

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

**INTERNATIONAL COMMERCIAL ARBITRATION
ASSESSMENT**

**REPORT ON THE RESULTS OF THE ASSESSMENT IN THE CIS (ARMENIA,
AZERBAIJAN, GEORGIA, KAZAKHSTAN, KYRGYZ REPUBLIC, MOLDOVA, RUSSIA,
TAJIKISTAN, TURKMENISTAN, UKRAINE, UZBEKISTAN)
AND MONGOLIA**

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1. Introduction

The purpose of the EBRD International Commercial Arbitration Assessment 2007 (the Assessment) is to evaluate and compare the respective legal regimes of some of the Bank's countries of operation with the best international standards and practices. The study covers arbitration legislation in the CIS countries (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan) and Mongolia¹.

Arbitration is commonly regarded as a preferred dispute resolution mechanism in international commercial contracts. It is supplanting litigation primarily because it offers contracting parties the freedom to tailor the method of dispute resolution to their particular needs. Overall, its main advantages are enforceability, party-control, neutrality, privacy and confidentiality, cost-effectiveness and speed².

However, the ability of the parties to a dispute to enjoy the abovementioned advantages is conditional on standards adopted by the national legislation. A poorly drafted law may undermine these advantages and make arbitration a much less attractive method of dispute settlement, especially in cases where impediments on the recognition and enforcement of arbitral awards exist. Conversely, the risks of the parties to an international commercial transaction are further reduced when a reliable and cost-effective mechanism of dispute settlement is in place. Therefore, since national legislation may significantly affect the ability of the parties to obtain recourse through an appropriate dispute settlement mechanism, it is pertinent and important to examine national laws and establish whether they comply with the best international standards and practices.

For the purposes of this Assessment, the relevant national legislation of the observed States is compared to the UNCITRAL Model Law on International Commercial Arbitration 1985 (the Model Law) as revised and amended by the UNCITRAL Commission in its 39th session in 2006. The choice of the UNCITRAL text as the benchmark is justified on certain vital grounds. The Model Law 'covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different legal or economic systems of the world ... It is advisable to follow the model as closely as possible since that would be the best contribution to the desired harmonization and in the best interest of the users of international arbitration, who are primarily foreign parties and their lawyers'³. The latter point was further enforced by the General Assembly of the United Nations in Resolution 40/72 in December 1985, recommending 'that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability

¹ The present Assessment succeeds the 2004 EBRD Report on the Quality of Commercial Arbitration Legal Regimes in Early Transition Countries (Armenia, Azerbaijan, Georgia, Moldova, Kyrgyz Republic, Tajikistan and Uzbekistan).

² A.Winstanley, Law in Transition, EBRD, Autumn 2001, pp33-4.

³ Explanatory Note to the Model Law of the UNCITRAL Secretariat, available at http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf.

of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practices'.

The Assessment intends to establish whether the national legislation is based on the Model Law provisions and to reflect the degree of the conformity of the local international commercial arbitration regime with the standard as set by the Model Law.

2. Overview of the methodology and results

2.1. Methodology and Qualifications

The Assessment is being undertaken through a questionnaire, formulated to facilitate the comparison between national legislation and the Model Law. The questionnaire evaluates each of the national arbitration regimes on more than 50 questions. Each question receives a numerical mark, with higher marks representing a higher degree of conformity to the UNCITRAL text.

The questionnaire compares the national legislation to the Model Law with a view to the following nine criteria through a category of questions^{4,5}:

- ✓ Scope of Application;
- ✓ Court Involvement;
- ✓ Arbitration Agreement;
- ✓ Tribunal Jurisdiction;
- ✓ Interim Measures;
- ✓ Arbitral Proceedings and Awards;
- ✓ Applicable Rules;
- ✓ Recourse;
- ✓ Recognition and Enforcement.

In accordance with the results, the national legislation of each of the observed States is categorized as belonging to one of the following groups:

- ✓ Very High Compliance (91% and higher)⁶;
- ✓ High Compliance (76-90%);
- ✓ Medium Compliance (51-75%);
- ✓ Low Compliance (34-50%);
- ✓ Very Low Compliance (33% and lower).

Generally, most countries endeavoured to align their arbitration framework with the 1985 version of the Model Law that does not include the 2006 amendments. None of the observed countries have implemented the revised provisions of the Model Law⁷. This might be assumed to have occurred due to the fact that the amendments were introduced relatively recently. The Assessment uses the amended text of the Model Law as the benchmark by which to judge its results, and reflects the fact that the legislation in some of the States has been rendered outdated by the UNCITRAL revision. However, it seems appropriate to explicitly mention whether the legislation currently in force conforms to the 1985 version of the Model Law that contains the

⁴ The categories are further explained in the Question Groups section *infra*.

⁵ Each group has a fixed pre-determined contribution to the overall result of a country, one not necessarily corresponding to the number of questions for the groups. The Assessment recognizes that some of the questions and groups are of greater value and pertinence than others.

⁶ None of the countries have implemented the revised provisions of the Model Law, and, hence, none of the countries were included in the category of Very High Compliance.

⁷ The one possible exception is Armenia, where the articles of the Commercial Arbitration Act 2007 on interim measures are drafted in a style close to that of the 2006 revisions of the Model Law.

bulk of the core Model Law provisions. Hence, the Assessment often refers to the 1985 provisions of the Model Law.

The Assessment focuses on the international commercial arbitration as it is defined by the Model Law⁸. However, several States have a single legal regime for both domestic and international commercial arbitration, and to this extent, the Assessment also evaluates legislation relating to domestic arbitration.

This Assessment analyzes the content of the international commercial arbitration laws of the respective countries; in several cases the relevant provisions of the Civil or Commercial Procedure Codes are also taken into account⁹. The study has not evaluated or assessed the effectiveness or the practical operation and application of those laws nor has it been concerned to evaluate institutional capacity to apply the law, merely examining national legislation as it is on the books (*id est* the Assessment is of extensiveness type). The scope of the project has not permitted assessment of any judicial or other practices, which may have 'cured' or corrected the deficiencies or weaknesses in international commercial arbitration laws.

In the implementation of the project, English or Russian translations of the relevant laws are used¹⁰. The mentioned texts have been kindly provided by the local counsels in the period of 27 March – 22 April 2007¹¹ and are considered to be current at the indicated dates. Despite the efforts to verify that the translations adequately reflect the original provisions, it is not possible to guarantee accuracy or completeness of the analysis. This assessment does not constitute legal advice.

⁸ According to the Model Law arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

⁹ The States covered in the Assessment belong to the continental system of law with codified legislation. The mentioned codes relate to the civil law of these countries, as opposed, *exempli gratia*, to criminal or administrative. Civil law covers transactions of essentially commercial or quasi-commercial nature between individuals and/or legal persons. If a State in addition to the Civil Procedure Code has a Commercial Procedure Code, the latter usually covers civil law transactions between commercial entities (registered entrepreneurs or incorporated business entities).

¹⁰ The original texts of the Russian legislation were analyzed in the Assessment.

¹¹ The list of the local counsels who kindly provided relevant legal texts and the information on countries' accession to international agreements is stated at the end of this Report.

2.2. Question Groups

As has been mentioned, the national legislation is compared to the Model Law with a view to nine criteria through a category of questions. This section includes information on the relevant Model Law provisions as regards each of these criteria,¹² and contains a collective overview of the results in the respective areas. (See Chart 1 at the end of this section)

Scope of Application

This category reflects the substantive and territorial scope of application of the national legislation in question.

The Model Law contains a definition of international commercial arbitration; if a dispute is within the scope of this definition, the parties may refer it to international commercial arbitration¹³.

Further and according to the Model Law, certain of its provisions apply irrespective of the place of arbitration. In particular, this relates to the recognition of the compatibility of interim court measures with arbitration agreements, to the recognition by courts of arbitration agreements, and to the recognition and enforcement of foreign arbitral awards. The recognition of arbitral interim measures and the issuance of court interim measures were added to this list by the revised version of the Model Law.

According to the results of the Assessment, the national legislation varies significantly in this area. The application of the law to foreign arbitral awards seems to be an especially contentious issue and the observed approaches include silence on the scope of application of the law (Georgia), a somewhat inconsistent drafting open to interpretations (Belarus), and full conformity to the Model Law (Azerbaijan, Russia, Ukraine). The approaches to the definition of the international commercial arbitration also vary; generally, States adopt a more narrowly drafted clause. *Exempli gratia*, in Kazakhstan the law applies only to disputes arising out of contracts. In Russia, international commercial arbitration is defined as where at least one party has its place of business abroad or where one of the parties is a Russian entity with foreign capital. A similar definition is adopted in Ukraine.

Some States do not make a clear distinction between international commercial arbitration and domestic arbitration. Hence, in such countries the same provisions apply in both cases (Armenia, Georgia, the Kyrgyz Republic, Moldova, Mongolia)¹⁴.

¹² The description is intended as guidance only and is not exhaustive.

¹³ By adopting a narrow definition, the national legislation may treat what is in essence international commercial arbitration as domestic arbitration. One common example is that the national legislation only recognizes as international commercial arbitration cases where one of the parties is abroad. However, the Model Law *also* recognizes as international commercial arbitration cases where a substantial part of the obligations of the commercial relationship is to be performed outside the State.

¹⁴ Often, the application of the law in such cases is limited to arbitration taking place in the relevant country. However, this does not mean that arbitration is not an international commercial one. According to the Model Law definition, arbitration may be 'international commercial' even when all the parties to the dispute are domestic. Such is the case, *exempli gratia*, where a substantial part of the obligations is to be performed abroad.

Court Involvement

This category reflects the scope of court assistance to and supervision over arbitration.

Under the Model Law, the intervention of courts in arbitration is limited by a general clause. The UNICTRAL text provides for courts' assistance in the appointment/challenging of arbitrators and in the taking of evidence. Courts are obliged to refer the parties to arbitration in the respective cases and the interim court measures of protection are recognized as compatible with arbitration.

The study establishes that the national legislation in certain cases fails to include a provision limiting court intervention (Georgia, the Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan and Uzbekistan) or is silent on the question of assistance in taking evidence (the Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan and Uzbekistan). In few cases, the law denied assistance in the appointment/challenge of arbitrator(s), and, in cases where disputes in these matters arise, the parties are forced to terminate arbitration (Tajikistan, and for *ad hoc* tribunals – in Uzbekistan).

Arbitration Agreement

This category compares the national requirements to the form and content of an arbitration agreement.

The revised Model Law allows the countries to opt for one of two approaches to the form of an arbitration agreement. The first generally requires a written form and the second recognizes that the parties are free from any specific requirements to the form of an arbitration agreement. The provisions of the Model Law relating to the written form of an agreement have also been changed. Other changes relate to agreements concluded by means of telecommunication (the list of available means has been modified and expanded); the Model Law now explains that only the content of an agreement shall be in written form, and the agreement itself may be concluded orally, by conduct or by other means. None of the States have implemented the new provisions. A special case is the Moldovan legislation, which is silent on the requirements to the form of an arbitration agreement; however, this does not seem to implement the revised Model Law provisions¹⁵.

The Model Law (both the revised and the 1985 versions) also recognize the 'submission-type' arbitration agreement – when in an exchange of statements of claim and defence the existence of an arbitration agreement is alleged by one party and is not denied by the other. According to the UNCITRAL text, the parties may submit to arbitration both present and future disputes, and all or (only) certain disputes arising out of a defined legal relationship.

According to the results of this study, in certain cases, the drafting of the laws of several States can be interpreted to exclude the freedom of the parties to submit future disputes to arbitration (Georgia, Moldova) or (only) certain disputes (Georgia, Kazakhstan, Turkmenistan). The national legislation frequently introduces extra requirements to the content of an arbitration agreement (Georgia, the Kyrgyz Republic and Moldova).

¹⁵ The relevant Moldovan law on arbitration was adopted in 1994, prior to the revision of the Model Law. Furthermore, it seems that the Moldovan Procedure legislation may still require an agreement to be in writing when, subsequently, a party intends to enforce an award in courts.

Tribunal Jurisdiction

This category analyses whether an arbitral tribunal may rule on its own jurisdiction (including any objections with respect to the existence or validity of the arbitration agreement) and whether the arbitration clause is treated as an agreement independent of the other terms of the contract (hence a decision by the arbitral tribunal that the contract is null and void not entailing *ipso jure* the invalidity of the arbitration clause).

The results of the Assessment show that the national legislation in certain cases remains silent on the first (Georgia), the second (Kazakhstan and the Kyrgyz Republic) or both of the mentioned issues (Moldova and Turkmenistan).

Interim Measures

This category covers interim measures ordered by arbitral tribunals and courts.

The 2006 revision of the Model Law has significantly extended the relevant provisions. The revised version includes a list of possible interim measures and conditions on which the relevant measures may be granted. Courts are generally obliged to recognize and enforce measures granted by arbitral tribunals; the Model Law also introduces a list of grounds that allow to refuse to recognize arbitral interim measures.

Generally, the 2006 amendments are not reflected in the national legislation¹⁶. However, in several cases, the States comply with the old, 1985, provisions¹⁷. Nearly in as many cases as the national legislation complies with the 1985 provisions, it does not cover interim arbitral measures at all (Georgia, Kazakhstan, Moldova, Mongolia, Tajikistan and Turkmenistan).

Arbitral Proceedings and Awards

This category evaluates the national legislation related to the rules of arbitral proceedings and the form and content of awards.

The Model Law specifies that the parties shall be treated equally and shall be given full opportunity to present their case. The parties are free to agree on the number of arbitrators, on the procedure of their appointment and challenge, on the place and language of arbitration, and, importantly, on the rules related to the arbitration procedure. The UNCITRAL text establishes liberal requirements to the form and content of arbitral awards.

The national legislation varies significantly in the area and often restricts the freedoms of the parties as compared to the Model Law. The restrictions often include requirement(s) to the number, qualifications, or the procedure of appointment and challenge of arbitrators (Armenia, Kazakhstan, Moldova, Tajikistan and Uzbekistan). Some States limit the freedom of the parties to determine the procedure of arbitration (Kazakhstan and Moldova limit this freedom in respect of the proceedings in permanent arbitral institutions, Kazakhstan also introduces a fixed procedure

¹⁶ Armenia has adopted a new law on arbitration in 2006. On interim measures, the document adopts a drafting style which is somewhat similar to the revised Model Law. See the Interim Measures section on Armenia *infra*.

¹⁷ The 1985 version of the Model Law simply provided that 'Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure'.

and requirements to submitting of a statement of claim). The freedom to choose the language(s) of arbitration may be denied (Georgia) or it may be unclear if the parties or the tribunal initially makes the relevant choice (Tajikistan).

Applicable Rules

This section establishes whether the parties are given the freedom to designate the rules of law applicable to the substance of the dispute.

According to the Model Law, the parties are free to agree on the **rules of law** applicable to the substance of the dispute. The Explanatory Note of the UNCITRAL Secretariat¹⁸ clarifies that the clause allows the parties a wider freedom of choice than simply pointing out to a certain jurisdiction. *Exempli gratia*, the 'rules of law' wording allows the parties to designate the generally recognized principles of international law as the rules applicable to the substance of the dispute. Failing the express choice of the rules of law by the parties, the arbitral tribunal is given the right to apply the conflict of rules which it considers to be applicable. In all cases tribunals shall decide in accordance with the terms of the contract and take into account the usages of the trade applicable to the transaction. Another provision of the Model Law stipulates that an arbitral tribunal decides *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

The national legislation related to the applicable rules varies significantly. *Exempli gratia*, in Georgia, the law is silent on the rules applicable to the substance of the dispute. In Uzbekistan, the national law applies¹⁹. It seems that in Belarus and Moldova, the parties are not free to agree on the **rules of law**, and the freedom only covers the **law** of a certain State. Only two States in the observed group mention decisions *ex aequo et bono* or as *amiable compositeur* (Armenia and Azerbaijan).

Recourse

The Model Law exclusively limits recourse against arbitral awards to setting aside. The UNCITRAL text includes a closed list of grounds on which courts are allowed to set aside awards; a statute of limitations of three months applies to such action.

The national legislation in the majority of cases limits recourse against awards to setting aside. In Azerbaijan, it seems, the legislation expands the list of grounds on which awards may be set aside by adding the 'contradiction to the Azeri legislation' ground. The Georgian legislation departs significantly from the Model Law and stipulates that awards may be set aside if they contradict the Code of Administrative Offences or the criminal legislation, or if the rules of the arbitration procedure were violated²⁰. The Moldovan legislation, when compared to the Model Law list, recognizes four extra grounds that allow courts to set awards aside. In the Kyrgyz Republic and Tajikistan, the legislation does not cover recourse against awards.

¹⁸ Available at http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf.

¹⁹ In addition, in Turkmenistan the Arbitral Tribunal of the Chamber of Commerce and Industry applies the national law.

²⁰ For a detailed explanation see Recourse section on Georgia *infra*.

Recognition and Enforcement

This category determines which rules apply to the recognition and enforcement of arbitral awards, both domestic and foreign²¹.

The Model Law stipulates that arbitral awards shall be recognized as binding and are enforceable upon application to the competent court and provides a closed list of grounds that allow courts to refuse to enforce awards. These provisions apply irrespectively of the place where the award was made, and, hence, the UNCITRAL text equally treats domestic and foreign awards.

The Model Law also spells out the procedural requirements to recognize and enforce an award. According to the amended version of the Law, the revised provisions on the form and the content of arbitral awards, have excluded the requirement for a party to submit the original document of the arbitration agreement (or a certified copy thereof) to courts when seeking to enforce the award, which was made pursuant to that agreement.

According to the results of the Assessment, similarly to the Scope of Application category, the recognition and enforcement of awards is a contentious issue. This is even more true with relation to foreign arbitral awards. The national legislation varies significantly.

In practice, with a view to foreign awards²², many laws do not contain clear provisions and hence their enforceability remains open to interpretations. Azerbaijan, Moldova, Russia and Ukraine have adopted legislation that reflects the Model Law provisions and recognize awards irrespective of the place where they were made. Arguably, the Belarusian legislation also recognizes foreign arbitral awards; however, this may be open to interpretations²³. In Armenia, awards made in the member States of the 1958 New York Convention are recognized; the legislation also refers to recognition of awards on the basis of reciprocity²⁴. The Kazakh law stipulates that foreign arbitral awards are recognized on the basis of reciprocity. In the Kyrgyz Republic, the provisions on the enforcement of foreign awards are found in the Civil Procedure Code; it seems that the legislation requires foreign awards to be legalized and expands the list of grounds, which allow courts to refuse to recognize foreign awards²⁵. In Mongolia, the arbitration law stipulates that the procedure for the recognition and enforcement of foreign arbitral awards shall be set in accordance with the 1958 New York Convention. However, as the mentioned law generally does not apply to foreign arbitral awards, it is unclear whether the drafting is intended to recognize awards made in the New York Convention member States or merely to provide for the relevant procedure²⁶. In Turkmenistan, the Civil Procedure Code stipulates that foreign awards shall be

²¹ Provisions covering recognition and enforcement of arbitral awards are often regarded as the most important set of rules related to international commercial arbitration.

²² For information on domestic arbitral awards, the reader is referred to the Recognition and Enforcement section on the relevant country.

²³ See the Recognition and Enforcement section on Belarus.

²⁴ The exact meaning of the latter provision is unclear. For discussion see Recognition and Enforcement section on Armenia *infra*.

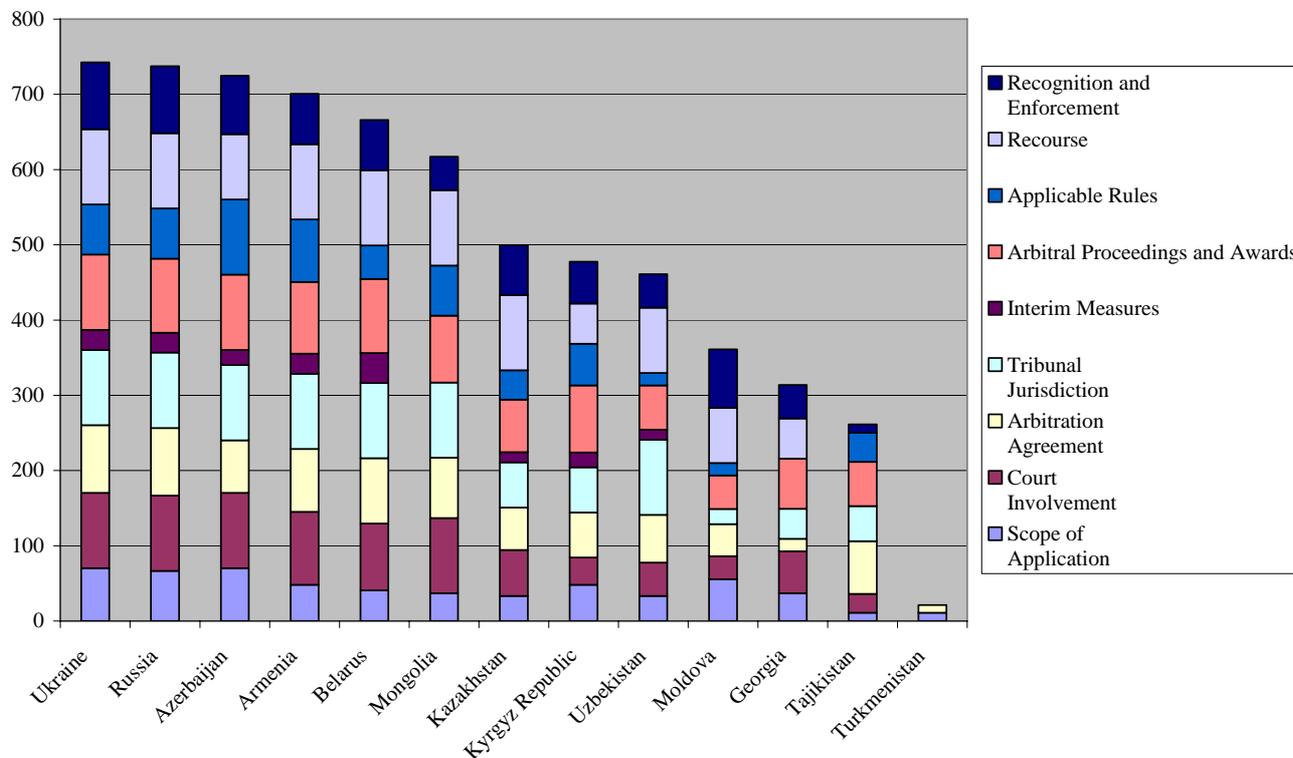
²⁵ An award may not be enforced if there is a Kyrgyz court hearing or a Kyrgyz court decision on the same subject matter in the same dispute between the same parties, or if recognition/enforcement affects sovereignty or threatens security of the Kyrgyz Republic.

