KAZAKHSTAN

Law and Practice

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1. GENERAL

1.1 Prevalence of Arbitration

The Republic of Kazakhstan is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

At the same time, Kazakhstan has entered into only a few international treaties on legal assistance allowing the recognition and enforcement of foreign court judgments in the Kazakh territory or the judgments of the Kazakh courts in the territories of foreign states. This is one of the key reasons for selecting international arbitration as a forum for resolving disputes arising out of contracts with foreign counterparties.

In light of the fact that the practice of dispute arbitration is poorly developed in Kazakhstan, in the absence of a foreign element, the domestic parties often prefer resolving disputes in state courts. This is also connected with the fact that enforcement of an arbitral award requires an application to a state court for recognition and enforcement of the arbitral award, whereas a state court judgment may be immediately enforced.

1.2 Impact of COVID-19

The COVID-19 pandemic forced the permanent arbitral institutions to transfer to online proceedings for the period of strict quarantine restrictions. Official websites of arbitral institutions can now offer an opportunity to file a statement of claim online.

The documents are submitted by the parties by way of electronic messages or, if it becomes necessary to submit the originals, they are delivered to an arbitral institution by post.

In light of easing the quarantine measures in Kazakhstan, certain arbitral institutions start conducting in-person arbitration proceedings.

1.3 Key Industries

The authors have not seen any significant international arbitration activity in 2020–21 or decreased international arbitration activity during this period.

1.4 Arbitral Institutions

The best-known arbitral institutions in Kazakhstan are:

- Kazakhstan International Arbitration;
- the International Arbitration Centre under the AIFC (IAC);
- the Arbitration Center of the National Chamber of Entrepreneurs “Atameken”; and
- International Arbitration “IUS”.

Kazakhstan International Arbitration is one of the most authoritative arbitral institutions, because it is headed by a famous civil lawyer, professor M. K. Suleimenov; it is also represented by arbitrators from the scientific community of local famous civil lawyers.

During recent years, the International Arbitration Centre under the AIFC has become popular. It was set up in 2018 as part of establishing the Astana International Financial Centre in Kazakhstan, which enjoys a special legal regime, and has the AIFC court and an arbitral institution. The AIFC’s governing law consists of the AIFC acts based on the principles, rules and precedents of the laws of England and Wales, making dispute resolution by the IAC look attractive for businesses seeking fair resolution of disputes.

The National Chamber of Entrepreneurs “Atameken” was organised in the framework of abolishment of the Kazakhstan’s chambers of commerce. Previously, under the European

Convention on International Commercial Arbitration (Geneva, 21 April 1961), it was necessary to apply to a chairman of a competent chamber of commerce for appointment of an arbitral institution with respect to pathological arbitration clauses. After abolishment of the chambers of commerce and industry in Kazakhstan, such applications are resolved by the National Chamber of Entrepreneurs "Atameken". In turn, the said chamber appoints, as a rule, its Arbitration Center as the arbitral institution. In light of this fact, many disputes are considered by the Arbitration Center of the National Chamber of Entrepreneurs "Atameken" in the framework of appointment of this arbitral institution with respect to pathological arbitration clauses.

As regards the arbitral institutions set up in 2020–21, we may distinguish the arbitral institution under Arbitration of Oil Capital LLP, which is the first permanent arbitration in Atyrau.

1.5 National Courts

There are no courts in the Republic of Kazakhstan specifically designated to resolve cases relating to arbitration proceedings.

Jurisdiction over such cases is determined according to the general rules for determining jurisdiction secured in the Civil Procedure Code of Kazakhstan No 377-V dated 31 October 2015 (CPC).

Pursuant to the CPC, a petition to set aside an arbitral award must be filed with the appropriate court of appeal of the Republic of Kazakhstan.

2. GOVERNING LEGISLATION

2.1 Governing Law

International arbitration is governed in Kazakhstan by the Law No 488-V "On Arbitration" dated 8 April 2016 (the "Arbitration Law"). The division of arbitration into local and international is conditional, because their legislative regulation is similar.

In general, although the Arbitration Law is based on the UNCITRAL Model Law with respect to certain principles, it contains stricter requirements with regard to the arbitration process.

Firstly, the terms secured in the Arbitration Law do not coincide with the key concepts of the UNCITRAL Model Law. According to the Arbitration Law, the term "arbitration" means "arbitration set up specifically to consider a specific dispute, or a permanent arbitration", thus mixing the concept of arbitration as a method to resolve disputes with concepts such as "arbitration tribunal" and "arbitral institution".

The Arbitration Law contains stricter requirements for arbitrators. Specifically, an arbitrator may be a person who has reached the age of 30 and has higher education and work experience in the speciality of at least five years. An arbitrator solely resolving a dispute must have a higher legal education. In the case of collective dispute resolution, a chairman of the arbitration tribunal must have a higher legal education.

Unlike the UNCITRAL Model Law, the Arbitration Law contains a special procedure: return of a statement of claim, which does not prevent a repeat filing of the same claim by a claimant to arbitration.

Unlike the UNCITRAL Model Law, the Arbitration Law provides for a two-month period during which a dispute must be considered and resolved by arbitration. The Arbitration Law also establishes certain requirements as to the content of an arbitral award.

The Arbitration Law provides for a wider list of grounds for setting aside an arbitral award and for rejection of the recognition and enforcement of an arbitral award as compared with the UNCITRAL Model Law. Specifically, as an additional ground for setting aside the arbitral award or rejection of the recognition and enforcement of an arbitral award, the Arbitration Law provides for the presence of:

- an effective court judgment or arbitral award rendered in a dispute between the same parties, on the same subject and under the same grounds; or
- a ruling of a court or arbitration on termination of proceedings in a case in connection with the claimant's abandonment of claim.

2.2 Changes to National Law

There have been no significant changes to the national arbitration law in the past year, and there is no pending legislation that may change the arbitration landscape.

3. THE ARBITRATION AGREEMENT

3.1 Enforceability

Form of Arbitration Agreement

The Arbitration Law obligates the use of a written form of an arbitration agreement. It did not completely imbibe the recommended language of the UNCITRAL Model Law on International Commercial Arbitration as amended in 2006. In particular, the Arbitration Law does not contain the recommended provision that "an arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means".

