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Editorial staff of the journals of www.tadqiqot.uz
Tadqiqot LLC The city of Tashkent,
Amir Temur Street pr.1, House 2.
Web: http://www.tadqiqot.uz/; Email: info@tadqiqot.uz
Phone: (+998-94) 404-0000

Контакт редакций журналов. www.tadqiqot.uz
ООО Tadqiqot город Ташкент,
улица Амира Темура пр.1, дом-2.
Web: http://www.tadqiqot.uz/; Email: info@tadqiqot.uz
Тел: (+998-94) 404-0000

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THE ARBITRATION AGREEMENT UNDER UZBEK LAW: CONSENT, FORM, AND THE LIMITS OF PARTY AUTONOMY

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Nodirkhon Malikov
Attorney at the New York law firm "Mestechkin Law Group"

Annotation. The arbitration agreement is the cornerstone of any arbitral process: without a valid, binding agreement to arbitrate, tribunals lack jurisdiction and awards are vulnerable to challenge. This article examines the legal regime governing arbitration agreements under Uzbek law, with particular attention to the dual statutory framework created by the Law on International Commercial Arbitration (ICA Law, 2021) and the Domestic Arbitration Law (DAL, 2006). Adopting the UNCITRAL Model Law as its template, Uzbekistan has positioned itself within the mainstream of international arbitration law — yet significant interpretive gaps remain. The article analyzes the essential content and form requirements for arbitration agreements, evaluating Uzbekistan's compliance with Article II(2) of the New York Convention and the 2006 UNCITRAL Recommendation on the written-form requirement. It examines the under-developed doctrine of incorporation by reference through practical hypotheticals involving ICC and FIDIC standard forms, and undertakes a comparative analysis of the law applicable to the arbitration agreement, drawing on the Sulamérica and Enka v. Chubb jurisprudence. The article further expands on the implications of the reported MADI GMBH v. Zomin Brewery decision for multi-party and third-party arbitration, exploring the group-of-companies doctrine and assignment. A new section addresses pathological arbitration clauses – a systemic risk in Uzbek commercial practice – and argues for adoption of a pro-validity construction principle. Throughout, the article compares Uzbek law with French, German, English, and other Model Law jurisdictions, identifying areas where Uzbek courts and legislators should update or clarify the existing framework.

Keywords: arbitration agreement; Uzbek law; UNCITRAL Model Law; New York Convention; incorporation by reference; pathological clause; multi-party arbitration; party autonomy; applicable law; group of companies doctrine

АРБИТРАЖНОЕ СОГЛАШЕНИЕ ПО ЗАКОНОДАТЕЛЬСТВУ УЗБЕКИСТАНА: СОГЛАСИЕ, ФОРМА И ПРЕДЕЛЫ АВТОНОМИИ СТОРОН.

Нодирхон Маликов
адвокат Нью-Йоркской адвокатской компании "Mestechkin Law Group"

Аннотация. Арбитражное соглашение является краеугольным камнем любого арбитражного процесса: при отсутствии действительного и

обязывающего соглашения об арбитраже трибуналы лишены юрисдикции, а вынесенные решения уязвимы для оспаривания. В настоящей статье исследуется правовой режим арбитражных соглашений по узбекскому праву, с особым акцентом на дуальной нормативной системе, создаваемой Законом о международном коммерческом арбитраже (Закон МКА, 2021) и Законом об арбитражных судах (ЗАС, 2006). Приняв за основу Типовой закон ЮНСИТРАЛ, Узбекистан занял место в господствующем направлении международного арбитражного права – однако в его толковании по-прежнему сохраняются существенные пробелы. Статья анализирует требования к существенному содержанию и форме арбитражных соглашений, оценивает соответствие Узбекистана статье II(2) Нью-Йоркской конвенции и Рекомендации ЮНСИТРАЛ 2006 года о требовании письменной формы. Рассматривается недостаточно разработанная доктрина инкорпорации посредством отсылки – на основе практических гипотетических ситуаций, связанных со стандартными формами ICC и FIDIC, – а также проводится сравнительный анализ права, применимого к арбитражному соглашению, с опорой на практику английских судов по делам Sulamérica и Enka v. Chubb. Расширен анализ последствий решения по делу MADI GmbH против Зоминского пивзавода для многостороннего арбитража и участия третьих лиц, включая доктрину группы компаний и уступку требований. Отдельный раздел посвящён патологическим арбитражным оговоркам – системному риску узбекской коммерческой практики – и отстаивает принцип толкования в пользу действительности арбитражного соглашения. На протяжении всей статьи узбекское право сравнивается с французским, немецким, английским и иными правопорядками государств – участников Типового закона.
Ключевые слова: арбитражное соглашение; узбекское право; Типовой закон ЮНСИТРАЛ; Нью-Йоркская конвенция; инкорпорация посредством отсылки; патологическая оговорка; многосторонний арбитраж; автономия воли сторон; применимое право; доктрина группы компаний

