



# Uzbekistan

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## Overview

### 1 In general terms, what policy has your jurisdiction adopted towards Islamic finance? Are Islamic finance products regulated differently from conventional instruments?

With its population of 30 million and traditional Islamic roots Uzbekistan is probably one of the most promising markets for Islamic financing in Central Asia. But it is fair to say that until recently the banking and financial services sector and business in Uzbekistan have had limited exposure to and understanding of Islamic finance. Despite the active presence of the Islamic Development Bank (IDB) and investment, albeit limited in scope, from Islamic countries and investment institutions, Uzbekistan has not adopted a level playing field approach towards Islamic finance. Islamic finance has become a relatively recent trend across Central Asia mainly through promotion of ties between central governments in the region and Islamic development agencies and Islamic investment funds. Uzbekistan has traditionally been selective in its approach to foreign borrowing with very low levels of reliance on world capital markets for funding its domestic economy. The state's attitude to Islamic finance is consistent with its overarching philosophy of cautious and gradual implementation of reforms. Natural and growing demand for Islamic finance instruments in Uzbekistan contrasts with the absence of a regulatory platform to accommodate Islamic finance and *shariah*-compliant investments. Uzbekistan is a secular state with largely dominant Islamic population and any legislative reform involving adoption of *shariah*-based principles must be a fine balancing act. The key laws such as the Civil Code, the Tax Code and laws on banking and investment do not refer to Islamic finance or to Islamic finance instruments. It is therefore important that Islamic finance and Islamic banking instruments are first recognised as a legislative concept before any regulatory mechanisms are put in place. In its lending policy the IDB employs Islamic finance principles and it does so next to donors operating conventional financial instruments. In the absence of a specific regulatory regime, the IDB and Islamic investment and finance institutions rely on use of existing conventional legislation to pursue their agenda in Uzbekistan.

### 2 How well established is Islamic finance in your jurisdiction? Are Islamic windows permitted in your jurisdiction?

As noted above Islamic finance has seen a gradual rise from being an almost non-existent concept in the early days of Uzbekistan's independence to becoming a popular trend in recent times. Although the history of Uzbekistan's engagement with the IDB dates back to 1992 and financing of pilot infrastructure projects, it was not until the government of Uzbekistan approved a programme of cooperation between Uzbekistan and the IDB in 2004 that Islamic finance became available for private and public sector development on a large scale in Uzbekistan. In 2003 Uzbekistan joined the IDB with full membership in the Islamic Corporation for the Development of the Private Sector (ICD) from 2004. In accordance with the 2011–2013 cooperation programme approved at the IDB's 36th annual board meeting, the main focus of the IDB's operation is in infrastructure development and financing of structural reforms. Total financing available under this cooperation programme is US\$655.5 million. The total amount of credit funds and investments of the bank in 38 projects in Uzbekistan's economy is over US\$1 billion. As an example, the IDB provided financing to the government of Uzbekistan in 2013 for the purchase of two Boeing aircraft for the national air carrier, a deal worth US\$270 million, according to the

IDB press release. The Saudi Fund for Development and Kuwait Fund for Arab Economic Development are among key Islamic lending institutions in the Arab world with which Uzbekistan has an established track record of cooperation in financing infrastructure development projects. Typically, such projects are assigned to state-owned companies or banks with state shareholding. Analysis of recent trends suggests a steady increase in lending volumes attracted through Islamic finance institution.

Private sector initiatives launched by the ICD, a private sector lending arm of the IDB, include interventions with private banks and SME. Its approach to lending is based on *shariah*-compliant principles that are adapted to requirements of the existing conventional regulatory environment. Independent *shariah* advisory and consultancy agencies, such as the AlHuda Centre of Islamic Banking and Economics, are also in talks with local non-state owned banks to investigate the possibility of these banks offering Islamic financial products and services. Upward trends registered in private sector lending in recent years suggest there is a growing demand for Islamic finance and Islamic banking products. However, local banks have not yet been permitted to operate Islamic windows given that such a step would require a policy change and adjustments to the regulatory environment. Meanwhile, Uzbekistan's banking sector is supported by demand for industrial projects, backed by the government.