According to the Arbitration Law, the requirement on the written form of an arbitration agreement has been complied with if an arbitration clause is present in a document signed by the parties, or in the exchange of letters, telegrams, phone and fax messages, and electronic documents, or other documents that determine the actors and the content of their expression of will (Article 9.1). Given that Kazakhstan's judicial practice is fairly restrictive in construing the electronic documents, the lack of a broader definition of "electronic communication" or "data message" in the Arbitration Law (as, for example, in the UN Convention on the Use of Electronic Communications in International Contracts (New York, 23 November 2005), to which Kazakhstan did not accede) poses the risks of potential impossibility to qualify the exchange of information via SMS, instant messaging (IM), email and other electronic communication channels as proper arbitration agreement execution.

The Arbitration Law allows for a possibility to conclude an arbitration agreement via a reference in a contract to a document containing a provision allowing disputes to be referred to arbitration, provided that the contract is concluded in writing and the reference makes the arbitration agreement a part of the contract (Article 9.3).

An arbitration agreement is deemed to have been executed in writing if it is concluded by way of exchanging a statement of claim and a statement of defence, in which one of the parties asserts that the agreement is in place and the other does not object (Article 9.2 of the Arbitration Law).

Competent Authority's Consent to Conclude an Arbitration Agreement

The Arbitration Law requires that in order to conclude an arbitration agreement with a Kazakh individual or a legal entity, the following entities must obtain consents from the authorised agency in the relevant industry or from the local executive authority:

- governmental agencies;
- state-owned enterprises; and
- legal entities where 50% of voting shares (interests in the charter capital) or more are directly or indirectly owned by the state.

According to Article 8.10 of the Arbitration Law, the above entities, if intending to enter into an arbitration agreement, must file a request for consent to such agreement to the relevant industry's authorised agency (in respect of national property) or the local executive authority (in respect of municipal property), specifying the projected amounts of arbitration costs. The authorised agency of the relevant industry or the local executive authority must consider the request within 15 calendar days and send a written message concerning irrevocable consent or motivated refusal to give consent.

Validity, Continuity and Enforceability of Arbitration Agreement

In addition to requirements concerning the form of an arbitration agreement and necessity to obtain the authorised agency's consent, Article 10 of the Arbitration Law specifies that an arbitration agreement must be valid, effective and enforceable. Given these conditions, courts refer the parties to arbitration if a statement of claim is filed with respect to a dispute covered by an arbitration agreement.

Kazakh legislation is silent as to the criteria pursuant to which an arbitration agreement is deemed to be valid, effective and enforceable.

Neither Kazakh legislation nor its judicial practice unequivocally answers the question of what is the nature of an arbitration agreement. The legislation does not clarify whether an arbitration agreement is a civil or a procedural transaction.

The only rule in the Arbitration Law directly referring to the Civil Code in terms of the regulation of arbitration agreements – thus hinting at the legislator's position on the contractual nature of arbitration agreements – was contained in Article 9.5 of the Arbitration Law and was in effect from 19 April 2016 to 10 March 2017. This rule provided for the possibility to repudiate an arbitration agreement before a dispute arose. Although this rule was abolished and ceased to operate on 11 March 2017, it was present in the original version of the Arbitration Law, signalling that the legislator had probably treated arbitration agreements from the outset as a type of civil contract.

In the event of such approach, if considering an arbitration agreement as a civil transaction, one may conclude that the general rules on invalidity of transactions stipulated by the Kazakh legislation (specifically, Articles 158 and 159 of the Civil Code) apply to invalidity of the arbitration agreement.

When considering the issue of whether an arbitration agreement has lost its force or remains in effect, the below information must be taken into consideration.

- Has an arbitration agreement been terminated or cancelled?
- Has this dispute already been resolved between the same participants by a court or arbitration panel?

An arbitration agreement will cease to be effective if it had been effective in due time but was subsequently terminated. An arbitration agreement is deemed to have lost its effect if the same dispute between the same participants has already been resolved by a court or an arbitration panel.

Kazakh legislation does not list cases where an arbitration agreement is recognised as unenforceable. In practice, unenforceability of an arbitration agreement may be caused by physi-

cal circumstances; for example, cases where an arbitration agreement provides for an arbitral institution that had ceased to exist by the moment of dispute or the death of an arbitrator whose name is specified in the arbitration agreement.

Unenforceability of an arbitration agreement also means an unclear wording, which does not allow the establishment of the true intentions of the parties with respect to the arbitration mechanism of resolving a dispute. An example of such unenforceable arbitration agreement may be an arbitration agreement whereby the parties intend to refer a dispute to arbitration, but fail to specify and accurately name the arbitration rules or arbitral institution, which makes it impossible to determine the arbitral institution selected by the parties.

Insufficient individualisation of an arbitral institution does not always deprive an arbitration agreement of its legal force.

Thus, Kazakhstan is a party to the European Convention on International Commercial Arbitration (Geneva, 21 April 1961) (the "European Convention"), which provides for a detailed mechanism of individualisation of an arbitral institution if the parties failed to specify it in their arbitration agreement. Specifically, according to Article IV of the European Convention, where the parties have agreed to submit their disputes to a permanent arbitral institution without determining the institution in question and cannot agree thereon, the claimant may send a request to determine such institution to the president of the Chamber of Commerce of the place of arbitration or to the president of the competent Chamber of Commerce of the respondent's habitual place of residence. Where the claimant fails to exercise this right, the respondent or the arbitrator(s) is/are entitled to do so.

3.2 Arbitrability

Only disputes arising out of civil relations may be submitted to arbitration (Article 8.2 of the Arbitration Law).

Moreover, according to the Arbitration Law, the following disputes are non-arbitrable:

- those affecting the interests of underage persons;
- those affecting the interests of persons recognised as incapable or those with diminished capacity;
- those concerning rehabilitation and bankruptcy;
- those between natural monopoly entities and their consumers;
- those between governmental authorities;
- those between legal entities where 50% of voting shares (participatory interest in the charter capital) or more are directly or indirectly owned by the state; and
- those arising out of personal non-property relations, which are not associated with property relations (disputes over protection of honour, dignity and business reputation, right on name, privacy protection, personal image, etc).

3.3 National Courts' Approach

Kazakh legislation generally recognises the parties' selection of the law governing an arbitration agreement. Thus, Articles 52.1 and 57.1 of the Arbitration Law and Article 255 of the CPC specify that a Kazakh court at the stage of setting aside or recognition of an arbitral award must evaluate validity of the arbitration agreement according to the law of the state that the parties selected as providing the governing law.

If the law governing the arbitration agreement is not determined by the parties, as applied to the Kazakh (local) arbitration, the court will evaluate

the validity of the arbitration agreement based on Kazakh legislation.