²⁶ In either case, Mongolia has ratified the 1958 New York Convention and in relevant cases, awards may be enforced on this basis.

enforced when it is provided for by international agreements. The arbitration laws of Georgia and Tajikistan do not expressly cover foreign awards at all.

The two States in the observed group – Tajikistan and Turkmenistan – have not ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards²⁷.

Chart 1 – Comparative compliance of the countries’ legislation with the Model Law per criteria



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The bars indicate the degree of the overall compliance of the respective national legislation with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended and the colors indicate compliance per selected criteria. The higher the bar is, the higher the degree of compliance of the country.

²⁷ For additional information on the participation of the observed countries in several other international agreements related to arbitration, see Participation in International Agreements section of this Assessment on p17.

2.3. Degree of Compliance Overview

As has been mentioned above, the results of the Assessment are used to categorize the arbitration legislation of the observed countries as collectively belonging to one of several compliance groups²⁸. This section provides an overview of each of the compliance groups and highlights some of the features of the legislation in the relevant group. For a cross-country comparison as to the degrees of compliance, see Chart 2 at the end of this section.

Very High Compliance

According to the results of the Assessment, no national legislation is categorized so as to belong to this group. This, basically, reflects the fact that none of the States have amended their laws to reflect the revised articles of the Model Law.

High Compliance

The Assessment recognizes the legislation of Armenia, Azerbaijan, Russia and Ukraine as highly compliant with the Model Law²⁹. All the States in the group adopted legislation that narrowly follows the Model Law and all of these States opted for the wide scope of application of their laws. Apart from Armenia, the legislation of the countries in this group stipulates that the relevant provisions on the recognition of arbitration agreements and the recognition and enforcement of arbitral awards apply irrespective of the place of arbitration. Armenia is a somewhat special case, though its international commercial arbitration legislation has recently been amended to comply with the Model Law. The Armenian law stipulates that the mentioned provisions apply irrespective of the place of arbitration; nevertheless, specific provisions on the recognition and enforcement of arbitral awards seem to be limited to awards made in the member States of the 1958 New York Convention or to be conditional on reciprocity³⁰.

Medium Compliance

The laws of Belarus, Kazakhstan, the Kyrgyz Republic, Mongolia and Uzbekistan belong to the group³¹.

Belarus and Mongolia have adopted legislation that follows the Model Law narrowly; however, there are limitations on the scope of its application. *Exempli gratia*, the Belarusian legislation includes a specific provision on the recognition of foreign arbitral awards; however, the law generally stipulates that it only applies to arbitration in Belarus.

²⁸ See 2. Overview of the methodology and results

2.1. **Methodology and Qualifications** section on p.5.

²⁹ The group includes legislation with overall result of 76-90%.

³⁰ For a discussion on the exact meaning of this provision, see Recognition and Enforcement section on Armenia *infra*.

³¹ The group includes legislation with overall result of 51-75%.

The Mongolian legislation does not grant the global scope of application to any of its provisions; however, a reference is made to the 1958 New York convention with regards to the recognition and enforcement of foreign arbitral awards³².

In Kazakhstan, foreign arbitral awards are recognized and enforced on the grounds of reciprocity. However, the legislation more significantly diverges from the Model Law in other respects, including, in particular, the provisions on the applicable rules.

In the Kyrgyz Republic, the legislation does not cover *per se* recourse against awards. Also, the provisions on the recognition and enforcement of arbitral awards (domestic and foreign) differ to a degree from the Model Law.

The Uzbek arbitration legislation is the least compliant in the group. The law in force at the time of the writing is generally limited to apply only to domestic arbitration³³; the parties are not free to choose the law applicable to the substance of the dispute and the Uzbek law shall always apply.

Low Compliance

The arbitration legislation of Georgia and Moldova belong to this group³⁴.

When compared to the Model Law, the relevant Moldovan legislation is brief and remains silent on a number of issues. Moldova is the only country in the Assessment where the arbitration law does not include any requirements to the form of an arbitration agreement; however, it seems that other legislation requires such an agreement to be in writing. The provisions of the Commercial Procedure Code (but not the arbitration law) on the recognition and enforcement of foreign awards generally conform to the Model Law.

The Georgian law seems to apply only to domestic arbitration and it remains silent on the rules applicable to the dispute. In addition, extra requirements to the content of an arbitration agreement are introduced. The provisions on recourse and the recognition and enforcement of awards do not conform to the Model Law.

Very Low Compliance

The legal regime for international commercial arbitration in Tajikistan and Turkmenistan has been categorized as very low compliant³⁵.

Neither of the States has adopted a statute dedicated to arbitration³⁶. However, other legislation covering arbitration exists and the countries have ratified a number of international agreements that include provisions related to arbitration.

³² For a discussion on the exact meaning of this provision, see Recognition and Enforcement section on Mongolia *infra*.

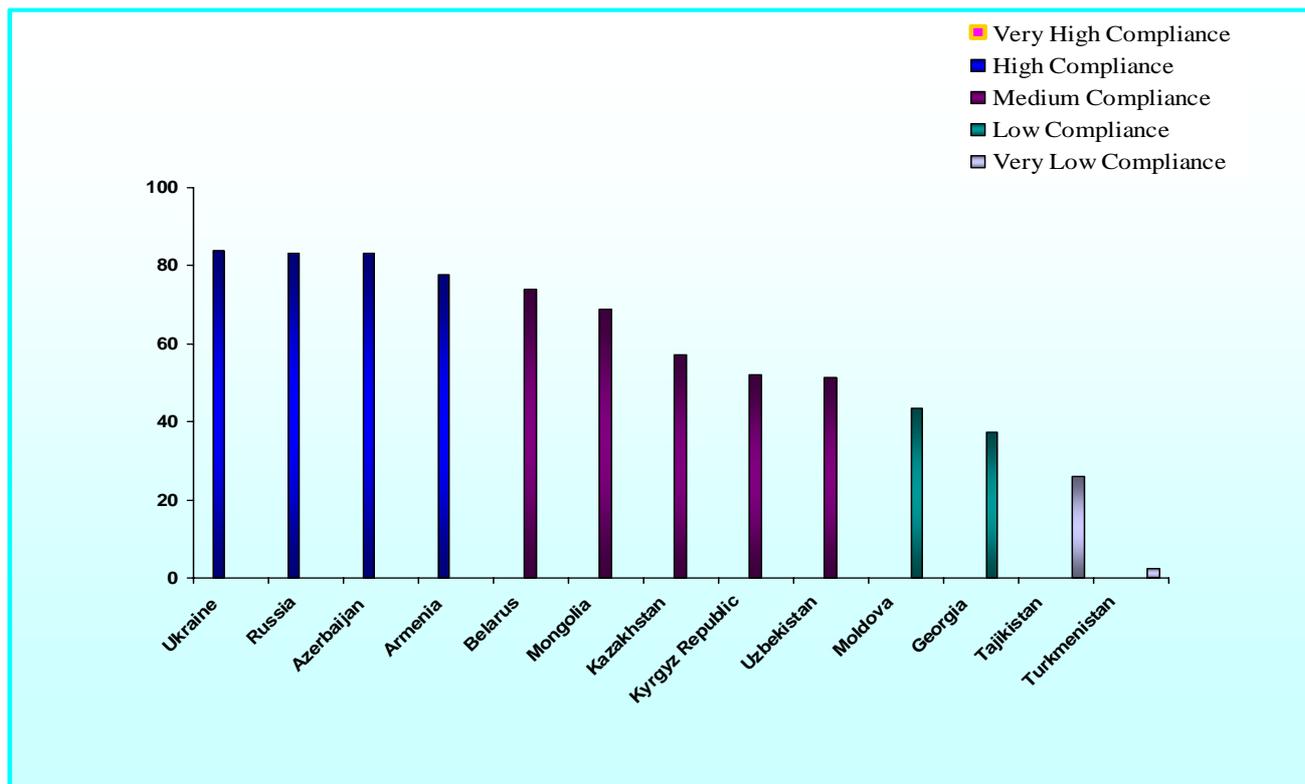
³³ A draft law on international commercial arbitration has been prepared in Uzbekistan. For more information see the Scope of Application section on Uzbekistan.

³⁴ The group includes legislation with overall result of 34-50%.

³⁵ The group includes legislation with overall result equal or lower than 33%. According to the methodology of the Assessment, a result below 33% indicates that the national provisions are, generally, incompatible with the Model Law provisions.

³⁶ In fact, *Majlis-e Oli* (Supreme Assembly) of Tajikistan has adopted a 'Regulation' that covers arbitration. The legal status of the document is lower than that of a law. See the relevant description of the country's legislation *infra*.

Chart 2 – Cross-Country Comparison by Degree of Compliance



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The bars indicate the degree of the overall compliance of the respective national legislation with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The higher the bar is, the higher the degree of the overall compliance of the country.

3. Participation in International Agreements

In addition to the national legislation, the rules related to the regime of the international commercial arbitration may be found in some international agreements. Chart 3 below provides information on the ratification of the following instruments:

- ✓ 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- ✓ 1961 (Geneva) European Convention on International Commercial Arbitration;
- ✓ 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention);
- ✓ The Agreement of March 20, 1992 among the Governments of the Participants of the Commonwealth of Independent States on the Procedure for Resolution of Disputes Relating to Carrying Out Business Activities;
- ✓ 1994 Energy Charter Treaty.

While every effort was made to provide accurate information, advice should be sought from local counsels for purposes of legal advice.

Chart 3 – Cross-Country Ratification of International Agreements

Agreement / Country	1958 New York Convention	1961 European Convention on International Commercial Arbitration	1965 ICSID Convention	1992 CIS Convention	1994 Energy Charter Treaty
Armenia	29.12.1997		16.09.1992	29.03.1994	15.12.1997
Azerbaijan	29.02.2000	31.05.1996	18.09.1992	10.12.2002	06.06.1997
Belarus	13.09.2000	09.09.1996	24.04.1992	24.11.1992	
Georgia	03.02.1994		07.08.1992		12.07.1995
Kazakhstan	04.10.1995	04.10.1995	09.07.1994	02.06.1992	18.10.1995
Kyrgyz Republic	18.03.1997		05.07.1997	19.04.1994	26.07.1996
Moldova	10.07.1998	26.09.1997			03.05.1996
Mongolia	26.05.1994		28.05.1996		25.11.1999
Russia	24.08.1960	27.06.1962		19.12.1992	
Tajikistan				26.06.1993	15.05.1997
Turkmenistan			01.09.1992	01.03.1992	01.06.1995
Ukraine	10.01.1961	07.01.1964	16.03.2000	19.12.1992	06.02.1998
Uzbekistan	22.12.1995		06.05.1994	06.05.1993	16.04.1998

Source: EBRD International Commercial Arbitration Assessment 2007

Note: The data was provided by the local counsels as of March – April 2007. The table reflects the date of ratification of the relevant instruments. Blank spaces indicate that the instrument has not been ratified (though it might have been signed) or that data is not available. The entry on the 1994 Energy Charter Treaty for Mongolia indicates the submission of the ratification document to the Depository while for Uzbekistan the date indicates the entry of the Treaty into force.

4. National Legislation and the Model Law

This section contains a description of the results obtained in the Assessment *per* country.

In each individual case, the description starts with an overview of the relevant legislation. The overview indicates whether the UNCITRAL Secretariat recognizes the respective national legislation as based on the Model Law³⁷. This is followed by a brief description of the differences between the national legislation and the standard as set by the UNCITRAL text. The overview includes a spider diagram depicting the degree of conformity of the national legislation to the Model Law as regarding the analysed nine criteria.

The subsequent text provides a detailed comparison of national law and the benchmark provisions with respect to each of the aforementioned criteria: Scope of Application, Court Involvement, Arbitration Agreement, Tribunal Jurisdiction, Interim Measures, Arbitration Proceedings and Awards, Applicable Rules, Recourse, and finally, Recognition and Enforcement.

Armenia

Overview

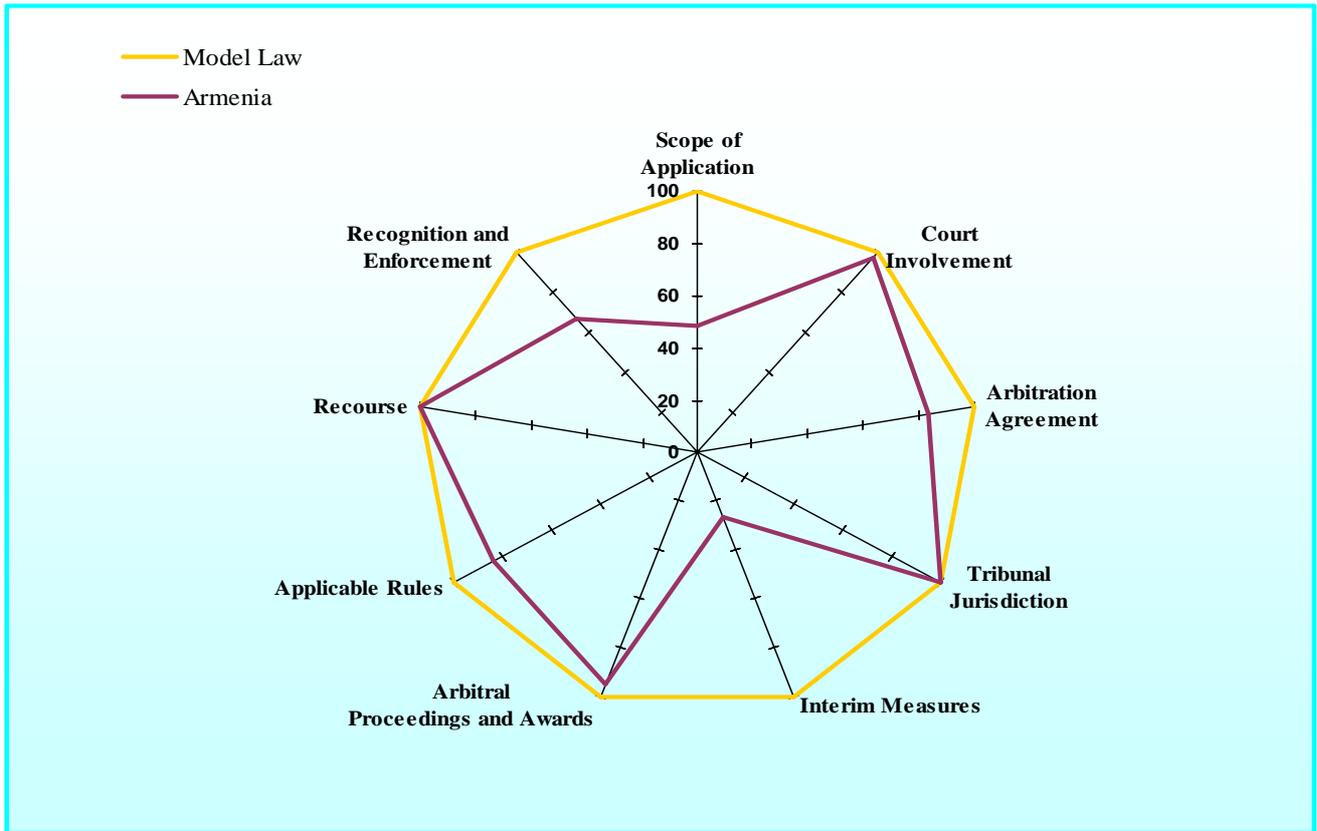
The relevant Armenian legislation is the Commercial Arbitration Act 2007.

Prior to the Commercial Arbitration Act 2007 (CAA), arbitration in Armenia was governed by the Arbitral Tribunals and Arbitral Proceedings Act 1998. The latter law differed significantly from the Model Law: the scope of its application diverged, there were few provisions on court assistance and supervision, and none on tribunal jurisdiction; rules on recourse allowed the courts to review awards on grounds not available under the Model Law; and finally, the recognition and enforcement provisions did not conform to the Model Law. With the adoption of the Commercial Arbitration Act, the situation has changed dramatically. The latter law generally conforms to the Model Law and retains its article numbers. However, the UNCITRAL Secretariat currently does not recognize Armenia as a country with arbitration legislation based on the Model Law. Nevertheless, this situation may change³⁸.

³⁷ See 'Status of Conventions and Model Laws', Notes by UNCITRAL Secretariat, prepared for each UNCITRAL Commission session. At the time of writing the latest available Note (29 May 2006) was prepared for the 39th session, available at <http://daccessdds.un.org/doc/UNDOC/GEN/V06/544/18/PDF/V0654418.pdf?OpenElement>. In addition, the UNCITRAL page reflecting the status of the Model Law is updated whenever the UNCITRAL Secretariat is informed of changes in enactment of the Model Law. See http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

³⁸ According to the information published by the UNCITRAL, its Secretariat updates the list of countries with arbitration legislation based on the Model Law when it is notified of the relevant changes. In addition, the Secretariat prepares a yearly document, which reviews the status of UNCITRAL Model Laws. It seems that this document is prepared for each Commission session in the middle of the year. At the time of writing such a document was not available for 2007.

Chart 4 – Level of Compliance of Laws of Armenia



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

This Assessment analyzes arbitration under the 2007 Act, although in certain cases the 1998 Act provisions may apply³⁹.

The main difference of the CAA provisions and the Model Law relates to the recognition and enforcement of foreign awards. The Armenian law stipulates that foreign awards are recognized and enforced if they were made in a New York Convention State and on the basis of reciprocity^{40,41}.

³⁹ See Scope of Application section *infra*.

⁴⁰ The Model Law refers to arbitral awards irrespective of the country in which it was made – A35. The UNCITRAL document does not mention reciprocity as a condition for recognition and enforcement.

⁴¹ CAA A35.1 and A35.3 respectively. It is not entirely clear whether the Armenian law recognizes awards made in States that are not members of the New York Convention on the basis of reciprocity or the latter is intended as an additional condition for enforceability of awards made in the Convention States. Arguably, the former approach is more likely.

Scope of Application

The Armenian law does not distinguish between international and domestic commercial arbitration and applies to any 'commercial' arbitration⁴². As *per* the Model Law, the term 'commercial' is given a wide meaning and covers all relationships of commercial nature, whether contractual or not⁴³.

Similarly to the Model Law, the CAA provisions on the court recognition of arbitration agreements, on the compatibility of interim court measures, on the recognition and enforcement of arbitral awards apply irrespective of the place of arbitration⁴⁴.

However, the CAA differs from the Model Law in the respect of the recognition and enforcement of foreign arbitral awards. The law stipulates that awards made in Armenia and the 1958 New York Convention member States shall be recognized and enforced; reference to recognition on the basis of reciprocity is also made⁴⁵.

The CAA is intended to replace the Arbitral Tribunals and Arbitral Proceedings Act 1998. Nevertheless, in certain cases the old law may still apply. Such cases include arbitration proceedings and court hearings on enforcement of arbitral awards that has commenced under the 1998 Act⁴⁶. It seems that the validity of pre-2007 Act arbitration agreements is also subject to the 1998 conditions^{47,48}.

Court Involvement

The CAA provisions on court assistance to and supervision over arbitration conform to the Model Law. The law expressly designates a specific court for purposes of assistance and supervision and limits court intervention in arbitration⁴⁹. The courts are obliged to refer the disputes to arbitration where relevant agreements exist, and interim court measures of protection are recognized as compatible with arbitration⁵⁰.

The Armenian law slightly modifies the Model Law provisions on court assistance in taking evidence. The CAA clarifies that such assistance shall relate to court orders compelling to deliver documents or other evidence relevant to arbitral proceedings, to orders to appear as a witness, or otherwise to provide assistance in taking evidence⁵¹.

⁴² CAA A1.2.

⁴³ CAA A2(4).

⁴⁴ CAA A1.3.

⁴⁵ CAA A35. For discussion of the mentioned provisions see Recognition and Enforcement section.

⁴⁶ The parties are given the freedom to subject the arbitration proceedings to the 2007 Act. This does not apply to court hearings.

⁴⁷ The translation of the Armenian law is not entirely clear on the issue.

⁴⁸ The 1998 Act contained some extra requirements to the form of an arbitration agreement.

⁴⁹ CAA A6 and A5 respectively.

⁵⁰ CAA A8 and A9 respectively.

⁵¹ CAA A27.

Arbitration Agreement

The Armenian law generally conforms to the 1985 version of the Model Law. The arbitration agreement shall be in writing. Parties may submit present or future, all or (only) certain disputes to arbitration. The CAA recognizes agreements concluded in an exchange of documents or by means of electronic communications⁵². The incorporation by reference and the submission-type situation are also recognized⁵³.

The CAA, when compared to the Model Law, contains an additional provision, which stipulates that an arbitration agreement is also 'in writing' if 'a written offer to arbitrate from one party is in one way or another accepted by the other party'⁵⁴. It is not clear whether there are any requirements to the form of such an acceptance. The law stipulates that if a party to arbitration files a claim in court in the respect of a dispute that the parties have agreed to arbitrate, and the other fails to object to litigation raising the existence of an agreement to arbitrate, then both parties shall be deemed to have waived their rights to arbitrate⁵⁵. It is unclear whether this provision prejudices arbitration when compared to the Model Law. The UNCITRAL text obliges the courts to refer parties to arbitration if a party so requests *no later than submitting its first statement* on the substance of the dispute⁵⁶.