The development of the Islamic finance sector is at its very early stages in Uzbekistan and Islamic securities whether listed on the local exchange or as banking instruments are yet to be recognised at policy and legislative level.

### 3 What is the main legislation relevant to Islamic banking, capital markets and insurance?

Any transactions performed on the basis of or using Islamic finance principles shall be subject to conventional laws of Uzbekistan. Islamic finance or Islamic banking and similar practices have not yet been afforded a specific treatment or legislative framework in Uzbekistan. Islamic finance-based transactions are governed by governmental and presidential decrees and resolutions to the extent such investments or projects are agreed and coordinated by the state and its authorised agencies.

Uzbekistan laws applicable to the financial services industry are complex and constantly evolving to embrace challenges and to cope with competing development priorities. Apart from the Constitution, Civil Code and Tax Code, which provide the major principles and set the legislative framework, the operation of the financial services industry is subject to regulatory requirements and sector-specific by-laws issued in the form of presidential decrees and government resolutions. It must be mentioned that Uzbekistan accepted the obligations of article VIII of the IMF Articles of Agreement, with effect from 15 October 2003 thus becoming the 157th of the IMF's 184 members to have accepted those obligations. As a result, all currency restrictions with respect to the export-import of products and services, the buying and selling of hard currency valuables (precious metals, jewellery checks, etc), interest transfers, dividend payments from investments abroad, dividends and revenue payments abroad for investments in Uzbekistan, as well as certain other currency conversion restrictions, have been abolished. However, the country faces certain foreign exchange challenges and pressures to protect its national interests from the effects of the world economic downturn. The introduction of the Foreign Exchange Law in 2003 represents the government's effort to outline the rules governing operation of business in Uzbekistan under the applicable foreign exchange regime. For example, under the Uzbek foreign exchange regime resident

exporters must ensure that 50 per cent of their export sales proceeds in foreign currency is converted to local currency at the prevailing exchange rate fixed by the Central Bank of the Republic of Uzbekistan (CBU). Certain operations related to the movement of capital are subject to notice and the procedure prescribed by the CBU in accordance with Regulation 2536 issued on 17 December 2013. General guarantees of equal national treatment and further assurances of rights and protections on matters such as expropriation and profits repatriation, which are of specific interest to the foreign investor, are encapsulated in the Law on Foreign Investments and the Law on Guarantees and Measures for Protection of Rights of Foreign Investors. The Law on Foreign Borrowings and Procedure for Provision of Sovereign Guarantee as approved by the Cabinet of Ministers of the Republic of Uzbekistan Resolution No. 534 dated 28 November 2003 further sets the scene for general lending and sovereign guarantee transactions. The 2012 Law on Private Banking and Financial Institutions and Guarantees of Their Operations provides important safeguards against discrimination and unlawful intervention from state and authorised state agencies. In 2004 Uzbekistan enacted the Law on Anti-Money Laundering and Combating the Financing of Terrorism, which contained a range of anti-money laundering and counter-terrorism provisions, including record keeping, reporting and the establishment of financial intelligence units. All financial services sector organisations must comply with a specific AML checklist approved by the Ministry of Justice's 2013 Regulation on Monitoring Currency Transactions.

### Supervision

#### 4 Which are the principal authorities charged with the oversight of banking, capital markets and insurance products?

The CBU is the principal national regulator and the licensing authority with responsibility for oversight of the banking and financial services sector. Foreign lending transactions other than those backed by sovereign guarantee of the government of Uzbekistan are subject to registration by the CBU. The Centre for Coordination and Control of the Functioning of the Securities Market performs licensing for capital markets participants and acts as a registering authority for transactions involving depositories and joint-stock companies including banking institutions. Licensing of insurance and auditing companies falls within the remit of the Ministry of Finance. Filing of any government acts affecting the operation of the industry, state registration and maintenance of the register of companies will fall within the authority of the Ministry of Justice. The State Tax Committee has overall responsibility for regular supervision and spot-checking of compliance with statutory requirements applicable to all financial services industry.

#### 5 Identify any notable guidance, policy statements or regulations issued by the regulators or other authorities specifically relevant to Islamic finance.

Not applicable.

