



ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2015

8th Edition

A practical cross-border insight into litigation and dispute resolution work

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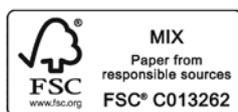
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EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

One general chapter titled *Freezing Injunctions in Support of Foreign Proceedings & Arbitration*.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 42 jurisdictions, with the USA being sub-divided into five separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Greg Lascelles of King & Wood Mallesons LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

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LITIGATION

1 Preliminaries

1.1 What type of legal system has Kazakhstan got? Are there any rules that govern civil procedure in Kazakhstan?

Kazakhstan is a civil law country. Rules of civil procedure are contained in the Civil Procedure Code of the Republic of Kazakhstan (“CPC”). Regulatory resolutions of the Supreme Court and Constitutional Council as well as applicable ratified international treaties also form part of the body of mandatory rules governing the sphere of civil procedure.

1.2 How is the civil court system in Kazakhstan structured? What are the various levels of appeal and are there any specialist courts?

Kazakhstan has a four-tiered judicial system: (1) trial courts; regional courts, which are divided into (2) an appellate chamber and (3) a cassation chamber; and (4) the Supreme Court.

Any complaint is initially filed with a trial court. Trial courts comprise district courts, specialised interdistrict economic courts, specialised interdistrict juvenile courts, or military courts. A party may appeal the trial court’s decision with the appellate chamber of the respective regional court within 15 days from the day the trial court’s decision was handed to the party. If the decision is not appealed within this period, it becomes enforceable.

The appellate court’s resolution becomes enforceable the moment it is announced. Though the parties have to comply with the binding appellate court’s resolution, they may appeal it further with the pertinent cassation panel within six months.

The cassation panel’s resolution may further be appealed with the Supreme Court. The Supreme Court may review any lower court’s decision within one year of the date the lower court’s decision becomes enforceable. The petitioner requests the Supreme Court to reconsider the case in what is called “the supervisory manner”. The Supreme Court’s review, however, is discretionary.

The Supreme Court first conducts a preliminary hearing by a panel of three Supreme Court judges; if it decides to initiate supervisory proceedings, then the supervisory panel, consisting of at least five judges, is convened to review the case.

In very rare instances (i.e., when the supervisory panel’s ruling could lead to severe and irreversible effects on the lives and health of people, or economy and security of the state), the ruling of the Supreme Court’s supervisory panel can be further reviewed by a panel consisting of at least seven judges of the Supreme Court.

1.3 What are the main stages in civil proceedings in Kazakhstan? What is their underlying timeframe?

The main stages in civil proceedings are as follows: (1) plaintiff filing the complaint; (2) the court’s preparation of the case to the hearing (i.e., issuing subpoena, rules on injunctive relief sought (if any), holding preliminary consultations with the parties, etc.); (3) defendant filing a response to the complaint or counterclaim; and (4) the hearing.

Under the general rule, trial courts must resolve civil disputes within two months after the preparatory stage is complete. Reduced deadlines apply to disputes involving mandatory hospitalisation into a psychiatric facility, cases involving restructuring of financial companies, and claims of illegal strikes. Certain employment cases, claims for alimony support, and complaints against the decisions or actions of state bodies or officials must be reviewed within one month after the preparation is complete.

An appeal must be reviewed within one month after the appeal is received; if there is a need for additional scrutiny, the term may be increased to two months. A cassation appeal must be reviewed within one month of receipt of the cassation appeal. A supervisory petition to the Supreme Court is previewed within one month and then if the supervisory panel is convened, it has one month to rule on the petition.

1.4 What is Kazakhstan’s local judiciary’s approach to exclusive jurisdiction clauses?

Exclusive jurisdiction clauses are generally enforceable unless they change the exclusive jurisdiction rules of the CPC, including, *inter alia*, rules that lawsuits with regard to real property must be filed with a court in the district where such real property is located, and that lawsuits of testator’s creditors must be filed with a court in the district where the estate or its main part is located.

1.5 What are the costs of civil court proceedings in Kazakhstan? Who bears these costs? Are there any rules on costs budgeting?

