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The main issues in the International Arbitration: A comparative analysis in the Republic of Kazakhstan and Mainland China

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Abstract

This study's peculiarity compares with the related legislation of international commercial Arbitration between Mainland China and Kazakhstan. The comparison tries to provide some solutions for the future developments of International Arbitration in China. Based on the findings of the comparative analysis, it can be concluded that the Arbitration Laws of China and Kazakhstan generally conform to international standards and that the arbitration procedure is similar in the main points and principles required for Arbitration, in which the parties independently determine the procedure and conditions of the proceedings. However, there are still issues that need to be addressed for Arbitration to develop more effectively in the countries under consideration.

Keywords: UNCITRAL Model Law on International Commercial Arbitration, Arbitration Law of the People's Republic of China, Arbitration Law of the Republic of Kazakhstan

INTRODUCTION

China and Kazakhstan have established diplomatic relations for 30 years, during which the countries worked together for joint development and common prosperity. Modern China-Kazakhstan relations are a model and an example of mutually beneficial cooperation. The number of arbitration cases involving Kazakh-Chinese parties is rapidly increasing, and this is due to the high

recognition, respect, and trust in the arbitrations of both China and Kazakhstan. For example, on July 09, 2019, cooperation agreements were concluded between Kazakhstan's most respected arbitrations, the Kazakhstan International Arbitration, and the Harbin Arbitration Commission. This results from the ongoing and comprehensive strategic partnership between China and Kazakhstan in the spirit of mutual assistance and mutually beneficial cooperation and contributes to raising bilateral relations to an unprecedented new level. This article addresses some of the problems that parties in Arbitration in the countries under consideration face when settling disputes. China's Arbitration Law and Kazakhstan's Arbitration Law are generally in line with international norms. However, some issues need to be resolved and expressed in the legislation of the countries under review, which would have a more favorable impact on the desire of commercial parties to use Arbitration to settle conflicts.

China and Kazakhstan have not ratified the UNCITRAL Model Law of June 21, 1985, which covers all procedural aspects of International Commercial Arbitration, and it is not part of their legal framework. However, the Arbitration Law of China, 1994 and the Arbitration Law of Kazakhstan, 2016 do not explicitly prohibit its application. Despite this, the 1994 Law and the 2016 Law still reflect some Model law provisions, which directly or indirectly indicates that these Acts are based on the UNCITRAL Model Law. Let's compare the Arbitration Law in China and the Arbitration Law in Kazakhstan with the UNCITRAL Model Law. We can conclude that the differences do not relate to the basic provisions and fundamental principles.

METHODOLOGY

One of the essential methods used in this study was the method of comparative legal analysis. The comparison was based on two countries-China and Kazakhstan's arbitration laws, and the differences between the Arbitration Law in China and the UNCITRAL Model Law. When using the method of comparative legal analysis, the following stages were carried out: 1) study of the compared institutions separately; 2) comparison of the identified features in terms of their similarities and differences; 3) evaluation of the results.

Similarities between the Arbitration Law in the Republic of Kazakhstan and Mainland China

In some cases, the Law on Arbitration in the Republic of Kazakhstan and Mainland China covers the main principles of International Arbitration. The arbitration proceedings are carried out in compliance with the principles:

1) the autonomy of the parties' will, that implies that, based on prior agreement among themselves, the parties have the right to independently decide on the procedure and conditions for the conduct of arbitration proceedings on a dispute that has arisen or may arise.

In Kazakhstan by the Article 5, Clause 1, parties have the ability to act on their resolving issues of the order and conditions for the implementation of arbitration process on a conflict. **[1]**

Article 4 of the Arbitration Law in China states that a party who has demanded arbitration to resolve a dispute must have an arbitration clause in a contract with the other party, which must be signed voluntarily. The application would be rejected if such an agreement is not signed and one of the parties files an appeal with the arbitration commission. **[2]**

Article 3, 18 of the law on Choice of Law for Foreign-Related Civil Relationships states that the parties can expressly choose the laws applicable to foreign-related civil relationships in compliance with the law's provisions. **[3]**

2) independence, which means that arbitrators are impartial in resolving conflicts brought before them and make decisions in a way that has no bearing on them;

In Kazakhstan, Article 5, Clause 3 includes the principle of independence, which states that arbitrators and arbitration tribunals are impartial in settling conflicts brought to them and make decisions free of influence;

In China according to the law, arbitration carries out an independent activity and does not interfere in the affairs of administrative bodies, public organizations and citizens. (Article 8)

3) competitiveness and equality of the parties, assuming that the parties in arbitration chose their status, forms and means of protecting it individually and without interference from anyone else and having equal rights and responsibilities.

