

“CONDITIONED CIVIL LEGAL CAPACITY” OF PRIVATE EMPLOYMENT AGENCIES: THEORETICAL FOUNDATIONS AND PRACTICAL SIGNIFICANCE

Sherzodjon Egamberdiyev

Advocate, “SHERLEGAL” Law Firm

Republic of Uzbekistan

Abstract. Private employment agencies occupy an unusual position in civil law: they are ordinary commercial legal entities, yet the very activity for which they are created may be lawfully exercised only after the state has performed additional administrative acts, namely inclusion in a special register and, for the placement of citizens in jobs abroad, the grant of a licence. This article develops the concept of “conditioned civil legal capacity” to describe this position. Building on the classical distinction between the general and special legal capacity of legal entities and on Article 41 of the Civil Code of the Republic of Uzbekistan, the article argues that the capacity of a private employment agency arises at the moment of its creation but remains partially suspended: the right to perform the agency’s core statutory services is conditioned upon further juridical facts of a public-law character. The practical significance of the construct is demonstrated through the evolution of Uzbek legislation, from the Law “On Private Employment Agencies” of 2018 to Presidential Resolution No. ПК-367 of 2024, which entrusts overseas job placement to the private sector, and through recent enforcement practice, including licence terminations in 2026. The article concludes that conditioned capacity is the legal mechanism that allows the state to privatize employment intermediation without surrendering control over the protection of jobseekers, an approach consistent with ILO Convention No. 181.

Keywords: *private employment agency, civil legal capacity, special legal capacity, licensing, register, ultra vires, labor migration, ILO Convention No. 181, Uzbekistan*

1. Introduction

For most of the twentieth century, employment intermediation was treated in many jurisdictions as a state monopoly, and fee-charging private agencies were viewed with suspicion or prohibited outright. The adoption of the Private Employment Agencies Convention, 1997 (No. 181) marked a decisive change of approach: the International Labour Organization recognized private employment agencies as legitimate labor market institutions, defining them as natural or legal persons that provide services for matching offers of and applications for employment without becoming a party to the resulting employment relationship (ILO, 1997). At the same time, the Convention did not deregulate the sector. Article 3 requires each member state to determine the legal status of such agencies in accordance with national law and practice and to determine the conditions governing their operation “in accordance with a system of licensing or certification”, except where those conditions are otherwise regulated by appropriate national law and practice (ILO, 1997). Although only a minority of ILO member states have so far ratified the Convention (ILO, n.d.-a), the licensing and certification model it endorses has spread far beyond the circle of ratifying states.

The Republic of Uzbekistan belongs to this wider circle. The legal basis for private employment agency activity was created by the Law of the Republic of Uzbekistan No. ЎПҚ-501 “On Private Employment Agencies” of 16 October 2018, which determined the legal status of such agencies, the services they may provide, including the selection of jobs for persons seeking work in Uzbekistan, the recruitment of personnel for employers, the placement of persons seeking employment outside the country, and information and consulting services in the field of employment, and the requirements they must satisfy (Law No. ЎПҚ-501, 2018). The Law forms part of a broader legislative framework that includes the Law “On Employment of the Population” (Law No. ЎПҚ-642, 2020) and the general legislation on licensing, permitting and notification procedures (Law No. ЎПҚ-701, 2021). The admission of an agency to the market is organized in two tiers: inclusion in a special state register, confirmed by a certificate, opens access to intermediation on the domestic labor market (Norma.uz, n.d.), while the placement of citizens in jobs abroad additionally requires a licence issued through the state licensing system (Migration Agency, 2026).

The practical stakes of this regime rose sharply in the autumn of 2024. Following Presidential Decree No. ПФ-59 on the improvement of labor migration processes (Decree No. ПФ-59, 2024), the President adopted Resolution No. ПК-367 of 17 October 2024 “On Additional Measures to Regulate the Processes of Carrying Out Labor Activity Abroad” (Resolution No. ПК-367, 2024). The Agency for External Labor Migration was reorganized, a Migration Agency under the Cabinet of Ministers was established (Gazeta.uz, 2024), and the state’s own overseas job placement functions were scheduled for gradual transfer to private recruitment agencies by 1 January 2026; to widen access to licences, the financial reserve requirement for applicants was reduced from 8,500 to 4,000 times the basic calculation unit (Kun.uz, 2024). By mid-2026 the official register maintained by the Migration Agency listed forty-seven licensed private employment agencies (Migration Agency, 2026).