As applied to foreign arbitral awards, in the event of absence of an indication as to the governing law in an arbitration agreement, the court will evaluate the validity of the arbitration agreement according to the law of the country where the arbitral award was rendered.

Recognition of an Arbitration Agreement by Courts

If a statement of claim is filed to court, with respect to which there is a concluded arbitration agreement, the court must return the statement of claim and refer the parties to arbitration. Please see **5.3 Circumstances for Court Intervention**, which applies to this issue.

3.4 Validity

The Arbitration Law secures the principle of autonomy of an arbitration agreement. This principle means that invalidity of the main contract does not entail invalidity of the arbitration clause.

4. THE ARBITRAL TRIBUNAL

4.1 Limits on Selection

The parties are not limited in their selection of arbitrators. However, the Arbitration Law secures special requirements that an arbitrator must meet.

According to Kazakh legislation, an arbitrator may be a person meeting in total the following criteria:

- absence of direct or indirect interest in the case outcome, and independence from the parties to a dispute;
- they must be 30 years or older;
- they must have a higher education; and
- they must have at least five years' work experience in the speciality.

An arbitrator solely resolving a dispute must have a higher legal education. In the case of collective dispute resolution, a chairman of the arbitration panel must have a higher legal education.

Kazakh citizens, foreigners and stateless persons may act as arbitrators.

Additional requirements for the arbitrator candidates may be agreed upon by the parties or determined by the rules of the arbitral institution pursuant to which a dispute is considered.

A person cannot be an arbitrator if they:

- have been selected or appointed by a judge;
- have been recognised by a court as incapable or partially capable in accordance with the procedure established by Kazakh legislation;
- have an unexpunged or unspent conviction;
- are a state official; a deputy of the Parliament of Kazakhstan or a deputy of a *maslikhat* (a local representative body) carrying out the activities on a permanent or full-time basis, remunerable out of the state budget funds; or in the military.

4.2 Default Procedures

According to the general rule, the arbitration panel is formed by way of electing the arbitrator(s) by agreement of the parties or in accordance with the procedure established by the rules of an arbitral institution.

The following default procedure applies if the parties' chosen method for selecting arbitrators fails.

- Unless the parties agreed otherwise, three arbitrators are appointed to resolve a dispute in arbitration.

- When forming a panel of arbitrators composed of three arbitrators, each party appoints one arbitrator, and the two arbitrators appointed this way elect the third one – the chairman of the panel of arbitrators.
- In the case of absence of the parties' agreement and unless otherwise established by the rules of the arbitral institution, the head of the arbitral institution or Arbitration Chamber, in the case of dispute consideration by ad hoc arbitration, may appoint the arbitrator(s) within 30 calendar days upon an application of one of the parties to the dispute from the persons included in the registers of the Arbitration Chamber or the arbitral institution in cases where:
  (a) a party fails to appoint an arbitrator within 30 days of the moment of receiving a relevant request from the other party, unless any other term is established by the rules or the parties' agreement;
  (b) two arbitrators fail to elect the third arbitrator within 30 calendar days of the moment of their appointment, unless any other term is established by the rules or the parties' agreement; or
  (c) the parties fail to select an arbitrator solely considering a dispute within 30 calendar days, unless any other term is established by the rules or the parties' agreement.

4.3 Court Intervention

Courts cannot intervene in the arbitrator selection procedure.

However, if the arbitrator selection procedure contradicts the parties' agreement or, in the absence of such agreement, the laws of the country where the arbitration proceedings take place, this serves as a ground for setting aside an arbitral award or rejection of recognition and enforcement thereof by a court.

4.4 Challenge and Removal of Arbitrators

If the arbitrator fails to meet the requirements specified in **4.1 Limits on Selection**, the parties may challenge the arbitrator.

The grounds for challenging an arbitrator may also be the following circumstances casting doubt upon the arbitrator's impartiality and/or competence in the situation where:

- a person closely related to the arbitrator is a party to the dispute or the arbitrator may otherwise expect significant advantage or damages, depending on the dispute consideration results;
- an arbitrator or a person closely related to the arbitrator is a CEO in a legal entity, its branch or representative office that is a party to the dispute, or otherwise represents a party or any other person that may expect significant advantage or damages, depending on the dispute consideration results;
- an arbitrator acted as an expert or otherwise predetermined their position in the dispute or assisted a party to the dispute with the preparation or presentation of its position;
- an arbitrator received or requested a reward in connection with consideration of the case that is not stipulated by the Arbitration Law; or
- an arbitrator unreasonably fails to observe the terms of arbitration proceedings.

A person closely related to an arbitrator is understood as a person who is the arbitrator's spouse or a close relative, a cousin-in-law or an employee of an arbitral institution; who is in labour or other contractual relations with the arbitrator; or who has other connections evidencing their dependence on the arbitrator.

A party may challenge an arbitrator selected by such party only if it becomes aware of the cir-

cumstances serving as a ground for challenging the arbitrator after forming the arbitration panel to consider this case.

If the arbitrator challenging procedure has been neither agreed upon by the parties, nor determined by the rules of an arbitral institution, a written motivated application for challenging the arbitrator must be filed by a party to arbitration within 30 days of the date such party became aware of the circumstances serving as the ground for challenging.

If an arbitrator who has been challenged refuses to satisfy the application or one of the parties disagrees with such challenge, the issue of challenging the arbitrator must be resolved by the arbitrators forming an arbitration panel within ten calendar days of the moment of receiving a written motivated application of the party.

The issue of challenging an arbitrator who solely considers a dispute is resolved by such arbitrator.

If an arbitrator solely considering a dispute refuses to satisfy an application for challenging from one or both parties, or one of the parties disagrees with the arbitrator challenging, the issue of challenging is resolved by way of reaching an agreement between the parties on the termination of arbitration proceedings with this panel of arbitrators.

4.5 Arbitrator Requirements

Please see **4.1 Limits on Selection**.

5. JURISDICTION

5.1 Matters Excluded from Arbitration

Please see **3.2 Arbitrability**.

5.2 Challenges to Jurisdiction

The principle of competence-competence is secured by the current legislation of Kazakhstan.

The Arbitration Law sets forth that the arbitral tribunal decides the issue of whether it has powers (jurisdiction) to consider a submitted dispute, including in cases where one of the parties objects to the arbitration proceedings due to invalidity of an arbitration agreement.

5.3 Circumstances for Court Intervention

According to the general rule, if a statement of claim is filed to court in connection with a dispute covered by an arbitration agreement, the court must return the statement of claim and refer the parties to arbitration.