In Kazakhstan, Article 5, Clause 4 includes the principle of the and the concept of legality, since arbitrators are only directed by the rules of the law that apply to the parties' agreement, and the concept of legality, since arbitrators are only directed by the rules of the law that apply to the parties' agreement.

In China by Article 2: Civil, contractual, and property disputes between equal subjects (citizens, legal entities, and organizations) which be resolved by arbitration. There is no specific rule in the law disclosing the principles of Arbitration, but these principles are provided and other rules and clarifications support this on arbitration.

4) fairness, which means that the arbitrators and arbitrators, as well as the parties to the arbitration, must behave in good faith, adhering to the agreed standards, societal moral values, and business ethics laws, and the concept of legality, since arbitrators are only directed by the rules of the law that apply to the parties' agreement.

Fairness, as defined in Kazakhstan by Article 5 Clause 5, means that arbitrators and arbitration tribunals must act in good faith in resolving disputes submitted to them, and parties to arbitration proceedings must act in good faith in observing established requirements, societal moral principles, and business ethics; Legality refers to the fact that arbitrators and arbitration tribunals are driven in their decisions by the rules of law that the parties have agreed to apply.

In China Article 1 say that, this law was adopted to guarantee a fair and timely settlement of arbitration disputes, to protect the legitimate interests of the parties and to promote the healthy development of the economy of the socialist market. Arbitration is obliged to fairly and rationally resolve disputes on the facts, in accordance with the law (Article 7)

5) finality of an award The arbitral award in Kazakhstan and China cannot be reviewed on the merits, which indicates the finality of the award.

In China by Article 9 if, after the arbitration tribunal's decision, the parties continue to have issues in dispute and the parties again apply to arbitration or file a claim with the people's court, the arbitration commission and the people's court may refuse to consider them.

6) The principle of the autonomy of the arbitration clause Following the UNCITRAL Model Law on International Commercial Arbitration, many principles appeared in Kazakhstan and China's Arbitration Law.

The principle of the autonomy of the arbitration clause is currently enshrined in the legislation of many countries.

Currently, the doctrine of the autonomy of the arbitration agreement in Kazakhstan is enshrined in subparagraph 7) of Art. 5, as well as clause 1 of Art. 20 of the new Arbitration Law. As a result, the arbitration proceedings follow the principle of arbitration agreement autonomy, which states that the termination, modification, or invalidation of the arbitration provision would not result in the termination, amendment, or invalidation of the main agreement. As a consequence, the cancellation, alteration, or invalidation of the main agreement has no effect on the arbitration clause's termination, modification, or invalidation.

In China, Article 19 states that the arbitration agreement is not affected by changes, termination, suspension, and the contract's ineffectiveness.

7) Recognition and enforcement of arbitral awards The Mainland China and Kazakhstan were agreed to join the New York Convention.

In China the interested party must apply to a mid-level court at the location of the debtor or property. From 2 to 6 months, the application is considered in Court, and it is necessary to provide the original or notarized copies of the decision, arbitration agreement, and translation if the decision and arbitration agreement are not in the Chinese language. There are Recognitions of two options: by issuing a writ of execution or registration order.

Contrastingly, for refusing recognition and enforcement of arbitration court decisions middle Court has to notify the Supreme court, then the Supreme court must inform the SPC of its intention, and if the SPC confirms, only then it is possible to refuse recognition and enforcement.

