

Mediation In Uzbekistan

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Introduction

This post provides an overview of legal aspects of mediation in Uzbekistan. It will start with some brief historical background information and proceed to the analysis of the Law "On Mediation", other relevant laws and amendments that were made to facilitate the use of mediation in Uzbekistan.

Historical Background

The use of various dispute resolution methods in different countries is intertwined with their culture and religion, and Uzbekistan is not an exclusion. People in Uzbekistan have sought resolution of their disputes by referring to an elder person (Aksakal) of their community for centuries.

This Uzbek tradition of conciliation continues and is now undertaken by the local Mahalla Councils. Mahalla is a unique social element of Uzbek society. It is a territorial unit that includes households that are situated on the same street or district. Mahalla Councils are headed by a chairman, elected by the residents of Mahalla. These councils, among other functions, manage disputes between neighbors, as well as divorce disputes.

Law on Mediation

The Law "On Mediation" entered into force on 1 January 2019 and created a legal framework for the functioning of mediation in Uzbekistan. The law has introduced mediation into the national legal system and defined its scope of application.

Scope of the Law

The Law applies to civil cases, including entrepreneurial activity, individual labor disputes and family disputes. The Law does not apply to cases where rights of third parties and public interests are involved.

Mediation can be used in out-of-court, court and arbitration proceedings, and in the enforcement stage of court decisions. Mediation can also be used in disputes that involve state bodies.

Principles of Mediation

Articles of 5 through 9 enumerate the principles upon which the mediation process should be conducted. They are the following:

1. Confidentiality;
2. Voluntariness;
3. Cooperation and equal rights of the parties;
4. Independence and impartiality of the mediator.

Confidentiality

Article 6 of the Law provides that parties to mediation are not entitled to disclose information that became known to them during mediation without the written consent of the other party that provided that information. Participants of the mediation process cannot be questioned as a witness about circumstances that became known to them during mediation, and information related to mediation cannot be requested from them, except as required by law.

These rules are important for an effective mediation process as parties and the mediator can share sensitive information without the fear that it could be disclosed in further proceedings if mediation turns out to be unsuccessful.

Multiparty Mediation

Article 10 of the Law provides that mediation can take place between two or more parties, as well as conducted by one or more mediators.

Mediator Qualification

Article 12 of the Law sets the requirements for a mediator. It differentiates between a professional and non-professional mediator. The latter serves as a mediator for free of charge, but can recover costs related with the conduct of mediation.

A professional mediator is a person who undertakes a special 144-hour training course for mediators approved by the Ministry of Justice of the Republic of Uzbekistan (MOJ), and registered in the Register of Professional Mediators, maintained by the MOJ and posted on its website.

This Article establishes an age threshold of the age of 25 for non-professional mediators and identifies persons who cannot act as a mediator:

1. State officials;
2. Persons with limited capacity;
3. Persons with criminal record;
4. Persons under criminal prosecution.

Limitation Period

Pursuant to Article 21 of the Law, during the mediation process, the limitation period is suspended.

Time Limits

Article 23 sets a time limit of 30 days for the mediation process with the opportunity to extend this period for an additional 30 days upon agreement of the parties. Extension is not possible when mediation is conducted during the enforcement stage of court decisions and the mediation process should not exceed 15 days.

Conflict of Interests

Article 25 provides that a mediator is not entitled to:

- be a representative of any party in connection with the same dispute, with the exception of cases provided by law, and mutual consent of parties;
- render any legal, consultancy or other assistance;
- act as a mediator if he is personally (directly or indirectly) interested in the outcome of mediation, including being in a kinship with a person who is party to mediation, except in cases of mutual consent of parties.

Mediation Agreement

The mediation agreement should be drafted in a written form, have binding force on the parties and be executed by them voluntarily in the manner and within the time periods provided for therein. In case of default of one party another party can apply for court enforcement.

State Duty

Pursuant to Article 17 of the Law, when parties end the mediation process with a mediation agreement then the state duty, paid at the beginning of the court proceedings, is refunded. However, this does not apply to cases when enforcement of court decisions is being carried out.

Such amendment was made on 30 July 2019 and directed at widespread use of mediation in Uzbekistan. A party who initiates court proceedings would be interested to recover the state duty and inclined to settle the case by concluding the mediation agreement. For example, depending on the category of disputes, the state duty from a claim submitted to the Civil Court could be 4 per cent of the amount in dispute.

Amendments to Procedural Codes

In order to further the use of mediation, amendments were made to the Civil Procedural Code (CPC) and the Economic Procedural Code (EPC) of Uzbekistan. These amendments provide that civil and economic courts should stay court proceedings if parties have agreed to mediate and until the end of mediation but not more than 60 days.

Arbitration Proceedings

According to Article 371 of the Law "On Arbitration Courts" of 16 October 2006 arbitration proceedings are suspended if parties agree to conduct mediation and until the end of the mediation process. The arbitration proceedings are terminated if parties conclude a mediation agreement.

Investment Disputes

Article 63 of the Law "On Investments and Investment Activity" of 25 December 2019 provides for mediation in resolution of investment disputes between the foreign investor and Uzbekistan in case of failure of negotiations.

International Treaties

Uzbekistan is a party to international treaties on the enforcement of court decisions and has bilateral agreements on mutual legal assistance with several countries. However, they all deal with the enforcement of court orders and decisions on the territory of one another.

Unless a mediation agreement is approved by the competent court order it cannot be enforced by such international treaties. Thus, such a mechanism will be confined only to mediations conducted during the court proceedings and not to out-of-court mediations and mediation agreements reached during the arbitration proceedings.

Uzbekistan has not yet joined the Singapore Convention on Mediation.

Courts

For mediation to function in Uzbekistan, besides a legal framework, there should be support from the judicial system. The Civil and the Economic Courts can promote its widespread use by informing the parties about the existence of mediation and its advantages.

Conclusion

Mediation is not new to the Uzbek dispute resolution culture. The special law discussed above is aimed at widespread use of mediation by the public, and the role of courts would be critical to the development of mediation in Uzbekistan as the courts are the first point where the disputing parties come without knowing that they have another alternative to resolve their dispute.

From the standpoint of resolving international disputes the requirement of the Law regarding entry of the professional mediators into the Register with pre-requisite 144-hour training limits the entry of foreign mediators to Uzbekistan and makes it less mediation friendly venue for users. This aspect should be taken into account in the future revision of the Law.