O'ZBEKISTON QONUNCHILIGIGA MUVOFIQ ARBITRAJ BITIMI: ROZILIK, SHAKL VA TOMONLARNING AVTONOMIYASINING CHEGARALARI

Nodirhon Malikov
Nyu-Yorkdagi “Mestechkin Law Group” advokatlik kompaniyasining advokati

Annotatsiya. Arbitraj kelishuvi har qanday arbitraj jarayonining asosiy ustuni hisoblanadi: tegishli va majburiy arbitraj kelishuvusiz tribunallar yurisdiktsiyadan mahrum bo'ladi, qabul qilingan qarorlar esa e'tiroz bildirishga nisbatan zaif bo'lib qoladi. Ushbu maqolada O'zbekiston huquqi bo'yicha arbitraj kelishuvlarini tartibga soluvchi huquqiy rejim, xususan Xalqaro tijorat arbitraji to'g'risidagi qonun (XTA Qonuni, 2021-yil) va Arbitraj sudlari to'g'risidagi qonun (ASQ, 2006-yil) tomonidan yaratilgan ikki yo'nalishli normativ tizim ko'rib chiqiladi. UNCITRAL Namunaviy qonunini andoza sifatida qabul qilgan O’zbekiston o'zini xalqaro arbitraj huquqining

asosiy yo'nalishi doirasida mustahkamlagan – biroq talqin jihatidan muhim bo'shliqlar mavjud bo'lib qolmoqda. Maqolada arbitraj kelishuvlarining muhim mazmuni va shakliga qo'yiladigan talablar tahlil qilinadi; O'zbekistonning Nyu-York konventsiyasining II(2)-moddasi va 2006-yildagi UNCITRAL Tavsiyasiga muvofiqligi baholanadi. ICC va FIDIC standart shakllari bo'yicha amaliy gipotezalar orqali havola qilish yo'li bilan inkorpora qilishning yetarlicha ishlab chiqilmagan doktrinasi o'rganiladi; arbitraj kelishuviga nisbatan qo'llaniladigan huquq masalasi Sulamérica va Enka v. Chubb bo'yicha ingliz sudlari amaliyotiga asoslanib qiyosiy tahlil qilinadi. MADI GmbH va Zomin pivo zavodi o'rtasidagi bo'yicha qarorning ko'p tomonlama arbitraj va uchinchi shaxslar qatnashuviga oid tahlili kengaytiriladi. Yangi bo'lim O'zbek tijorat amaliyotida tizimli xavfni ifodalovchi patologik arbitraj bandlariga bag'ishlanib, haqiqiylik foydasiga talqin qilish tamoyilini joriy etish taklif etiladi. Maqola davomida O'zbek huquqi Frantsiya, Germaniya, Angliya va boshqa Namunaviy qonun davlatlarining huquqi bilan qiyoslanadi.
Kalit so'zlar: arbitraj kelishuvi; O'zbek huquqi; UNCITRAL Namunaviy qonuni; Nyu-York konventsiyasi; havola orqali inkorporatsiya; patologik band; ko'p tomonlama arbitraj; tomonlar avtonomiyasi; qo'llaniladigan huquq; kompaniyalar guruhi doktrinasi

I. Introduction

No arbitral tribunal can exercise jurisdiction in the absence of an agreement to arbitrate. The arbitration agreement is the foundation upon which the entire structure of international commercial arbitration rests: it confers jurisdiction on the tribunal, delineates the scope of disputes subject to arbitration, and derogates from the ordinary jurisdiction of national courts. As Gary Born has observed, the arbitration agreement is 'the cornerstone of the international arbitral process,' and defects in its drafting or validity can prove fatal to the entire arbitration, irrespective of the merits of the underlying dispute.

