

Legitimacy, equity, economy

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Arbitration is a widely recognized mechanism of alternative dispute resolution. The main advantages of arbitration in comparison to common jurisdiction courts are confidentiality of proceedings, speed and economy of proceedings and impartiality and objectivity. In the contemporary world, Constitutions and other Laws of certain states do not directly regulate issues related to arbitration. However, this form of alternative dispute resolution is recognized in all countries with developed legal systems providing for normal functioning of market economy.

Arbitration courts did not receive necessary development until the beginning of 1990s due to the absence of economical and legal prerequisites, excluding the foreign trade sphere where international commercial arbitration was practically the only method of dispute resolution with the participation of foreign partners. At present, practical application of Kazakhstani legislation on arbitration tribunals is not sufficient enough to bridge the gaps and address the inaccuracy in regulation of complex mechanisms of arbitration court activities, which create difficulties in its development. It became clear when arbitration was more widely accepted in practice and numerous arbitration courts, which assumed to settle considerable numbers of economic disputes, had been founded throughout the country.

Development of arbitration courts as an alternative to state courts is considered a positive event and promotional to considerable facilitation of the burden of conflicts resolution among business entities placed on state courts. Moreover, in the sphere of foreign economic relations international arbitration is considered an important element which effectively provides for development of international cooperation. In this realm, the creation of conditions providing the necessary application of national legislation, which should be based on correct understanding of legal nature and role of arbitration court as constituent of national legal system, is extremely important.

On 28 December 2004 the Law of the Republic of Kazakhstan "On Arbitral Tribunals" and

"On International Commercial Arbitration" were adopted. These laws regulate status and procedures of the operating of arbitration courts in the Republic of Kazakhstan. In this connection, arbitration court in Kazakhstan becomes real alternative to common jurisdiction courts and provides not only impartial, speedy and effective dispute resolution, but also working mechanisms of compulsory enforcement of arbitral awards.

At present, a number of arbitration courts operate in Kazakhstan. The most active of them are the International Arbitration Court of the Republic of Kazakhstan, the International Arbitration Court of Juridical Center "IUS" and the Arbitration Commission under Union of Chambers of Commerce and Industry of the Republic of Kazakhstan. The rest are not so noticeable in the legal scene, but they play significant role in the process of development of arbitration in Kazakhstan.

Kazakhstani International Arbitrage (hereinafter — KIA) was founded after the adoption of legislative acts on arbitral tribunals and international commercial arbitration and is permanently an acting arbitration institution which resolves disputes under both Kazakhstani legislation and the legislation chosen by parties of the dispute.

The Chairman of KIA is prominent Kazakhstani researcher, Doctor of Laws, Professor, Academician of National Academy of Sciences Suleimenov Maidan Kuntuarovich, who took an active part in the drafting and the adopting of legislative acts related to arbitration matters in Kazakhstan.

Where any agreement, submission or reference provides in writing and in whatsoever manner for arbitration under the rules of the KIA, the parties shall be taken to have agreed in writing that the arbitration shall be conducted in accordance with the KIA Rules or such amended rules as the Kazakhstani International Arbitrage may have adopted hereafter to take effect before the commencement of the arbitration. The Rules include the Schedule of Costs in effect at the commencement of the arbitration, as separately amended from time to time by the KIA. Since

realization of the right to apply to arbitration court for dispute resolution depends solely on the will of the parties, KIA Rules of Arbitration, first of all, take into account the interests of the parties in order to provide rapid and effective dispute resolution in accordance with common international standards.

The quality of arbitration proceedings depends not only on thoroughly elaborated procedural mechanisms but also on the qualifications of the Arbitrators. Therefore, the KIA's list of Arbitrators includes leading Kazakhstani and international specialists in the sphere of law, who have high prestige among scientific groups and practicing lawyers.

In order to apply to Kazakhstani International Arbitrage, parties are recommended to use a standard arbitration clause of the KIA in contracts. Parties may agree to settle a dispute in arbitration court even during proceedings in common jurisdiction courts if the decision has not been adopted.

The awards of Kazakhstani International Arbitrage are enforced on a voluntary or compulsory basis. If a party, against which an award is adopted, does not execute it in the time provided, then the compulsory enforcement takes place. Arbitral awards are enforceable in Kazakhstani national courts. While enforcing, national courts will refuse to consider the merits of a judicial resolution of a dispute issued by the KIA.

Before submitting a case for consideration in arbitration, parties may consider the dispute in mediation. Settlement of a dispute in mediation is actual when parties would like to maintain partnership relations, but are unable to settle their dispute in negotiations. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the KIA in accordance with its Rules of Mediation.

If parties would like to use mediation as part of the dispute resolution procedure decided upon by them in contract, they may include a clause on mediation into their contract.

UNCITRAL Arbitration Rules were adopted by United Nations Commission on International Trade Law in 1976 after wide consultations with arbitral institutions and arbitration experts. In the same year, the United Nations General Assembly, in Resolution 31/98, recommended the use of these Rules for the settlement of disputes arising from international commercial relations.

This recommendation was made considering that the development of the Rules for *ad hoc* arbitration, which can be accepted for the countries with different legal, social and economic systems, will be a sufficient contribution to the development of harmonious international economic relations.

Ad hoc arbitration, in accordance with UNCITRAL Arbitration Rules, can be assisted by an organization acting as an appointing authority or providing administrative services during the arbitration proceedings.

In accordance with the Rules of Administering Arbitrations under UNCITRAL Arbitration Rules, Kazakhstani International Arbitrage provides for parties that would like to consider their dispute in accordance with UNCITRAL Rules services as the appointing authority and other administrative services of a technical and a secretarial character.

Kazakhstani International Arbitrage has close relations with the leading international and foreign arbitration institutions that allow responding to changes in international practice of alternative dispute resolution in proper time. □