Differences between Arbitration Law in the Republic of Kazakhstan and Mainland China

1. Scope of application

Unless otherwise established by the Republic of Kazakhstan's legislative acts, the Arbitration Law refers to conflicts arising from civil law relationships involving persons and (or) legal entities, regardless of the parties' place of residence or position within or outside the state (**Article 1)**

According to the Commentary pits the UN Secretariat of the Commission on International Trade Law (UNCITRAL) on the Law of the Republic of Kazakhstan "On arbitration", 2017 (hereinafter Comments)

Article 14 (6)). Differences can be identified in each provision, or separate sections with provisions on domestic and international Arbitration can be created. It is necessary to define as clearly as possible which provisions do not apply to international Arbitration to develop international Arbitration in Kazakhstan. **[4]**

However in comparison, China has a separate Section VII . Special Provisions for External Arbitration (Articles 65-73)

For a long time, International Arbitration in China had jurisdiction only to arbitration cases in which the subject, object, and/or legal fact had a foreign element. Similarly, domestic arbitration claims were limited to the jurisdiction only in respect of domestic arbitration cases. There was a significant breakthrough in this matter in June 1996 with the Notification of the State Council, after which local arbitration institutions began to consider cases involving a foreign element. CIETAC has been the first of the International arbitration institutions that started to consider domestic arbitration cases since 1998, providing the relevant rules in its procedural rules. This is quite a favorable breakthrough in the development of Arbitration, but at the same time it is necessary to mention the differences that exist if a case with a foreign element will be referred to local Arbitration. Firstly, the difference is that if an application for the preservation of evidence is submitted to domestic Arbitration, the request will be sent to the base court. Suppose such application is submitted to international Arbitration. In that case, the Arbitration will refer the request to an intermediate court, which has

more experience with cases of a foreign nature than the base court. Secondly, the differences relate to arbitrators, where, by article 67 of the AL, the arbitrator may be a foreign person with relevant knowledge and experience, while for the arbitrators of local arbitration institutions are more stringent requirements in article 13 of the AL. Thirdly, international Arbitration may hear the case in English, while domestic Arbitration provides in Chinese.

2. Types of Arbitration

To settle a particular dispute, a permanent arbitration tribunal or arbitration tribunal may be formed in the Republic of Kazakhstan. Individuals and (or) legal entities may create permanent arbitration tribunals by Kazakhstan law.

A permanent arbitration tribunal accepts Arbitration's rules and the list of arbitrators who will participate in the Arbitration. The parties establish Arbitration to resolve a specific dispute, and it remains in place until the dispute is resolved or the parties decide to take the matter to Court. (**Article 4)**

However, in contrasts with Kazakhstan, in China there is no an ad hoc arbitration. The law on Arbitration recognizes only institutional Arbitration and not arbitration ad hoc. But, the arbitration decision of hell posted out of China can be recognized as legitimate in China. In practice, China already has arbitration projects for a particular dispute. The Chinese Lawmaker should consider in more detail the decision on the introduction of ad hoc. The difference between the ad-hoc Arbitration is only one - it is formed directly by the parties of the dispute. Therefore, when implementing ad hoc arbitration, the mediator should be correctly identified and referred to not as a permanent arbitration but as a permanent arbitration institution or institution, as provided for in the Model Law. To distinguish with the arbitration court ad hoc in the separate norms of the Model Law to specify that some rules of law (e.g., arbitration court, as part of arbitrators - see sub-paragraph a) of Article 2 of the Model Law) apply regardless of formed the Arbitration of the permanent arbitration institution or directly by the parties to the dispute.

The Court of Arbitration may be created directly by the parties to the dispute, without recourse to a permanent arbitral institution, and it is no different from the arbitration court established by the

permanent arbitration institution at the appeal of the parties to the arbitration agreement.

3. Arbitrators

An arbitrator is a person who has agreed to perform the duties of an arbitrator, is independent of the parties, has a higher degree, is at least thirty years old, and has at least five years of work experience in the specialty. An arbitrator who settles a conflict on his or her own must have a higher degree of legal experience. The Chairman of the arbitral tribunal in a collegial dispute settlement must have a higher legal education.