The importance of a sophisticated legal framework governing arbitration agreements is accordingly difficult to overstate. A regime that is unclear on formal requirements, silent on the law governing the agreement's validity, or hostile to multi-party and third-party effects will generate uncertainty, litigation, and ultimately the erosion of confidence that drives parties to choose arbitration over court proceedings in the first instance.

Uzbekistan's arbitration law regime is at a formative stage. The ICA Law, enacted in 2021 and modelled closely on the 2006 revision of the UNCITRAL Model Law on International Commercial Arbitration, represents a significant modernisation of the legal framework for international arbitration. The parallel DAL, enacted in 2006, continues to govern domestic arbitrations and imposes requirements that differ – in some respects materially – from those of the ICA Law. This dual-track system creates complexity and occasional inconsistency, particularly with respect to form requirements and essential content.

The reasons for studying the Uzbek approach to arbitration agreements are both practical and scholarly. On the practical side, Uzbekistan has attracted growing volumes of foreign direct investment in its energy, mining, construction, and agricultural sectors, and international contracts routinely include arbitration clauses that may implicate Uzbek law. The Tashkent International Arbitration Centre (TIAC), established in 2018, has emerged as a regional forum of increasing significance. As the volume of arbitrations seated in Tashkent grows, questions about the validity and interpretation of arbitration agreements under Uzbek law will become more frequent and more consequential.

On the scholarly side, Uzbekistan presents a particularly instructive case study in the dynamics of Model Law adoption. The ICA Law's text closely tracks the 2006 Model Law, but its interpretation remains in formation: there is a limited body of published court decisions engaging with the arbitration agreement provisions, and academic commentary is nascent. Identifying the interpretive gaps and recommending solutions grounded in comparative law is therefore a productive enterprise – and one that is timely, given that courts and practitioners will increasingly be called upon to resolve these questions in the years ahead.

The central tension this article seeks to illuminate is the degree to which Uzbek law, as adopted and as interpreted, departs from or adheres to international best practice. In some respects – notably the adoption of the expanded written-form definition from the 2006 Model Law revision – the ICA Law places Uzbekistan firmly within the liberal mainstream of modern arbitration law. In other respects – including the law applicable to the arbitration agreement, the effect of arbitration clauses on third parties, and the treatment of pathological clauses – Uzbek law is either undeveloped or potentially restrictive, and the prospects for interpretive improvement depend on the receptiveness of Uzbek courts to comparative sources and transnational principles.

This article proceeds as follows. Section II examines the typology of arbitration agreements and their essential content requirements, including a comparative analysis of the ICA Law and DAL regimes. Section III analyzes form requirements, with particular reference to the New York Convention and the 2006 UNCITRAL Recommendation. Section IV addresses incorporation by reference through comparative analysis and illustrative hypotheticals. Section V undertakes a substantive analysis of the law applicable to arbitration agreements, drawing on Sulamérica and Enka v. Chubb. Section VI examines third-party and multi-party arbitration, with expanded analysis of MADI GMBH v. Zomin Brewery. Section VII addresses termination. Section VIII introduces a new analysis of pathological arbitration clauses in Uzbek practice.

II. Typology and Essential Content of Arbitration Agreements

A. Arbitration Clauses and Submission Agreements

The ICA Law, following the Model Law, recognizes two principal forms of arbitration agreement: the arbitration clause – a pre-dispute agreement embedded in a primary contract referring future disputes to arbitration – and the submission agreement (or *compromis*) – a post-dispute agreement to refer an existing dispute to arbitration. Both forms are treated as equally valid, a position consistent with Article II(1) of the New York Convention and with the practice of all major arbitration jurisdictions.

The practical significance of this distinction lies primarily in the assessment of consent: the submission agreement involves a concrete, known dispute, making it considerably easier to evaluate whether the parties have truly consented to arbitrate the specific controversy at hand. The arbitration clause, by contrast, requires prospective consent to an unspecified range of future disputes – a circumstance that creates interpretive difficulties when the scope of the clause is contested. In such cases, Uzbek courts should apply the principle of effective interpretation, construing ambiguous scope clauses broadly so as to give effect to the parties' evident intention to arbitrate.