Tribunal Jurisdiction

The CAA provisions on tribunal jurisdiction conform to the Model Law. Tribunals may rule on their own jurisdiction and the arbitration clause is treated as an agreement independent of the other terms of the contract.

Interim Measures

The Armenian law on interim measures is close to the 1985 version of the Model Law – under the CAA, an arbitral tribunal may make an order for interim measures of protection. However, the law goes further to add that such an order may be made in the form of an interim award and that interim measures ordered by a tribunal *may* be enforced, or, on the contrary, rendered ineffective by a designated court^{57,58}.

⁵² CAA A7. It has to be noted that the obtained translation of the Act, when covering the exchange of documents situation, refers to 'sealed letters' and not 'letters' as *per* Model Law.

⁵³ The submission-type situation covers cases where in an exchange of statements of claim and defense the existence of an arbitration agreement is alleged by one party and is not denied by the other.

⁵⁴ CAA A7.2.

⁵⁵ CAA A4.2.

⁵⁶ Model Law A8.1.

⁵⁷ CAA A17.3.

⁵⁸ Under A17H of the revised Model Law, the interim measures issued by an arbitral tribunal *shall be recognized as binding and enforced*, unless otherwise provided by the tribunal. Hence, when compared to the UNCITRAL text, the Armenian law weakens the role of arbitral tribunal measures. However, the drafting style of the clause is, arguably, the closest to the revised Model Law provisions when compared to the legislation of the other observed States.

Arbitration Proceedings and Awards

The CAA rules on arbitration proceedings and awards generally conform to the Model Law. The parties shall be treated with equality and shall be given full opportunity in presenting the case. The law provides for freedom to choose the place and language(s) of arbitration, and, failing, such choices by the parties, the decision lies with the tribunal. The parties are free to agree on the rules of the procedure (subject to restrictions of the law) and to choose the number of arbitrators and the procedures for their appointment and challenge. All documents submitted to arbitration shall be accessible to both parties and sufficient advance notices of any hearings must be made.

The CAA differs from the Model Law in prescribing that the number of arbitrators shall be odd⁵⁹. However, the law mitigates the situation where the parties have agreed on an even number of arbitrators and stipulates that in such cases the number of arbitrators shall be increased by one. Furthermore, under the Armenian law, unless parties agree otherwise, arbitral awards shall contain a section covering the arbitration costs and their distribution⁶⁰.

Applicable Rules

The Armenian law narrowly follows the Model Law and gives the parties the freedom to choose the rules of law (not limiting the choice to the law of a particular State) applicable to the substance of the dispute. Failing such a choice the arbitral tribunal applies the rules of conflict of laws, which it considers applicable. The CAA provides that the parties, at any time before an award is made, may authorize the tribunal to decide *ex aequo et bono* or as *amiable compositeur*⁶¹. In all cases, the tribunal shall decide in accordance with the terms of the contract 'in view of the trade customs applicable to the given transaction'⁶².

Recourse

The CAA provisions on recourse against awards fully conform to the Model Law. Recourse is limited to setting aside; and the grounds that allow courts to set awards aside are limited as prescribed and compatible with the Model Law.

Recognition and Enforcement

Arbitral awards in the respective cases shall be recognized as binding and enforceable in Armenia⁶³. This provision applies to domestic awards and foreign awards if they were made in a State that is a member of the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards. The CAA further provides that awards made outside the Republic of Armenia

⁵⁹ CAA 10.1.

⁶⁰ CAA A31.2.

⁶¹ The Model Law contains a different wording: the arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

⁶² CAA A28.

⁶³ CAA A35.1.

shall be recognized and enforced as *per* the principle of reciprocity throughout the territory of the Republic of Armenia subject to other legal acts and international agreements⁶⁴. It is unclear whether the latter provision allows for recognition of foreign awards from States that are not members of the 1958 New York Convention or is merely an addition to the requirement that the award has been made in a Convention State⁶⁵.

Grounds that allows courts to refuse to recognize and enforce arbitral awards are limited as prescribed and compatible with the Model Law provisions. However, the application of the relevant CAA article is limited to domestic awards and awards from the 1958 New York Convention States. Hence, the question on whether awards from non-member States are enforceable and, if yes, what are the grounds that allow courts to refuse to enforce such awards, remains unanswered.

The CAA procedural requirements for the recognition and enforcement of arbitral awards conform to the 1985 version of the Model Law.

Azerbaijan

Overview

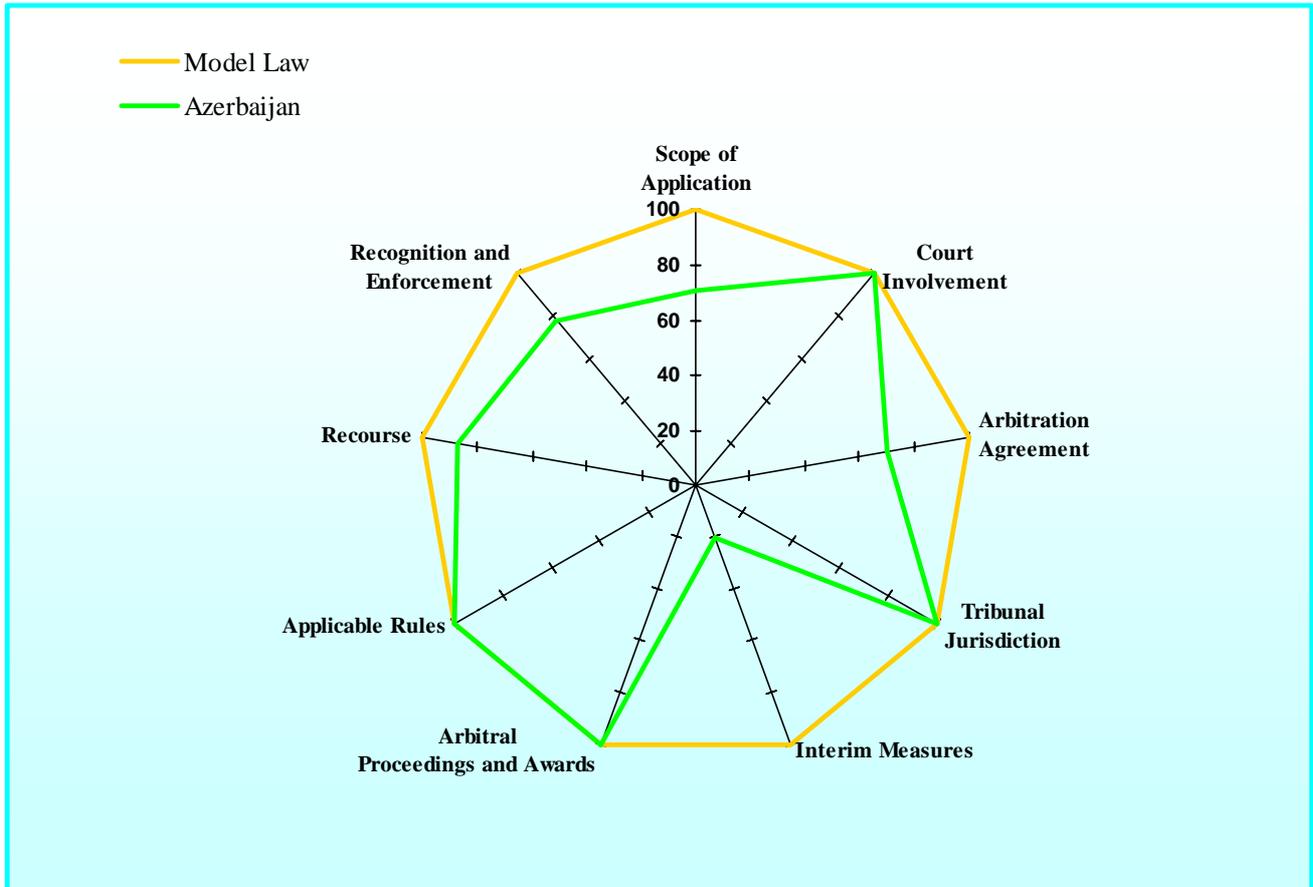
The relevant Azeri legislation is the International Arbitration Act 1999.

The UNCITRAL Secretariat recognizes Azerbaijan as a country with legislation based on the Model Law. The International Arbitration Act 1999 (IAA) is virtually a mirror copy of the 1985 version of the Model Law; the Act retains the Model Law article numbers. However, some provisions in the Azeri law can be distinguished from the UNCITRAL text: arguably, the IAA includes restrictions on its scope of application and introduces an additional ground, which allows courts to grant recourse against awards and refuse recognition and enforcement.

⁶⁴ CAA A35.3.

⁶⁵ Armenia has ratified the 1958 New York Convention with a limitation on its scope of application – only awards from Convention States are recognized and enforced under the document.

Chart 5 – Level of Compliance of Laws of Azerbaijan



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The IAA generally conforms to the Model Law. The law allows the parties to submit disputes to arbitration in the cases as provided for by the Model Law. The global scope of application is given to the respective provisions covering the recognition of arbitration agreements, the interim court measures of protection and the recognition and enforcement of arbitral awards.

However, the provision of Model Law regarding the international status of an arbitration was altered. According to the IAA, an arbitration is international if:

- ...;
- any place where the *main* part of the obligations arising out of *trade* relationships is to be performed, or a place that is closely connected with the *object* of dispute;
- if the parties have *indisputably* agreed that the subject of the arbitration agreement is connected with more than one state⁶⁶.

⁶⁶ IAA A1.3.b).

The provisions in question, as spelt out by the Model Law, refer to the *substantial* part of obligations arising out of *commercial* relationship ... or the place with which the *subject-matter* of the dispute is most closely connected and *express* agreement⁶⁷. As it can be seen, the IAA uses more narrow *main* part and *trade* relationships definitions and refers to *object* of the dispute instead of its *subject matter*. Furthermore, the meaning of *indisputable* agreements is not clear in the context. In particular, will a claim questioning the validity or existence of an arbitration agreement (this is, disputing it) by a party exclude the dispute from the scope of the application of the law?

Arguably, the drafting of the IAA limits its scope of application as compared to the Model Law.

Court Involvement

The IAA provisions on court assistance to and supervision over arbitration conform to the Model Law.

Arbitration Agreement

The IAA rules on the form and the content of an arbitration agreement conform to the 1985 version of the Model Law, except in the following. The law provides that an arbitration agreement is an agreement between the parties to submit to arbitration all or (only) certain disputes which *may arise*⁶⁸. The similar clause in the Model Law mentions both disputes that *have arisen* and may arise (this is present and future disputes). Hence, the drafting of the IAA may exclude the right of parties to submit present disputes to arbitration.

Another divergence between the IAA and the Model Law relates to the form of an arbitration agreement. The IAA provides that an agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement *to which the other party does not object*. The Model Law gives the latter phrase a different meaning. The UNCITRAL text stipulates '... which provide a record of the agreement, *or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other*'. Hence, the IAA may render arbitration agreements in any of the mentioned forms void as it subjects them to the subsequent approval of the other party.

Tribunal Jurisdiction

The Azeri legislation fully conforms to the Model Law.

Interim measures

The IAA fully conforms to the 1985 Model Law and does not include the 2006 revised provisions on interim measures.

⁶⁷ Model Law A1(3)(b)(i) and (ii) respectively.

⁶⁸ IAA A7.1.

Arbitration Proceedings and Awards; Applicable Rules

The Azeri legislation on the conduct of the proceedings, on the form and the content of an award and on rules applicable to the substance of the dispute⁶⁹ conforms to the Model Law.

Recourse; Recognition and Enforcement

The Azeri legislation mirrors the 1985 version Model Law provisions on the recourse against, and the recognition and enforcement of arbitral awards (both foreign and domestic). However, the IAA introduces a new, or significantly modifies an existing, ground that allows courts to set aside or to refuse to enforce awards. According to the Model Law, a common ground for granting recourse and refusing recognition is that the award *is in conflict with the public policy of the State*⁷⁰. This provision, when read in the IAA, states that an award may be set aside or refused recognition when it *'contradicts Azeri legislation'*. One of the possible interpretations of such a clause is that the IAA requires all awards (domestic and foreign, and on disputes subject to Azeri law and law of other States) to apply Azeri legislation. The other possible interpretation is that since the IAA generally allows the parties to choose the rules of law applicable to the disputes submitted to arbitration and obliges courts to recognize and enforce foreign awards, the reference to Azeri legislation should be interpreted to include such provisions, and hence no additional restrictions are introduced by the clause in question. It seems that the existing drafting creates additional legal risks for a party seeking to rely on an arbitral award.

Belarus

Overview

The relevant Belarus legislation on international commercial arbitration is:

- International Arbitration Act 1999;
- Commercial (Khozyaistvennyi) Procedure Code 2004⁷¹.

According to the UNCITRAL Secretariat, Belarus has adopted legislation based on the 1985 UNCITRAL Model Law on International Commercial Arbitration (Model Law). The Belarus International Arbitration Act 1999 (IAA) is based on the 1985 version of the Model Law. However, a major difference is that the Belarus law generally applies only to domestic international commercial arbitration⁷².

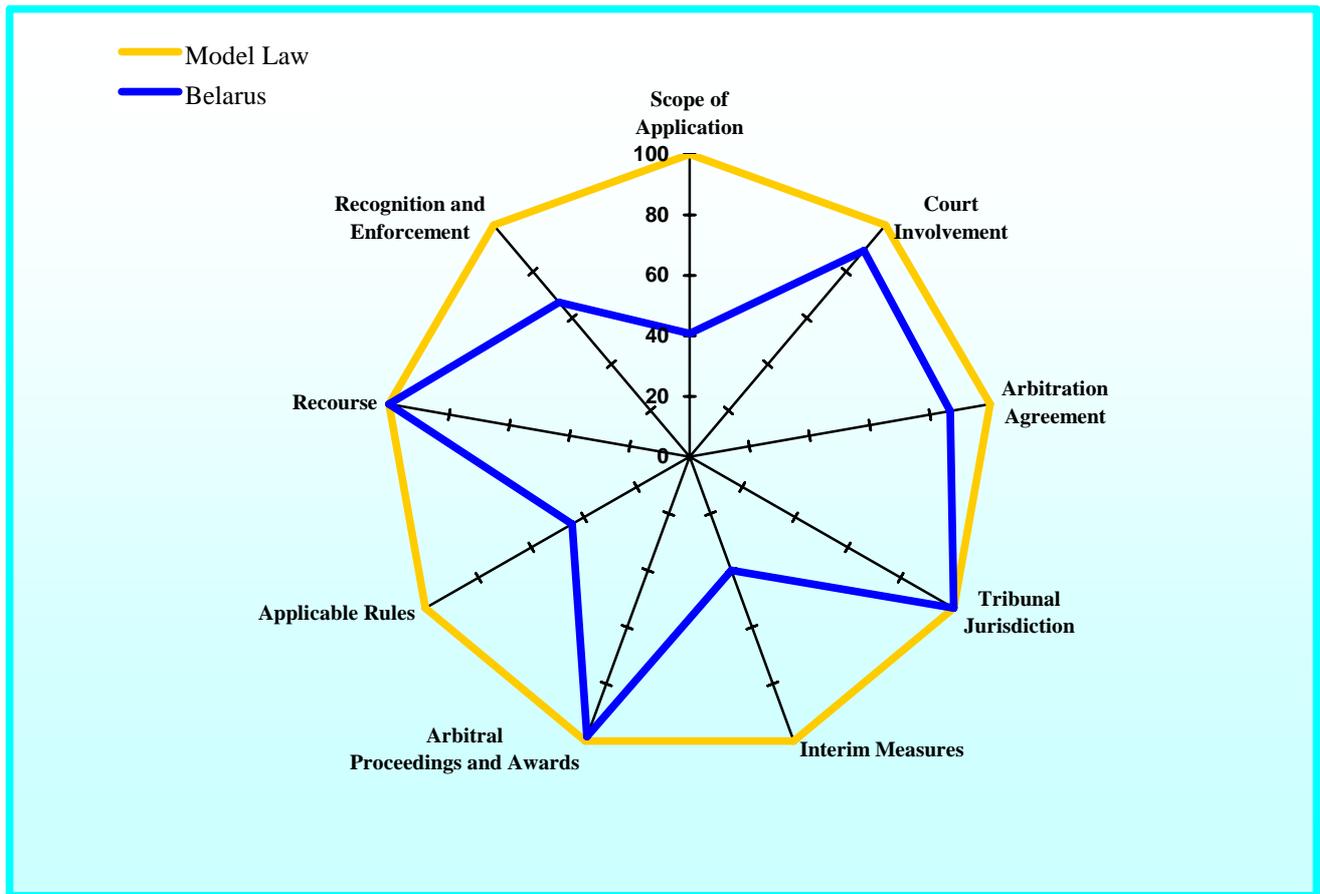
⁶⁹ On rules applicable to the substance of the dispute see also 'Recourse; Recognition and Enforcement'.

⁷⁰ Model Law A34(2)(b)(ii) and A36(1)(b)(ii).

⁷¹ Chapter 28 (Recognition and Enforcement) and Chapter 29 (Setting Aside) are directly relevant to international commercial arbitration.

⁷² However, the law also contains a clause that specifically refers to the recognition and enforcement of foreign arbitral awards. See Recognition and Enforcement section *infra*.

Chart 6 – Level of Compliance of Laws of Belarus



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The Belarus legislation allows the parties to refer to arbitration disputes arising out of any civil law international relationships. However, the IAA includes a general clause limiting application of the law to domestic arbitration; unlike the Model Law, there is no provision giving global application to the articles on the recognition and enforcement of foreign arbitral awards etc⁷³.

Court Involvement

The IAA provides that no court shall intervene in the proceedings of a tribunal, unless otherwise provided for by ‘this law or other legislation’⁷⁴. The ‘other legislation’ clause seemingly allows

⁷³ IAA A4. However, A40 of the law (as amended) provides that foreign arbitral awards are recognized as binding and are enforced in Belarus. This provision is discussed *infra* in ‘Recognition and Enforcement’.

⁷⁴ IAA A6.

courts more freedom than the Model Law⁷⁵. Implementing A6 of the Model Law, which designates authorities for the purposes of assistance to and supervision over arbitration, the IAA refers to Chairman of the Arbitration Court or President of the Belarus Chamber of Commerce for assistance and supervision. In line with the Model Law, courts assist arbitral tribunals in taking evidence⁷⁶. However, the IAA does not include a provision that allows parties to appeal to a court on a tribunal decision on own jurisdiction during proceedings. In Belarus such an appeal shall be made to the presidium of the tribunal, and the proceedings are suspended while the appeal is pending⁷⁷.

Arbitration Agreement

The Belarus provisions⁷⁸ on the form of an arbitration agreement closely follow the Model Law as it was adopted in 1985; the 2006 revisions are not reflected by the law.

Tribunal Jurisdiction

The Belarus legislation conforms to the Model Law and recognizes that the tribunal may rule on own jurisdiction, and that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract⁷⁹.

Interim measures

The IAA conforms to the Model Law 1985 original provisions. The law provides for the court interim measures to be compatible with an arbitration agreement and allows the tribunals to make orders for interim measures. In addition, the law allows the tribunals or parties to apply to courts for orders for interim measures of protection. In such cases, courts, in accordance with the relevant procedure legislation, may grant measures of protection⁸⁰.

Arbitration Proceedings and Awards

The IAA provisions on the number of arbitrators, as well as their appointment, challenge and substitution follow the Model Law⁸¹. The principle that parties to the arbitration shall be treated equally and shall be given full opportunity to present the case is reinforced; parties are given the freedom to choose arbitration procedures, the place and the language of arbitration⁸².

⁷⁵ Model Law A5 provides that 'in matters governed by this Law, no court shall intervene except where so provided in this Law'.

⁷⁶ IAA A35.

⁷⁷ IAA A22.

⁷⁸ IAA A11.

⁷⁹ IAA A22.

⁸⁰ IAA A23.

⁸¹ IAA A16-A21.

⁸² IAA A24-A35.

Applicable Rules

The Belarus legislation allows the parties to choose the law applicable to the substance of the dispute, however, it seems that parties are not free to choose the rules of law⁸³. No reference is made to arbitral awards *ex aequo et bono* or as *amiable compositeur*.

Recourse

The IAA limits recourse against arbitral awards exclusively to setting aside⁸⁴; the list of grounds for setting awards aside conforms to the Model Law. The Commercial Procedure Code provides for the relevant procedures⁸⁵.

Recognition and Enforcement

Domestic arbitral awards are recognized as binding and are enforced in Belarus in accordance with the commercial procedure legislation⁸⁶.

The law introduces a separate article covering the recognition and enforcement of foreign arbitral awards⁸⁷. However, this provision needs a careful approach. The IAA stipulates that an arbitral award 'shall be recognized and enforced in accordance with the Belarus commercial procedure legislation and international agreements irrespective of the country where such an award was made'. The mentioned provision is included in the IAA Chapter on 'Enforcement of the awards delivered by International Arbitration Tribunals'⁸⁸. Furthermore, the IAA defines an international arbitration tribunal as a tribunal constituted in Belarus⁸⁹ while another general clause limits the application of the IAA to domestic tribunals⁹⁰. It seems, therefore, that the special clause on foreign awards enforcement may contradict the general clauses in the IAA.

The Commercial Procedure Code does not clarify the situation. According to the Code, foreign arbitral awards are recognized and enforced where this is provided for by the Belarus legislation, international agreements, or on the basis of reciprocity⁹¹. Thus, the special law on arbitration (the IAA) refers to the general commercial procedure legislation to determine whether foreign awards are enforced⁹², and the general commercial legislation (the Code) refers to 'other' legislation⁹³. Arguably, such drafting is potentially open to interpretations.