A resident of the Republic of Kazakhstan, a foreigner, or a stateless person may be chosen as an arbitrator if the parties agree **(Article 13)**

According to Comments with Article 13 of the Law, "On arbitration" not quite clearly describes the arbitrators' selection criteria, for example, the requirements in Article 13 read as follows: "professional experience in the specialty for at least five years." It would be preferable to indicate the necessary qualifications for selecting arbitrators more objectively since the current situation is subject to different interpretations. The law must agree to the consequences of an arbitrator's appointment in breach of the five-year experience requirement. Alternatively, one could suggest not specifying the conditions that the arbitrator must meet but leaving it to the parties' discretion or allowing the arbitral institutions to decide this issue by their own rules. Moreover, the rule described in Article 11 of the Model Law is not reflected in the Law of the Republic of Kazakhstan “On Arbitration”, namely: “no one can be deprived of the right to become an arbitrator because of his citizenship or nationality unless the parties have agreed otherwise.” Non-discrimination based on nationality is an essential factor in international Arbitration, therefore Committee recommends that this provision of the Model Law be included.

Conversely, in China an arbitrator must meet one of the following conditions: full eight years of experience in Arbitration; full eight years of experience as a lawyer; full eight years of experience as a judge; participation in legislative, research, and scientific work and compliance with a high rank; knowledge of legislation, experience in

the field of economics or trade and the presence of a title or equivalent professional level (Article 13). For external Arbitration, it is provided that the Arbitration Commission may hire foreign citizens with professional knowledge in current legislation, economics and trade, scientific and technical, and other fields as members of the arbitration tribunal (Article 67)

4. Arbitral Tribunal

A single individual or a group of people may make up the Arbitral Tribunal. The permanent arbitration tribunal is formed either by the parties agreeing to nominate (appoint) arbitrators or by the rules of the permanent arbitration tribunal.The parties have the right to choose how many arbitrators they want, which must be an odd number. Three arbitrators will be elected (appointed) to settle the conflict in Arbitration unless the parties agree otherwise (**Article 14)**

On the other hand, in China the arbitral tribunal may consist of three or one arbitrator. If the arbitral tribunal consists of three judges, then it is necessary to select the chief arbitrator (Article 30)

The Arbitration in China may comprise one or three persons. In an arbitration proceeding of three arbitrators, every side should select one person, and the Chairman of the arbitration institution shall assign the leading arbitrator. In an arbitration, where the single arbitrator or the sides jointly designate one arbitrator or the arbitration Committee chairman selects a competent person to resolve the dispute.

Chapter 2 of China's Arbitration Law clearly states the number of arbitrators, one to three (Article 30). In Kazakhstan, there is no such restriction; the composition of the Arbitration may be single or collegial. The parties have the right to define the number of competent persons, which must be odd. (from Article 14).

5. The right of Arbitration to rule on its competence and order to take measures to secure the claim

The arbitration tribunal must determine independently if it has the authority (jurisdiction) to consider the dispute that has been presented for resolution, even in situations where one of the parties

objects to the arbitration proceedings due to the arbitration agreement's invalidity.

An arbitration provision in a contract shall be construed as an arrangement irrespective of the contract's other terms for this reason. The arbitrator's opinion on the contract's invalidity does not mean that the arbitration provision is therefore null.

Until submitting its first comment on the merits of the case, a party has the right to announce that the arbitration tribunal lacks the power to accept the dispute submitted for resolution.

Unless the rules or the parties' agreement provide otherwise, the arbitration tribunal must consider an application submitted within ten calendar days (**Article 20)**

In China, suppose one of the parties considers the arbitration agreement to be invalid. In that case, it can require the arbitration committee to decide or apply for a decision to the People's Court.

Contrarily, in China, if one party demands the arbitration committee's decision, and the other demands the People's Court's decision, then the People's Court decides.

By the Art. 20 of the Arbitration Law, if there are any problems with an arbitration arrangement's legality, a side may request the Arbitration or may request to the SPC. In the case where one of the parties asks the Arbitral Tribunal for the award of the arbitration arrangement's validity question, and the other participant asks the SPC for an order, the SPC in this question will ultimately make a decision. The question regarding the arbitration agreement's legality should arise before the first arbitration court's meeting. The core principle of 'competence-competence' is absent in the legislation of China. The power to decide on jurisdiction does not lie within the arbitral tribunals but the state court and arbitration institutions. It means that in China, arbitration institutions (which are administrative bodies) decide over jurisdiction matters. According to international standards, even when a jurisdictional challenge is filed before the Court, the arbitral tribunals are generally allowed to continue with the arbitral proceeding. On the contrary, the Chinese approach grants the Court dominant power over the arbitration institution.