B. Essential Content: A Comparative Analysis

The ICA Law adopts a minimalist approach to essential content, requiring only that the agreement identify arbitration as the mechanism for dispute resolution. This approach is consistent with the Model Law philosophy of favouring validity: provided the parties have expressed an intention to arbitrate, courts and tribunals should strive to give effect to that intention, filling gaps through applicable institutional rules or default provisions.

The DAL, by contrast, imposes more detailed requirements for domestic arbitration agreements, including – in some interpretations of its text – the specification of the arbitral institution or rules, the number of arbitrators, the seat of arbitration, and the language of proceedings. These requirements, while intended to promote clarity, function in practice as a trap for the unwary. A domestic arbitration clause that omits, say, the number of arbitrators or the seat may be vulnerable to challenge as formally deficient – even if the parties' intent to arbitrate is beyond dispute. This over-prescription is inconsistent with international trends and with the principle, endorsed by Fouchard, Gaillard and Goldman, that the validity of an arbitration agreement should not depend on its completeness with respect to procedural matters.

A principled distinction should be drawn between provisions going to the existence and scope of the agreement to arbitrate – which are essential – and provisions that relate merely to the organisation of the arbitral proceedings – which are default rules susceptible to gap-filling. Uzbek courts should resist any interpretation of the DAL that would invalidate agreements for failure to specify procedural details that the applicable institutional rules or the *lex arbitri* would in any event supply. Legislative reform of the DAL to align its essential content requirements with the leaner ICA Law standard is, on this basis, strongly advisable.

III. Form Requirements

A. The ICA Law and the 2006 Model Law Standard

The ICA Law adopts, in substance, the expanded written-form definition introduced by the 2006 revision to the UNCITRAL Model Law. Under this formulation, an arbitration agreement is in writing if its content is recorded in any form – including electronic communications – irrespective of whether the arbitration agreement or the underlying contract was concluded orally, by conduct, or by other means. The reference to a pre-printed standard form or to a document in another written instrument is also sufficient.

This formulation is deliberately expansive. It departs from the earlier Model Law text – which required signature or exchange of letters and telexes – and reflects the reality that modern commercial transactions are concluded through email, electronic data interchange, and online platforms. Under the ICA Law, an arbitration clause in an email confirmation, an e-contract, or a click-wrap agreement would satisfy the written-form requirement – a result that is commercially sensible and consistent with the practice of leading arbitration jurisdictions including England, France, Germany, and Singapore.

B. Compliance with Article II(2) of the New York Convention

Article II(2) of the New York Convention (1958), to which Uzbekistan is a party, defines the 'agreement in writing' as an arbitral clause in a contract or an arbitration agreement signed by the parties or contained in an exchange of letters or telegrams. This formulation, drafted in 1958, predates the electronic communications era and has long been regarded as anachronistically restrictive in its literal scope.

The 2006 UNCITRAL Recommendation addressed this problem directly, inviting states to apply Article II(2) with recognition that the grounds set out therein are not exhaustive, and to interpret 'agreement in writing' in a manner consistent with the more liberal standard in the 2006 Model Law revision. States such as France, Germany, England, Singapore, and Hong Kong have all embraced this approach, either through legislation or judicial interpretation.

Uzbekistan's ICA Law, in adopting the 2006 Model Law standard, effectively incorporates the Recommendation's guidance into domestic law. Uzbek courts should therefore apply the expanded written-form definition when considering whether an arbitration agreement satisfies Article II(2) of the Convention – rejecting any argument that the original, restrictive 1958 text controls. The DAL, however, retains a narrower conception of written form, creating a two-track system: international arbitration agreements enjoy the full benefit of the modern liberal standard, while domestic arbitration agreements remain subject to more demanding formal requirements. Legislative harmonisation is overdue.

IV. Incorporation by Reference

A. The Doctrinal Problem

Incorporation by reference raises the question whether an arbitration clause contained in a document separate from the main contract – such as institutional arbitration rules, general conditions, or a standard trade association agreement – becomes part of the main contract by virtue of a general reference in that contract. The issue is of considerable practical importance, as many commercial transactions are concluded on the basis of pre-printed conditions or institutional rules that themselves contain arbitration clauses.

Under the ICA Law, following the Model Law, an arbitration agreement includes an agreement contained in a document to which the contract makes reference, provided the reference is such as to make that clause part of the contract. The key interpretive question – what kind of reference suffices – is left to courts. There is no settled Uzbek doctrine on this point, making it one of the most practically significant gaps in the current framework.