⁸³ IAA A36.

⁸⁴ IAA A43.

⁸⁵ Commercial Procedure Code A251-A256. In addition to the list in the IAA, A255 of the Commercial Procedure Code repeats the grounds for setting aside.

⁸⁶ IAA A44.

⁸⁷ IAA A45.

⁸⁸ IAA Chapter 9.

⁸⁹ IAA A1.

⁹⁰ IAA A4.

⁹¹ Commercial Procedure Code A245.

⁹² IAA A45.

⁹³ Commercial Procedure Code A245.

As it has been mentioned, the Commercial Procedure Code and the IAA allow for award recognition and enforcement on the basis of international agreements. The 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards was ratified by Belarus on 13 September 1960⁹⁴. Therefore, despite the clauses where drafting of the IAA and the Commercial Procedure Code is open to interpretations, a party intending to recognize and enforce a foreign arbitral award in the majority of cases may still rely on their provisions.

Unlike the IAA (and the Model Law), the Commercial Procedure Code contains a provision that allows courts to refuse to enforce domestic arbitral awards on grounds 'as provided for in other legislation'⁹⁵. Arguably, the inclusion of the 'other legislation' contradicts the purpose of the closed list of grounds for setting aside in the IAA⁹⁶ and introduces additional legal risks.

Georgia

Overview

The relevant Georgian legislation is:

- Private Arbitration Act 1997;
- Civil Procedure Code 1997 (as amended).

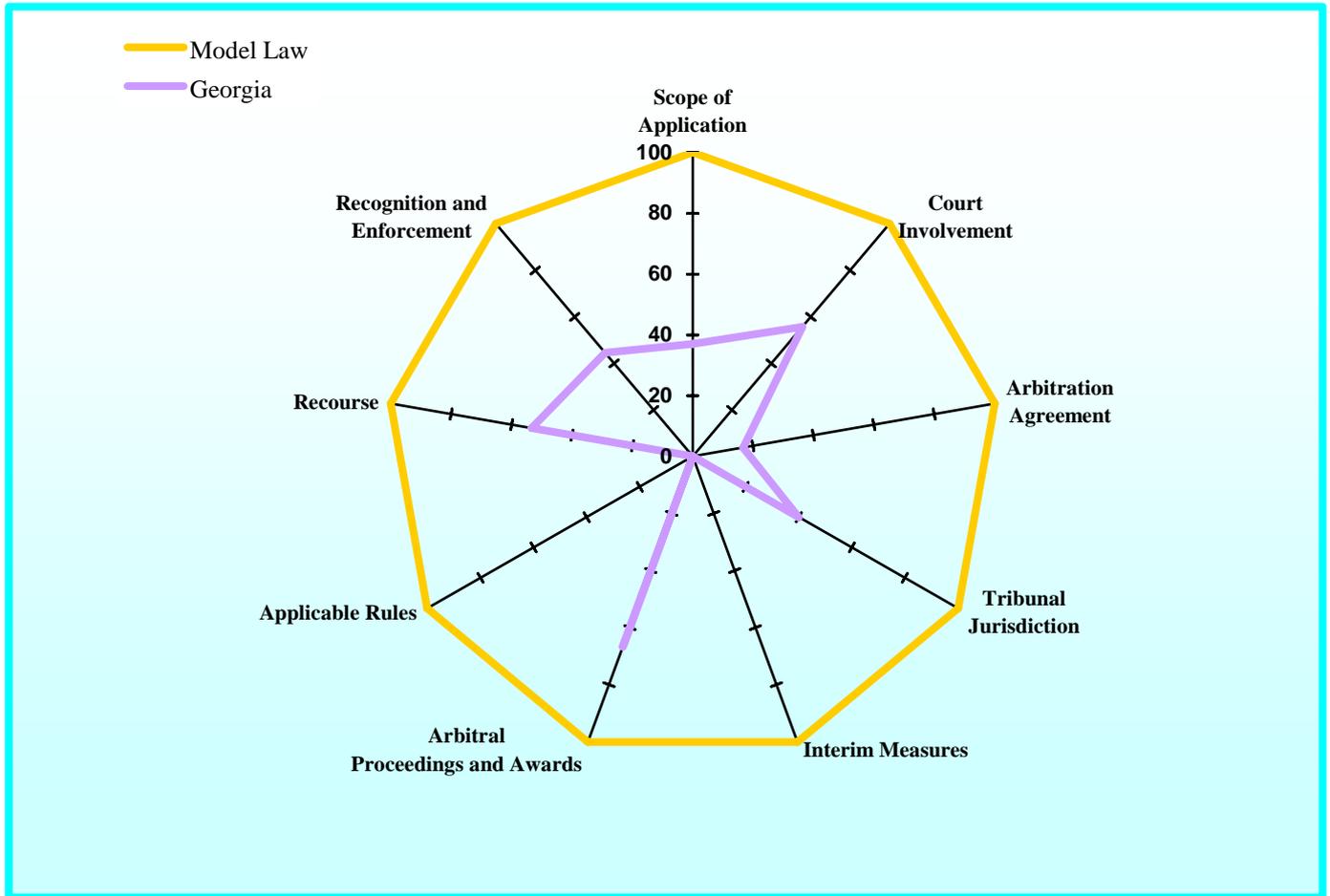
The UNCITRAL Secretariat does not recognize Georgia as a country with arbitration legislation conforming to the Model Law. Georgian law differs from the UNCITRAL text in that it seems to apply only to domestic awards. Furthermore, there are restrictions on the content of an arbitration agreement, the tribunals are not given the express right to rule on own jurisdiction, the law is silent on the applicable rules, and, finally, provisions on the recourse and the recognition and enforcement of awards do not conform to the Model Law.

⁹⁴ Belarus recognizes foreign arbitral awards from countries that are not parties to the New York Convention on basis of reciprocity.

⁹⁵ Commercial Procedure Code A260.

⁹⁶ IAA A43.

Chart 7 – Level of Compliance of Laws of Georgia



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The Private Arbitration Act 1997 (PAA) provides that ‘a civil dispute which has arisen between persons’ may be referred to arbitration in the appropriate cases^{97,98}. The reference in the PAA to civil law disputes allows, similarly to the Model Law, to submit a multitude of disputes to arbitration. Interestingly, the PAA provides that arbitration proceedings shall be suspended if a criminal case has been initiated on the matter of the dispute⁹⁹.

⁹⁷ PAA A1.

⁹⁸ Civil Procedure Code A12 provides that any ‘property-related’ dispute may be submitted to arbitration upon agreement of the parties.

⁹⁹ PAA A3.

Under the Civil Procedure Code, the courts shall refuse to accept a statement of claim if the parties have concluded a 'private arbitration agreement'¹⁰⁰. The Enforcement Procedures Act 1999 provides that 'private arbitration' awards shall be enforced¹⁰¹.

Neither the Code, nor the Enforcement Procedures Act contain clear provisions which allow to make a distinction between approaches to foreign and domestic arbitration in Georgia¹⁰². However, the PAA section on the recourse against awards seems to apply to *all* awards covered by the Act. In theory, recourse is only available against domestic awards. With these facts in mind, it is likely that the PAA applies only to domestic arbitration.

Court Involvement

Unlike the Model Law, the Georgian legislation does not introduce a clause limiting court intervention in arbitration. The PAA includes a general provision which designates certain courts for purposes of assistance to and supervision over arbitration¹⁰³ and specifically provides for court assistance in appointment and termination of the mandates of arbitrators (however, not in the case of challenge)¹⁰⁴. The law stipulates that an appeal to courts 'for invalidation of the arbitration agreement shall not imply termination of the arbitration'¹⁰⁵. In addition, in line with the Model Law, arbitral tribunals may apply to courts in certain cases for assistance in taking evidence¹⁰⁶. The PAA provides that courts 'shall have no right to consider a dispute on the issues that are subject to an arbitration agreement', except where the parties so request or the court finds that the arbitration agreement is null and void¹⁰⁷.

As has been mentioned earlier, the PAA stipulates that the arbitral proceedings shall not be conducted where a criminal case has been brought on the matter which is subject of the dispute and which may influence the outcome of proceedings¹⁰⁸.

Arbitration Agreement

The PAA stipulates that arbitration agreements shall be in writing¹⁰⁹. The definition of an arbitration agreement refers only to 'disputes that have arisen' and there is no provision that would allow submitting not only all, but also (only) some disputes arising out of a relationship. Neither the extended form of an arbitration agreement, nor the submission-type situation are

¹⁰⁰ Civil Procedure Code A186.

¹⁰¹ The Enforcement Procedures Act A2.

¹⁰² However, the rules of the PAA on recourse against awards and recognition and enforcement, arguably, may limit the scope of the application of the law to domestic awards only. See 'Recourse' and 'Recognition and Enforcement' sections *infra*.

¹⁰³ PAA A6.

¹⁰⁴ PAA A11 and A16.

¹⁰⁵ PAA A30.

¹⁰⁶ PAA A21, A23, A32.

¹⁰⁷ PAA A30, also Civil Procedure Code A186.

¹⁰⁸ PAA A3.

¹⁰⁹ PAA A1.

covered by the law¹¹⁰. There are some extra requirements to the content of arbitration agreements¹¹¹.

Tribunal Jurisdiction

In line with the Model Law, the PAA provides that when an arbitration agreement forms a part of the main contract, and the main contract has been declared null and void, this does not *ipso jure* invalidate the arbitration agreement.

However, the PAA does not contain any clauses on the powers of tribunals to rule on its own jurisdiction.

Interim Measures

The PAA does not contain any provisions relating to interim measures of protection.

Arbitration Proceedings and Awards

Similarly to the Model Law, the PAA provides that the parties shall be treated with equality¹¹². The parties are free to agree on the rules for the appointment and challenge of arbitrators¹¹³, on the procedure for the arbitration proceedings¹¹⁴ and the place of arbitration¹¹⁵. However, there is no express provision allowing the parties to agree on the language of arbitration. The PAA rules on default of a party are similar to those of the Model Law¹¹⁶. The law provides for tribunal to send all submitted documents to both parties and stipulates that the parties shall be notified of a hearing five days in advance¹¹⁷. Rules on settlements differ to a degree from the Model Law: the parties are entitled to settle the dispute at any stage of the proceedings and the tribunal shall make a decision on the termination of the proceedings within three days¹¹⁸. The PAA rules on the content of awards generally conform to the Model Law, however the law requires the awards to be notarized and 'given' to the district (city) court within which jurisdiction the arbitration took place¹¹⁹.

¹¹⁰ Agreements by exchange of documents, or entered into by means of telecommunication. Submission-type situation arises when a party alleges existence of arbitration agreement in a statement of claim and the other does not dispute this in its response.

¹¹¹ PAA A2. The required content includes the names, the places of residence or legal addresses of the parties, the subject matter of the dispute, the date and place of the agreement.

¹¹² PAA A25. The article also provides that an award shall not be made until the explanations of the parties are heard unless a party evades the hearing or there is a relevant agreement of the parties.

¹¹³ PAA A7-9, A15.

¹¹⁴ PAA A18.

¹¹⁵ PAA A29.

¹¹⁶ PAA A26.

¹¹⁷ PAA A20.

¹¹⁸ PAA A33.

¹¹⁹ PAA A35, A36.

Applicable Rules

The PAA is silent on the (rules of) law applicable to the substance of the dispute.

Recourse

According to the Georgian legislation, an arbitration award may be contested before a judicial authority and may be changed only if: the award contradicts the Code of Administrative Offences and the criminal legislation; the rules of the arbitration procedure as established by the parties and the PAA were violated; or an arbitrator has committed a crime related to intellectual property rights, except where the crime has not influenced the award¹²⁰. These grounds to contest an award diverge from those provided for in the Model Law by excluding some grounds and adding others. The law provides that an application of contest *per se* does not suspend enforcement of awards. A district (city) court shall suspend enforcement where it may cause an irremediable damage to the party¹²¹. The law does not set any time limit for submitting of an application of contest.

Recognition and Enforcement

The rules of the PAA differ from the Model Law. An arbitration award, which has not been executed voluntarily shall be enforced on the basis of an enforcement inscription made by the chairman of the tribunal. The inscription may be made on own initiative of the chairman or on the basis of a request of a party. An award with the inscription shall be enforced in accordance with the rules of the civil procedure legislation¹²². Compared to the above, the Model Law provides that awards shall be recognized as enforceable and binding without any inscription and introduces a list of grounds on which recognition and enforcement may be refused. However, a similar role to the Model Law list is played by the rules of the PAA on the recourse against awards, which contain a list of grounds which allow the awards to be contested in courts. Such a structure, arguably, presumes that the law covers only the enforcement of domestic awards, as the grounds for a successful contest seem to be inapplicable to foreign arbitral awards.

Kazakhstan

Overview

The relevant Kazakh legislation is:

- International Commercial Arbitration Act 2004;
- Civil Procedure Code 1999 (as amended).

The UNCITRAL Secretariat does not recognize Kazakh legislation as one based on the Model Law. The International Commercial Arbitration Act 2004 (ICAA) diverges from the Model Law in several

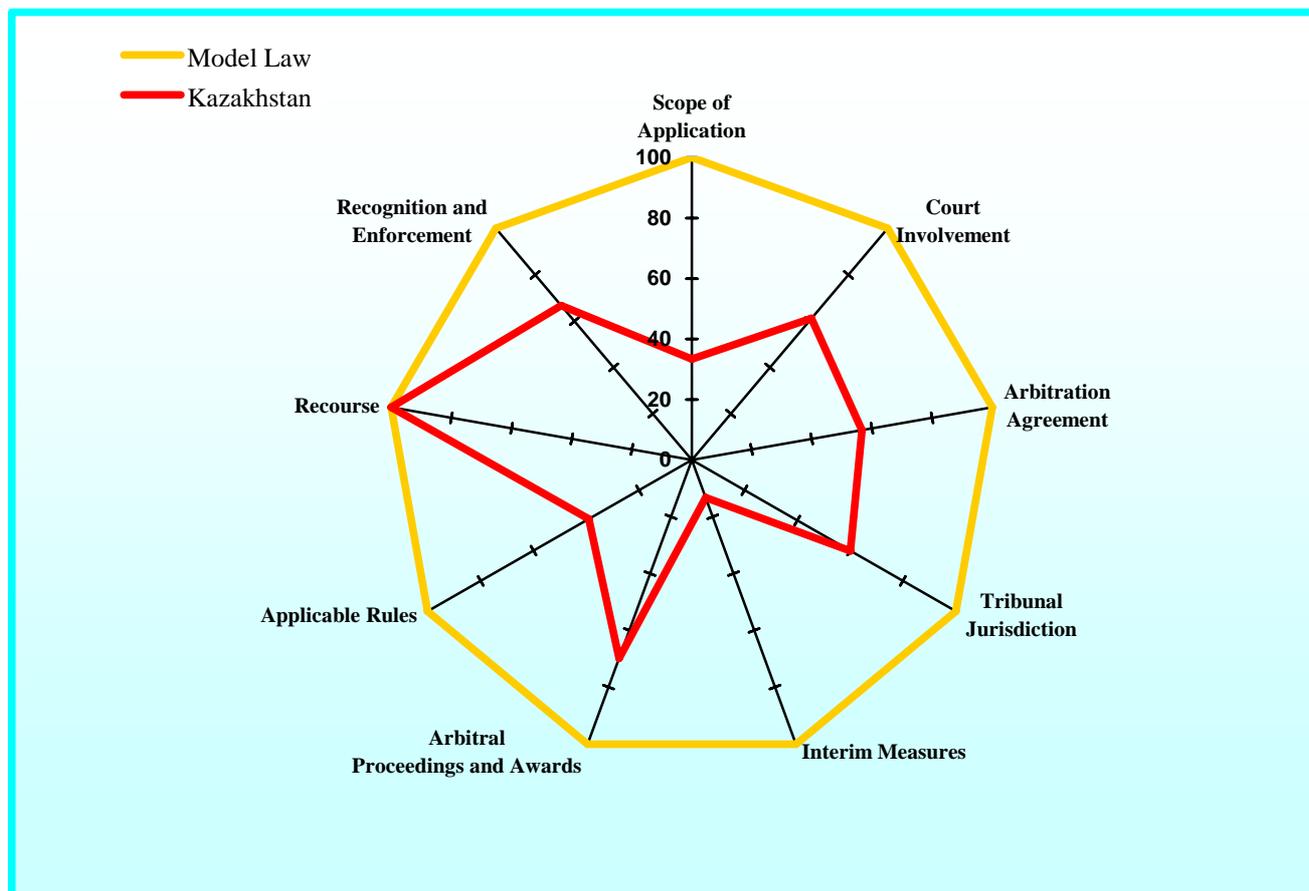
¹²⁰ PAA A43.

¹²¹ PAA A44.

¹²² PAA A42.

respects; however, it seems that due regard has been given to the UNCITRAL text during preparation of the bill. The provisions on the recourse against awards and on recognition and enforcement were the ones to have least differed from the Model Law. The more significant divergence is the limitation of the scope of application to contractual transactions and the direction given to tribunals to determine the applicable law in accordance with the Kazakh legislation where parties failed to make a choice.

Chart 8 – Level of Compliance of Laws of Kazakhstan



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The Kazakh legislation applies to ‘disputes arising from civil law contracts’¹²³. This is further clarified by a provision which prescribes that valid arbitration agreements ‘may be concluded only with regards to disputes arising from a concrete civil law contract’¹²⁴. Hence, the ICAA scope of application, unlike the Model Law, is limited to contractual relationships only¹²⁵.

¹²³ ICAA A1.

¹²⁴ ICAA A6.2.

¹²⁵ The Model Law A7 allows to submit disputes to arbitration ‘whether contractual or not’.

The law allows referral of disputes to arbitration only where one of the parties to the contract is a foreign person¹²⁶; this definition of international commercial arbitration is narrower than the one in the Model Law¹²⁷.

Foreign arbitral awards are recognized and enforced in Kazakhstan on the basis of reciprocity^{128,129}.

Court Involvement

Following the Model Law, the Civil Procedure Code contains a provision that obliges courts to refer the parties to arbitration, where the respective agreement exists¹³⁰. Under the ICAA, court assistance in evidence taking is possible¹³¹.

The ICAA differs from the Model Law in several respects. Although the law contains a clause that is designed to limit intervention in arbitration, it adopts a different approach: 'arbitrators and tribunals when considering submitted disputes are independent to make decisions in conditions that exclude any influence of the governmental bodies or other organizations'¹³². This can be compared to the Model Law, where court intervention in arbitration is limited¹³³. The law does not include a provision which allows a party to appeal a tribunal decision on own jurisdiction during arbitration proceedings. There is no express provision on compatibility of interim court measures of protection with an arbitration agreement; however, the law stipulates that courts may make orders on interim orders of protection during arbitration¹³⁴. Unlike the Model Law, the ICAA does not provide for court (or other authority) assistance in the process of the challenge of arbitrators: when an arbitrator is challenged, the other arbitrators decide on the results of the challenge, and when there are no other arbitrators, parties may agree on the results of the challenge by terminating the proceedings¹³⁵.

Arbitration Agreement

Arbitration agreements shall be in writing; the law allows agreements to be concluded in an exchange of letters, by electronic means or by other documents, provided that the latter leaves a

¹²⁶ ICAA 6.4.

¹²⁷ The Model Law, A1 also defines international arbitration as a situation where 'one of the following places is situated outside the State in which the parties have their places of business: the place of arbitration if determined in, or pursuant to, the arbitration agreement; or any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.'

¹²⁸ ICAA A32.1.

¹²⁹ The Civil Procedure Code obliges courts to refer the parties to arbitration where the respective agreement exists; however, it is not clear whether this applies to agreements for foreign arbitration.

¹³⁰ The Civil Procedure Code A249.5.

¹³¹ ICAA 25.5.

¹³² ICAA A5.

¹³³ Model Law A6.

¹³⁴ ICAA 25.1.

¹³⁵ ICAA A10.

record of the identity of the parties and of the content of their agreement¹³⁶. The ICAA covers the incorporation of an arbitration agreement neither by reference, nor the submission-type situation¹³⁷. Present and future disputes may be submitted to arbitration; however, it seems that the ICAA does not allow the parties to submit not only all, but also (only) certain disputes to arbitration¹³⁸. As has been mentioned, an arbitration agreement shall relate to a concrete civil law contract.

Tribunal Jurisdiction

Similarly to the Model Law, the ICAA allows the tribunals to rule on own jurisdiction¹³⁹; however, there is no express provision that the arbitration agreement shall be treated independently of the other terms of the contract.

Interim Measures

The law includes no provisions on interim measures granted by tribunals. However, under the ICAA, a party may apply to courts for interim measures of protection. Such applications are subjected to the ordinary rules of the civil procedure legislation¹⁴⁰.

Arbitration Proceedings and Awards

The ICAA introduces restrictions on the freedom of the parties to stipulate the number and to determine the procedures related to the choice of arbitrators. The parties may agree on the number of arbitrators, however this number shall be odd¹⁴¹. There are certain age and qualification requirements to arbitrators¹⁴². In *ad hoc* arbitration the parties are free to agree on the procedure for the appointment of arbitrators; however, a parties' agreement cannot override the regulations of a permanent arbitration institution¹⁴³. Similarly, parties are free to agree on the procedures followed by *ad hoc* tribunals¹⁴⁴, but are bound by a permanent institution's by-laws¹⁴⁵.

¹³⁶ Agreement by exchange of documents, agreement entered into by telex and other means of telecommunication.

¹³⁷ When in exchange of statements of claim and defense one party alleges that a relevant agreement exists and the other does not deny it.

¹³⁸ ICAA A6.2.

¹³⁹ ICAA A15.1.

¹⁴⁰ ICAA A25.

¹⁴¹ ICAA A8.

¹⁴² ICAA A7.

¹⁴³ ICAA A9.3 and A9.2 respectively.

¹⁴⁴ ICAA A16.2.