The UNCITRAL Model Law allows an arbitral tribunal to decide on its competence (Art. 16) and define the arbitration

arrangement's legality. Under the Law on Arbitration, the arbitration committee may decide on the arbitration arrangement's legality if the force is imposed on the Court (Art. 20). The arbitration committee's decision on the legality of the arbitration arrangement is issue to revision by the Court by cancellation or execution of the decision. To improve Chinese Law, it is mandatory to bring the arbitration law in line with this matter. General practice shows that it is better to leave this issue to arbitration ***[5]***

6. Language of the Arbitration

The parties are free to choose which language or languages will be included in the Arbitration. The arbitration proceedings' language is determined by the theory of arbitration, which is based on the language of the arbitration statement of claim or the arbitration agreement in the absence of such an agreement. If it is discovered during the preparation of the case for Arbitration that the plaintiff does not speak the language in which his representative filed the statement of claim, the Arbitration will, upon the plaintiff's written request, change the language of the arbitration proceedings.

Persons involved in the dispute who do not speak the arbitration language have the ability to read the case materials, engage in the arbitration process through an interpreter, and testify in Arbitration in their native language.

In this situation, the party is responsible for ensuring the translator's presence in the arbitration proceedings. Additional conditions can be decided by the rules of Arbitration or the parties' agreement for parties presenting documentation and other materials that are not in the language(s) of the arbitration proceedings.

The arbitration tribunal may need the parties to translate documents and other materials into the arbitration proceedings' language(s) **(Article 28)**

In comparison with China in practice, there are also problems related to the language in which Arbitration should be conducted. Chinese arbitration law does not include regulations governing the language that should of in the arbitration process. For example, one of the well-known arbitrations, CIETAC (China International Economic and Trade Arbitration Commission, hereinafter CIETAC), in its regulations foresaw this gap. The Law ensures that when the sides

have adopted the language they want to resolve the Arbitration dispute, it will have an advantage. Suppose the sides do not agree on which language the Arbitration will be conducted. In that case, the arbitration language will be Chinese or any different languages that CIETAC will indicate on the lawsuit's occasion. ***[6]***

To address this gap, i can recommend Article 28 of the Arbitration Law in Kazakhstan. Article 28 of the Arbitration Law in Kazakhstan on the Language of Arbitration says that the parties can, at their discretion, agree on the language (s) that will be used during the Arbitration. In the lack of arrangement, the language of the Arbitration shall be definable by the definition of Arbitration, depending on the language in which the claim is filed in the Arbitration or the language of the arbitration arrangement

7. Allocation of costs associated with the resolution of the dispute in Arbitration.

Arbitration distributes the costs of settling the conflict between the parties by the parties' agreement, or in the absence of one, in proportion to the satisfied and refused claims.

The costs of paying for the services of a lawyer by the party in whose favor the arbitral award was made, as well as other costs associated with the arbitral proceedings, could be shifted to the other party according to the arbitral award if the claim for reimbursement of the costs incurred was declared during the arbitration process and was resolved by the Arbitration. (article 42 paragraph 1, 2)

On the other hand, China does not provide the losing party's obligation to pay all arbitration costs, including the registration fee (costs of the arbitration Institute) and the arbitration fee (arbitrators ' fees). The party that initially paid the arbitration fee is not necessarily protected against reimbursement of expenses incurred. Therefore, because the arbitration Law does not contain provisions on this issue, Arbitration institutions have provided a rule in their rules that govern the allocation of arbitration costs (Art. 52 CIETAC; Art. 47 SHIAC; Art. 66 SCIA; Art. 51 BAC). These provisions provide that the arbitral Tribunal may specify by its decision that the losing party shall pay the other party the amount of the arbitration costs. It is also possible that the Arbitration, having considered the case's specific circumstances,

may decide on the distribution of arbitration costs between the parties by the satisfied requirements.

8. Rules applicable to the merits of the dispute

Arbitration resolves a dispute according to the law's guidelines that the parties have agreed to follow in resolving the dispute. Any reference to a state's law or legal structure should be viewed as referring to that state's substantive law rather than its conflict of laws rules.