#### 6 Is there a central authority responsible for ensuring that transactions or products are *shariah*-compliant? Are IFIs required to set up *shariah* supervisory boards? May third parties, related parties or fund sponsors provide supervisory board services or must the board be internal?

Not applicable.

#### 7 Do members of an institution's *shariah* supervisory board require regulatory approval? Are there any other requirements for supervisory board members?

Not applicable.

#### 8 What are the requirements for Islamic banks to be authorised to carry out business in your jurisdiction?

Foreign banks including Islamic banks may open representative offices or set up subsidiary outlets in Uzbekistan provided they comply with minimum criteria and qualify under requirements imposed by the CBU in accordance with the Regulation on the Procedure for Registration and Licensing of Banking Operations approved by the CBU's Resolution No. 2014 on 8 October 2009 as most recently updated on 20 May 2014. Foreign banks may also become shareholders in existing banks subject to minimum statutory requirements as set out above. Corporate entities registered, or

individuals resident, in offshore jurisdictions and religious organisations are prohibited from becoming shareholders or acting as founders of banks in Uzbekistan.

#### 9 May foreign institutions offer Islamic banking and capital markets services in your jurisdiction? Under what conditions?

For reasons outlined above, no foreign institutions offering Islamic banking and capital markets services other than the IDB and ICD are currently registered in Uzbekistan. However, foreign institutions are not prevented from engaging in the market without being registered in Uzbekistan provided they satisfy requirements contained in the CBU's Regulation 2536. In accordance with the Regulation any currency transactions involving movement of capital are subject to registration with a local bank and notice to the CBU. As stated under question 8, Uzbekistan laws allow foreign banks to set up subsidiaries and become shareholders in Uzbek banks. Foreign insurers may establish in Uzbekistan by way of registering a subsidiary or acquiring shares in existing businesses. Establishing an in-country presence triggers licensing requirements. Similar registration and licensing requirements apply in respect of auditing and broker companies. Sector-specific minimum requirements (including capitalisation) will vary depending on the business segment and regulator.

#### 10 What are the requirements for *takaful* and *retakaful* operators to gain admission to do business in your jurisdiction?

As foreign insurers, *takaful* and *retakaful* operators will be required to register a branch and obtain a licence to conduct business in Uzbekistan. Registration shall be performed by the Ministry of Justice and licensing by the Ministry of Finance. A minimum charter capital requirement applicable to insurers specialising in general insurance is US\$500,000. Applicants seeking to obtain a licence must have established branches in all provinces and the capital city of Tashkent.

#### 11 How can foreign *takaful* operators become admitted? Can foreign *takaful* or *retakaful* operators carry out business in your jurisdiction as non-admitted insurers? Is fronting a possibility?

Admission can be achieved via establishing in Uzbekistan or by merger with the existing operator and subject to minimum requirements including capitalisation. No foreign operators may engage in business in Uzbekistan without being admitted. A fronting arrangement is not an option.

#### 12 Are there any specific disclosure or reporting requirements for *takaful*, *sukuk* and Islamic funds?

Not applicable.

#### 13 What are the sanctions and remedies available when products have been falsely marketed as *shariah*-compliant?

Not applicable.

#### 14 Which courts, tribunals or other bodies have jurisdiction to hear Islamic finance disputes?

Islamic finance disputes are not subject to any specific treatment under Uzbek law. Parties to agreements contemplating transactions based on Islamic finance principles or using Islamic banking instruments are not restricted as to their choice of governing law and dispute resolution. The choice of arbitration as the form of dispute resolution shall be valid, binding and enforceable under the laws of Uzbekistan. Uzbekistan is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention). Accordingly, a foreign arbitral award shall be recognised and enforced by an Uzbek court in accordance with the provisions of the New York Convention unless such award is not in contravention with public policy considerations. Arbitration courts under the Chamber of Commerce and Industry provide a cost-effective and viable dispute resolution alternative in Uzbekistan.

#### 15 *Mudarabah* – profit sharing partnership separating responsibility for capital investment and management.

The Civil Code does not expressly prohibit the *mudarabah* type of arrangement. The principle of freedom of contract under article 354 of the Civil Code allows the parties to choose this arrangement and various provisions of the Code allow parties to a transaction to share risks and liabilities (for

example, concepts of joint and secondary liability). It is also an observed practice in Uzbekistan for banks to share profits and risks with entrepreneurs; however, this occurs more often in foreign borrowing transactions and by allowing a financing institution to become a shareholder in a business entity.