These developments expose a doctrinal question that Uzbek civil law science has not yet answered systematically. Under Article 41 of the Civil Code, a legal entity possesses civil legal capacity in accordance with the objectives of its activity provided for in its constituent documents; that capacity arises at the moment of the entity’s creation and terminates upon completion of its liquidation, and certain types of activity, the list of which is determined by legislation, may be carried out only on the basis of a special permit, that is, a licence (Civil Code, 1995). A private employment agency is therefore a fully existing legal person from the day of its state registration, yet it cannot lawfully perform the very services for which it was founded until additional administrative acts, registration in the sectoral register and, for overseas placement, licensing, have taken place. How should the civil legal capacity of such an entity be characterized? This article proposes to describe it through the category of “conditioned civil legal capacity”: capacity that exists from the moment of creation but whose core content may be exercised only upon the occurrence of legally defined conditions of a public-law nature.

The purpose of the article is threefold: first, to ground the concept of conditioned civil legal capacity in the general theory of the legal capacity of legal entities; second, to demonstrate, on the basis of the current legislation of Uzbekistan, that the legal position of private employment agencies is best explained through this concept; and third, to show its practical significance for the ongoing reform of external labor migration and for the protection of jobseekers. The article proceeds as

follows: Section 2 describes the materials and methods; Section 3 presents the results of the doctrinal and normative analysis; Section 4 discusses their theoretical and practical implications and formulates recommendations; Section 5 concludes.

2. Materials and Methods

The research design is doctrinal and qualitative, which corresponds to the nature of the research question: the article seeks to construct and justify a legal category, not to measure an empirical effect. The primary material is the positive law of the Republic of Uzbekistan: Article 41 and related provisions of the Civil Code (Civil Code, 1995), the Law “On Private Employment Agencies” (Law No. ЎПҚ-501, 2018), the Law “On Employment of the Population” (Law No. ЎПҚ-642, 2020), the Law “On Licensing, Permitting and Notification Procedures” (Law No. ЎПҚ-701, 2021), Presidential Decree No. ПФ-59 (Decree No. ПФ-59, 2024) and Presidential Resolution No. ПК-367 (Resolution No. ПК-367, 2024). These acts were analyzed using the formal-dogmatic method: the wording of the norms was examined, their place in the system of legislation was established, and the legal consequences they attach to registration, register inclusion and licensing were reconstructed.

Second, international and comparative materials were used to situate the national regime within the global regulatory standard. These include the text of ILO Convention No. 181 (ILO, 1997), the ILO guide on the regulation, monitoring and enforcement of private employment agency activity (ILO, 2007), ILO materials promoting ratification of the Convention (ILO, n.d.-a; ILO, n.d.-b) and the toolkit of the World Employment Confederation on the benefits of ratification (World Employment Confederation, 2019). Classical common law doctrine on corporate capacity, in particular the ultra vires rule associated with *Ashbury Railway Carriage and Iron Co. v. Riche* (1875), is referred to for the historical background of the distinction between general and special capacity.

Third, descriptive empirical information on the application of the regime was drawn from official and journalistic sources: the official register of licensed private employment agencies published by the Migration Agency under the Cabinet of Ministers (Migration Agency, 2026), an official explanation of the register certificate procedure (Norma.uz, n.d.) and press reports on the 2024 reform and on enforcement practice, including licence terminations in 2026 (Kun.uz, 2024;

Gazeta.uz, 2024; Zamin.uz, 2026). The findings from the three streams were synthesized: the doctrinal construction developed in Section 3.3 was tested against both the normative material and the observed practice. A limitation should be acknowledged: systematized judicial practice of Uzbek courts on transactions of unlicensed agencies is not publicly available, so the conclusions on transaction validity are drawn from the statutory text rather than from case statistics.

3. Results

3.1 General and special legal capacity in the doctrine of legal entities

Civil legal capacity is the recognized capability of a person to have civil rights and bear civil obligations. For citizens, the Civil Code of Uzbekistan recognizes this capability equally for all and attaches it to birth and death (Civil Code, 1995). For legal entities the construction is different in two respects. First, capacity is functional: under Article 41 of the Civil Code, a legal entity has civil legal capacity “in accordance with the objectives of its activity provided for in its constituent documents” (Civil Code, 1995). Second, capacity is temporally bounded by the entity’s artificial life: it arises at the moment of creation and terminates at the completion of liquidation. The functional element preserves, in modern form, the old idea that a legal person is created for a purpose and receives legal personality to the extent required by that purpose.