Costs of civil litigation include the state filing duty and various other expenses including, *inter alia*, payments to experts, witnesses,

attorneys' fees, etc. The state filing duty is either expressed in Monthly Calculation Indexes (1 MCI equals approx. \$10.8 at the current exchange rate) or as a percentage of the claimed amount of money or claimed value of property, e.g., companies pay 3% and individuals pay 1% of the claimed amount of money or of the value of claimed property.

The court orders the losing party to cover the prevailing party's expenses, including attorneys' fees (capped at 10% from the granted part of the complaint in cases of monetary claims). If the court partially satisfies the complaint, litigation costs shall be distributed between plaintiff and defendant proportionately.

All costs must be properly documented in order to be accepted as evidence.

1.6 Are there any particular rules about funding litigation in Kazakhstan? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

There are no specific rules or restrictions on funding litigation. Any fee arrangements are allowed, including contingency/success/conditional fee arrangements. There are no formal rules on attorneys' security for costs of litigation.

1.7 Are there any constraints to assigning a claim or cause of action in Kazakhstan? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

The general rule is that a claim may be assigned unless it is inherently tied to the identity of the claimant. A non-party to litigation may finance the proceedings.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

For certain claims (e.g., claims under the law on Merchant Sea Shipping, consumer lawsuits), before resorting to the judiciary, the claimant must first submit its claim to the defendant.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Under the general rule, a period of limitation is three years from the date the plaintiff became aware or should have become aware that his rights or interests were violated. However, in certain instances, the period of limitation is shorter (e.g., a claim against a passenger railway or water carrier must be brought within six months of the occurrence of the event that gave rise to the claim; claims against a cargo or mail railway or sea carrier must be brought within one year; claims that a contract is void may be filed within one year from the date the plaintiff became aware or should have become aware of grounds for invalidating the contract), or longer (the statute of limitations in tax and customs cases is five years). Certain claims (e.g., copyright, payment of housing utilities) are not subject to the period of limitations.

According to certain resolutions of the Supreme Court, time limits are treated as a substantive law issue.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Kazakhstan? What various means of service are there? What is the deemed date of service? How is service effected outside Kazakhstan? Is there a preferred method of service of foreign proceedings in Kazakhstan?

If the complaint meets all the prescribed requirements, the judge issues a ruling on initiating the civil proceedings. The subpoena is usually served either by mail (regular or with the "return receipt requested" service), text message, or other means of communication. Subpoenas are served on the defendant with a copy of the plaintiff's complaint and any other documents that were attached to the complaint.

Subpoenas must be served personally on a party, and if a party is a company, then a person with management functions at the company should be served (and such person should sign the return slip, and state his name and position on it). If the intended addressee is absent from his place of abode or at his business address then the serving party may leave the subpoena with adults living together with the missing individual if they do not object to that, or with the respective administration within the missing individual's housing block or office. The person receiving the subpoena on the missing individual's behalf should fill in the return slip, and as soon as it becomes possible, give the subpoena to the intended recipient. In these cases, the intended party would be deemed to have been notified of the need to appear before the court on the date the subpoena was left with another adult or administration, as directed by the CPC. A party's refusal to accept the subpoena does not block the court from proceeding to reviewing the case on the merits or performing other procedural acts.

There are no specific rules regarding service outside of Kazakhstan and there is no preferred method of service of foreign proceedings in Kazakhstan.

3.2 Are any pre-action interim remedies available in Kazakhstan? How do you apply for them? What are the main criteria for obtaining these?

In its pleadings the plaintiff may request the court for injunctive relief in cases when a failure to grant the injunction may hinder enforcement or make it impossible to enforce the court decision. Injunctive measures may include, *inter alia*, a freeze on the defendant's assets, prohibition to perform certain activity, prohibition for third parties to transfer property to the defendant, etc. The injunctive relief shall be commensurate with the plaintiff's claims.

3.3 What are the elements of the claimant's pleadings?

The plaintiff's written complaint must state:

- 1) the name of the court with which the complaint is filed;
- 2) the plaintiff's personal details, address (for individuals) or the business name, place of registration, factual business address (for businesses), identification number, bank account and the representative's name, and his address – if the representative files the complaint – and cell phone number and email (if any);

- 3) the defendant's personal details and address (for individuals) or the business name, factual business address (for businesses), and its identification number, cell phone number and email – if the plaintiff is aware of these details;
- 4) the gist of the violation or threat to plaintiff's interests, and the relief sought;
- 5) arguments on which the claims are based, and supporting evidence;
- 6) the amount of claim (if one exists); and
- 7) a list of attached documents.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Yes, the pleadings may be amended before the court has finished reviewing the case on the merits and turned to concluding arguments. In its concluding oral arguments a party may not point to circumstances or evidence that the court did not examine previously as part of reviewing the case on the merits.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/ claim or defence of set-off?