¹⁴⁵ ICAA A16.1.

Following the Model Law, parties are free to agree on the place¹⁴⁶ and language(s)¹⁴⁷ of arbitration, and are given the right of access to all documents submitted during the proceedings¹⁴⁸. Experts may be cross-examined¹⁴⁹.

Applicable Rules

The ICAA allows the parties to choose the rules of law applicable to the substance of the dispute. Where the parties failed to make such a choice, the tribunal determines the applicable law in accordance with the Kazakh legislation¹⁵⁰. The Kazakh law, unlike the Model Law, does not provide for tribunals to decide in all cases in accordance with the terms of the contract; the obligation of a tribunal is to apply the relevant usages of trade, where there are no relevant provisions in the legislation¹⁵¹.

Recourse

The ICAA provisions on the recourse against awards follow the Model Law¹⁵². Recourse is limited to setting aside and the grounds for setting aside conform to the Model Law¹⁵³.

Recognition and Enforcement

The Kazakh legislation provides for domestic arbitral awards to be recognized as binding and enforced^{154,155}.

The Civil Procedure Code stipulates that foreign arbitral awards shall be recognized and enforced where the Kazakh legislation or the relevant international agreements provide so; the statute of limitations for enforcement is three years from the date of the award entering into force¹⁵⁶. According to the ICAA, foreign arbitral awards shall be enforced on the grounds of reciprocity¹⁵⁷.

¹⁴⁶ ICAA A17.

¹⁴⁷ ICAA A21.

¹⁴⁸ ICAA A23.

¹⁴⁹ ICAA A24.2.

¹⁵⁰ The Model Law allows the tribunal to choose the conflict of laws rules which it considers applicable.

¹⁵¹ ICAA A26.

¹⁵² The Constitutional Council of Kazakhstan has issued the Resolution on Official Interpretation of the Constitution, A13.2 and A75.1 on 15 February 2001. The Interpretation generally dealt with a right to a court hearing. In the document, the Council mentions that 'an arbitration agreement does not preclude from a future court hearing on the (same) subject-matter, where this is provided for by the legislation in force'. The Resolution may open the door for court review of all arbitral awards. However, it seems that the exact meaning of the Resolution is subject to debate in Kazakhstan.

¹⁵³ ICAA A31.

¹⁵⁴ ICAA A32.1.

¹⁵⁵ However, this may be affected by the Resolution on Official Interpretation of the Constitution, A13.2 and A75.1 on 15 February 2001. See fn152 *supra*.

¹⁵⁶ Civil Procedure Code A425.

¹⁵⁷ ICAA A32.1.

The list of grounds on which courts may refuse (foreign and domestic) award recognition and enforcement are limited as prescribed and compatible with the Model Law¹⁵⁸.

Kyrgyz Republic

Overview

The relevant Kyrgyz legislation is:

- The Arbitration Tribunals Act 2002 (as amended);
- The Civil Procedure Code 1999 (as amended).

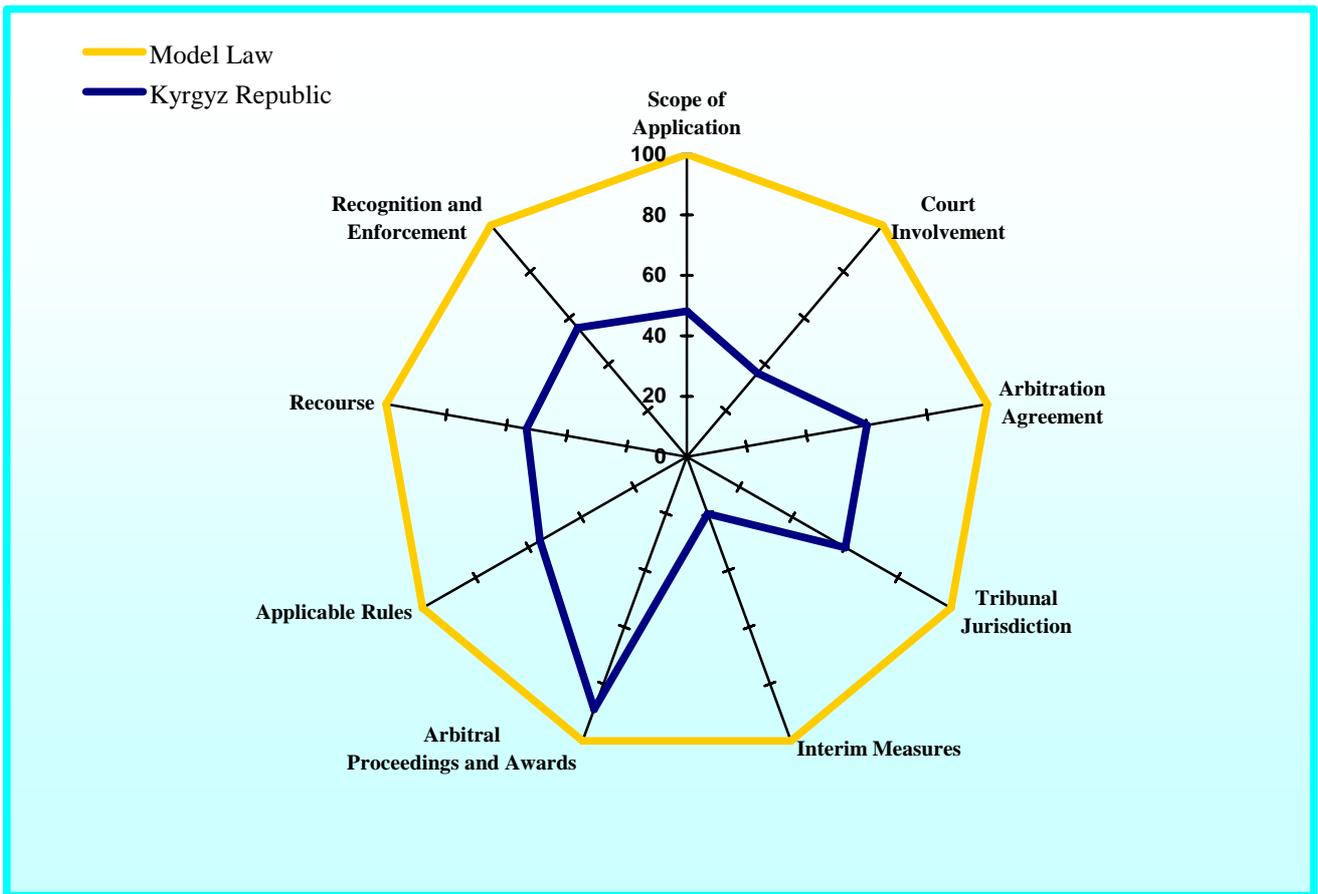
UNCITRAL Secretariat does not recognize the Kyrgyz legislation as based on the Model Law. However, the Arbitration Tribunals Act (ATA) and the Civil Procedure Code contain some provisions that are similar to the UNCITRAL text.

The Kyrgyz legislation and the Model Law differ on the interim court orders of protection and on assistance in taking evidence – the Kyrgyz law has no comparable provisions. Unlike the Model Law, the ATA does not provide specifically for the recourse against awards¹⁵⁹. Nevertheless, the local legislation contains provisions having a somewhat similar effect. In the Kyrgyz Republic, an arbitral award cannot be set aside; however, courts may refuse to enforce an award on grounds similar to the Model Law provisions on setting aside.

Chart 9 – Level of Compliance of Laws of Kyrgyz Republic

¹⁵⁸ ICAA A33 and Civil Procedure Code A425-3.

¹⁵⁹ *Id est* setting aside as the exclusive means of recourse.



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the 'web', the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The Kyrgyz arbitration legislation covers 'civil law disputes, including investment disputes'. The law also mentions that the disputes in question (in the absence of an arbitration agreement) should have been under the jurisdiction of a relevant Kyrgyz court¹⁶⁰.

The ATA does not expressly extend its scope of application to foreign arbitral proceedings or awards by a general clause; however, it does make a reference to recognition of foreign arbitral awards by stipulating that such awards must be legalized^{161,162}. The Kyrgyz Civil Procedure Code introduces two separate sets of provisions that cover respectively domestic and foreign arbitral awards¹⁶³.

¹⁶⁰ ATA A1.

¹⁶¹ ATA A41.

¹⁶² In addition, the ATA A46 introduces a specific provision targeted at the disputes where one of the parties is a foreign investor and the other is the Kyrgyz Republic. The clause covers cases where the Kyrgyz Republic agrees (or is presumed to agree) to arbitration. The provision is drafted somewhat ambiguously and its exact meaning is unclear.

¹⁶³ Chapter 46; A441, A442 in Chapter 48.

Court Involvement

Unlike the Model Law, the ATA does not include a general clause limiting court intervention. There are no provisions on court assistance in taking evidence, or on the compatibility of the interim court measures of protection with arbitration. Tribunal decisions on own jurisdiction cannot be appealed^{164, 165}.

Arbitration Agreement

The ATA provides that the arbitration agreement shall be in writing and recognizes the validity of an arbitration agreement in the 'extended form' as *per* the 1985 version of the Model Law¹⁶⁶. Incorporation of an arbitration clause by reference is also recognized. The law permits for an arbitration agreement to cover both present and future disputes, and on the face of it – allows the parties to submit to arbitration not only all, but also (only) certain disputes¹⁶⁷. The latter provision seems to be compromised, however, by the requirements of the law to the content of an arbitration agreement.

The ATA stipulates that arbitration agreements shall include the following provision: '*any* dispute, or disagreement, or demand arising out of a dispute between the parties is to be heard by an arbitral tribunal'¹⁶⁸; the parties shall also specify the name of the arbitral tribunal^{169, 170}. It seems that the use of 'any' restricts the freedom of the parties to submit certain (as opposed to all or any) disputes to arbitration. The Kyrgyz legislation does not cover the submission-type situation¹⁷¹.

Tribunal Jurisdiction

The Kyrgyz arbitration tribunals are given the right to rule on the validity of the arbitration agreement and their own jurisdiction¹⁷². However, unlike the Model Law, there is no provision stipulating that the validity of the arbitration agreement is a matter that shall be treated separately from the validity of the main contract.

¹⁶⁴ See ATA A14.1 and A28.

¹⁶⁵ However, in cases where such a decision on own jurisdiction was unjustified, Kyrgyz legislation grants relief to a party by refusing to enforce the award.

¹⁶⁶ That is, an agreement in an exchange of letters, telex, telegrams or other means of telecommunication that provide a record.

¹⁶⁷ ATA A7.1.

¹⁶⁸ ATA A7.3.

¹⁶⁹ ATA A7.3.

¹⁷⁰ It is unclear whether any *ad hoc* tribunal can be mentioned by name at the time of signing of an arbitral agreement – that is when the tribunal has not been created yet.

¹⁷¹ Where a party alleges in exchange of statements of claim and defense that an arbitration agreement exists and the other party does not deny it.

¹⁷² ATA A14.1.

Interim Measures

The ATA provisions correspond to the 1985 text of the Model Law. The Kyrgyz law allows a tribunal to order a party to take such interim measures of protection as it considers appropriate and may require the other party to provide security 'for the expenses incurred by ordering the interim measures'¹⁷³.

Arbitration Proceedings and Awards

Generally, the ATA conforms to the respective provisions of the Model Law. The number of arbitrators can only be odd¹⁷⁴. Further, the Kyrgyz legislation introduces a list of requirements to the arbitrators' qualifications. For example, the presiding arbitrator (or the arbitrator, where the tribunal has one member) shall have a degree in law. Where an *ad hoc* tribunal makes an award, the ATA provides that the arbitrators' signatures shall be notarized. All arbitral awards must state reasons upon which they were based (the Model Law allows to omit this, when the parties so agree); extra requirements to the contents of awards are in place¹⁷⁵.

Applicable Rules

Following the Model Law, the ATA gives the parties the freedom to choose the rules of law applicable to the substance of the dispute. However, the law does not contain provisions on awards based on *ex aequo et bono* or as *amiable compositeur*. The other difference between the Model Law and the ATA is that there is no express provision in the latter that obliges the tribunal in all cases to decide in accordance with the terms of the contract (between the parties).

Recourse

The ATA does not cover the recourse against arbitral awards. Instead, a party may obtain relief, where appropriate, through courts' refusal to enforce an award. Certainly, this provision cannot be applied in practice where the losing party has complied with the award voluntarily. Grounds for refusing enforcement, as provided for in the Civil Procedure Code¹⁷⁶, are compatible with those as prescribed by the Model Law.

Recognition and Enforcement

The Kyrgyz legislation contains two sets of rules related to award (recognition and) enforcement. The first set covers enforcement only and applies to domestic arbitral awards¹⁷⁷; the second set

¹⁷³ ATA A22. The part of the law on granting security seems to differ from the Model Law provisions.

¹⁷⁴ ATA 9.1.

¹⁷⁵ ATA A31.

¹⁷⁶ Civil Procedure Code, Chapter 46 – for the domestic arbitral awards and Chapter 48, A441, A442 – for the foreign arbitral awards.

¹⁷⁷ The ATA applies exclusively to domestic arbitral awards.

relates both to the recognition and to enforcement and applies to foreign arbitral awards¹⁷⁸. As has been mentioned, the ATA does not expressly extend its scope of application to foreign arbitral awards; nevertheless, it introduces a provision, which stipulates that for the purposes of recognition and enforcement, foreign arbitral awards must be legalized¹⁷⁹. The rules on the enforcement of domestic arbitral awards and on the recognition and enforcement of foreign arbitral awards are generally compatible with the Model Law¹⁸⁰. The provisions of the Civil Procedure Code differ from the Model Law in that they do not allow an award to be enforced if there is a Kyrgyz court hearing or a Kyrgyz court decision on the same subject matter in the same dispute between the same parties or if recognition/enforcement affects sovereignty or threatens security of the Kyrgyz Republic¹⁸¹.

Moldova

Overview

The relevant Moldovan legislation is:

- Arbitration Tribunals Act 1994 (as amended);
- Civil Procedure Code 2003 (as amended)¹⁸².

The UNCITRAL Secretariat does not recognize Moldova as a country where international commercial arbitration legislation is based on the Model Law. The Arbitration Tribunals Act 1994 (ATA) is brief and, compared to the Model Law, many of its provisions are summary¹⁸³. Probably, as a consequence of being brief, the ATA is silent on a number of matters covered in the Model Law, including appeals on tribunals decisions with a view to its own jurisdiction¹⁸⁴, court assistance in taking evidence, compatibility of the interim court measures of protection with arbitration, form of an arbitration agreement, tribunal powers on interim measures of protection and various procedural issues. The freedom of the parties, as compared to the Model Law, is limited in several cases: arbitration procedures are prescribed by permanent tribunals' by-laws and the arbitrators' appointment rules are set by the ATA.

Chart 10 – Level of Compliance of Laws of Moldova

¹⁷⁸ These provision can be found in the Civil Procedure Code, and not in the ATA.

¹⁷⁹ ATA A41.3. The ATA, however, does not provide that foreign arbitral awards shall be recognized and enforced.

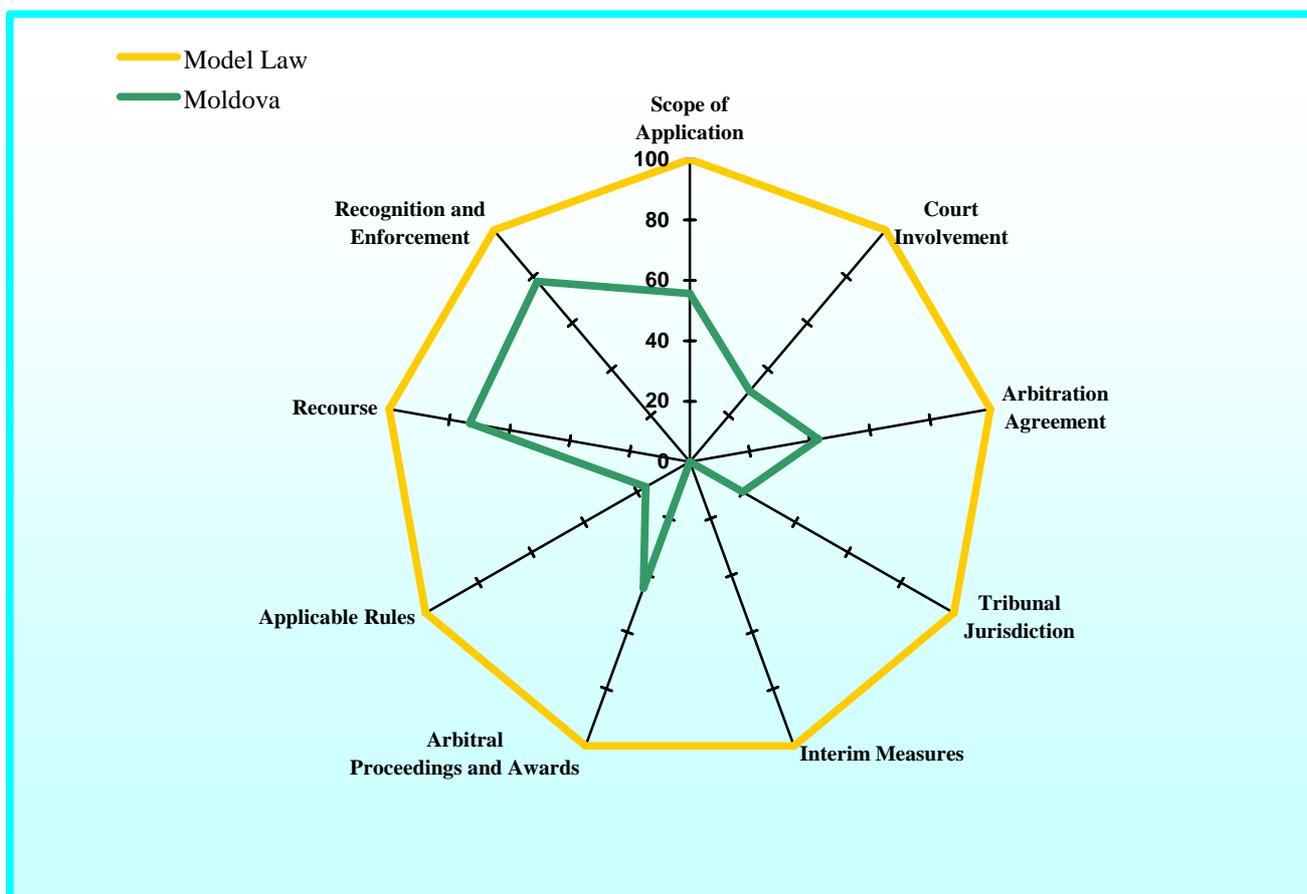
¹⁸⁰ Except for the legalization requirement.

¹⁸¹ Civil Procedure Code, A434, A441.

¹⁸² Chapter XLII covers foreign arbitral awards and Chapters XLIII and XLIV cover domestic arbitral awards.

¹⁸³ ATA contains a preamble and 15 articles.

¹⁸⁴ Civil Procedure Code provisions on setting aside, recognition and enforcement cover cases where tribunals exceed their powers.



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the 'web', the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The ATA preamble provides that the law applies to disputes arising from obligations, both contractual and non-contractual, related to sales and purchases of goods, provision of services, or related to property, including intellectual property. A further provision in the law stipulates that parties are free to submit any dispute 'connected to economic relations' to arbitration¹⁸⁵. According to the ATA, 'foreign arbitral awards are enforced in the manner as provided for by the Moldovan legislation, except where such procedures are provided for by the international agreements that Moldova is a party to'¹⁸⁶.

Court Involvement

The ATA does not include the following provisions: a general provision limiting court intervention, a specific provision designating courts or authorities for purposes of assistance or supervision, a

¹⁸⁵ ATA A2.

¹⁸⁶ ATA A15.

provision on appeals on tribunal decisions on own jurisdiction, court assistance in taking evidence, compatibility of the interim court measures of protection with arbitration agreements.

The ATA and the Civil Procedure Code prescribe that courts shall not consider statements of claim (applications) when an arbitration agreement exists¹⁸⁷.

Arbitration Agreement

The ATA neither stipulates that the arbitration agreement should be in writing, nor contains any provisions related to form of an arbitration agreement¹⁸⁸. However, the Civil Procedure Code provisions on enforcement of awards stipulate that a party seeking to enforce an award, in addition to other documents, shall submit the original arbitration agreement or a certified copy thereof to the court¹⁸⁹. Hence, it seems that in practice, the parties still need to have an arbitration agreement in writing to be able to enforce an arbitral award.

The law recognizes that the parties may submit not only all, but also (only) certain disputes to arbitration¹⁹⁰. However, the law is silent on whether the parties may submit future disputes to arbitration. The ATA introduces extra requirements to the content of an arbitration agreement where disputes are submitted to *ad hoc* tribunals¹⁹¹.

Tribunal Jurisdiction

According to the ATA, tribunal jurisdiction shall be determined during the arbitration proceedings¹⁹². Unlike the Model Law, the ATA is silent on the validity of arbitral clause in cases where the contract it is contained in is null and void.

Interim Measures

The ATA contains no provisions related to interim measures.

Arbitration Proceedings and Awards

As *per* the Model Law, the ATA provides that the parties to arbitration enjoy equal procedural rights¹⁹³. The parties are free to agree on the place and language of arbitration^{194,195}. The law stipulates for notifications of the time and date of the hearing to be made¹⁹⁶.

¹⁸⁷ ATA 2(3) and Civil Procedure Code A267 e).

¹⁸⁸ It has to be noted that the ATA was adopted in 1994, - that is before the revised A7 of the Model Law in one of the options repudiated the requirement for an arbitration agreement to be in writing. Hence, the fact that the ATA does not include any express provisions may not necessarily be interpreted as the evidence of the intent of the legislature to dispense with all requirements to the form of an arbitration agreement.

¹⁸⁹ Civil Procedure Code A483(4)b).