No restrictions shall apply in respect of a foreign financing institution in terms of risk levels it can accept in any particular financing transaction.

However, limitations apply to Uzbek banks. These limitations are introduced by CBU Regulation No. 557 on maximum risk levels applicable to any one borrower or a group of affiliated borrowers issued on 2 December 1998. In accordance with Regulation No. 557, commercial banks may not assume risks amounting to 25 per cent of the bank's Tier 1 capital (equivalent to at least 50 per cent of the bank's authorised capital) per one borrower or a group of affiliated borrowers. This rule applies in relation to secured loan facilities. The maximum level of risks that can be borne by an Uzbek commercial bank in unsecured financing arrangements constitutes 5 per cent of the bank's Tier 1 capital. Also, the aggregate amount of Uzbek bank's large-scale loans cannot exceed eight times the bank's Tier 1 capital. In the case of leasing transactions the value of all leasing services provided by an Uzbek bank (apart from aircraft lease operations) may not exceed 25 per cent of the bank's Tier 1 capital.

#### 16 *Murabahah* – cost plus profit agreement

*Murabahah* transactions are commonly practised by the ICD and local commercial banks. Where such transactions are financed by the ICD, the local commercial bank issues a guarantee as security for the performance by the borrower of its obligations to the ICD. *Murabahah*-based transactions are subject to conventional sale and purchase rules specified in the Civil Code, which defines a sale and purchase agreement as an agreement 'whereby a seller undertakes to transfer a commodity into the ownership of another party (buyer), and the buyer undertakes to accept such commodity and pay for it'.

In the context of Uzbekistan law this type of transaction falls within the above definition of sale and purchase agreement and are therefore legal, binding and enforceable, while the principle of freedom of contract will govern the contract price and the profit disclosure requirements. *Murabahah* implies that the title to the commodity passes to and remains with the buyer. As such, *murabahah* is in compliance with Uzbekistan law regulating conventional sale and purchase in terms of title to a commodity of a transaction. Under Uzbekistan law and unless otherwise provided by the contract, the risk of loss passes to the buyer upon delivery by the seller of the goods sold. Import-export rules as set forth in the Government Resolution No. 416 require that delivery of goods or services under import contracts occur not later than 180 days following due payment. The buyer's deferred payment under *murabahah* is in compliance with Uzbekistan law, namely article 244 of the Civil Code, which allows for deferred performance of a contractual obligation, provided this is explicitly agreed by the parties in the contract. Further, articles 421 and 422 of the Civil Code regulate the issue of deferred and instalment payments in sale and purchase agreements. In particular, unless otherwise provided in the agreement, the seller may terminate the agreement and demand return of the sold item if the buyer fails to make at least one scheduled payment, except where the amount already paid by the buyer for the item exceeds two-thirds of the contract price. In addition, under sale and purchase agreements with a deferred-payment mechanism, an item sold is deemed pledged to the seller to secure the seller's obligation to pay. A seller in a *murabahah*-based transaction shall be subject to applicable customs duties, VAT and profit tax levied in accordance with the Tax Code unless granted preferential status and treatment in Uzbekistan under relevant treaties. The IDB's and ICD's assets are exempt from generally applicable customs duties when entering Uzbekistan. We note, however, that such exemption will only apply where assets are imported for the IDB's and ICD's personal use.

We note that the concept of *murabahah* is typically used in transactions involving ICD lending and IDB employs a mixture of Islamic finance tools such as *murabahah* and *ijarah*. Most recent examples of private sector initiatives include *murabahah*-based facilities to finance working capital and equipment purchase for private production companies Leading Force LLC and Magnus Industrial Group LLC.

#### 17 *Musharakah* – profit sharing joint venture partnership agreement.

Profit sharing joint venture partnership agreements can be entered into in two ways: by establishing a separate company that will be treated as a legal

entity; or by establishing a simple partnership by separate legal entities. If a legal company is established, all shareholders should have rights and obligations arising from the quantity of shares they hold. If a simple partnership is arranged, then no new legal entity emerges and all partners must choose one managing partner, which will represent the partnership before third parties. Due to lack of regulation and excessive taxation simple partnership arrangements have not become popular in Uzbekistan.