After receiving the subpoena with a copy of plaintiff's complaint, the defendant must file his response. The defendant's response must contain:

- 1) the plaintiff's details;
- 2) the defendant's details;
- 3) the defendant's counterarguments with respect to the essence of the raised claims, with references to the applicable law and evidence supporting the defendant's position; and
- 4) a list of attached documents.

At any time before the court issues its decision, the defendant may also file his counterclaim to be reviewed jointly with the plaintiff's complaint. Set-off defence is allowed.

4.2 What is the time limit within which the statement of defence has to be served?

The defendant's response shall be served within the time period set by the court, which time period shall ensure that the plaintiff can review the defendant's response prior to the start of the hearing.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

If the defendant believes that he should not be the only party held accountable, he may join co-defendant(s), or if he believes that he is not the proper defendant, he may file a claim against a third party that he believes to be the proper defendant.

4.4 What happens if the defendant does not defend the claim?

If the defendant who was duly notified of the court hearing does not appear in court to defend the claim, the court may proceed to hear the matter even without the defendant, if the cause of defendant's absence is unknown or the court finds it inexcusable, or believes that the defendant is wilfully procrastinating.

4.5 Can the defendant dispute the court's jurisdiction?

Yes, if, for example, the lawsuit was filed with the court located outside of the district where the defendant dwells, or if the lawsuit concerns real estate but is filed with the court outside of the district where the disputed real estate is located, or when the plaintiff and defendant agree to litigate at a different court in their contract, or their contract has an enforceable arbitration clause.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

In civil cases, two categories of third parties can be joined into ongoing proceedings:

- (a) third parties with independent claims to the subject matter of dispute; and
- (b) third parties without independent claims to the subject matter of dispute.

A third party with independent claims to the subject matter of dispute may join into ongoing proceedings only by filing a statement of claim against one or all of the parties to the proceedings.

A third party without independent claims to the subject matter of dispute is entitled to join into ongoing proceedings if a court decision may affect the third party's rights or obligations to any of the parties to the ongoing proceedings. The court may decide to join such a third party (i) at the court's own initiative, or (ii) on a motion by the third party or any of the parties to the ongoing proceedings.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

If the court finds it expedient to do so, the court may consolidate into one set:

- (a) sets of proceedings between the same claimant and defendant;
- (b) sets of proceedings related to claims of the same claimant to different defendants; or
- (c) sets of proceedings related to claims of different claimants to the same defendant.

5.3 Do you have split trials/bifurcation of proceedings?

If the court finds it expedient to do so, the court may split into several sets of proceedings:

- (a) one set of proceedings related to different claims between the same claimant and defendant;
- (b) one set of proceedings related to claims by several claimants; or
- (c) one set of proceedings related to claims against several defendants.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Kazakhstan? How are cases allocated?

Detailed rules on jurisdiction govern allocation of cases between different courts.

The allocation of cases between different judges of the same court is automated using a computer program. The program takes into account several criteria including availability of judges (workload, temporary absence, etc.), their areas of expertise, language of the statement of claim, complexity of cases, etc.

6.2 Do the courts in Kazakhstan have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The courts have various case management powers, including the following powers: to stay or terminate proceedings; to adjourn or bring forward a hearing; to consolidate or split proceedings; to set a time period for submission of a statement of defence; to order a defendant, witness, expert, specialist or translator to attend the court; or to order inspection of evidence outside of court premises.

Parties can make interim applications, including motions to impose security measures, to involve third parties, to involve an expert or specialist, to retrieve evidence, or to call witnesses.

Only some of such applications entail cost consequences. A party making the application that entails costs covers the relevant costs. When finalising the proceedings the court allocates, or approves allocation of, costs between the parties.

6.3 What sanctions are the courts in Kazakhstan empowered to impose on a party that disobeys the court's orders or directions?

