

12. THE JUDICIAL SYSTEM AND DISPUTE RESOLUTION

12.1 Upper Level of Courts

The upper level of the Uzbek judicial system consists of: the Constitutional Court, which renders decisions on the constitutionality of acts of the legislative and executive branches; the Supreme Court, which acts as both a court of first instance and an appellate court for civil and criminal cases, and which analyzes court practice and oversees the work of the lower level courts; and the High Economic Court, which has the same functions as the Supreme Court, but deals exclusively with commercial cases involving legal entities (foreign and local) and individual entrepreneurs. Judges of the Constitutional Court, the Supreme Court and the High Economic Court are nominated by the President and approved by a majority vote of the Senate of the Oliy Majlis.

12.2 Lower Level of Courts

The lower level of the Uzbek judicial system includes: regional, city and district courts for civil cases; regional, city and district courts for criminal cases; economic courts; and military courts. A separate Supreme Court also exists for civil and criminal cases, together with an Economic Court for the autonomous Republic of Karakalpakstan.

Judges of the regional, city, and district courts are nominated by the High Qualification Committee under the President, and appointed by the President. Judges of the Supreme and Supreme Economic courts are nominated by the President and approved by the Senate of the Oliy Majlis. Judges of the economic courts are nominated by the Chairman of the High Economic Court and approved by the President.

12.3 Settlement of Economic Disputes

With regard to disputes arising in connection with foreign investments or related activities, the disputing parties have a choice of dispute resolution mechanisms: negotiations, dispute resolution by an Uzbek economic court, or international

arbitration in accordance with the rules of international agreements to which Uzbekistan is a party. Where a contract between two legal entities (local and/or foreign) is governed by Uzbek law and does not specify the jurisdiction for dispute resolution, the regional economic court will hear the dispute upon the petition of one of the parties.

The *Commercial Procedure Code*²⁷ provides that foreign parties shall have the same procedural rights and duties as Uzbek parties in matters before an Uzbek court. If the parties elect to resolve their dispute in an Uzbek court, they nonetheless may switch to international arbitration at any time before the court renders a decision. Foreign investors typically insist on a contract clause specifying that binding arbitration in a third country will be the exclusive means of resolving disputes.

Uzbekistan is a party to several investment and juridical cooperation treaties with foreign countries containing dispute resolution clauses. Uzbekistan has signed and ratified the *ICSID Treaty*.²⁸ Thus, certain disputes with the Republic of Uzbekistan may be eligible for arbitration under *ICSID Treaty* auspices. Uzbekistan also has signed and ratified the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.²⁹ However, legislation implementing this treaty has not been adopted and enforcement of a foreign arbitral decision against an Uzbek party may be problematic.

²⁷ Commercial Procedure Code of the Republic of Uzbekistan dated 30 August 1997, as amended.

²⁸ Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Treaty) of 1965.

²⁹ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.