Doctrine traditionally distinguishes between general capacity, under which a commercial organization may have any civil rights and obligations not prohibited by law, and special capacity, under which an entity may act only within the objectives fixed in its constituent documents or in legislation. The historical extreme of the special capacity approach was the English ultra vires doctrine, under which a transaction outside the objects of a company was void, as classically stated in *Ashbury Railway Carriage and Iron Co. v. Riche* (1875); over the following century the doctrine was progressively abandoned in company law as a trap for innocent counterparties, and modern statutes generally provide that the validity of a company’s act may not be called into question on the ground of lack of capacity. Post-Soviet civil codes, including the Uzbek one, took a middle path: commercial organizations enjoy broadly defined capacity, but the legislator retains two instruments for narrowing it, namely the fixing of statutory objectives for particular types of entities and the licensing mechanism, under which certain activities listed

by legislation may be carried out only on the basis of a special permit (Civil Code, 1995). Consistently with this, the Civil Code allows a court to invalidate a transaction concluded by a legal entity in conflict with the objectives of its activity or without the licence required for the relevant activity (Civil Code, 1995).

Licensing occupies a peculiar place in this scheme. A licence is not an element of the entity's creation: the entity exists, has organs, owns property and answers for its debts before any licence is granted. Nor is the absence of a licence a sanction: it is the initial, lawful state of every newly created entity. The licence is a condition attached by public law to the exercise of a defined segment of the entity's capacity. Where the licensed activity is merely one of many things the entity may do, this conditioning is peripheral. But where, as with private employment agencies, the conditioned segment coincides with the entity's core statutory purpose, the conditioning ceases to be peripheral and becomes constitutive of the entity's legal position. It is this configuration that, in our view, deserves a name of its own: conditioned civil legal capacity.

3.2 The statutory regime for private employment agencies in Uzbekistan

The Law “On Private Employment Agencies” of 2018 defines the sector functionally. A private employment agency may provide the following types of services: selection of jobs for persons seeking work in the Republic of Uzbekistan; recruitment of personnel for employers; placement of persons seeking employment outside the Republic of Uzbekistan; and information and consulting services in the field of employment (Law No. ЎПҚ-501, 2018). The Law thus describes not an incidental activity but the entire *raison d'être* of a distinct type of commercial organization, which must be reflected in the agency's name and constituent documents. In the terminology of Section 3.1, the agency is an entity with special capacity: its objectives are fixed by legislation, not merely by the founders' choice.

Admission to the market is then organized in two tiers. The first tier concerns intermediation on the domestic labor market: an agency must be included in the register of private employment agencies and receives a certificate confirming that inclusion, the procedure for which is regulated at the sub-legislative level (Norma.uz, n.d.). The second tier concerns the placement of citizens in jobs abroad: this activity requires a licence, issued today through the unified electronic licensing system as a formal state service (Migration Agency, 2026). The general framework

for such permits is set by the Law “On Licensing, Permitting and Notification Procedures” of 2021, which consolidated the previously fragmented permitting legislation (Law No. ЎПҚ-701, 2021). The licence for overseas placement is accompanied by substantive financial conditions designed to secure the claims of workers: the applicant must reserve funds as a guarantee, and the size of this reserve was reduced in 2024 from 8,500 to 4,000 times the basic calculation unit precisely in order to allow more private agencies to obtain licences (Kun.uz, 2024).

The surrounding employment legislation confirms that the agencies operate within a system of state guarantees rather than outside it. The Law “On Employment of the Population” of 2020 preserves the state’s responsibility for employment policy and for the protection of persons seeking work (Law No. ЎПҚ-642, 2020), and the reforms of 2024 embedded the agencies in state-run infrastructure: from 1 November 2024 all foreign employers’ job offers are published on the electronic platform of the migration authority, and citizens working abroad receive access to microloans and free consultations (Kun.uz, 2024; Decree No. ПФ-59, 2024). The private agency is thus a private actor performing a function of public significance, and the law treats its capacity accordingly.

3.3 The construct of conditioned civil legal capacity

The normative material described above can be generalized into a three-layer model of the civil legal capacity of a private employment agency. The first layer is general: from the moment of state registration the agency, as a legal entity, may own property, open accounts, hire staff, lease premises, sue and be sued (Civil Code, 1995). The second layer is special: the objectives of the agency’s activity are fixed by the Law “On Private Employment Agencies”, so that its capacity is oriented toward the statutory list of employment services (Law No. ЎПҚ-501, 2018). The third layer is conditioned: within the special capacity, the right actually to perform the core services is placed under suspensive conditions of a public-law character, namely inclusion in the register for domestic intermediation and licensing for overseas placement. Until the condition occurs, the corresponding segment of capacity exists only potentially; when the condition occurs, the segment becomes exercisable; if the condition is revoked, the segment is again suspended.