However, if the court discovers that the arbitration agreement is invalid, lost its force and cannot be enforced, it can accept the case for consideration. In this situation, despite the fact of filing a claim to court, the arbitration proceedings may be commenced or continued and an arbitral award be rendered so far as the court considers the issue of jurisdiction over the dispute.

Due to the heavy workload of the judicial system and the great number of cases each judge has to deal with, judges tend to recognise the presence of an arbitration agreement and refer disputes for consideration to arbitration.

The authors are unaware of the practice pursuant to which Kazakh courts review negative rulings on jurisdiction by arbitral tribunals.

5.4 Timing of Challenge

Generally, the arbitral tribunal decides the issue of whether it has powers (jurisdiction) to consider a submitted dispute.

However, if a party challenges the jurisdiction of the arbitral tribunal in court, it is understood that it may do this before submitting the first statement on the subject of the dispute to arbitration.

This stems from the aggregate of the following rules of the Arbitration Law:

- a party may claim that the arbitral tribunal has no powers to consider a submitted dispute before its first statement on the subject of the dispute; and
- a party is deemed to have waived its right to object if it is aware that any provision of the Arbitration Law or any requirement of an arbitration agreement has not been complied with and, nevertheless, further participates in the arbitration proceedings without any objections against such failure to comply within the term determined by the arbitration rules for such purpose.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

Kazakh legislation is silent as to the standard of judicial review (eg, deferential or de novo) for considering the issue of challenging the jurisdiction of the arbitral tribunal. In practice, the courts are more likely to follow the de novo standard; ie, they examine the arguments of the arbitral tribunal and consider the arguments on the merits of the party challenging the jurisdiction of the arbitral tribunal.

5.6 Breach of Arbitration Agreement

Generally, if a statement of claim is filed to court in connection with a dispute covered by an arbitration agreement, the court must return the statement of claim and refer the parties to arbitration.

However, if the court discovers that the arbitration agreement is invalid, lost its force and cannot be enforced, it can accept the case for consideration. In this situation, despite the fact of a claim being filed to court, the arbitration proceedings may be commenced or continued and an arbitral award be rendered so far as the court considers the issue of jurisdiction over the dispute.

Due to the heavy workload on the judicial system and the great number of cases each judge has to deal with, judges tend to recognise the presence or an arbitration agreement and refer disputes for consideration to arbitration.

5.7 Third Parties

The Arbitration Law contains a rule pursuant to which a statement of claim is subject to return if it affects the interests of third parties that are not the parties to an arbitration agreement.

In practice, the arbitral institutions determine the procedure under which arbitration may be conducted with the participation of third parties that are not the parties to an arbitration agreement (eg, such procedure stipulates that consents must be obtained from the parties to the arbitration agreement and the third parties involved).

6. PRELIMINARY AND INTERIM RELIEF

6.1 Types of Relief

The arbitral tribunal is permitted to award an interim relief upon a request from ether party. Kazakh legislation does not determine what types of relief can be awarded. The Arbitration Law only specifies that the arbitral tribunal may order the other party to take such measures to secure a claim with respect to the subject of the dispute that it deems reasonable.

Later, after the arbitral tribunal issues a ruling on interim relief, a party to the arbitration proceedings may apply to court with an application on

interim relief in order to make such measures binding and to ensure the enforcement thereof with respect to the party in the framework of enforcement proceedings.

Please note that the practice of issuing such measures by an arbitral tribunal is not widespread. This is connected with the fact that Kazakh legislation allows for the filing of an application by a party to the arbitration proceedings directly to court for adoption of a relief by court without the necessity to preliminarily apply for this purpose to an arbitral tribunal. This option is often applied in practice.

6.2 Role of Courts

As mentioned above, after an arbitral tribunal adopts an interim relief, a party may file a relevant application to court for application of the interim relief. Obtainment of a court resolution allows ensuring the implementation of the relief (attach property by way of entering records into relevant public registers, freeze bank accounts, etc).

Kazakh legislation does not expressly address the issue of whether an interim relief may be granted by court in the framework of foreign arbitration proceedings. However, in practice, such applications have been satisfied and courts have been granted such measures in aid of foreign-seated arbitrations.

The CPC provides for the following provisional measures:

- freezing of money or other property of a defendant;
- prohibiting certain actions by a defendant;
- prohibiting other persons from performing obligations to a defendant as stipulated by legislation or contract (eg, to transfer the disputed property to the defendant or register rights thereto);
- suspending the sale of property, if a claim for the release of that property is filed; and
- suspending debt recovery on the basis of a writ of execution (enforcement order) that is disputed by an applicant.

This list is not exhaustive. The court may also apply other measures, depending on the merits of the dispute, including several measures at a time.

Arrests (freezing) of money or other property owned by a defendant are most often applied in Kazakhstan when considering commercial disputes.

The court can request a claimant to provide security for the defendant's potential losses caused by provisional measures, through placing a certain amount on the deposit account of the authorised agency. However, the "authorised agency" is not designated by legislation and the mechanism of implementing this provision has not yet been determined. Therefore, in practice, a defendant cannot obtain security for its potential losses. If the court rejects a claim, a defendant can file a claim against a claimant for compensation for losses caused by such provisional measures.

A court ruling on the adoption of interim or provisional measures is subject to enforcement by court enforcement officers, whose function is to identify the defendant's property and send a court ruling on attachment to the relevant authorities for execution.

Kazakh legislation does not provide for a possibility to use emergency arbitrators.

6.3 Security for Costs

Kazakh legislation does not provide for a possibility for the courts and/or the arbitral tribunal to order security for costs.

As mentioned above, the CPC provides for a possibility to grant "security for losses" where the court can request a claimant to provide security for the defendant's potential losses caused by the provisional measures, through placing a certain amount on the deposit account of the authorised agency.

7. PROCEDURE

7.1 Governing Rules

The procedure for arbitration is governed by the Arbitration Law and international conventions to which Kazakhstan is a party: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) and the European Convention on International Commercial Arbitration (Geneva, 21 April 1961).

7.2 Procedural Steps

According to the Arbitration Law, arbitration proceedings are conducted in accordance with the rules of an arbitral institution and an arbitration agreement.

The procedure for arbitration secured in the Arbitration Law may be conditionally divided into the following steps.

Initiation of Arbitration Proceedings, Formation of Arbitration Panel

A claimant sets out the claims in a statement of claim, which is submitted to arbitration in writing. A copy of the statement of claim is transferred to a defendant.