Courts may impose various sanctions. Non-compliance with a court act is punishable by an administrative fine from 10 to 50 MCI or arrest up to five days; protracted non-compliance is a criminal offence punishable by imprisonment up to seven years. Contempt of court is punishable by an administrative fine of up to about 30 MCI or an administrative arrest of up to 10 days, while gross contempt of court leads to criminal liability. The court may also order to forcibly bring a defendant, witness, expert, specialist or translator to court.

6.4 Do the courts in Kazakhstan have the power to strike out part of a statement of case or dismiss a case entirely? If so, in what circumstances?

The courts do not have the power to strike out a part of a statement of claim. If a statement of claim or its part is defective (e.g., if

the statement of claim does not contain some required information, or if a document confirming payment of a court fee or confirming authority to sign the statement of claim is not filed together with the statement of claim), the courts issue a ruling to leave the statement of claim motionless and give the claimant time to correct indicated defects. If the defects are not corrected in time, the court refuses to admit the statement of claim and returns it to the claimant.

Once the court has admitted the statement of claim and started proceedings, the court may dismiss the case entirely ("leave the statement of claim without consideration") in several circumstances, including, but not limited to, the following:

- (a) the claimant has not complied with preliminary dispute resolution procedures (mandatory for some types of claims) and it is still possible to engage in such procedures;
- (b) the statement is filed by a legally incapacitated person;
- (c) the statement is signed and filed by a person who lacks authority; or
- (d) the claimant has not attended the proceedings after second summons and has not requested the court to consider the case in his absence.

6.5 Can the civil courts in Kazakhstan enter summary judgment?

For some categories of claims, the law provides for simplified procedures under which the court can issue a court order under expedited and simplified proceedings without a trial.

6.6 Do the courts in Kazakhstan have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Courts have such powers in Kazakhstan. A court *must* stay the proceedings if:

- (a) a legal entity that is a party to the proceedings is reorganised or liquidated, and can be succeeded with respect to the rights and/or duties which are the subject matter of the dispute;
- (b) an individual who is a party to the proceedings dies and can be succeeded with respect to the rights and/or duties which are the subject matter of the dispute;
- (c) an individual who is a party to the proceedings loses its legal capacity;
- (d) an individual who is a defendant in the proceedings is drafted for military service;
- (e) it is impossible to proceed until another civil, criminal, or administrative case is resolved;
- (f) if the court finds that an applicable legal act violates constitutional rights, and seeks a determination by the Constitutional Council on the constitutionality of that legal act;
- (g) the court addresses a foreign court with a request for legal assistance; or
- (h) if parties to the proceedings conclude an agreement to mediate.

At the court's own initiative or based on a motion by any of the parties or participants of the proceedings, a court *may* stay the proceedings if:

- (a) an individual who is a party to the proceedings is drafted for military service or for other state service;
- (b) an individual who is a party to the proceedings is on a business trip that is longer than the duration of the proceedings;
- (c) an individual who is a party to the proceedings is in a medical institution due to an illness because of which he/she is not able to attend the proceedings;
- (d) the court appoints an expert review;

- (e) the court addresses a Kazakhstan court with a request for legal assistance; or
- (f) there are some other narrowly defined specific reasons.

A court *must* terminate the proceedings if:

- (a) a case is not subject to proceedings under civil procedure rules;
- (b) there is a court decision that is in effect and concerns the same dispute (i.e., the same subject matter and the same grounds) between the same parties;
- (c) there is a court resolution terminating other proceedings that is in effect and concerns the same dispute between the same parties;
- (d) there is an arbitral decision that is in effect and concerns the same dispute between the same parties;
- (e) the claimant abandons its claim and such abandonment is approved by the court;
- (f) the parties have concluded a settlement agreement and it is approved by the court;
- (g) the parties have concluded a settlement agreement on the basis of mediation procedures and it is approved by the court;
- (h) an individual who is a party to the proceedings dies and *cannot* be succeeded with respect to the rights and/or duties which are the subject matter of the dispute; or
- (i) a legal entity that is a party to the proceedings is reorganised or liquidated, and *cannot* be succeeded with respect to the rights and/or duties which are the subject matter of the dispute.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Kazakhstan? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure?