As regards floating interest rates, the banking laws of Uzbekistan do not forbid use of floating rates of return and linking them to the borrower's profits. The CBU Regulation on requirements for the credit policy of commercial banks No. 905 of 2 March 2000 requires that Uzbek banks approve an internal credit policy with detailed description of types of loans, security issues, interests and others. CBU Regulation No. 905 allows Uzbek commercial banks to determine their lending policies independently. Nevertheless this has not become a widespread practice in Uzbekistan and all banks tend to issue loans with the interest rate fixed throughout the whole loan period. The applicable interest rate must not exceed 20 per cent.

#### 18 *Ijarah* – lease to own agreement.

Under Uzbekistan law an arrangement whereby one party buys a commodity for the sole purpose of leasing it back to a seller cannot be framed into a single contract (except for reversionary leasing, as discussed below) and must be split into two separate agreements: sale and purchase, and a lease-type contract.

If a commodity is procured from a foreign (non-Uzbek resident company or individual) third-party supplier then this transaction falls outside the reach of Uzbekistan legislation and, therefore, will not be discussed herein. Conversely, if the commodity is purchased from a resident company, then such transaction will be treated as an export of goods, and, similarly to import contracts (see question 16), it will be subject to registration with Uzbek customs authorities and the local Uzbek bank. In Uzbekistan all export contracts are subject to a minimum 15 per cent advance payment requirement (to be included in the contract), in the absence of which the contract would not be registered by the authorities and the bank. In addition, 50 per cent of export proceeds credited to a resident company from such sale will be subject to mandatory sale (conversion into soms) at the prevailing exchange rate fixed by the CBU. Following purchase of commodity from a resident company the foreign entity may lease it back to the resident under a conventional lease agreement in accordance with provisions of the Law on Leasing and the Civil Code. A lease agreement may provide for an unconditional transfer of ownership to the leased item from the lessor to the lessee upon expiration of the lease agreement, thus avoiding execution of separate undertakings to sell and to buy.

The Law on Leasing allows for a lease transaction in which the lessee and the third party that sells the item to the lessor is the same person; the lessor purchases an item from the lessee only to lease it back to the lessee on such terms prescribed by the lease agreement and in accordance with applicable laws on leasing. One of the advantages of this arrangement is that it does not require execution of separate irrevocable undertakings to buy and to sell, which are otherwise not available under Uzbekistan laws, as both such undertakings are implied. In addition, it is up to the parties to a such a lease to agree on maintenance and insurance obligations (ie, it can be agreed to be an obligation of either a lessor or lessee), thus avoiding execution of an agency service agreement. Article 590 of the Civil Code and article 20 of the Law on Leasing expressly provide that a payment under a lease agreement must comprise the actual price of the leased item and the lessor's profit interest (interest payment). In other words, Uzbekistan law prohibits lease agreements without an express reference to the lessor's interest payments.

The most recent example of an *ijarah*-based (lease-back) transaction includes financing in 2013 by the IDB of two aircraft for the national air carrier of Uzbekistan. This was the IDB's first experience of aircraft financing using an Islamic finance tool.

#### 19 *Wadiyah* – safekeeping agreement.

*Wadiyah* may be enforceable in Uzbekistan only if a financing institution does not sue a debtor in economic courts or arbitration courts. Taking into account that transfer of title in relation to any type of property requires consent of the owner the debtor shall have quite a strong legitimate protection against seizure by a financial institution of the property, including bank accounts, real estate, moveable property and others.

However, entering into *wadiah* will not protect debtors if a financing institution files a lawsuit with a competent court and receives an enforcement decision. In accordance with the Law on Enforcement of Court Decisions and Decisions of Other Competent Authorities of Uzbekistan, law enforcement agencies shall be required to execute an enforcement decision and through law enforcement agents a financing institution will be able to recover funds from bank accounts (deposits) and other property of the debtor.

In accordance with Uzbekistan contract and banking rules gifts cannot be offered to depositors in lieu of interest. Banking laws of Uzbekistan require banks to pay interest to depositors on all deposits made.