Conditioned capacity must be distinguished from adjacent categories. It is not identical to special capacity: special capacity describes the outer boundary of what

the entity may ever do, while conditioned capacity describes a temporal and administrative threshold inside that boundary. It is not a restriction of capacity in the sense of a sanction, because the unconditioned state is the lawful starting position of every agency. Nor is the construction reducible to the civil law figure of a transaction under a suspensive condition: there the condition is agreed by the parties and its occurrence is uncertain, whereas here the condition is imposed by legislation, its content is an administrative act, and the applicant can bring it about by satisfying statutory requirements. The closest analogy is the juridical composition: the full capacity of the agency results from an accumulation of juridical facts, of which state registration is only the first, and register inclusion and licensing are the completing elements.

The construct is dynamic in both directions, and recent practice illustrates the reverse movement. Resolution No. ПҚ-367 strengthened state supervision over the activity of private employment agencies as part of the transfer of placement functions to the private sector (Resolution No. ПҚ-367, 2024), and in May 2026 the licences of two agencies operating in the field of overseas placement, the “Workmall” and “Etos” private employment agencies, were terminated (Zamin.uz, 2026). Termination of a licence does not liquidate the legal entity: the agency continues to exist, retains its property and remains liable on its obligations, but the conditioned segment of its capacity collapses back into potentiality. No other category of civil law describes this state of affairs as precisely: the entity is alive, its special capacity is intact in the abstract, yet its defining activity is again lawfully closed to it.

The construct also determines the fate of transactions. Since the Civil Code permits the invalidation of a transaction made by a legal entity without the required licence (Civil Code, 1995), a contract by which an unlicensed entity undertakes to place a citizen in employment abroad is exposed to invalidation, and the protective purpose of the licensing regime, the shielding of jobseekers from unqualified and financially unsecured intermediaries, supplies the rationale for that exposure. The conditioning of capacity thus operates simultaneously on two planes: administratively, as a barrier to market entry, and civilly, as a ground affecting the validity of the entity’s juridical acts.

3.4 Conditioned capacity and the international standard of ILO Convention No. 181

The construction developed above is not a national idiosyncrasy; it reflects the architecture of the international standard. Convention No. 181 deliberately separates two questions: the legal status of private employment agencies, which is left to national law and practice after consultation with the social partners, and the conditions governing their operation, which are to be determined “in accordance with a system of licensing or certification” unless otherwise appropriately regulated (ILO, 1997). In other words, the Convention itself presupposes that the existence of an agency as a legal person and its authorization to operate are distinct legal moments, which is exactly the separation that the category of conditioned capacity captures on the plane of civil law doctrine.

The ILO’s practical guidance confirms that member states implement this standard through a spectrum of instruments, from simple registration through certification to full licensing with financial guarantees, and emphasizes that regulation is meaningful only in combination with monitoring and enforcement, including the possibility of withdrawing the authorization (ILO, 2007). The Uzbek two-tier model, register inclusion for domestic intermediation and licensing with a financial reserve for overseas placement, sits comfortably within this spectrum, at its more protective end for the migration segment, which is justified by the heightened vulnerability of citizens employed abroad.

Uzbekistan has not ratified Convention No. 181 (ILO, n.d.-a). Ratification is actively promoted both by the ILO, which points to the Convention as the framework for a labor market free from exploitative recruitment (ILO, n.d.-b), and by the international industry association of employment agencies, which argues that ratification improves the reputation and legal certainty of the national recruitment market (World Employment Confederation, 2019). Since the substantive machinery required by the Convention, licensing, worker protection and state supervision, is already present in national law, the normative distance to ratification appears short; what ratification would add is an international law anchor for the stability of the existing regime.

4. Discussion

4.1 Theoretical significance: a third member in the taxonomy of capacity

The main theoretical result of this study is the justification of a third member in the traditional two-member taxonomy of the legal capacity of legal entities. The dichotomy of general and special capacity, inherited from the debates around the ultra vires doctrine and codified in post-Soviet civil law, describes the scope of capacity but not its activation. The category of conditioned civil legal capacity adds the missing temporal and administrative dimension: it explains how an entity can simultaneously exist, possess special capacity in the abstract, and yet lawfully lack the ability to perform its defining activity. For private employment agencies, this is not a marginal technicality but the central fact of their legal existence, since the conditioned segment coincides with their statutory purpose (Law No. ЎПҚ-501, 2018; Civil Code, 1995).