¹⁹⁰ ATA A2(2).

¹⁹¹ ATA A2(5).

¹⁹² ATA A6(5).

¹⁹³ ATA A6(6).

¹⁹⁴ ATA A6(3) and A6(7).

Unlike the Model Law, the Moldovan legislation limits the freedom to agree on the rules of procedure: proceedings shall be conducted as prescribed in the by-laws of permanent tribunals¹⁹⁷; however, the parties are free to agree on the procedure for *ad hoc* tribunals¹⁹⁸. The law stipulates, that 'as a rule, there shall be three members in a tribunal', nevertheless, the parties may agree on a different number. The ATA prescribes a rigid appointment procedure – each party appoints one arbitrator and the arbitrators appoint the chairman¹⁹⁹. In many cases, the law does not provide for a set of suppletive (default) rules, which would allow the arbitration proceedings to continue if the parties have not expressed their choice on a particular issue. On a number of procedural issues, which are covered in the Model Law, the ATA is silent²⁰⁰.

Applicable Rules

Moldovan legislation and the Model Law diverge on the rules applicable to the substance of the dispute. The ATA provides as follows: if there is a clause on the applicable law in the contract or another agreement, the tribunal applies that law²⁰¹. In the absence of such a clause, the tribunal applies law as agreed by the parties during the hearing. Failing such an agreement, the tribunal makes a decision based on the contract and 'the applicable conflict of laws rules'^{202,203}. The ATA stipulates that tribunals may apply Moldovan law, law of other States as well as the usages of the trade applicable to such disputes²⁰⁴. Unlike the Model Law, this clause seems to deny the parties the freedom to apply the **rules of law** (and not only the law) to the substance of the dispute.

Recourse

Both the ATA and the Commercial Procedure Code cover recourse against arbitral awards. The two acts contain provisions that differ: the ATA lists four and the Code lists eight grounds for setting awards aside²⁰⁵. The Code, expanding the list of the Model Law, recognizes the following additional grounds: the award does not contain an operative part, the place where the award was made is not mentioned, the award is not signed by the arbitrators; or the operative part has provisions which cannot be enforced. In place of the 'contrary to the public policy of the State'

¹⁹⁵ Arguably, these freedoms may be limited in the by-laws of the permanent tribunals. Thus, by-laws of the International Commercial Arbitration Court of the Chamber of Commerce provide that statements of claim and all documents enclosed with it shall be submitted in Romanian language (A14); as a rule, the language of arbitration shall be Romanian, unless the parties have provided to the contrary (A26).

¹⁹⁶ ATA A6(1).

¹⁹⁷ ATA A2(4).

¹⁹⁸ ATA A2(5).

¹⁹⁹ ATA A5(2).

²⁰⁰ These issues include rights of access to documents, rights to submit documents, expert cross-examinations, choice of the language of arbitration by the tribunal where the parties failed to choose one.

²⁰¹ ATA A7(1).

²⁰² ATA A7(3).

²⁰³ The Model Law A28(2) suggests that the tribunal applies conflict of laws rules which it considers applicable.

²⁰⁴ ATA A7(2).

²⁰⁵ ATA A12(2) and Commercial Procedure Code A480(2), respectively.

ground, the Moldovan legislation recognizes 'contrary to the principles of Moldovan law or to the fundamentals of morality' ground for setting aside.

Recognition and Enforcement

The ATA and the Commercial Procedure Code distinguish between domestic and foreign arbitral awards for the purposes of recognition and enforcement.

The ATA stipulates that domestic awards shall be complied with voluntarily²⁰⁶. Enforcement may be refused on the same grounds as for setting aside²⁰⁷. The court ruling on enforcement can be appealed²⁰⁸. The Commercial Procedure Code also provides a list of grounds when enforcement may be refused²⁰⁹; this list is compatible with the Model Law provisions²¹⁰.

The ATA stipulates that foreign arbitral awards are recognized and enforced in accordance with Moldovan legislation²¹¹. The Commercial Procedure Code provisions on foreign awards recognition and enforcement, including the list of grounds allowing the courts to refuse enforcement, are compatible with the Model Law²¹².

Mongolia

Overview

The relevant Mongolian legislation is the Arbitration Act 2003²¹³.

The UNCITRAL Secretariat does not list Mongolia as one of the countries with international commercial legislation based on the Model Law. However, the modern Arbitration Act 2003 (AA), unlike its predecessor, is clearly drafted on the basis of the Model Law. One of the few differences to that text is related to award recognition and enforcement. The Mongolian legislation provides that the courts shall confirm the award and issue writs of execution when it is reasonable²¹⁴. However, this provision is modified further in the same law by stipulating that 'when courts fail to make writs of execution under illegal or unclear reasons, this will not be the reason to dismiss the

²⁰⁶ ATA A13(1).

²⁰⁷ ATA A13(4).

²⁰⁸ ATA A13(5).

²⁰⁹ Commercial Procedure Code A485.

²¹⁰ Similarly to setting aside, the Code recognizes 'contrary to the principles of Moldovan law or the fundamentals of morality' instead of 'contrary to the public policy of the state' provided for in the Model Law.

²¹¹ ATA A15.

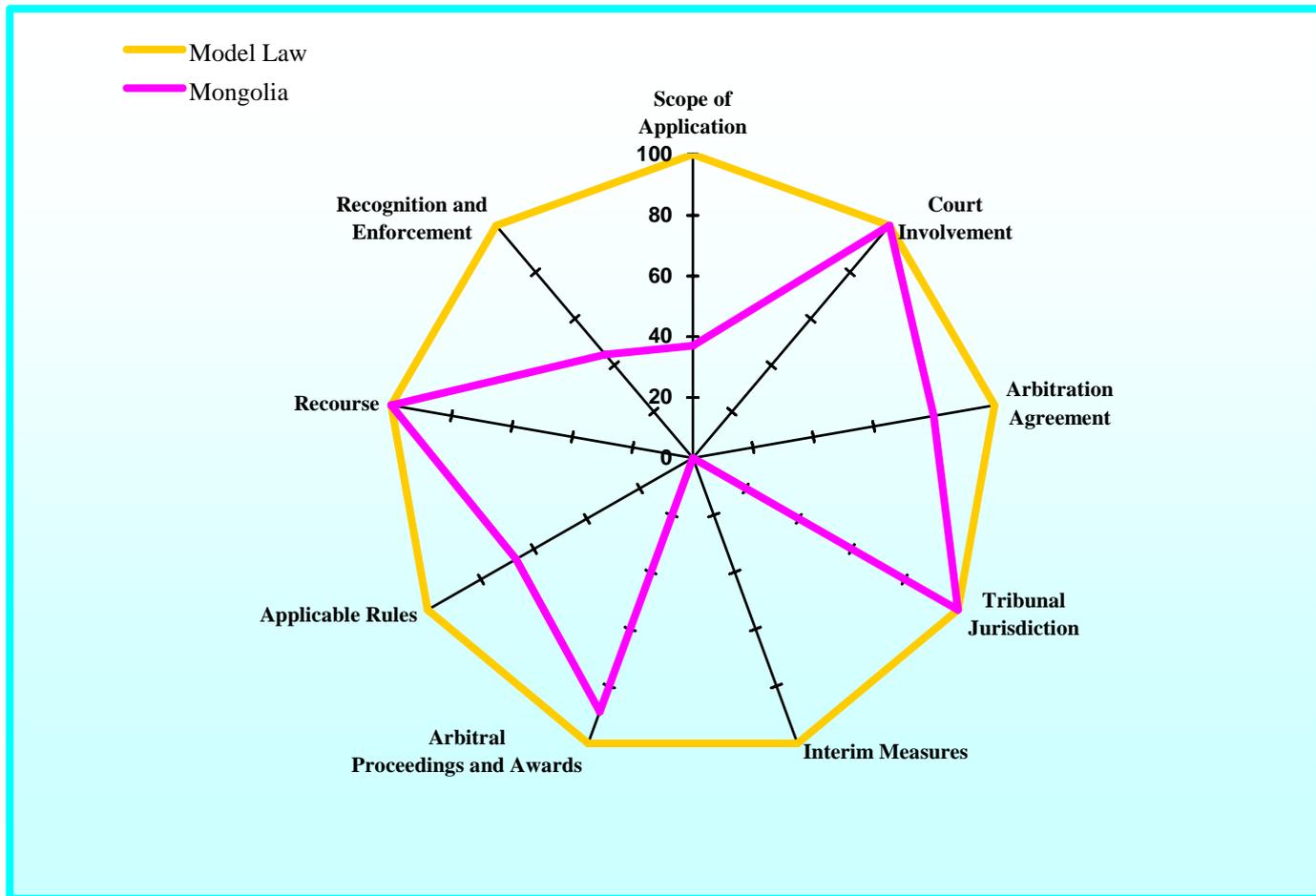
²¹² Commercial Procedure Code A475, A476.

²¹³ The preceding legislation on Arbitration was Foreign Arbitration Act 1995. Dissimilarities between the Model Law and the 1995 Act were significant; the parties' freedom of choice was restricted by the old legislation – *exempli gratia*, neither *ad hoc* tribunals were recognized, nor could the parties choose language to be used in the proceedings.

²¹⁴ AA A42.7.

enforcement measure. In this case, the court enforcement organization may enforce the award on own initiative²¹⁵.

Chart 11 – Level of Compliance of Laws of Mongolia



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The scope of substantive application of the AA seems to be wide. The law governs ‘arbitration in disputes related to tangible and intangible property’²¹⁶. Another provision refers to the Civil Procedure Code to determine whether a dispute may be submitted to arbitration²¹⁷. In turn, the Civil Procedure Code does not specify any particular requirements, except for that arbitration shall be agreed upon by the parties²¹⁸.

²¹⁵ AA A42.9.

²¹⁶ AA A1.

²¹⁷ AA A6.

²¹⁸ Civil Procedure Code A13.2 and A13.3.

In line with the Model Law, the AA provisions on recognition and enforcement apply to both domestic and foreign awards. In addition, the law stipulates that foreign awards shall be recognized and enforced in accordance with the 1958 New York Convention²¹⁹.

The Mongolian legislation obliges the courts to refer the parties to arbitration where a relevant arbitration agreement exists²²⁰. However, a general clause limits the application of the law to arbitration on the territory of Mongolia²²¹. Hence, it is not clear whether courts are bound to recognize agreements for arbitration outside Mongolia.

Court Involvement

The AA provisions on court supervision and assistance narrowly follow the Model Law. The law includes a general provision limiting court intervention in arbitration²²², allows courts to consider appeals on tribunal decisions on its own jurisdiction²²³, obliges courts to refer disputes to arbitration where the relevant agreements exist²²⁴, allows for court assistance in taking evidence²²⁵, and recognizes the compatibility of the interim court measures of protection with arbitration²²⁶.

Arbitration Agreement

Requirements of the Mongolian legislation to the form and content, as well as provisions on validity, of the arbitration agreement follow the 1985 version of the Model Law²²⁷.

Tribunal Jurisdiction

As *per* the Model Law, tribunals may rule on their own jurisdiction²²⁸ and the arbitration agreement may be treated as an agreement valid and separate even when the contract in which it is contained is declared as null and void²²⁹.

²¹⁹ AA 3.2.

²²⁰ Civil Procedure Code A20.2. The law is drafted in general terms and it seems that the provision applies equally to agreements on both domestic and foreign arbitration. The latter, however, is less certain.

²²¹ AA A3.1.

²²² AA A8.3.

²²³ AA A20.6.

²²⁴ AA A12.1.

²²⁵ AA A33.

²²⁶ AA A13.1.

²²⁷ AA A11. The AA allows for certain or all, present and future disputes to be submitted to arbitration, requires the agreement to be in writing, recognized the extended forms of agreements and the submission-type situation.

²²⁸ AA A20.1.

²²⁹ AA A11.5 and A20.2.

Interim Measures

The AA does not cover interim measures, except that it recognizes compatibility of the interim court measures of protection with arbitration.

Arbitration Proceedings and Awards

The Arbitration Act provisions conform to the Model Law. The AA differs only in the following: the language of the arbitration, if not agreed upon by the parties, shall be Mongolian (and not as determined by the tribunal as *per* Model Law)²³⁰, there are qualification requirements to arbitrators, and the awards²³¹, in addition to the Model Law rules, shall include a costs section²³².

Applicable Rules

The relevant AA provisions conform to the Model Law. The parties are free to choose the rules of law applicable to disputes. Failing the choice of the substantive law, the tribunal shall apply whichever conflict of laws rules it considers applicable, and in all cases, the tribunal shall decide in accordance with the terms of the contract²³³. The law does not, however, mention awards *ex aequo et bono* or as *amiable compositeur*.

Recourse

The AA rules on the recourse against awards are similar to the Model Law. A party cannot submit a claim to a court on a dispute where an arbitral award on the same dispute is in force²³⁴. The only method of recourse is setting aside; the grounds for setting aside conform to and are limited as in the Model Law²³⁵.

Recognition and Enforcement

Arbitral awards are recognized and enforced in Mongolia. The requirements for the recognition and enforcement are compatible with those of the 1985 version of the Model Law. The grounds that allow courts to refuse to enforce an award follow the Model Law, with the following important exception: the courts confirm awards and grant the writ of execution where they find it reasonable²³⁶. This provision is mitigated to some extent by a clause that allows the court enforcement organization to execute the award on its own initiative where a court has failed to issue a writ of execution under illegal or unclear reasons^{237,238}.

²³⁰ AA A26.1.

²³¹ AA A15.2.

²³² AA A37.3.3.

²³³ AA A34.

²³⁴ AA A37.5

²³⁵ AA A40.

²³⁶ AA A42.7.

²³⁷ AA A42.9.

The AA does not include a provision stipulating that foreign arbitral awards are recognized and enforced; in addition, a general clause limits the application of the law to arbitration in Mongolia. Nevertheless, the AA stipulates that the procedure for the recognition and enforcement of foreign arbitral awards shall be set in accordance with the 1958 New York Convention and Chapter VIII (Recognition and Enforcement) of the law²³⁹. It is unclear whether such a drafting is intended to recognize awards made in the 1958 New York Convention member States or merely to provide for the relevant procedure. In any circumstance, Mongolia has ratified the 1958 New York Convention.

Unlike the Model Law, the AA prescribes a statute of limitations on enforcement for both domestic and foreign awards of three years after the award has become valid, unless an international agreement provides otherwise²⁴⁰.

Russia

Overview

The relevant Russian legislation is:

- International Commercial Arbitration Act 1993;
- Commercial Procedure Code 2002 (as amended)²⁴¹.

The UNCITRAL Secretariat recognizes the Russian legislation as based on the Model Law. In fact, the International Commercial Arbitration Act 1993 (ICAA) is almost a direct translation of the 1985 version of the Model Law into Russian. The International Commercial Arbitration Act even retains the article numbers of the Model Law. The few differences between the 1985 UNCITRAL text and the ICAA is a narrower approach to scope of 'international commercial arbitration' definition, slight difference in the requirements to the content of arbitral awards and silence on awards *ex aequo et bono* or as *amiable compositeur*.

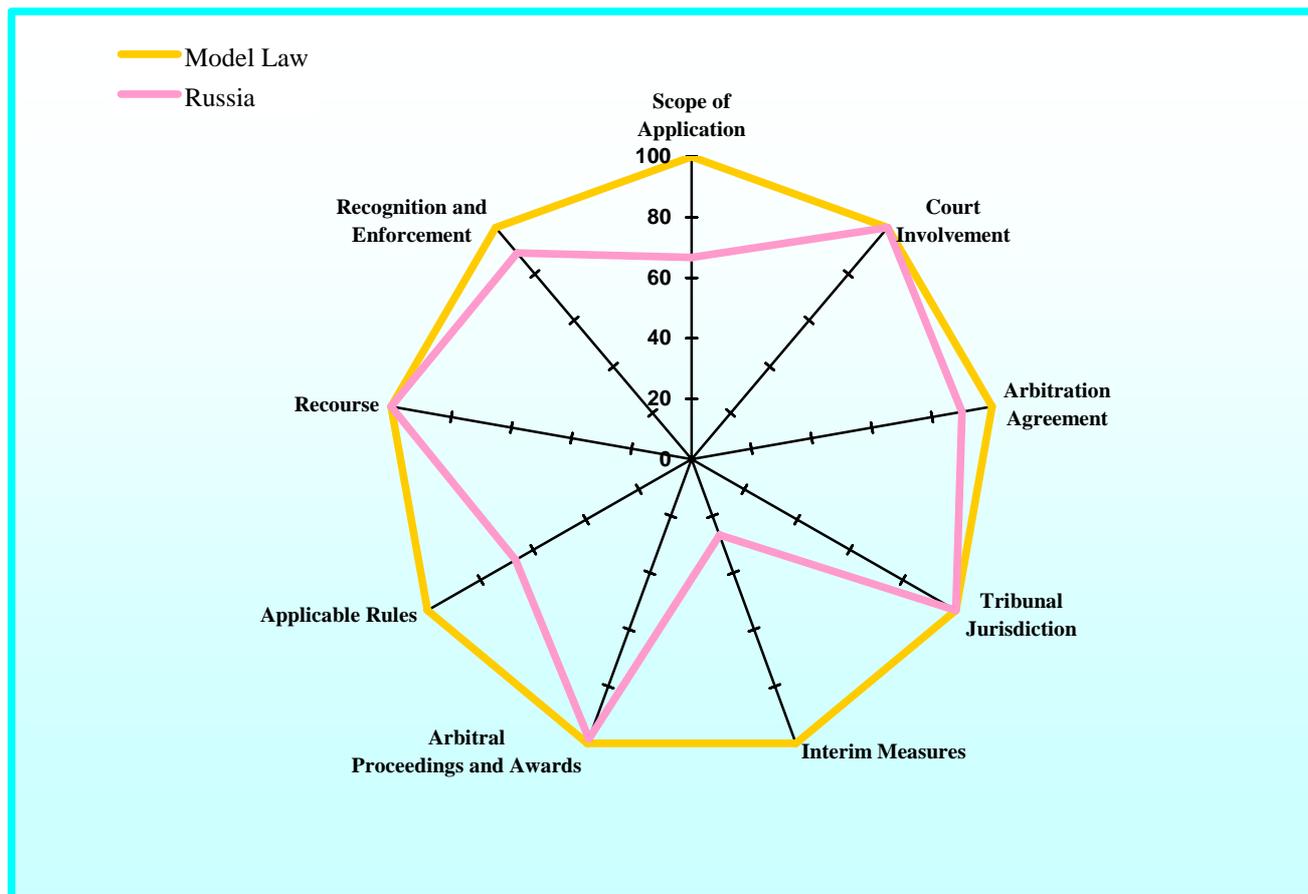
²³⁸ It is unclear how this provision may be applied in practice and whether the court enforcement organization will ever be willing to enforce an award where court recognition has been previously refused.

²³⁹ AA A3.2.

²⁴⁰ AA A42.3 and A42.4.

²⁴¹ Chapters 30 and 31.

Chart 12 – Level of Compliance of Laws of Russia



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The ICAA applies to international commercial arbitration when it takes place in the Russian Federation; however, in line with the Model Law the following provisions apply irrespective of the place of arbitration: the court recognition of arbitration agreements, compatibility of the interim court measures with arbitration, and the recognition and enforcement of arbitral awards²⁴².

According to the law, contractual and other private disputes arising out of international commercial activities may be submitted to international commercial arbitration where at least one party has its place of business abroad²⁴³. In addition, the law allows international commercial arbitration where one of the parties is a Russian entity with foreign capital²⁴⁴.

²⁴² ICAA A1.1.

²⁴³ ICCA A1.2.

²⁴⁴ ICAA A1.2: disputes between entities with foreign capital or international associations (holding companies) and organizations incorporated in the Russian Federation, disputes between members of such entities, and disputes between such entities and other persons subject to the law of Russian Federation. It has to be noted that references in this definition do not correspond to the current state of corporate legislation in Russia.

Court Involvement

In line with the Model Law, court interference with arbitration is limited exclusively to cases expressly mentioned in the law²⁴⁵. There are two authorities designated for purposes of court assistance and supervision. President of the Russian Chamber of Commerce and Industry provides assistance and supervision in matters related to arbitral proceedings and a chain of courts is designated for purpose of appeals on tribunal decisions as regards its jurisdiction and setting the awards aside²⁴⁶. Where arbitration agreement exists, Russian courts are obliged to refer disputes to arbitration irrespective of the place of arbitration under the agreement²⁴⁷.

Arbitration Agreement

The requirements of the Russian legislation to the form of an arbitration agreement conform to the 1985 version of the Model Law. The agreement must be in writing, can be included in two separate documents, may be incorporated by reference, may be concluded by exchange of documents, entered into by means of telecommunication. The submission type situation, where a party alleges in its statement of claim the existence of an arbitration agreement and the other party does not deny this allegation, is also covered in the law.

Tribunal Jurisdiction

In conformity with the Model Law, an arbitral tribunal in Russia may rule on its own jurisdiction, and an arbitration agreement is treated as an agreement independent of the other terms of the contract²⁴⁸.

Interim Measures

The ICAA follows the 1985 provisions of the Model Law and allows the arbitration tribunals to make orders on the interim measures of protection; the compatibility of the interim court measures of protection with arbitration agreements is recognized.

Arbitration Proceedings and Awards

The rules on arbitration proceeding and awards, as prescribed by the ICAA, are similar to those of the Model Law. The parties shall be treated equally and shall be given full opportunity to present the case²⁴⁹, and they are free to agree on the procedure, place and language of arbitration. The ICAA only differs from the Model Law in requiring that all arbitral awards shall state the reasons on which they are based.

²⁴⁵ ICAA A5.

²⁴⁶ ICAA A6.

²⁴⁷ ICAA 8.1, 1.1.

²⁴⁸ ICAA A16.1 and 17.

²⁴⁹ ICAA A18.