Should a breach of fiduciary duty or misuse of funds occur financing institutions will be entitled to sue corresponding employees for abuse of power in criminal courts of Uzbekistan. The burden of proof will rest with the suing party.

**20 *Sukuk* - Islamic securities. Have *sukuk* or other Islamic securities been structured and issued in your jurisdiction to comply with Islamic principles, such as the prohibition of interest?**

Not applicable.

**21 What is the legal position of *sukuk* holders in an insolvency or a restructuring? Are *sukuk* instruments viewed as equity or debt instruments? Have there been any court decisions or legislation declaring whether *sukuk* holders are deemed to own the underlying assets?**

Not applicable.

**22 *Takaful* - Islamic insurance. Are there any conventional cooperative or mutual insurance vehicles that are, or could be adapted to be, *shariah*-compliant?**

The principal law governing the insurance industry in Uzbekistan is the Law on Insurance Activities. Insurance rules are rather strict and in general terms, the fundamental principles of Uzbekistan's insurance system do not greatly differ from that of *takaful*. However, the approach to certain aspects differs to a certain degree. The main difference is that under Uzbekistan's laws insurance activities are treated as commercial activities and an insurance company's profits are distributed among its shareholders, whereas under *takaful* insurance is not treated as a commercial activity of its shareholders.

The table below highlights the difference in approaches:

Principle under <i>takaful</i>	Principle under Uzbekistan laws
Policyholders cooperate among themselves for their common good.	Insurance company is registered by its shareholders, is licensed and operates for the benefit of the insured and shareholders.
Policyholders' contributions are treated as donations to the pool.	Insurance premiums are paid by the insured as consideration for insurance of their risks.
Each policyholder pays a subscription to help those who require assistance.	Insurance payments to the insured are paid by insurance company financed by its shareholders and insurance premiums paid by other insured.
Losses and liabilities are shared according to the community pooling system.	All losses and liabilities are assumed by insurance company.
Uncertainty is eliminated concerning subscription and compensation.	Uncertainty is eliminated by signing a written detailed insurance contract.
No advantage is gained at the expense of others.	Overall advantage received from insurance activities is paid to insurance company's shareholders in the form of dividends.

**23 Which lines of insurance are currently covered in the *takaful* market? Is *takaful* typically ceded to conventional reinsurers or is *retakaful* common in practice?**

Not applicable.

**24 What are the principal regulatory obstacles facing the Islamic finance industry in your jurisdiction?**

From a historic perspective Uzbekistan has already made significant steps towards recognition of Islamic finance via membership in the IDB and ICD, which it joined in 2003 and 2004, respectively. Stable relations between these institutions and the government have enabled Islamic finance to gain an entry point to the market. However, for Islamic finance to gain an institutional foothold it must be recognised at the legislative level. Forming an initiative group within parliament to develop a road map with clear milestones towards reform of existing conventional law to create a level playing field for Islamic finance might be a starting point. Alternatively, a similar government blueprint would signal a policy shift at top executive level. Any proposed regulatory reform must include an awareness campaign to promote the perception of Islamic finance and Islamic banking as an interest-free alternative to conventional banking and financial services. As the next step, amendments would be required to the Civil Code, the Tax Code and the major banking and investment laws to address the matter systemically. Whether commercial banks should be allowed to open Islamic windows or Islamic banking institutes set up independently from conventional banking will inform public and expert debate on the shape and scope of regulatory reform. To introduce Islamic banking and Islamic finance instruments new rules must be formulated or existing ones adapted for Islamic book-keeping procedures. National accounting standards are IFRS-based and any reform to introduce *shariah* principles must include compatibility analysis. Embedding the success stories of IDB and ICD project interventions in the regulatory reform will pave the way for Islamic banking products and *sukuk*. In fact, launch of *sukuk* bond could be a point at which market response and readiness of the domestic stock exchange system will be tested. Bringing taxation of Islamic products into the equation will prove another challenge. Insurance laws in Uzbekistan do not contemplate principles of community insurance typical for *takaful*. Potential establishment of *takaful*-governed insurance will require a further reform of insurance laws and regulatory environment as a whole.

