

# Kazakhstan

## Law of the Republic of Kazakhstan “On Tribunal Courts”

## Law of the Republic of Kazakhstan “On International Commercial Arbitration”

On December 28, 2004, President of the Republic of Kazakhstan signed Law No. 22-III of the Republic of Kazakhstan “On Tribunal Courts” and Law No. 23-III of the Republic of Kazakhstan “On International Commercial Arbitration” (hereinafter – the Laws). The Laws were officially published in “Kazakhstanskaya Pravda” newspaper on January 7, 2005 and would be effective upon expiration of ten calendar days from the day of their publication.

### General description of the Laws

The Laws are aimed at filling the legislative gaps regarding the activities of arbitration courts and tribunal courts that occurred when the Law “On Arbitration Court of the Republic of Kazakhstan” was repealed from July 1, 1999.

Although the Civil Procedural Code did have a rule on the possibility of submission of a dispute for the consideration of a tribunal court, in practice, a system of enforcement of decisions of tribunal courts and arbitration was actually absent, and the procedure for their activities and coordination with courts of general jurisdiction was not defined.

The Laws introduce the concepts of tribunal court and arbitration which include both permanently acting courts or arbitrations and those specially formed by the parties for the settlement of a particular dispute.

The fundamental distinction in the activity of a tribunal court and arbitration (international commercial arbitration) is that the arbitration considers only those disputes in which at least one of the parties is a nonresident of the Republic of Kazakhstan.

A dispute arising from civil relations may be submitted for the consideration of a tribunal court or arbitration only if a tribunal court or arbitration agreement executed in writing between the parties is in place; such agreement may be executed with respect to disputes examined by courts of general jurisdiction, at any time prior to the issue of judgments by them.

It shall not be allowed to submit disputes involving the state interests and also some other disputes to the tribunal court; however, there are no such restrictions regarding the disputes considered by the arbitration.

### Composition of tribunal court and arbitration

The parties are free to determine the number of arbitrators, which number should be odd. Under a general rule, however, three arbitrators are appointed.

The Law establishes a number of requirements to be met by the appointed tribunal court judge or arbitrator; in this respect the requirements to the sole judge or arbitrator are tougher than those related to the panel of the tribunal court or arbitration. The Laws also state the restrictions with respect to persons who are not eligible to be appointed as tribunal court judges or arbitrators, and the grounds for challenging, replacement, and termination of powers of the tribunal court judges and arbitrators.

### Tribunal court and arbitral proceedings

On the whole, the Laws provide for the standard procedure for disputes consideration.

It is noteworthy that the Laws provide that tribunal courts and arbitration may independently decide on their competence to consider the submitted dispute, including in the case when one of the parties to the dispute is against the tribunal court or arbitral consideration due to the invalidity of the tribunal court or arbitration agreement.

In the consideration of the case, the parties may apply to the competent court (court of first instance) with an application on the adoption of interim relief, and in the arbitral proceedings – also with the request to render assistance in taking evidence.

### Recourse against award

An arbitral award of the tribunal court or arbitration may be set aside by the competent court pursuant to an application of one of the parties in the cases as established by the Laws. It should be noted that the deadlines for filing the above-mentioned application are limited.

It is also possible to take recourse against arbitral award or the tribunal court or arbitration at the com-

petent court in the cases established by the Law, including due to procedural violations and also when the arbitral award of the tribunal court contradicts the principle of legality and public policy of the Republic of Kazakhstan. On this ground, the competent court may formally examine the contents of the arbitral award of the tribunal court on the merits.

#### **Recognition and enforcement of arbitral awards of the tribunal court and arbitration**

The important provision is a long-awaited expressly fixed legislative rule on the possibility of enforcement of the arbitral awards of the tribunal

court and arbitration which is carried out under the rules of execution proceeding on the basis of the enforcement order issued by the competent court.

In this respect, an arbitral award issued in a foreign state shall be recognized by the competent court and be enforced on the principle of reciprocity.

The adopted Laws provide a list of grounds for the refusal to recognize or enforce the arbitral awards of the tribunal court and arbitration, among which is incompliance with the principle of legality.

*Aequitas*