The statement of claim must contain the following information:

- the date of submitting the statement of claim;
- the names of the parties, their postal addresses and banking details;
- substantiation of the application to arbitration;
- the claimant's claims;
- the circumstances serving as a ground for the claimant's claims;
- evidence confirming the grounds of the stated claims;
- claim value if the claim is subject to evaluation; and
- a list of the documents and other materials attached to the statement of claim.

The arbitration rules may provide for additional requirements to the content of a statement of claim.

After accepting the statement of claim, an arbitral institution must issue a ruling within ten calendar days, unless any other term is established by the rules or the parties' agreement, on initiation of arbitration proceedings in accordance with the arbitration rules or the rules agreed upon by the parties, notify the parties of the venue of proceedings, and propose the defendant to submit a written response to the statement of claim. In this case, the defendant's failure to submit objections cannot serve as an obstacle preventing consideration of the dispute.

If neither the arbitration rules nor the parties' agreement determines the period for submission of a response to the statement of claim, the said response must be submitted at least ten calendar days prior to the first arbitration session.

After initiation of the arbitration proceedings, the panel of arbitrators is formed (for details concerning the procedure for forming the panel of arbitrators, please see **4.2 Default Procedures**).

Arbitration Proceedings

Arbitration must serve a notice of time and venue of arbitration proceedings to the parties in a proper and timely manner, unless otherwise agreed upon by the parties.

Unless otherwise provided for by the parties' agreement, arbitration decides on whether to conduct an oral case hearing for submission of evidence or oral discussions or to conduct proceedings only based on the documents and other materials. If the parties did not agree to conduct an oral hearing, arbitration must conduct such hearing at a proper stage of proceedings upon a request from either party.

Unless the parties agreed otherwise, arbitration proceedings must be conducted at a private arbitration session with the participation of the parties or their representatives. An arbitration session (part thereof) may be conducted using videoconference communications and other programs and technical means upon the parties' application or on the initiative of arbitration.

Disputes are considered and resolved within two months of the date of accomplishing the case preparation to arbitration proceedings, unless any other term is established by the rules or the parties' agreement. The established terms may be extended by arbitration, depending on the complexity of the dispute in question.

Arbitral Award

After examining the case circumstances, arbitration renders an award by a majority of votes of the arbitrators forming the panel of arbitrators.

An arbitral award is announced at the arbitration session. Arbitration may announce only the operative part of the award. In this case, a substantiated award must be sent to the parties within ten calendar days of the date of announcing the operative part of the award, unless any other term is established by the rules or the parties' agreement.

For more details on the statutory requirements for an arbitral award, please see **10.1 Legal Requirements**.

7.3 Powers and Duties of Arbitrators

The Arbitration Law does not secure the powers and duties of arbitrators. Arbitrators must meet certain requirements:

- they must not be directly or indirectly interested in the case outcome;
- they must be independent from the parties; and
- they must be 30 years old or older, have a higher education and at least five years' work experience in the speciality.

7.4 Legal Representatives

The Arbitration Law does not stipulate any special requirements for the parties' representatives (eg, presence of legal education, advocate's licence). In other words, any person who is capable and has submitted a properly executed power of attorney confirming such person's powers to handle the case may be a representative.

8. EVIDENCE

8.1 Collection and Submission of Evidence

The Arbitration Law does not provide for any specific rules for interrogating the parties, using witness statements or specific rules for examining the evidence. This may be stipulated by the parties in an arbitration agreement or the rules of an arbitral institution.

8.2 Rules of Evidence

According to the Arbitration Law, each party must prove the circumstances to which it refers as to substantiation of its claims and objections. An arbitrator may propose that the parties, if they decide that the submitted evidence is insufficient, submit additional evidence.

Arbitrators may refuse to accept the evidence submitted by the parties, if such evidence does

not relate to a dispute or such refusal is justified subject to the time when such evidence has been submitted.

An arbitrator must directly examine all the evidence available with respect to the case.

In light of the fact that Kazakh legislation does not divide arbitration into international and local, the above regulation equally applies to both international and domestic arbitration.

8.3 Powers of Compulsion

The evidence rules applied by the arbitral tribunal (or arbitral institution) have a certain peculiarity: unlike the state court as a public authority, arbitration has no authoritative functions.

Therefore, the Arbitration Law secures that the arbitral tribunal (or arbitral institution) or a party with the consent of the arbitral tribunal (or arbitral institution) may apply to court with a request to assist with the obtainment of evidence (disclosure of evidence).

There are no powers of compulsion or court assistance for arbitrators to require the attendance of witnesses.

9. CONFIDENTIALITY

9.1 Extent of Confidentiality

Arbitration proceedings are based on the principle of confidentiality, which means that arbitrators and participants in arbitration proceedings may not disclose information coming to their knowledge in the course of arbitration proceedings without the consent of the parties or their legal successors, and they cannot be interrogated as witnesses concerning the information coming to their knowledge in the course of arbitration proceedings.

Unless the parties agreed otherwise, arbitration proceedings are conducted at a closed arbitration session with the participation of the parties and/or their representatives.

10. THE AWARD

10.1 Legal Requirements

Generally, the arbitral tribunal must render an award within two months of the date of commencement of the proceedings, unless any other term is established by the rules or the parties' agreement. This term may be extended by arbitration, depending on the complexity of a dispute under consideration.

An arbitral award is announced at the arbitration session. Arbitration may only announce the operative part of an award. In this case, a substantiated award must be sent to the parties within ten calendar days of the date of announcing the operative part of the award, unless any other term is established by the rules or the parties' agreement.

An arbitral award must be rendered in a written form and signed by all arbitrators (sole arbitrator). If a signature of one of the arbitrators is absent, the reason for this must be indicated in the arbitral award. An arbitrator adhering to a dissenting opinion is not required to sign, but the dissenting opinion must be attached in writing to the arbitral award. The award enters into force from the date of its signing by the arbitrators (sole arbitrator).

An arbitral award must contain the following information:

- date of rendering the award;
- seat of arbitration;
- composition of the arbitral tribunal;

- substantiation of the arbitral tribunal's jurisdiction to resolve the matter;
- names of the parties to a dispute, titles of the parties' representatives and description of their authorities;
- description of the claimant's claims and the defendant's objections;
- merit of a dispute;
- facts and circumstances as established by an arbitral tribunal; evidence in support of the established facts and circumstances; the laws based on which the arbitral tribunal renders its award;
- the arbitral tribunal's conclusions on satisfying or rejecting each of the stated claims;
- the amount of the arbitration costs and allocation of costs between the parties; and
- the time and procedure for the execution of an arbitral award, if required.