**25 In what circumstances may *shariah* law become the governing law for a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *shariah* or the conflict of *shariah* and local law relevant to the finance sector?**

Uzbekistan law poses no legal restrictions as to the choice of governing law by the parties. Foreign law, including *shariah*, shall be deemed a valid choice of governing law in financing or commercial transactions. Exceptions are certain areas of law that must be governed by Uzbek laws only, for example agreements involving incorporation of a company in Uzbekistan or agreements to settle insolvency issues, etc.

The experience of the IDB's engagement in Uzbekistan suggests that the CBU in its regulatory capacity does not oppose *shariah*-compliant lending to Uzbek borrowers.

Article 1189 of the Civil Code reinforces this principle by stating that commercial contracts are governed by the law of a country that has been chosen by the parties unless otherwise provided by law. Mandatory choice of Uzbekistan law shall apply only in very limited occasions, such as bankruptcy issues, criminal issues, employment issues, family issues or as referred above in this clause in the case of foundation agreements, when disputes are resolved by non-governmental arbitration tribunals, etc. Paragraph 2 of article 1189 also states that the parties may choose laws of different countries in relation to different contract terms or the same foreign law for the entire contract. The Civil Code and the Contracts Law allow the parties to commercial contracts to choose or change applicable law from Uzbekistan to foreign law or from a foreign law to another at any stage of the contract term, both prior to execution of a contract and at any time thereafter.

An important issue to bear in mind when choosing *shariah* law with Uzbek debtors is arbitration. We note that parties to a commercial contract are not restricted in their choice of foreign arbitration forum to resolve disputes. Neither the Law on Courts, nor the Law on Enforcement of Economic Decisions, nor the Civil and Economic Procedure Code establishes any restrictions to choose foreign arbitration in commercial contracts. Moreover, it is the established contract practice in Uzbekistan that in many instances legal entities have agreed and have chosen foreign arbitration as the means to settle their disputes, including state authorities where they are a party to an investment agreement signed on behalf of the Republic of Uzbekistan.

Where contractual terms of a *shariah*-governed agreement do not contradict imperative rules of Uzbekistan law it would be possible to enforce in Uzbekistan a foreign arbitral award issued in accordance with *shariah*. Uzbekistan is a party to the New York Convention. If the decision is made by a state court then enforcement shall be made under bilateral or multilateral treaties to which Uzbekistan is a party. In the following cases a foreign judicial or arbitration decision may be refused recognition and enforcement:

- the parties to a contract have not explicitly chosen *shariah* law in their contract or the provision choosing *shariah* law is insufficiently clear;
- the party to a contract relying upon a certain provision of *shariah* law has not proved the existence of this law to an Uzbek court. Please note that in accordance with the Economic Procedure Code and the Civil Code if the parties choose foreign law as the governing law of the contract and the matter is brought before an Uzbek court, the burden of proof of existence of foreign law lies with the party relying upon this law. Typically, foreign law can be proved either by receiving a certified copy of law from the competent state authorities of the respective country, or by providing original publication, or by certifying a copy of the law with an Uzbek consular department. In rare cases courts tend to accept original publications or explore publicly available internet databases;

- if Uzbek laws require satisfaction of certain procedural or legal requirements, for example registration of a contract with certain authorities or providing certain provisions in the text of a contract, and these requirements have not been fulfilled due to their not being necessary under a foreign law chosen by the parties, then the courts will refuse application of such foreign law and will give preference to existing Uzbek laws; and
- if the matter is related to enforcement of foreign arbitration decision then the court may refuse application of foreign law if this law contradicts the public order of Uzbekistan. This ground is provided by the New York Convention. By public policy considerations Uzbekistan courts tend to understand existing Uzbekistan laws enacted by the Parliament, the President and the Cabinet of Ministers of Uzbekistan.

**26 Are there any special considerations for the takeover of an Islamic financial institution, outside the requirements of the general merger control regime?**

Not applicable.

**27 Are there any notable features of the Islamic finance regime and markets for Islamic finance products in your jurisdiction not covered above?**

Assuming further expansion of Islamic finance in Uzbekistan has become a fait accompli, we believe the concept of Islamic boards will be difficult to apply in the conventional legislative framework.



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