There are no rules of disclosure in civil proceedings in Kazakhstan. Any party to the proceedings may file with the court a motion to retrieve evidence from another party or third party to the proceedings, or from persons or entities who are not parties. A party filing the motion must: (a) specify what piece of evidence should be retrieved; (b) indicate the location of the evidence; (c) explain what relevant facts can be confirmed or refuted by the evidence; and (d) explain why the party filing the motion cannot obtain the evidence on its own. If the motion is approved, a court issues a binding ruling ordering the evidence to be retrieved. The court may provide other assistance.

7.2 What are the rules on privilege in civil proceedings in Kazakhstan?

Kazakhstan law protects “*advocates’ secrets*”, a rather limited form of attorney-client privilege that applies only to legal services rendered by *advokats* (attorneys with special status).

7.3 What are the rules in Kazakhstan with respect to disclosure by third parties?

See the answer to question 7.1 above.

7.4 What is the court’s role in disclosure in civil proceedings in Kazakhstan?

See the answer to question 7.1 above.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Kazakhstan?

Any party that receives confidential documents in the course of court proceedings is under a statutory obligation not to disclose such documents.

8 Evidence

8.1 What are the basic rules of evidence in Kazakhstan?

The general principle of evidence is that any lawfully obtained factual information, on the basis of which the court can establish the existence or absence of circumstances which support the allegations and objections of the parties, as well as any other circumstances relevant for proper resolution of the case, shall be deemed evidence.

The CPC provides a non-exhaustive list of evidence examples: explanations of parties; witness testimony; material evidence; expert conclusions; records of procedural actions and court hearings; and other documents.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The rules on admissibility are quite broadly worded: the evidence is admissible if it is obtained in the manner provided for in the CPC. However, there is a reservation: if the law requires proving of specific circumstances by specific means, no other evidence would be admissible.

The CPC also provides that evidence must be recognised inadmissible if it was obtained through violation of the legal rights of parties, or the violation could affect the credibility of evidence.

Expert conclusions are admissible, and if they are used, they play a significant role in proceedings.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Any party who has any knowledge of the circumstances that have significance for the matter may be called as a witness; however, the witness is supposed to specify the source of his/her knowledge of the circumstances. If he/she cannot do so, the testimony would not be accepted.

Certain individuals cannot be called as witnesses: minors and those incapacitated by age or other conditions from adequately perceiving the facts or providing testimony; attorneys and advocates representing clients in civil cases and criminal cases, respectively, cannot be questioned about facts they learned in connection with such representations; judges cannot be questioned about deliberations about a judicial decision or a verdict; arbitrators and mediators cannot be questioned about facts they learned as a result of performing their duties; clergymen cannot witness about information received in confession; and anyone can refuse to testify against himself/herself, their spouse or close relatives.

If a witness is called by the court at the request of a party, he/she is obligated to appear and testify. Evasion of appearance, refusal to testify and perjury are criminal offences.

The CPC provides that a witness who cannot appear in the court due to age, health problems or other good causes may be questioned in his/her location. The CPC does not establish detailed rules on taking such testimony other than that the taking of testimony is made in the form of a court hearing, and the records of that hearing must be immediately sent to the requesting court.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

An expert witness is appointed by the court. The parties have a right to recommend a specific institution or an individual whom it would like to be appointed the expert, as well as provide the court with the set of questions which it wishes the expert to answer. The court is not bound by the party's recommendations as to the expert, and has broad discretion in appointing the expert. The list of questions is decided by the court and if it excludes any of the questions proposed by a party, it must provide reasoning for doing so.

There is a government-specialised institution under the Ministry of Justice called the "Judicial Expert Centre" whose experts are typically used by the courts in Kazakhstan. There are also private licensed experts, and the courts may appoint any other person on a one-off basis in certain situations. The expert activity is governed by the law "On judicial expert activity in the Republic of Kazakhstan" and other regulations developed in furtherance of this law. The experts owe their duty to the court and bear criminal liability for providing knowingly false conclusion. It is prohibited to influence the expert or otherwise interfere with expert activity.

8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Kazakhstan?