10.2 Types of Remedies

As a general rule, arbitration may apply all remedies set forth in the Civil Code of 27 December 1994, which are as follows:

- recognition of rights;
- restoration of the position that existed prior to the violation of a right;
- suppression of actions violating a right or posing a threat of violation;
- ordering of specific performance;
- recovery of losses, forfeit;
- invalidation of a voidable transaction and application of the consequences of its invalidity;
- application of the consequences of a void transaction;
- compensation for moral damages;
- termination or change of legal relations; and
- other remedies stipulated by legislative acts of Kazakhstan.

10.3 Recovering Interest and Legal Costs

The Arbitration Law does not provide for a possibility to recover interest, although such opportunity is stipulated for judicial proceedings.

As regards the allocation of arbitration costs between the parties, in this case the arbitral tribunal follows the parties' agreement or, in the absence of such, proportionally satisfied and dismissed claims.

11. REVIEW OF AN AWARD

11.1 Grounds for Appeal

Kazakh legislation does not provide for appealing against an arbitral award.

An arbitral award may be set aside by a Kazakh court. An applicant for setting aside must submit evidence to the court that the arbitral award contains a decision on the matter not contemplated by, or not falling within, the terms of the arbitration agreement, or it contains a decision on matters beyond the scope of the arbitration agreement, or a dispute is not within the jurisdiction of the arbitral tribunal.

If an arbitral award on matters falling within the terms of an arbitration agreement may be separated from an arbitral award on matters beyond that agreement, a court cannot refuse rendering an enforcement order (writ of execution) for enforcement of that very part of the arbitral award falling within the terms of the arbitration agreement:

- the court has considered one of the parties to the arbitration agreement as legally incapable, or an arbitration agreement is invalid under the law that the parties selected as the governing law of the arbitration agreement

and, in the absence of such choice, under the law of Kazakhstan;
- a party was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or was otherwise unable to provide its explanations under the circumstances admitted by the court as reasonable;
- the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties or, in the absence of such agreement, is not in accordance with the Arbitration Law; or
- the court judgment or arbitral award that has entered into legal force had been rendered in a dispute between the same parties, on the same subject matter and for the same reasons, or a court or an arbitral tribunal terminated the proceedings in connection with the abandonment or relinquishment of the claim by the plaintiff.

An arbitral award may also be set aside if the court finds that enforcement of the award contravenes the public policy of Kazakhstan, or the dispute in respect of which the arbitral award was rendered is not arbitrable in accordance with Kazakh legislation.

An application to set aside an arbitral award could be submitted to a Kazakh court within one month of the date of its receipt. The court duty must be paid when submitting the application. With respect to proprietary claims, the amount of the state duty is 1.5% for legal entities and 0.5% for individuals. In relation to non-property claims, the amount of the state duty is about USD1.7.

An application for setting aside an arbitral award must be considered by court within ten business days (this term is to be extended in some exceptional cases). Upon consideration of the application, the court renders a ruling on setting aside the arbitral award or rejecting the application submitted. The court ruling could be appealed to a higher-instance court within ten days and enters into force on the date of expiry of the period for appeal or on the date of rendering a decision by a higher-instance court.

The rulings rendered by the first-instance court and the appellate court could be further appealed to the Supreme Court of Kazakhstan, provided that the amount of claim under the arbitral award exceeds the threshold in the amount of approximately KZT5,834,000 for individuals and approximately KZT87,510,000 for legal entities.

11.2 Excluding/Expanding the Scope of Appeal

Kazakh legislation does not provide for the parties' opportunity to exclude or expand the scope of appeal or challenge.

11.3 Standard of Judicial Review

When considering an application for setting aside an arbitral award, the court cannot reconsider an arbitral award on the merits.

The court only verifies the presence of procedural grounds stated above for its setting aside.

12. ENFORCEMENT OF AN AWARD

12.1 New York Convention

Kazakhstan is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) and the European Convention on International Commercial Arbitration (Geneva, 21 April 1961).

In addition, Kazakhstan is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention").

12.2 Enforcement Procedure

Award Enforcement Procedures and Standards

A party applying for recognition and enforcement of an arbitral award must submit to the competent court the authenticated original award, or a duly certified copy thereof, and the original arbitration agreement (agreement including an arbitral clause), or a duly certified copy thereof.

The New York Convention does not define "duly certified copy", but the authors believe it to be a copy certified by the arbitral institution having rendered the award, or a notarised copy. If the documents are drawn up in a foreign language, the party must provide a duly certified translation of the documents into Kazakh or Russian (which is used, if necessary, alongside Kazakh).

An application for recognition and enforcement of an arbitral award must include a document confirming payment of the state duty; in 2021, the duty is about USD30.

The application for the arbitral award enforcement may be filed within three years of the date of expiry of the term for its voluntary performance. This gives rise to a question of how to determine the voluntary performance term, if it is not specified in the arbitral award. If the award or the rules of arbitration lack provisions setting the term for voluntary or immediate performance of the award, it would be expedient if the party, once it receives the full text of the award rendered in its favour, submits to the other party a written proposal to perform the award voluntarily, specifying a reasonable term for the same.

Grounds for Refusal to Recognise an Award

The CPC provides for a greater number of grounds for a refusal to recognise an award than stipulated by the New York Convention. In addition to the grounds provided for by Article V of the Convention, a court may refuse to recognise and enforce an arbitral award if a party against which the arbitral award was rendered submits evidence that there is an effective court judgment or arbitral award rendered in a dispute between the same parties, with respect to the same subject and on the same grounds, or a court or arbitration ruling on termination of proceedings in the case in connection with the claimant's abandonment of the claim.

Enforcement of an Award Set Aside by Courts in the Seat of Arbitration

According to the CPC and the Arbitration Law, recognition and enforcement or a foreign arbitral award may be rejected if it has not yet become binding on the parties or has been revoked, or its enforcement has been suspended by the court of the country pursuant to the laws according to which such arbitral award had been rendered.

This ground, according to its sense (although not letter for letter), reproduces the rule of Article 5.1.e of the New York Convention, which is to say that under the New York Convention, setting aside a foreign arbitral award based on any ground may result in refusal to enforce such award.