B. Hypothetical Scenarios

Scenario 1: Reference to ICC Rules

Party A (a Tashkent-based importer) and Party B (a German exporter) conclude a contract for the supply of industrial equipment. The contract states: 'This agreement shall be governed by Uzbek law. All disputes shall be resolved in accordance with ICC Rules.' Does this clause incorporate the arbitration agreement contained in Article 6 of the ICC Rules and constitute an agreement to arbitrate before the International Chamber of Commerce?

Under a liberal approach – consistent with French law and the general trend in Model Law jurisdictions – the answer should be yes. The reference to 'ICC Rules' is a sufficiently specific identification of a known institutional framework that contemplates arbitration as the method of dispute resolution. Uzbek courts should adopt this liberal approach, treating a clear reference to institutional rules that contemplate arbitration as sufficient for incorporation, at least between sophisticated commercial parties.

Scenario 2: Standard-Form Construction Contracts (FIDIC)

The FIDIC suite of construction contracts is widely used in Uzbek infrastructure and energy projects, particularly where foreign contractors or international financing institutions are involved. Each standard FIDIC form contains a multi-tiered dispute resolution clause culminating in ICC arbitration. The question arises: where a contract between a Uzbek state entity and a foreign contractor is stated to be 'on FIDIC Red Book terms,' but the FIDIC General Conditions are not expressly reproduced or annexed, is the arbitration clause incorporated by the general reference?

In the FIDIC context, several factors support incorporation even under a strict standard: FIDIC forms are published, publicly available, and well known to the construction industry; the reference to ‘FIDIC Red Book terms’ is a sufficiently specific identification of the document containing the arbitration clause; and ICC arbitration is a standard, predictable feature of FIDIC contracts. Uzbek courts should find incorporation in this scenario, particularly where the contract was negotiated between sophisticated commercial parties with access to legal advice.

C. Comparative Approaches

French law adopts an exceptionally liberal approach to incorporation by reference in international arbitration: a general reference to a document containing an arbitration clause is sufficient in international commercial contexts. German law draws a sharper distinction between B2B and B2C contexts, requiring – in consumer cases – that the arbitration clause be specifically brought to the party's attention. The Model Law itself does not prescribe the quality of reference required for incorporation: Article 7(6) of the 2006 revision provides simply that the reference must be such as to make the arbitration clause part of the contract.

For Uzbek law, the appropriate rule should distinguish between commercial parties of comparable sophistication – where a general reference to identified standard conditions should suffice – and consumer or asymmetric relationships – where a specific reference to the arbitration clause should be required. This distinction reflects both international trends and the legitimate policy concern with ensuring meaningful consent to arbitrate.

V. Law Applicable to the Arbitration Agreement

A. The Gap in Uzbek Doctrine

The law applicable to the arbitration agreement – sometimes termed the *lex arbitri conventionis* – is analytically distinct from both the law governing the main contract and the law of the seat. The Uzbek ICA Law provides no explicit rule for resolving this conflict-of-laws question, creating a genuine gap in the statutory framework. The significance of this gap is considerable: the law applicable to the arbitration agreement determines whether the agreement is formally and substantively valid, who has capacity to arbitrate, and what defenses to validity – fraud, duress, mistake – are available.

B. The English Approach: Sulamérica and Enka v. Chubb

The leading English cases – Sulamérica Cia Nacional de Seguros SA v. Enesa Engenharia SA [2012] EWCA Civ 638 and Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb [2020] UKSC 38 – provide the most fully developed judicial analysis of this question in the common law world, and offer a principled framework from which Uzbek law might usefully draw.

In Sulamérica, the Court of Appeal established a three-step inquiry: first, has the parties' choice of law for the arbitration clause been expressly stated? Second, can such a choice be implied? Third, in the absence of any choice, what law has the closest connection to the clause? In Enka v. Chubb, the Supreme Court held that a choice of law for the main contract generally extends to the arbitration agreement, and that the law of the seat governs in the absence of any choice of law for the main contract. Lord Hamblen and Lord Leggatt identified the principal policy rationale: applying the law of the seat promotes certainty and is consistent with the reasonable expectations of parties who have designated a particular legal system as the home of their arbitration.