The rules of the CPC are that the court does not have any obligation to collect evidence, and the burden of proof is borne by the parties to the proceedings. However, the court may render assistance to a party at its request if the party cannot obtain certain evidence on its own, and can issue an order requiring a third party to provide the sought evidence to the court.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Kazakhstan empowered to issue and in what circumstances?

The courts can issue orders, decisions, rulings and resolutions. A court order is issued in expedited and simplified proceedings (similar to summary judgment). A decision is issued when the trial court decides the case on merits. Any court act that does not decide the case on merits is issued in the form of ruling. Resolutions are issued by appellate and cassation courts.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court has full authority to award damages to the affected party, should it find that the defendant is liable for those. Although the

Civil Code definition of damages includes both actual loss and lost profit, in certain cases, as defined by law, only actual loss may be recovered.

The courts may award statutory interest on the monetary amounts for the time these amounts were not in the rightful owner's possession.

The courts can award the costs of litigation (see the answer to question 1.5 for details).

9.3 How can a domestic/foreign judgment be recognised and enforced?

A domestic judgment must be recognised and enforced by all entities and individuals in Kazakhstan. Incompliance with a court act may result in criminal liability.

A foreign court decision may be enforced in Kazakhstan only if there is a treaty between Kazakhstan and the country whose court issued that decision.

9.4 What are the rules of appeal against a judgment of a civil court of Kazakhstan?

A trial court decision may be appealed, as described in greater detail in the answer to question 1.2.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of alternative dispute resolution are available and frequently used in Kazakhstan? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The Kazakhstan CPC recognises mediation and arbitration as methods of ADR. There are special laws on mediation and arbitration.

Parties may use mediation before court proceedings and they can resort to it in the course of the court proceedings. Settlement agreements as a result of mediation approved by the court are considered final and a dispute cannot be tried in the court if it is settled in mediation. The statute of limitation is suspended for the time of mediation proceedings.

Arbitration is a lawful method of resolving disputes arising out of civil law relationships. Bankruptcy, family, labour and non-property related disputes cannot be subject to arbitration. Arbitration in Kazakhstan is regulated by laws on domestic arbitration and international arbitration. The general principles are the same for both types. There are certain differences in the scope of eligible parties and arbitrable issues. Disputes that concern the interests of government or government entities, or involving services or goods of natural monopolies or dominant entities, cannot be resolved through domestic arbitration. International arbitration may be used if at least one party is a foreign entity/individual, and no restrictions pertaining to the government affiliation or status of a monopoly/dominant market player are applicable.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

There are laws of the Republic of Kazakhstan “On Mediation”, “On Arbitral Tribunals”, and “On International Arbitration”.

1.3 Are there any areas of law in Kazakhstan that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Any dispute involving the interests of a minor or incapacitated person cannot be resolved by any of the ADR methods.

A dispute involving a state body cannot be resolved by means of mediation.

For limitations on arbitration please see the answer to question 1.1.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Kazakhstan in this context?

Before starting the court proceedings the court must explain to the parties their right to resolve the dispute through mediation or arbitration. If the parties choose to arbitrate, the court must terminate the judicial proceeding. Should the parties opt for mediation, the court should suspend the judicial proceeding. The courts approve settlement agreements resulting from the process of mediation. The courts issue the execution writ in relation to the arbitral awards issued by arbitral tribunals. The court can impose (and lift) interim measures on the request of the parties to arbitral proceedings.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Kazakhstan in this context?

Arbitral awards are enforced by means of issuance of an execution writ by a court. In that regard their force is equal to that of court decisions.

An arbitral award may be challenged by a party or a third party whose interests it affects in the court in limited circumstances (such as procedural violations and public policy considerations).

The settlement agreements reached in mediation are subject to the court’s approval if the decision to mediate was made in the course of a court proceeding.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in Kazakhstan?

The most active ADR institutions in Kazakhstan are the:

- Kazakhstan International Arbitrage;
- International Arbitration Court “IUS”;
- IAC (the Independent Arbitration Center);
- International Commercial Arbitration Court of Eurasian Mediation Center; and
- Unified Center of Mediation and Peacemaking “Mediation”.

3 Trends & Developments

3.1 Are there any trends or current issues in the use of the different alternative dispute resolution methods?

Mediation is currently being popularised throughout the country by the judicial bodies as a more peaceful method of dispute resolution compared to litigation.

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