At the same time, since Kazakhstan acceded to the European Convention, for Kazakhstan, the application of the said Article 5.1.e of the New York Convention must be limited to the cases stipulated by Article 9.1 of the European Convention. Specifically, according to the European Convention, a rejection to recognise and enforce an arbitral award is only possible in the event of the arbitral award being set aside under the exhaustive set of grounds.

Since Kazakhstan is a party to both conventions, the provisions of the European Convention must prevail over the provisions of the New York Convention; ie, not every revocation of an arbitral

award may serve as a ground for rejection of recognition and enforcement.

Approach of the Courts when an Award Is Subject to Ongoing Set-Aside Proceedings

There are no explicit rules in Kazakh legislation regarding the approach of the Kazakh courts when a foreign arbitral award is subject to ongoing set-aside proceedings at the seat of arbitration.

Based on the firm's practice, the court did not suspend the recognition or enforcement of proceedings, even though a party filed an application for suspension, referring to the set-aside proceedings at the seat of arbitration. Subsequently, the arbitral award under this case was annulled; after which, the Kazakh court annulled its ruling on enforcement of the arbitral award upon the concerned party's application.

Immunity of a Foreign State at the Enforcement Stage

It is not sufficiently clear whether a foreign state enjoys immunity from the enforcement of arbitral awards.

On the one hand, Article 492 of the CPC provides that, as a general rule, a foreign state enjoys immunity from the enforcement of judicial acts in Kazakhstan, except in the following cases.

- The state has expressly consented to an immunity waiver:
  - (a) by international agreement;
  - (b) by an arbitration agreement or in a written contract; or
  - (c) by a declaration before the court or a written communication.
- The state has allocated or earmarked property for the satisfaction of the claim that is the object of the proceedings.
- The state uses the property in Kazakhstan or the property is designated for purposes other than the performance of sovereign power.

On the other hand, Article 482 of the CPC provides that by entering into an arbitration agreement, a foreign state voluntarily waives judicial immunity regarding the issues associated with implementation of the functions relating to arbitration by Kazakh courts. Enforcement of an arbitral award requires adoption of a relevant court ruling on recognition and enforcement by a Kazakhstan court. This could lead to a conclusion that when recognising and enforcing an arbitral award against a foreign state, the Kazakh court implements its functions relating to arbitration, whereby the foreign state is not immune from enforcement.

Kazakh legal practitioners support this position; under which, entering into an arbitration agreement means that a foreign state waives immunity from enforcement of an arbitral award (see Suleimenov MK and Osipov E, Immunity of International Organizations).

Please note that foreign state entities do not enjoy sovereign immunity.

Sovereign Immunity of Kazakhstan

The Civil Code provides that in civil relations with a foreign element, Kazakhstan enjoys jurisdictional immunity with respect to itself and its property, including immunity from enforcement of a judicial act, unless otherwise established:

- in international agreement with Kazakhstan;
- in a written agreement that is not an international agreement of Kazakhstan; or
- by a declaration in court or by way of a written notice in the framework of specific proceedings.

12.3 Approach of the Courts

The grounds for rejecting the recognition and enforcement of foreign arbitral awards are concurrently provided in four acts of Kazakh legislation: the CPC, the Arbitration Law, the New York Convention and the European Convention.

The court rejects the recognition and/or enforcement of an arbitral award, irrespective of the country in which it has been rendered, on the following grounds.

- If the party against which the arbitral award has been invoked furnishes proof in court that:
  - (a) the arbitration agreement is not valid under the law of the state to which the parties have subjected it or, failing any indication thereof, under the law of the country where the award was rendered; or
  - (b) the award deals with a dispute not contemplated by the arbitration agreement or not falling within its terms, or contains resolutions on matters beyond the scope of the arbitration agreement, or the arbitration lacks jurisdiction over the dispute; if the decisions on matters covered by an arbitration agreement can be separated from the decisions on matters not so covered, the issuance of a writ of execution (enforcement order) for the part of an arbitral award covered by the arbitration agreement cannot be rejected:
  - (c) if a party to the arbitration agreement was found incapable or having diminished capacity by a court;
  - (d) if a party against which the arbitral award is invoked was not properly notified of the appointment of an arbitrator or of the arbitration proceedings, or was unable to present its case to arbitration for other reasons recognised as valid by court;
  - (e) if there is an effective court judgment or arbitral award rendered in a dispute between the same parties, on the same subject matter, and on the same grounds, or a court ruling or arbitral determination to terminate the case proceedings due to the claimant's abandonment of claim;
  - (f) if the composition of an arbitral tribunal or the arbitration procedure in the proceedings was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the laws of the country where arbitration took place;
  - (g) if the award has not yet become binding on the parties or has been set aside, or its enforcement has been suspended by the court of the country under the laws of which it was rendered;
- the court will establish that:
  - (a) recognition and/or enforcement of the arbitral award is contrary to Kazakhstan's public policy; or
  - (b) the dispute in which the arbitral award has been rendered cannot be the subject of arbitration proceedings under the Arbitration Law.

The burden of proving the above circumstances rests with the party against which an arbitral award has been rendered. However, in practice, Kazakh courts often fail to observe this requirement to distribute the burden of proof. For instance, in cases where the respondent refers to the ground of improper notification of the respondent about arbitration proceedings, Kazakh courts reject the recognition and enforcement of the arbitral award without requiring the respondent to prove improper notification and referring only to the fact that the adversary party (the claimant in arbitration proceedings) did not furnish proof of proper notification.

According to the Arbitration Law, public order is the fundamental principles of the legal order secured in the legislative acts of Kazakhstan. In

practice, the concept of the "fundamental principles of the legal order" is construed in a fairly broad manner and its application is completely referred to the judge's discretion. This poses certain risks associated with loose construction of the concept of public order, which may lead to unjust court judgments.

13. MISCELLANEOUS

13.1 Class-Action or Group Arbitration

Kazakh legislation does not provide for class-action arbitration or group arbitration concepts.

13.2 Ethical Codes

Kazakhstan has no ethical codes or other professional standards applying to counsel and arbitrators conducting arbitration proceedings in Kazakhstan.

13.3 Third-Party Funding

Kazakhstan has no regulations regarding third-party funding.

13.4 Consolidation

Kazakh legislation does not regulate the issue of consolidation of several arbitration proceedings into one. However, the authors deem it possible to implement this procedure if the parties to arbitration proceedings agree on such arbitration proceedings.

13.5 Third Parties

Kazakh legislation does not provide for a possibility for third parties to be bound by an arbitration agreement or award.