C. Recommended Approach for Uzbek Law

In the absence of a specific Uzbek statutory rule, courts adjudicating challenges to arbitration agreements in international proceedings should apply a three-step framework: (i) give effect to any express choice of law specifically addressing the arbitration clause; (ii) in the absence of express choice, consider whether the choice of law for the main contract implicitly extends to the arbitration clause – without assuming such extension lightly; and (iii) in the absence of either express or implied choice, apply the law of the seat as the default, consistent with the Enka approach and Article 178(2) of the Swiss PILS. Legislative reform incorporating this framework would significantly enhance the predictability and attractiveness of Uzbekistan as a seat of arbitration.

VI. Third Parties and Multi-Party Arbitration

A. The General Principle: Privity and Its Limits

The general principle in all legal systems is that an arbitration agreement binds only those parties who have consented to it. A third party who has not signed or otherwise acceded to the arbitration agreement cannot be compelled to arbitrate, nor can it invoke the clause against a signatory. Yet the principle of privity, rigorously applied, fails to capture the economic reality of complex commercial transactions involving corporate group members, guarantors, successors, and assignees. International arbitration law has accordingly developed several doctrines to extend arbitration agreements beyond their original parties.

B. MADI GMBH v. Zomin Brewery: Expanded Analysis

The reported decision in MADI GMBH v. Zomin Brewery – apparently the first Uzbek decision to engage with third-party binding effects in arbitration – represents an important, if preliminary, contribution to the development of this area of law. The decision's significance lies in several dimensions: it confirms that Uzbek courts are willing to engage with the question of third-party binding effects; the factual matrix invites analysis of the full range of doctrinal tools available – assignment, succession, agency, and the group of companies doctrine; and the case provides an opportunity to address implications for tribunal composition and the equality-of-arms principle. Assignment of contractual rights generally carries the arbitration clause with it, and succession by operation of law similarly transfers the agreement to arbitrate – Uzbek courts should apply these established civil law mechanisms to the arbitration context without hesitation.

C. The Group of Companies Doctrine

The group of companies doctrine – developed in French and Swiss arbitral practice, and reflected in the seminal ICC award in Dow Chemical v. Isover Saint Gobain (1982) – holds that a non-signatory corporate affiliate closely involved in the negotiation or performance of the contract may be bound by or entitled to invoke the arbitration clause. English courts have been considerably more sceptical, as demonstrated by Peterson Farms Inc v. C&M Farming Ltd [2004] EWHC 121 (Comm). For Uzbek law, the appropriate position is one of cautious openness: domestic courts should require a clear factual basis before extending an arbitration clause to a non-signatory affiliate, while TIAC rules would benefit from an express provision on joinder and consolidation in appropriate circumstances.

D. Piercing the Corporate Veil

Piercing the corporate veil – treating a parent or affiliated company as the alter ego of the contracting entity – provides a further basis for binding non-signatories in cases of fraud, abuse of the corporate form, or commingling of assets. Uzbek courts have developed a body of law on veil-piercing in the context of civil liability, and there is no doctrinal obstacle to applying analogous principles in the arbitration context, provided the requisite factual showing of control and abuse is made.

VII. Termination of Arbitration Agreements

An arbitration agreement may terminate by reason of the expiry of the main contract, express agreement of the parties to rescind the arbitration clause, the running of applicable limitation periods, or the fundamental breach or frustration of the main contract. The doctrine of separability – confirmed in the ICA Law – mitigates the risk that termination of the main contract will automatically extinguish the agreement to arbitrate: a claim that the main contract has been rescinded or frustrated does not automatically terminate the arbitration clause, and the parties must pursue that claim before the tribunal whose jurisdiction is in question.

In international practice, courts have been reluctant to find that parties have terminated an arbitration agreement by implication, requiring clear evidence of a mutual intention to abandon arbitration. Uzbek courts should adopt this pro-arbitration stance, avoiding any interpretation of termination that would deprive parties of access to an agreed forum. Conduct equally consistent with the continuation of the arbitration agreement – such as settlement negotiations – should not be treated as an implied waiver of the right to arbitrate.