Framing the licence and the register entry as elements of a juridical composition completing the agency's capacity has consequences for how lawyers should argue in disputes. It suggests that the question in litigation over the acts of an unlicensed agency is not whether the entity existed or whether its organs were authorized, but whether the conditioned segment of capacity had been activated at the moment of the transaction, and it directs attention to the protective purpose of the condition when courts weigh invalidation against the interests of the jobseeker, who will often be the innocent party. The construct is also exportable: analogous reasoning applies to other entities whose statutory purpose is entirely enclosed within a licensed activity, such as banks and insurance organizations, and the private employment agency provides a particularly clean illustration because its regime combines two different conditioning instruments, register inclusion and licensing, within one statute.

4.2 Practical significance: the 2024-2026 reform of external labor migration

The practical significance of conditioned capacity is best seen in the reform launched in October 2024. The state decided to withdraw from the operator role in overseas placement and to transfer this function to private recruitment agencies by 1 January 2026, while simultaneously establishing the Migration Agency under the Cabinet of Ministers as regulator and strengthening supervision over private agencies (Resolution No. ПҚ-367, 2024; Gazeta.uz, 2024; Kun.uz, 2024). Such a

transfer is politically feasible only if the state retains levers of control over the private actors that inherit the function. Conditioned capacity is precisely that lever: by keeping the core activity of the agencies under the suspensive condition of licensing, backed by a financial reserve, and under the resolute threat of licence termination, the state can privatize the service without privatizing the responsibility for worker protection.

The observable market response supports this reading. The reduction of the financial reserve requirement from 8,500 to 4,000 basic calculation units lowered the cost of satisfying the condition (Kun.uz, 2024), and the official register grew to forty-seven licensed agencies by mid-2026, with a visible acceleration of new licences in 2025 and 2026 (Migration Agency, 2026). At the same time, the terminations of 2026 demonstrate that the condition remains a live instrument of discipline rather than a formality (Zamin.uz, 2026). For practicing lawyers, including advocates advising agencies and jobseekers, the model yields concrete guidance: an agency's counterparties should verify not the charter alone but the current state of the conditioned segment of its capacity, that is, its presence in the register and the validity of its licence, both of which are publicly verifiable through official resources (Migration Agency, 2026).

4.3 Recommendations

Four recommendations follow from the analysis. First, the category of conditioned civil legal capacity deserves express doctrinal recognition in Uzbek civil law science and in the teaching of the law of legal entities, since it accurately describes a growing class of entities whose statutory purpose is fully enclosed within licensed activity. Second, the legislation on private employment agencies would benefit from an explicit statutory statement of the civil consequences of acting without register inclusion or a licence, in particular the fate of placement contracts and the priority of the jobseeker's restitution and compensation claims, so that the protective purpose of the conditioning does not turn against the persons it is meant to protect. Third, the public verifiability of the condition should be maintained and deepened: the register of agencies, with licence numbers and dates, is already published online (Migration Agency, 2026), and its completeness and timeliness should be treated as a legal obligation of the regulator, since third parties are expected to rely on it. Fourth, ratification of ILO Convention No. 181 should be

considered: the national regime is already structurally aligned with the Convention's licensing standard, and ratification would stabilize the regime internationally and signal the maturity of the reformed market (ILO, 1997; ILO, n.d.-b; World Employment Confederation, 2019).

5. Conclusion

This article has proposed and defended the concept of conditioned civil legal capacity as the adequate doctrinal description of the legal position of private employment agencies. Under Article 41 of the Civil Code of Uzbekistan, the capacity of a legal entity arises at creation and is shaped by the objectives of its activity, and certain activities may be conducted only under licence (Civil Code, 1995). For private employment agencies, whose entire statutory purpose lies within the regulated zone, this general mechanism produces a distinctive configuration: a three-layer capacity in which the general and special layers are complete from the moment of registration, while the core layer is activated only by the public-law conditions of register inclusion and licensing (Law No. ЎPK-501, 2018). The construct distinguishes itself from special capacity, from sanctions restricting capacity and from private-law suspensive conditions, and is best understood as the result of a juridical composition.

The category is not an abstraction for its own sake. It supplies the legal technique by which Uzbekistan is currently executing one of the more consequential administrative reforms of recent years, the transfer of overseas employment placement from a state agency to the private sector under the supervision of the Migration Agency (Resolution No. ПК-367, 2024; Kun.uz, 2024), and it frames the everyday questions of practice: what an unlicensed agency may and may not do, what happens to its contracts, and what its clients should verify before relying on it. As the private segment of the labor market matures and the enforcement practice of 2026 shows the conditions being applied in earnest (Zamin.uz, 2026), the theoretical clarity of the category will only gain in practical value, and its alignment with the licensing standard of ILO Convention No. 181 (ILO, 1997) provides a ready bridge between national doctrine and the international law of the labor market.

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