The Arbitration Law sets forth that a statement of claim is subject to return if it affects the interests of third parties that are not the parties to an arbitration agreement.

In practice, arbitral institutions determine the procedure under which arbitration may be conducted with the participation of third parties that are not the parties to an arbitration agreement (eg, such procedure implies that consent must be obtained from the parties to an arbitration agreement and the third parties involved).

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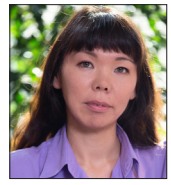

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Trends and Developments

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A Risky Jurisdiction

In general, Kazakhstan is still not a very arbitration-friendly jurisdiction. It deviates significantly from international standards of commercial arbitration in terms of the freedom of parties to design the arbitration procedure, form an arbitral tribunal, enter into an arbitration agreement, etc. The grounds for setting aside, recognition and enforcement of arbitral awards, both domestic and foreign, are more expansive than ordinarily accepted in the established practices of developed legal orders.

But the hostility manifests itself not only in the restrictions on the freedom of arbitration but also in the absence of established judicial practice on many controversial issues of arbitration. The court practice is not only inconsistent and controversial but also little known. The official database of judicial acts is incomplete, and its searchability is technically very limited. A comprehensive search of judicial acts on specific matters and categories is practically impossible – one must know the details of a particular case to find a required court act.

Last but not least, an impediment to the development of arbitration in Kazakhstan are the grey areas in matters requiring doctrinal interpretation. For example, neither legislation nor court practice clearly defines the concept of the "seat of arbitration" as the choice of law governing arbitral procedure or arbitration agreements, or a country in which courts possess jurisdiction over disputes concerning the respective arbitration. This has led Kazakh courts to, at least in one case, invalidate an arbitration clause with the seat in London under Kazakh law (while in the eyes of an English court, the validity of the arbitration agreement would have to be assessed from the English law perspective; not to mention that the dispute itself would likely fall under the jurisdiction of English courts).

The lack of development of some concepts in commercial arbitration should always be considered by the parties, even in cases where they want to subject their arbitration agreement to foreign law or the jurisdiction of foreign courts. The parties' choice should be articulated in the arbitration agreement clearly, unambiguously, and in more detail than would usually be needed in the legal order, where the use of certain words and expressions carries meanings developed by doctrine and adopted by established judicial practice.

Unclear Status of Accession to the 1958 New York and 1961 European Conventions

All the risks described above are increasing against the background of the still unclear status of Kazakhstan's accession to the 1958 New York and 1961 European arbitration conventions. Kazakhstan joined the conventions by a decree of the president issued on 4 October 1995 when, due to extraordinary historical circumstances, the country was left without a functioning parliament.

During that period, the president of Kazakhstan was authorised to issue two types of decrees: one having the force of law and the other having the force of by-laws. Under Kazakhstan's Constitution, only ratified international treaties supersede domestic legislation, while ratification requires exercising the powers of the highest

representative body, which the president arguably did not do when acceding the Republic of Kazakhstan to the conventions.

Instead of issuing a decree having the force of law to join the conventions, he issued ordinary presidential decrees, thereby putting the conventions at the level of by-laws. This arguably means that while the conventions are operative, they are inferior in force to laws in the event of conflict. Since the arbitration-related laws contain broader grounds for rejecting foreign arbitral awards than the Conventions, there is a risk that Kazakh courts may have formal grounds to apply those laws over the conventions.

Transnational Projects

For larger transnational projects implemented in the territory of Kazakhstan, parties frequently opt for international commercial arbitration with a foreign seat. However, for various reasons, Kazakh law is often chosen as the governing law of the contract.

Astana International Financial Centre

In early 2018, the Astana International Financial Centre (AIFC) started to operate. It is essentially a parallel (to the rest of the Republic of Kazakhstan) jurisdiction, with its own regulatory framework modelled after common law-based financial centres such as the Dubai International Financial Centre (DIFC) and an independent (from the courts of general jurisdictions) court system all comprised of foreign judges. The AIFC was established with a declared objective of attracting more foreign investments.

Within the AIFC territory, there is the International Arbitration Centre (IAC). The AIFC Arbitration Regulations correspond to international standards and are generally based on the UNCITRAL Model Law on International Commercial Arbitration. Naturally, the Arbitration Law of the Republic of Kazakhstan, with all its limitations and ambiguities, does not apply to arbitrations seated in the AIFC. All disputes arising out of commercial arbitrations with their seat in the AIFC fall under the jurisdiction of the AIFC Courts.

The AIFC Courts have vast powers to support arbitral proceedings, including the powers to appoint arbitrators where the parties fail to agree, to enforce security measures adopted by an arbitration tribunal, and to provide judicial assistance with the taking of evidence.

Some Positive Developments

The good news is that over recent years there have been some positive changes to the legislation that either cleared ambiguities or eliminated the restrictions imposed on arbitration.

Law Governing the Merits of Disputes

The Arbitration Law seeks to regulate not only relations arising out of arbitration agreements and arbitration proceedings but also relations concerning the merits of the dispute. In the period from 19 January 2016 to 2 February 2019, the Law, among other things, imperatively established that Kazakh law was to govern disputes between the following categories of persons.

- Disputes between individuals or legal entities of the Republic of Kazakhstan.
- Disputes in which one of the parties is:
  - (a) a governmental agency;
  - (b) a state-owned enterprise; or
  - (c) a legal entity in which 50% or more of voting shares (interests in the charter capital) are directly or indirectly owned by the state.

Starting 3 February 2019, only the first category of disputes – ie, disputes between Kazakh residents – is, according to the Law, to be governed by Kazakh laws.

Requirements for the Content of Arbitration Agreements

From 19 January 2016 to 2 February 2019, the Arbitration Law was establishing ambiguous requirements for the content of an arbitration agreement. In particular, the Law required that an arbitration agreement was to:

- contain the parties' intent to submit disputes to arbitration;
- specify the subject matter to be arbitrated; and
- specify a particular arbitration.

For obvious reasons, each of these requirements was confusing as to what a valid and enforceable arbitration clause was supposed to look like. All of them were abolished in February 2019.

Recognition and Enforcement of Foreign Arbitral Awards

The amendments introduced by the Law of 21 January 2019 removed some substantial impediments to recognising foreign arbitral awards. Before these changes, there had been a risk that a Kazakh court could sustain the adversary party's argument that the applicant should be denied recognition and enforcement of a foreign arbitral award because the arbitration proceedings conducted under a foreign law violated the imperative requirements of the Arbitration Law.

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