VIII. Pathological Arbitration Clauses in Uzbek Practice

A. The Problem Defined

A pathological arbitration clause is one that is defective in drafting – containing errors, ambiguities, or contradictions that raise questions about its enforceability or the procedural framework it was intended to establish. The term was coined by Frédéric Eisemann, former Secretary-General of the ICC Court of Arbitration, and has become a term of art in international arbitration scholarship. The problem is particularly acute in emerging arbitration jurisdictions such as Uzbekistan, where practitioners may have limited familiarity with institutional arbitration and where standard contract forms have not yet incorporated widely accepted model clauses. The pathological clause is an invitation to jurisdictional litigation – the antithesis of the efficiency and finality that arbitration is intended to deliver.

B. Common Drafting Errors in the Uzbek Context

Several categories of pathological clause appear with particular frequency in Uzbek commercial practice. First: references to defunct or obsolete institutions – Uzbek contracts predating 2018 sometimes refer to the ICAC in terms that do not reflect the current institutional structure, raising the question whether the reference designates the successor institution (TIAC) or renders the clause inoperable. Second: conflicting choice of institution and rules – a clause designating TIAC but specifying ICC Rules creates direct tension, since institutional rules are designed to be administered by the issuing institution. Third: optional arbitration clauses purporting to give either party the option to choose between court proceedings and arbitration – encouraging forum shopping and undermining exclusivity. Fourth: impossibly vague scope provisions distinguishing 'technical' from 'legal' disputes without workable criteria. Fifth: omission of the seat, creating unnecessary uncertainty about the lex arbitri and supervisory jurisdiction.

C. The Judicial Response: Pro-Validity Interpretation

International arbitration law has developed a strong preference for the pro-validity interpretation of arbitration clauses – the principle that courts and tribunals should give effect to the parties' evident intention to arbitrate rather than declare the clause void for imprecision or ambiguity. Born describes the pro-validity approach as 'the dominant rule in virtually all jurisdictions,' and Lew, Mistelis and Kröll similarly endorse it as most consistent with the facilitation of international commerce.

Applied to common Uzbek pathological clauses: a clause referring to the ICAC by an obsolete name should be read as referring to TIAC, unless clear evidence indicates the parties intended an institution that no longer exists; a clause designating one institution but specifying another's rules should be given effect if workable in practice; an optional arbitration clause should be construed as conferring exclusive arbitral jurisdiction at the election of either party. Courts should also apply the doctrine of severance – reading out an irreconcilable provision – where the pathological element can be isolated without destroying the core arbitration intent.

D. Practical Recommendations for Practitioners

To minimise the risk of pathological clauses in the Uzbek context, practitioners should: (i) use model clauses published by TIAC, ICC, or other established institutions as a starting point; (ii) ensure any institutional designation uses the institution's current official name and current rules; (iii) specify the seat, governing law, language, and number of arbitrators; (iv) avoid hybrid clauses splitting jurisdiction between courts and tribunals unless the allocation of categories is unambiguous; and (v) consider having the arbitration clause reviewed by the relevant institutional secretariat before execution.

IX. Conclusion

The legal framework governing arbitration agreements under Uzbek law is built on solid foundations. The 2021 ICA Law, modelled on the 2006 UNCITRAL Model Law revision, provides a modern, internationally compatible framework for international commercial arbitration agreements. Its adoption of the expanded written-form definition, the autonomy of the arbitration clause, and the *kompetenz-kompetenz* principle places Uzbekistan firmly within the mainstream of international arbitration law.

Yet significant work remains. The DAL's more demanding requirements create a two-track system that disadvantages domestic arbitration and creates a trap for the unwary. The law applicable to arbitration agreements is genuinely undeveloped. Incorporation by reference lacks settled doctrine. Third-party and multi-party arbitration has received only preliminary judicial treatment. And the problem of pathological arbitration clauses – widespread in Uzbek commercial practice – demands both judicial engagement with the pro-validity principle and practical guidance to practitioners.

Uzbek courts and the legislature have before them the full benefit of comparative law from France, England, Germany, Switzerland, Singapore, and other Model Law jurisdictions. The Sulamérica and Enka frameworks provide a principled basis for resolving choice-of-law disputes. The group of companies doctrine, applied with appropriate caution, offers a tool for addressing group liability in multi-party disputes. The pro-validity principle provides guidance for courts confronting pathological clauses. The arbitration agreement under Uzbek law is, in short, a work in progress – promising in structure, but in need of interpretive development and, in several respects, legislative reform to realise its potential as the reliable foundation of an internationally competitive arbitration seat.

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Tadqiqot LLC The city of Tashkent,
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Phone: (+998-94) 404-0000

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