Applicable Rules

The ICAA provisions²⁵⁰ on rules applicable to the substance of the dispute are similar to the Model Law, the difference being the silence of the ICAA on decisions *ex aequo et bono* or as *amiable compositeur*.

Recourse

As in the Model Law, the ICAA exclusively limits recourse against awards to setting aside. Grounds for setting arbitral awards aside are limited as prescribed by the Model Law²⁵¹.

Recognition and Enforcement

Arbitral awards, irrespective of the country where they were made, are recognized and are enforceable in the Russian Federation²⁵². Grounds for refusing award recognition and enforcement are limited as prescribed and are compatible with the Model Law²⁵³.

Tajikistan

Overview

The relevant Tajik legislation is:

- Law on Foreign Investments in the Republic of Tajikistan 1992 (as amended);
- Regulation on Arbitral Tribunals for Resolution of Economic Disputes in the Republic of Tajikistan 1997;
- Commercial Procedure Code 1995 (as amended).

UNCITRAL Secretariat does not recognize the Tajik legislation on arbitration as based on the Model Law. The Law on Foreign Investments contains only one provision that is relevant to arbitration. The Regulation on Arbitral Tribunals for Resolution of Economic Disputes in the Republic of Tajikistan 1997 (Regulation, RATRED) does not have the status of a law and does not ordinarily apply to international commercial arbitration. Similarly, the Commercial Procedure Code does not cover international commercial arbitration. Hence, the coverage of international commercial arbitration by the Tajik legislation is rather limited.

Furthermore, Tajikistan is not a party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, and, hence, the Tajik law generally is not supportive of arbitration.

²⁵⁰ ICAA A28.

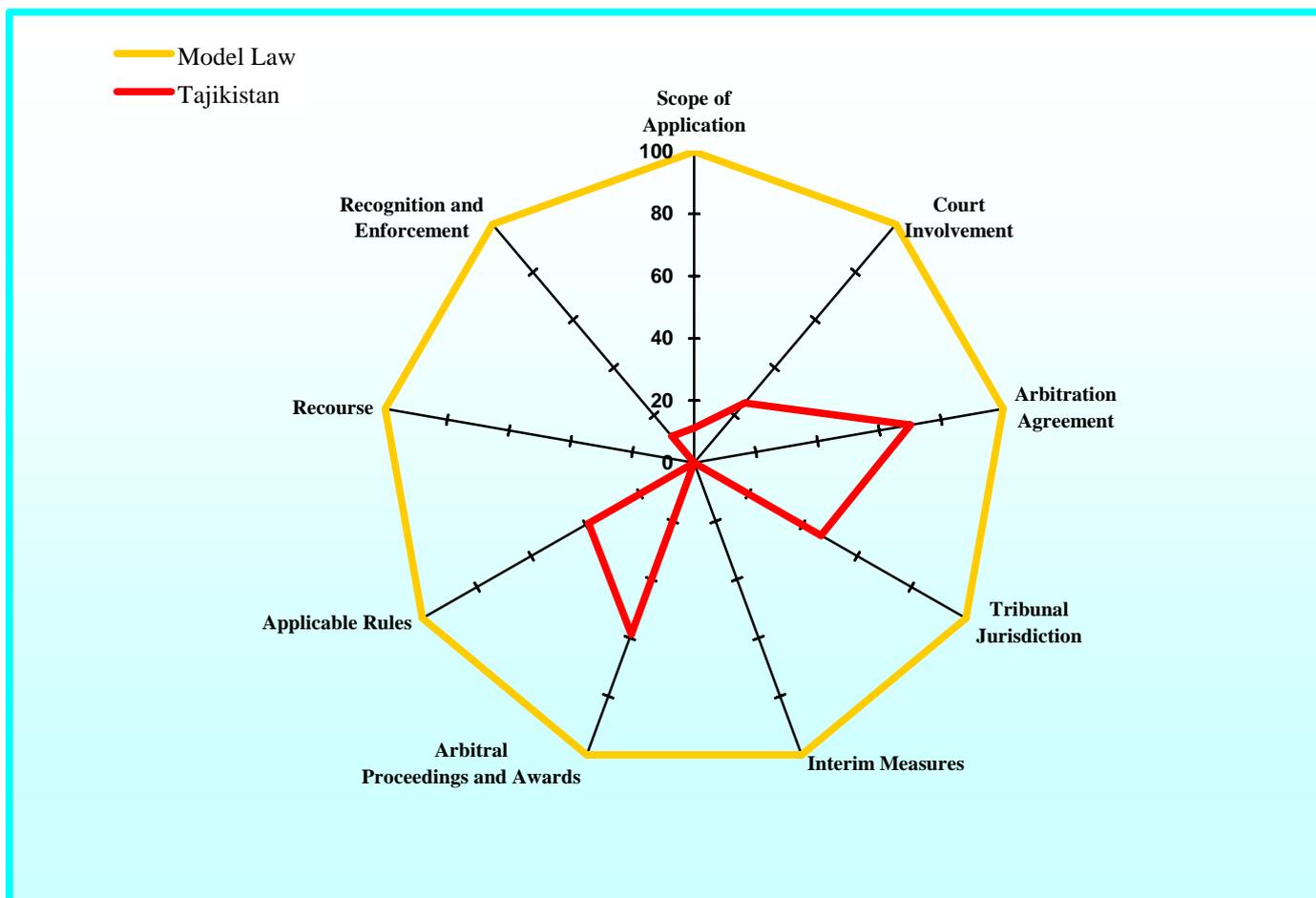
²⁵¹ ICAA A34. See also Commercial Procedure Code, A233.4.

²⁵² ICAA A35.

²⁵³ See ICAA A36, Commercial Procedure Code A237 and 239 for domestic arbitral awards, and A242.3 and A244.2 – for foreign arbitral awards.

The analysis below, excluding the Scope of Application section, is largely based on the provisions of the Regulation. However, it must be borne in mind that the scope of the application of the document is extremely narrow.

Chart 13 – Level of Compliance of Laws of Tajikistan



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The Law on Foreign Investments allows foreign investors to agree to submit their disputes with Tajik entities to arbitration, including arbitration abroad²⁵⁴. There are no other provisions in the law that relate to arbitration.

However, some provisions on arbitration may be found in the Regulation on Arbitral Tribunals for Resolution of Economic Disputes in the Republic of Tajikistan which was adopted by *Majlis-e Oli*²⁵⁵, the highest representative and legislative body of the Republic of Tajikistan²⁵⁶. Despite the

²⁵⁴ Law on Foreign Investment in Republic of Tajikistan A36.

²⁵⁵ Tajik Supreme Assembly.

²⁵⁶ Constitution of the Republic of Tajikistan, A48.

authority of the adopting body, the act does not have the status of a law²⁵⁷. Unless the parties agreed to the contrary, the Regulation does not apply if at least one party is located abroad or is an entity with foreign capital. However, even in the absence of the parties' agreement, the Regulation may apply in international commercial arbitration. The Model Law also applies in cases other than where a party is foreign, and such other cases are not excluded from the scope of application of the Regulation²⁵⁸. Furthermore, the scope of application of the Regulation is limited to *ad hoc* tribunals only²⁵⁹.

The Regulation applies to disputes, which, in the absence of an arbitration agreement, would have been subject to the jurisdiction of Economic Courts^{260,261,262}.

The Commercial Procedure Code also covers the recognition of arbitration agreements and the recognition and enforcement of arbitral awards²⁶³. However, these provisions seem to apply only to domestic awards. Tajikistan is not a party to the 1958 New York Convention, and hence, the Tajik legislation does not cover enforcement of foreign arbitral awards at all.

Court Involvement

The Regulation neither has a general clause limiting court intervention in arbitration, nor provides for court assistance and supervision²⁶⁴. Nevertheless, the Commercial Procedure Code obliges the courts to refer the parties to arbitration where the respective agreement exists²⁶⁵.

Arbitration Agreement

Following the 1985 version of the Model Law, the Regulation requires an arbitration agreement to be in writing and recognizes the extended form (in an exchange of letters or agreement

²⁵⁷ A draft 'Arbitration Tribunals Act' was prepared in Tajikistan, available in Russian at http://www.tpac.tj/rus/index.php?option=com_content&task=view&id=28&Itemid=25. The bill was not enacted at the time of writing.

²⁵⁸ The Regulation excludes only the case where one party is a foreign entity. The Model Law definition of international commercial arbitration also includes cases where 'any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected' is situated outside the State. The Regulation does not exclude these cases from the scope of its application, and hence its provisions may apply to an international commercial arbitration (in the Model Law sense) by default – even when parties have not expressly agreed for the Regulation to apply.

²⁵⁹ RATRED A2.

²⁶⁰ RATRED A1.

²⁶¹ According to the Commercial Procedure Code, A22 the following disputes *inter alia* are subject to Economic Courts: economic [commercial] disputes arising from civil law, administrative law and other relationships. In all cases, both parties to the disputes must be commercial entities.

²⁶² In addition to the Commercial Procedure Code and the Regulation, the Foreign Investment in the Republic of Tajikistan Act, A36 mentions cases where arbitration is possible. According to the provision, disputes between foreign investors or entities with foreign capital and governmental bodies (when engaged in civil law relationships), [other legal persons], and disputes between members of entities with foreign capital, and between such members and the entity may be submitted to arbitration (including foreign arbitration).

²⁶³ Commercial Procedure Code, A85, A87 and A198.

²⁶⁴ Courts are only mentioned in relation to award enforcement, RATRED A25.

²⁶⁵ Commercial Procedure Code A87.

concluded by means of telecommunications)²⁶⁶. Arbitration agreements may cover both present and future, all or (only) certain disputes. However, the submission-type situation²⁶⁷ is not recognized.

Tribunal Jurisdiction

Similarly to the Model Law, the Regulation recognizes that tribunals may rule on the validity of arbitration agreements; however, the provision does not expressly include a general power to rule on its own jurisdiction²⁶⁸. The document also contains a clause, which stipulates that if the (main) contract has been declared null and void by the tribunal, this does not entail the invalidity of the arbitration agreement²⁶⁹.

Interim Measures

The Regulation does not cover interim measures.

Arbitration Proceedings and Awards

According to the Regulation, the parties are free to agree on the procedure for appointment of arbitrators²⁷⁰. The number of arbitrators shall be odd²⁷¹. There is a general clause stipulating that parties shall be treated with equality and shall be given equal opportunity to present the case²⁷². Similarly to the Model Law, the Regulation provides for the freedom of the parties to choose the rules of procedure followed by the tribunal²⁷³, the place of arbitration²⁷⁴ and allows the tribunal to use a language that is understood by both parties²⁷⁵.

Where parties reach a settlement, the Regulation provides for the tribunal to make an award taking the settlement into account²⁷⁶; compared with the Model Law, extra requirements to the contents of arbitral awards are introduced²⁷⁷.

²⁶⁶ RATRED A3.

²⁶⁷ When in exchange of statements of claim and defense one party alleges that a relevant agreement exists and the other does not deny it

²⁶⁸ RATRED A8.

²⁶⁹ RATRED A3.

²⁷⁰ RATRED A5.

²⁷¹ RATRED A4.

²⁷² RATRED A9.

²⁷³ RATRED A10.

²⁷⁴ RATRED A11.

²⁷⁵ RATRED A12.

²⁷⁶ RATRED A19.

²⁷⁷ RATRED A20.

Applicable Rules

Generally, arbitral tribunals shall apply the Tajik law; however, the law of another State may be also applied when this is provided for by the Tajik legislation or by the parties' agreement²⁷⁸.

Recourse

The Regulation does not contain any specific provisions covering the recourse against awards. The recourse against an award in certain cases may offered via the recognition and enforcement mechanism.

Recognition and Enforcement

The Regulation provides that arbitral awards are, by default, to be complied with voluntarily²⁷⁹. When an award has not been complied with voluntarily, the High Economic Court or another Economic Court of the territory where the tribunal is situated issues a writ of enforcement²⁸⁰. The Regulation stipulates that for a writ of enforcement to be issued, the applicant must submit the proof of non-compliance of the losing party with the award. The statute of limitations for submitting an application for the writ is set as one month starting with the date when the award should have been complied with. Grounds on which award recognition and enforcement may be refused differ from those of the Model Law. The dissimilar provisions include the following cases: 'where an agreement to submit a dispute to arbitration was not reached, where the dispute arose from management [relations] and the dispute was not subject to arbitration, where the award was made not in accordance with the legislation or was made on the basis of evidence that was not examined'²⁸¹.

Turkmenistan

Overview

The relevant Turkmen legislation is:

- Civil Procedure Code 1963 (as amended);
- Commercial Procedure Code 2000 (as amended).

There is no specific legislation dedicated to arbitration in Turkmenistan. The Civil Procedure Code 1963 and the Commercial Procedure Code 2000 are the acts that contain the few relevant

²⁷⁸ RATRED A18.

²⁷⁹ RATRED A24.

²⁸⁰ RATRED A25.

²⁸¹ RATRED A26.

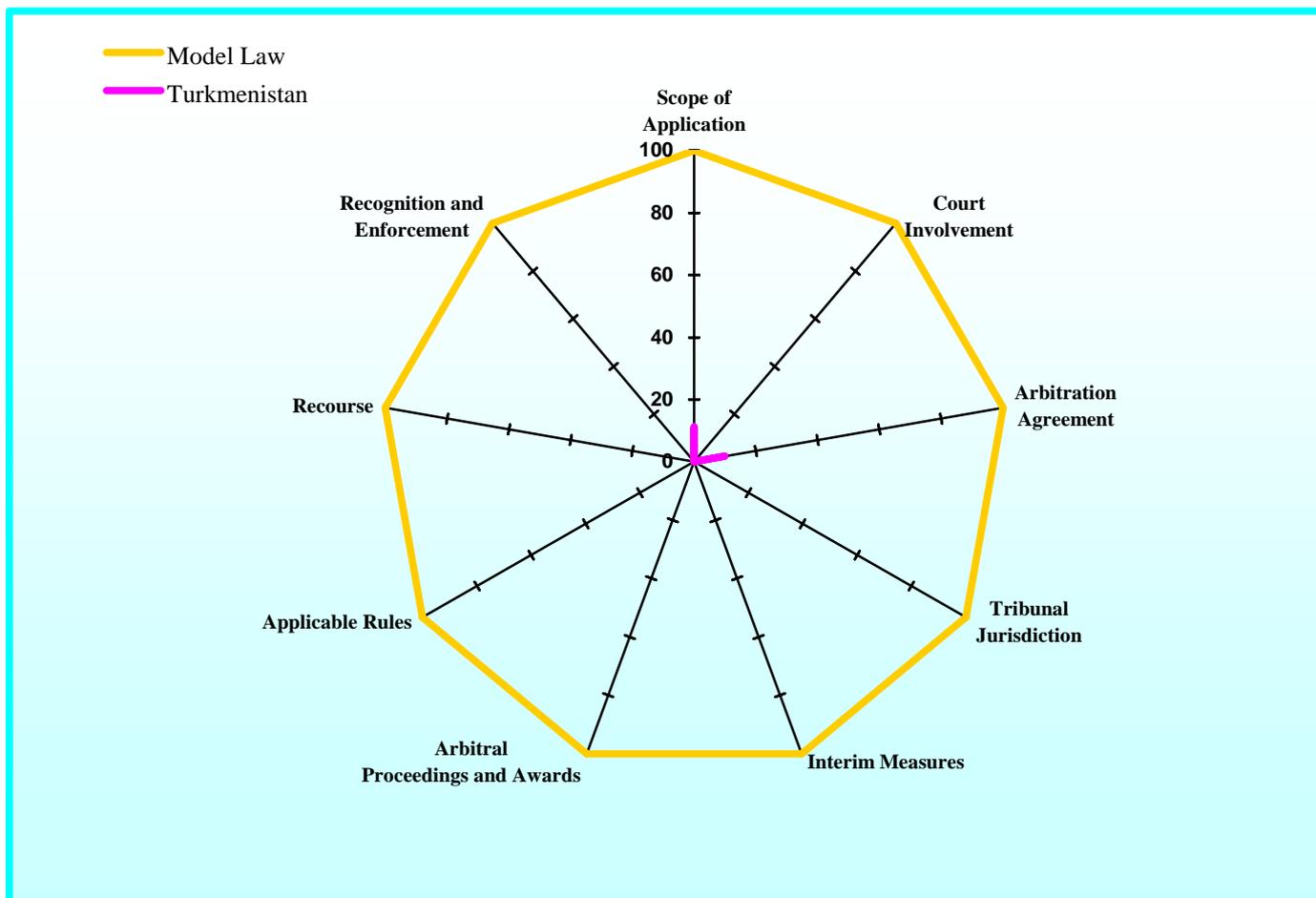
provisions²⁸². In addition, the Foreign Investments in Turkmenistan Act 1992 (as amended) and the Hydrocarbon Resources Act 1996 permit the parties to submit disputes to arbitration²⁸³.

Lacking dedicated domestic legislation on arbitration, Turkmenistan is not a party to the 1958 New York Convention, and the combination of these factors is likely to affect a party intending to rely on (international commercial) arbitration.

²⁸² Clearly, the UNCITRAL Secretariat does not recognize Turkmenistan as a State with legislation based on the Model Law.

²⁸³ The Regulations of the Arbitral Tribunal of the Chamber of Commerce and Industry also include certain provisions; however, the document is not considered here.

Chart 14 – Level of Compliance of Laws of Turkmenistan



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

Both, the Civil Procedure Code 1963 and the Commercial Procedure Code 2000 permit arbitration²⁸⁴. The Commercial Procedure Code allows the parties to submit ‘a present or future dispute to arbitration before the dispute has been adjudicated (in courts of law)’^{285,286}. The law does not stipulate any conditions on the nature of the dispute.

The Foreign Investments in Turkmenistan Act 1992 provides that disputes between foreign investors and legal entities or individuals may be submitted to arbitration where a relevant

²⁸⁴ The Civil Procedure Code applies to transaction where none of the parties is a commercial entity; hence, the document generally is of minor significance for the purposes of this Assessment. The Commercial Procedure Code applies in civil law relationships, where at least one of the parties is a commercial entity.

²⁸⁵ The Commercial Procedure Code A23.

²⁸⁶ The Civil Procedure Code A27 allows to submit disputes to arbitration only where this is provided for by Turkmen legislation or relevant international agreements.

agreement exists²⁸⁷. The Hydrocarbon Resources Act contains a provision that permits submitting disputes related to licensing or performance of a contract to international arbitration bodies after complying with the prescribed negotiation procedure²⁸⁸.

Court Involvement

The Turkmen legislation includes no specific provisions on court assistance or supervision. Moreover, the list of cases where courts shall refuse to consider a claim in the Commercial Procedure does not include the existence of an arbitration agreement or the existence of an arbitral award as one²⁸⁹. Hence, it is not clear whether Turkmen courts are obliged to recognize arbitration agreements and awards.

The Chamber of Commerce and Industry Act 1993 provides for an Arbitral Tribunal to be created under the auspices of the Chamber. The clause allows the parties to appeal to courts or commercial courts on the Tribunal's decisions²⁹⁰.

Arbitration Agreement

The Commercial Procedure Code stipulates that disputes that have arisen or disputes that may arise may be submitted to arbitration before a court decides on the subject matter²⁹¹. Hence, both present and future disputes may be submitted to arbitration in Turkmenistan.

Tribunal Jurisdiction; Interim Measures; Arbitration Proceedings and Awards

These areas are not covered by the Turkmen legislation.

Applicable Rules

The only relevant, and, arguably, restrictive, provision is introduced by the Chamber of Commerce and Industry Act: the Arbitral Tribunal of the Chamber of Commerce and Industry decides on disputes ... in accordance with the Turkmen law, intergovernmental agreements and international agreements²⁹².

²⁸⁷ Foreign Investments in Turkmenistan Act A32.

²⁸⁸ Hydrocarbon Resources Act A56.

²⁸⁹ Commercial Procedure Code A76-7, A100, A104. However, a clause is in place that allows to refuse to consider a claim or to refuse to proceed with the hearing if a party has not complied with the pre-judicial settlement procedure or if the dispute is not subject to the jurisdiction of the courts.

²⁹⁰ Chamber of Commerce and Industry Act A16.

²⁹¹ Commercial Procedure Code A23.

²⁹² Chamber of Commerce and Industry Act A16.

Recourse

The Chamber of Commerce and Industry Act allows the parties to appeal to courts on the Tribunal of the Chamber decisions²⁹³.

Recognition and Enforcement

The Civil Procedure Code provides that (domestic) arbitral awards are enforced similarly to court judgments²⁹⁴.

Foreign arbitral awards, according to the Code, shall be enforced as stipulated by the respective international agreements, and the statute of limitations is three years starting from the day the award came into force²⁹⁵.

Ukraine

Overview

The relevant Ukrainian legislation is the International Commercial Arbitration Act 1994 (as amended).

The UNCITRAL Secretariat recognizes Ukraine as a country with arbitration legislation based on the Model Law. The International Commercial Arbitration Act 1994 (ICAA) is, with very few exceptions, a translation of the 1985 version of the Model Law. The ICAA retains the Model Law article numbers²⁹⁶. The only notable divergence from Model Law, without amendments, is found in the definition of 'international arbitration' as related to the scope of the ICAA application.

