time consuming in the end. Additional misunderstandings between the parties to the dispute may make it harder to reach later consensus, and as a result, the tribunal will have to deal with an additional issue, thus increasing the necessary time to adopt its decision. As such, the Republic

⁵⁹ See also UNITED STATES MODEL BIT, ARTICLE 26.

⁶⁰ See JONATHAN BONNITCHA, SUBSTANTIVE PROTECTION UNDER INVESTMENT TREATIES: A LEGAL AND ECONOMIC ANALYSIS 336 (2014); See also ANDREW NEWCOMBE, *Development in IIA Treaty-making*, in IMPROVING INTERNATIONAL INVESTMENT AGREEMENTS 15, 21 (Armanda De Mesrtal & Céline Lévesque eds., 2013).

of Uzbekistan may consider the option that its BITs can specifically require that each party to the dispute shall bear its own costs and fees, or that the losing party shall pay the costs and fees.

The discussions above show that BITs concluded by Uzbekistan do provide the choice of application of laws other than local laws for dispute settlement. This is mostly guaranteed by the BITs themselves. Moreover, local law also provides that international law provisions shall prevail if an international treaty of Uzbekistan foresees more beneficial conditions for investors.⁶¹ Because of the principle of *pacta sunt servanda* which states that every treaty in force is binding upon the parties to it and must be performed by them in good faith, Uzbekistan is bound by the BITs and other treaties to which it is a party.⁶² Otherwise it would be a breach of international law. Therefore, it is a priority of Uzbekistan to respect its obligations and provide investors to choose from the most beneficial provisions of the laws.

We believe that if the above mentioned recommendations are taken into consideration along with the other reforms happening in the Republic of Uzbekistan, the investment environment will be even friendlier and the country will become an even more reliable economic partner in the world arena.

⁶¹ *Supra* note 17, art. 2.

⁶² *See generally* Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 8 I.L.M. 679, 1155 U.N.T.S. 331.