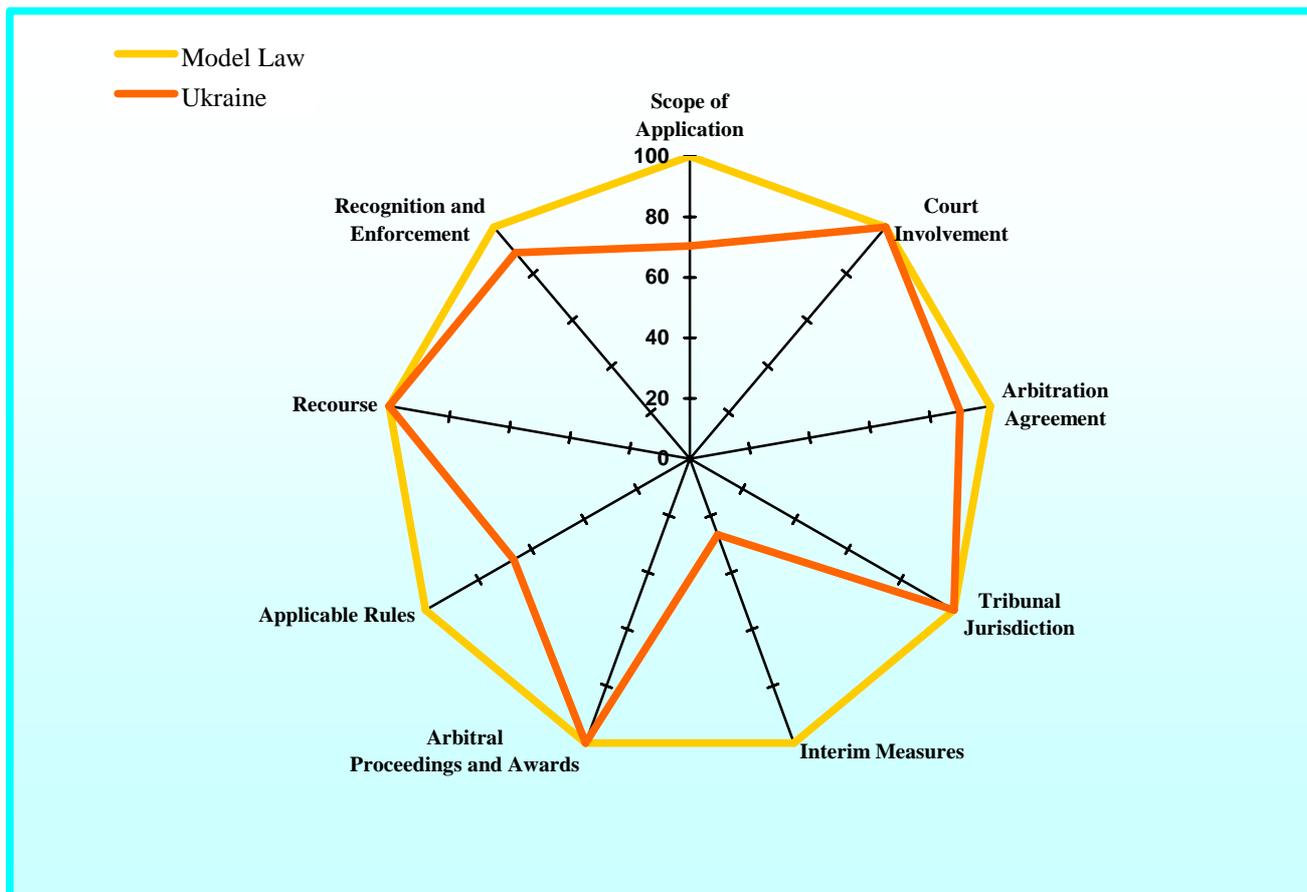
²⁹³ Chamber of Commerce and Industry Act A16. Interestingly, the CCI Arbitral Tribunal Regulations stipulate that awards shall be final.

²⁹⁴ Civil Procedure Code A344.

²⁹⁵ Civil Procedure Code A443.

²⁹⁶ Hence, in most cases references to article numbers in the ICAA are omitted.

Chart 15 – Level of Compliance of Laws of Ukraine



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The ICAA generally applies when the place of arbitration is in Ukraine. However, exactly as provided for by the 1985 Model Law, the provisions on the recognition of arbitration agreements, on the compatibility of interim measures, and on the recognition and enforcement of arbitral awards apply globally²⁹⁷.

Under the ICAA, the following disputes may be submitted to arbitration:

- disputes arising from contractual and other civil law relationships in foreign trade and other international economic transactions, if at least one party (to the transaction) has its place of business abroad; and
- disputes among entities with foreign capital and international associations and organizations, incorporated in Ukraine, disputes between members of such entities, or their disputes with other persons, which are subject to the jurisdiction of Ukraine²⁹⁸.

²⁹⁷ ICAA A1.1.

²⁹⁸ ICAA A1.2.

The above provisions differ from the relevant Model Law provisions and exclude certain Model Law disputes from the scope of the ICAA application²⁹⁹.

Court Involvement

The ICAA provisions on court assistance and supervision fully conform to the Model Law. The law designates the President of the Ukrainian Chamber of Commerce and Industry and refers to certain courts for purposes of assistance to and supervision over arbitration. As prescribed by the Model Law, the ICAA includes a general provision limiting court intervention in arbitration, obliges courts to refer disputes to arbitration in the respective cases and recognizes compatibility of the interim court measures with arbitration.

Arbitration Agreement

The ICAA requirements to the form and content of an arbitration agreement fully conform to those of the 1985 version of the Model Law. The agreement may cover all or (only) certain, present or future disputes. The agreement shall be in writing and both the extended form and the submission-type situation are recognized as valid³⁰⁰.

Tribunal Jurisdiction

The Ukrainian legislation follows the Model Law. Tribunals may rule on their own jurisdiction, and the invalidity of the decision that the main contract is null and void does not *ipso jure* entail the invalidity of the arbitration agreement.

Interim Measures

The ICAA conforms to the non-revised, 1985 version of the Model Law. Hence, it recognizes the compatibility of the court measures of protection with arbitration and grants the power to order interim measures to tribunals.

²⁹⁹ According to the Model Law, an arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

³⁰⁰ Respectively, an agreement in exchange of documents or concluded by means of telecommunication and the situation where in exchange of statement of claim and defense one party alleges the existence of an arbitration agreement and the other does not deny it.

Arbitration Proceedings and Awards

The ICAA rules on arbitration proceedings and awards reproduce the Model Law provisions. The only difference is that the ICAA, unlike the Model Law, does not allow a tribunal to omit from an award the reasons upon which the award was based³⁰¹.

Applicable Rules

The Ukrainian legislation, in line with the Model Law, allows the parties to choose the rules of law applicable to the substance of the dispute and provides that the tribunal, where parties have failed to choose rules of law, applies the conflict of laws rules which it considers applicable. Unlike the Model Law, the ICAA does not mention awards based on *ex aequo et bono* or as *amiable compositeur*.

Recourse

The ICAA fully conforms to the Model Law. Recourse against awards is limited to setting aside and the grounds for setting aside are limited as prescribed by the Model Law.

Recognition and Enforcement

The ICAA provides that domestic and foreign arbitral awards shall be equally recognized and enforced in Ukraine. The procedural requirements conform to the 1985 version of the Model Law and the grounds on which courts may refuse award recognition and enforcement are limited as prescribed by the Model Law.

Uzbekistan

Overview

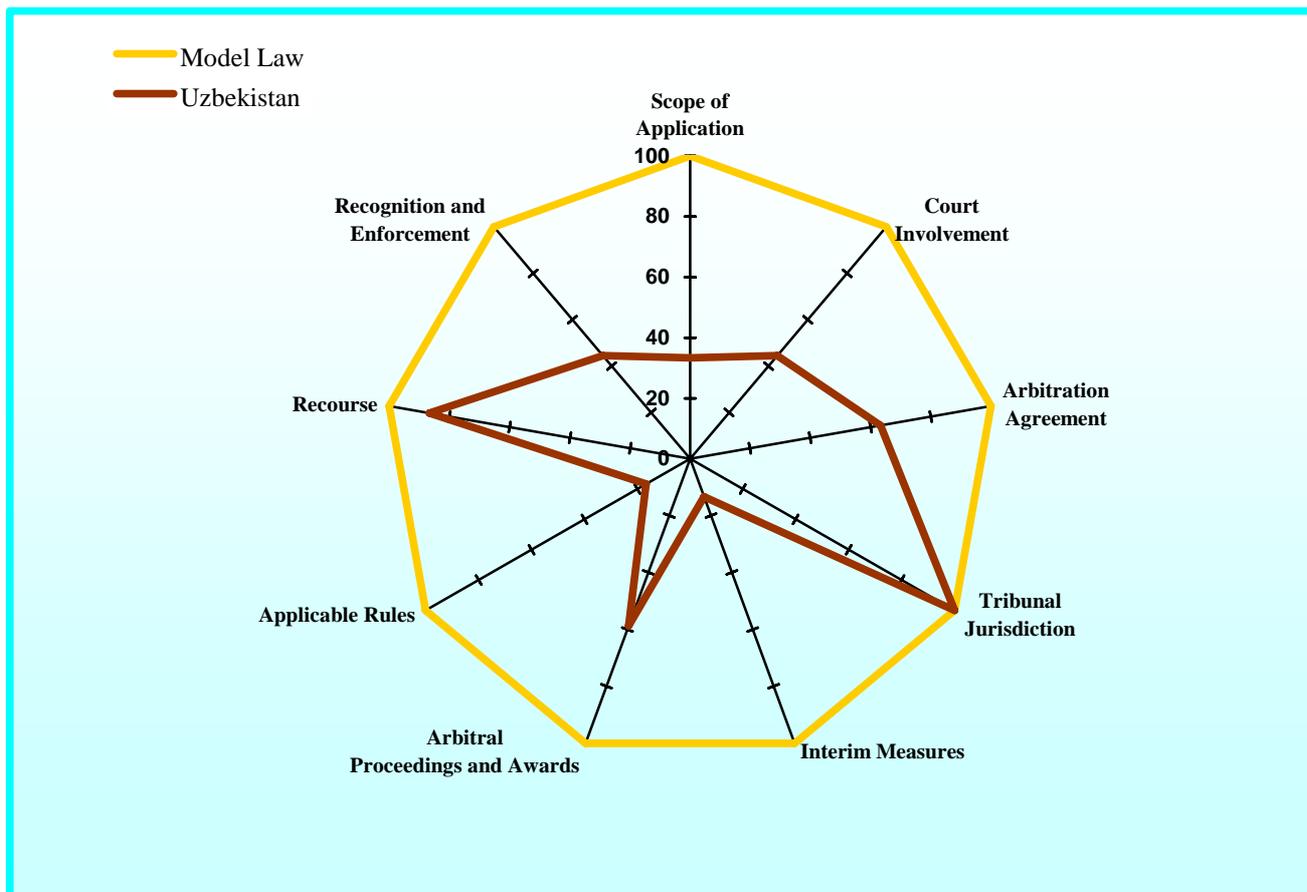
The relevant Uzbek legislation is:

- Arbitration Tribunals Act 2006;
- Commercial Procedure Code 1997 (as amended);
- Law on Enforcement of Court and other Authorities' Acts 2001.

The UNCITRAL Secretariat does not recognize Uzbekistan as a country with legislation based on the Model Law. In practice the Uzbek legislation diverges significantly from the standard. Generally, the scope of the application of the law is limited to domestic awards, the provisions on court involvement may affect arbitration, the regime of the interim measures ordered by arbitral tribunals is not entirely clear, the choice of the applicable law is limited to the Uzbek law, and finally, there are extra procedural requirements to the recognition and enforcement of awards.

³⁰¹ ICAA A31.2. The relevant Model Law provision allows omitting reasons where the parties have agreed so.

Chart 16 – Level of Compliance of Laws of Uzbekistan



Source: EBRD International Commercial Arbitration Assessment 2007

Note: The extremity of each axis represents an ideal score in line with UNCITRAL Model Law on International Commercial Arbitration 1985 as amended. The fuller the ‘web’, the more closely arbitration framework of the country approximates the principles established by the Model Law.

Scope of Application

The Arbitration Tribunals Act 2006 (ATA)³⁰², including provisions on the recognition of arbitration agreements and award enforcement, applies only to arbitration taking place in Uzbekistan³⁰³. The Commercial Procedure Code contains provisions that prescribe courts to refer the parties to arbitration, where the relevant agreement exists. The drafting of the Code does not allow to make a conclusion whether this applies also to foreign arbitration^{304,305}.

³⁰² A draft of ‘International Commercial Arbitration Tribunals Act’ was prepared in Uzbekistan. The bill was scheduled to be submitted to the Uzbek legislature in September 2006, however at the time of writing it is still not in force. The draft that was examined had express provision neither on recognition of ‘foreign’ arbitration agreements nor on recognition and enforcement of foreign arbitral awards. We are grateful to the lawyers of Denton Wilde Sapte Tashkent for investigating the status of the bill.

³⁰³ ATA A1.

³⁰⁴ Commercial Procedure Code A88(2).

³⁰⁵ However, an interpretation that the Code applies only to domestic arbitration agreements, i.e. as provided for by the special legislation – the ATA, is also possible.

The ATA is silent on the enforcement of foreign awards. However, the Law on Enforcement of Court and other Authorities' Acts makes a general reference to the Uzbek legislation and international agreements to determine which procedures apply to foreign award enforcement^{306,307}. Hence, the question whether foreign arbitral awards are recognized and enforced in Uzbekistan remains open.

The ATA includes a broadly drafted provision on its substantive scope of application – the law stipulates that disputes arising out of civil law transactions, including commercial disputes, may be submitted to arbitration³⁰⁸.

Court Involvement

Unlike the Model Law, the Uzbek legislation does not contain a general provision limiting court intervention in arbitration, there is no specific appeal process on tribunal's decision on its own jurisdiction, and court assistance in taking evidence is not mentioned. In addition, contrary to the Model Law, the ATA provides that where issues in challenging arbitrators arise, the tribunal itself makes the decision (and not the authority designated in the A6 as *per* the Model Law)³⁰⁹. Furthermore, where issues arise in appointment of arbitrators, the law provides for the arbitration to be terminated and the dispute to be referred to courts³¹⁰.

Similarly to the Model Law, the Uzbek legislation recognizes (at least for domestic arbitration) that where arbitration agreements are in place, courts have to refer parties to arbitration³¹¹.

Arbitration Agreement

Similarly to the 1985 version of the Model Law, the ATA provides that an arbitration agreement shall be in writing and recognizes the 1985 extended definition of 'writing' – the agreement may also be in an exchange of letters or messages delivered by means of electronic or other system of communication, which allows for records (of the messages) to be kept³¹². As the Model Law does, the ATA allows for present and future, and all or (only) certain disputes to be submitted to arbitration³¹³. The law is silent on the submission-type agreement in an exchange of statements of claim and defense.

³⁰⁶ Law on Enforcement of Court and other Authorities' Acts A6.

³⁰⁷ Regulation 'On the Order of Enforcement Procedures and Organization of (Court) Bailiffs' Activities' para 1 A1.9) provides that the Regulation covers recognition and enforcement of foreign arbitral awards where it is provided for by the Uzbek legislation and international treaties in force.

³⁰⁸ ATA A9.

³⁰⁹ ATA A17.

³¹⁰ ATA A15.

³¹¹ Commercial Procedure Code A88.2).

³¹² ATA A12.

³¹³ ATA A13.

Tribunal Jurisdiction

The ATA, in conformity with the Model Law, stipulates that tribunals may rule on own jurisdiction and that an arbitration clause shall be treated as an agreement independent of the other terms of the contract and if the contract is null and void it shall not entail *ispo jure* invalidity of the arbitration agreement³¹⁴.

Interim measures

The ATA provisions on the interim measures diverge from the 1985 UNCITRAL text and the revised Model Law. The ATA allows arbitral tribunals to make orders for the interim measures of protection. This provision is followed by another clause in the ATA, which stipulates that a party shall apply for interim measures of protection to particular courts. Furthermore, such an application shall be accompanied by documents evidencing that a claim was submitted to the arbitration tribunal and that the tribunal made an order on the interim measures of protection³¹⁵. It is unclear whether these provisions in effect subject tribunal orders on the interim measures of protection to the subsequent court approval, but this seems to be the more likely interpretation of the law.

Arbitration Proceedings and Awards

Following the Model Law, the ATA specifies that the parties shall be treated equally in presenting the case³¹⁶, that the parties shall be given sufficient notices of hearings³¹⁷, that all documents shall be accessible to both parties³¹⁸, that the parties are free to agree on the language and the procedure of arbitration³¹⁹. Rules on party default during arbitration are also compatible with the Model Law³²⁰.

The law differs in that it contains extra requirements to arbitrators, including a limitation on nationality – the arbitrators may only be Uzbek. The presiding arbitrator or the arbitrator, where tribunal consists of one member, shall have a degree in law³²¹; the number of arbitrators shall be odd³²². A permanent tribunal shall hear disputes only at the place as it is determined by the tribunal's regulations³²³. If parties fail to choose the language of arbitration, the language shall be Uzbek³²⁴. When parties fail to appoint arbitrators in *ad hoc* tribunals, the law stipulates that the

³¹⁴ ATA A24.

³¹⁵ ATA A32.

³¹⁶ ATA A35.

³¹⁷ ATA A35.

³¹⁸ ATA A34.

³¹⁹ ATA A27.

³²⁰ ATA A37.

³²¹ ATA A14.

³²² ATA A15.

³²³ ATA A26.

³²⁴ ATA A27.

arbitration terminates and the dispute shall be referred to courts³²⁵. Where the parties reach a settlement, its terms must 'be in accordance with the legislation'³²⁶. The ATA requirements to the form of arbitral awards are more stringent than the ones in the Model Law³²⁷.

Applicable Rules

The ATA stipulates that the dispute shall be resolved according to the Uzbek law³²⁸. In line with the Model Law, the tribunal shall base its decision on the terms of the contract and the applicable usages of the trade.

Recourse

The Uzbek legislation limits recourse against arbitral awards to setting aside. Grounds for setting aside conform to those of the Model Law, with one extra ground added: the award may be set aside if the award was not made on the basis of the Uzbek legislation^{329,330}.

Recognition and Enforcement

The ATA generally does not apply to foreign arbitration, and hence the regime provided for in the law cannot be applied to the recognition of foreign arbitral awards.

Domestic awards, according to the ATA, shall be complied with voluntarily³³¹. Where an award is not complied with, it shall be enforced according to the Uzbek enforcement legislation^{332,333}. The procedure for award recognition and enforcement includes extra requirements³³⁴. The party seeking to enforce an award shall supply a certified copy of the award. The certified copy shall be signed by the chairman of the tribunal that made the award. In cases where the award was made by an *ad hoc* tribunal, the signature shall be notarized. The statute of limitation for award enforcement is six months starting from the day the award should have been complied with voluntarily.

Grounds that allow courts to refuse to enforce an award are same as for setting aside.

Foreign arbitral awards, it seems, will be enforced where there is a relevant obligation under an international agreement. Uzbekistan has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in December 1995, and in the relevant cases an award may be enforced on the basis of obligations under the Convention.

³²⁵ ATA A15.

³²⁶ ATA A38,

³²⁷ ATA A39.

³²⁸ ATA A10.

³²⁹ ATA A46.

³³⁰ Another possible reading of this provision 'When the award does not apply [correctly] the Uzbek legislation'.

³³¹ ATA A49.

³³² ATA A50.

³³³ Law on Enforcement of Court and other Authorities' Acts 2001.

³³⁴ ATA A51.

5. Conclusions

This Assessment has examined international commercial arbitration regime in thirteen of the countries of operation of the European Bank for Reconstruction and Development, namely Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan (the CIS countries) and Mongolia.

In accordance with the results of the Assessment, the legislation of the observed countries was categorized as belonging to one of the following groups: High Compliance (Armenia, Azerbaijan, Russia and Ukraine), Medium Compliance (Belarus, Kazakhstan, the Kyrgyz Republic, Mongolia and Uzbekistan), Low Compliance (Georgia and Moldova) and Very Low Compliance (Tajikistan and Turkmenistan). None of the observed countries have implemented the revised provisions of the Model, and hence, none of the results were sufficiently high to be included in the Very High Compliance category.

The common features of the mentioned groups may be summarized as follows. The laws of the High Compliance category generally implement the 1985 version of the Model Law, albeit with some limitations. The Medium Compliance legislation remains compatible with the UNCITRAL text though with significant limitations, often including ones on the scope of its application. In the Low Compliance category, the legislation departs from the Model Law provisions, and the legal regime for international commercial arbitration is not sufficiently similar to the standard. The States in the Very Low Compliance group have not adopted a statute dedicated to international commercial arbitration, although a patchwork of provisions related to arbitration exists.

The approach to the recognition and enforcement of foreign arbitral awards is an important indicator of the degree of conformity of the national legislation to the Model Law. According to the UNCITRAL text, arbitral awards shall be recognized as binding and enforceable irrespective of the country in which they were made. Only three of the observed countries have introduced this provision in their arbitration laws without modifications (Azerbaijan, Ukraine and Russia)³³⁵.

The results of this Assessment demonstrate that the degree of conformity of the relevant national legislation to the Model Law varies significantly. The legislation of the Low Compliance and Very Low Compliance groups may present difficulties to arbitration, especially when one of the parties to the dispute is unfamiliar with the local law. The recognition and enforcement of foreign arbitral awards remains an issue that requires a careful approach in all of the observed countries (to a much lesser extent in the High Compliance category).

³³⁵ However, limitations on the application of this provision may be introduced by a general clause on the scope of application of the relevant law.

Appendix I

EBRD International Commercial Arbitration Assessment, 2007, Acknowledgments

	Country	Law firm
1.	Armenia	Harutiunian & Associates Law Office
2.	Azerbaijan	McGrigors Baku Limited
3.	Belarus	Law Offices of Borovtsov & Salei
4.	Georgia	Mgaloblishvili, Kipiani, Dzidziguri, (MKD) Law Firm
5.	Kazakhstan	GRATA Law Firm
6.	Kyrgyz Republic	Kalikova & Associates Law firm
7.	Moldova	Turcan & Turcan
8.	Mongolia	International Trade Centre
9.	Russia	White & Case LLC
10.	Tajikistan	Akhmedov, Azizov & Abdulhamidov, Attorneys
11.	Turkmenistan	Medet Company Ltd
12.	Ukraine	Law and Patent Firm "Grischenko and Partners"
13.	Uzbekistan	Denton Wilde Sapte, Tashkent