When a conflict occurs between persons and (or) legal entities in the Republic of Kazakhstan, the Republic of Kazakhstan's legislation will be applied. In the absence of an agreement between the parties on the applicable law, the Arbitration shall decide the applicable law using the conflict of laws rules that it finds appropriate in the circumstances.

In the absence of the rule of law regulating a specific relationship, the arbitration tribunal will decide based on the relationship's business customs. Business customs are rules of conduct that have evolved and are commonly used in the field of civil law ties, regardless of whether they are reported in any document. (Article 2, paragraph 10)

Where a contested relationship is not expressly settled by statute or by the parties' agreement, and there are no customs that apply, the rules of law governing similar legal relationships are applied to those relationships, to the extent that this does not contradict their nature, and where there are no such rules, the conflict is resolved based on general principles and the parties' agreement. (**Article 44)**

Arbitration Law in China is the most significant among the national sources of legal regulation of the International Commercial Arbitration in China (hereinafter ICA). The PRC's arbitration law combines the previously existing and often contradictory provisions regarding Arbitration in the PRC. Before the entry into force of the 1995 Law, there were 14 laws, 82 administrative rules and regulations, and 190 local arbitration regulations in the PRC. The entry into force of the Arbitration Law marked a significant change in the Chinese arbitration system. The Act laid down basic requirements for the validity of arbitration agreements, the conduct of proceedings, and

other matters relevant to Arbitration regarding "domestic" and "international" disputes. ***[7]***

Civil Procedure Law (hereinafter CPL) ***[8]*** *of the PRC in 1991 included several new regulations regarding accepting arbitral decisions, including those represented in international commercial disputes. The arbitration law, 1994, has amendments, which were in 2009, 2017. These changes are directly related to the amendments to the civil procedure law of 1991, in 2007, 2012, 2017. Therefore, accordingly, modifications were made to article 63 of the Law, which refers to the CPL (Art. 217 changed to 213, and now it is Art. 237 of the CPL), articles 70, 71 of the Law referring to the CPL (Art. 260 changed to 258, and now it is Art. 274 of the CPL)*

The PRC Law on arbitration 1995 does not contain the answers to many questions that require resolution. In this regard, the SPC of the PRC publishes clarifications to the Arbitration Law on some issues that arise in practice. Regulations of major institutional arbitrations in Mainland China.

Amiable Composition in China. Conversely, in China the legality of the amicable structure kind of Arbitration does not recognize in China. So, article 65 of the Law of PRC 1995 means that a higher ICA is regulated in the arbitration law's General Regulations. Chinese researchers note the following. First, the Chinese international chamber of Commerce is directly empowered for the implementation of ICA. Secondly, on ICA in the determination of its organizational structure, is independent. Thirdly, ICA may be appointed persons of different nationalities who have the Law's relevant requirements to perform an arbitrator's functions. Fourth, the mid-level Court has the competency to decide the arbitration contract's legality, applying measures to secure evidence, cancellation, and execution of the arbitral decision. (Under the "middle" court adopted to understand the courts operating at the level of municipalities, provinces, and autonomous regions). Fifth, the various ICA institutions can apply the rules approved by the Chinese Chamber of international trade.

The Lex Mercatoria. In China, there is no direct ban on the use of Lex mercatoria, but in practice, arbitrators do not use Lex mercatoria. Since the trade was closely connected with merchant shipping in this period, Lex mercatoria was often interpreted as a code of Maritime customs. In the second half of the XX century, Lex mercatoria was asked to take as a model for finding ways and means

to establish a uniform code of resolving international private-law trade-economic relations. Not to be confused with the medieval law merchant with the newly created system, it became known as "New Lex mercatoria" or "modern Lex mercatoria." Currently, the term "1ex mercatoria" can only be used conditionally to describe a variety of regulations that do not originate from states, do not imply state approval, and are often described by international organizations based on a generalization of international trade practice.

Ex Aequo et Bono. The arbitration decision is based on "goodness and fairness values" as well as "global mediation." The heat exchangers were governed by a variety of norms, some of which were derived from Roman law and others which were subject to Peregrina laws; however, the heat exchangers were granted a great deal of latitude to be judged "by inner conviction," according to Roman Law (exaequo et bono) and the specific requirements of each procedure."

The Statute of the International Court of justice stated: This decision does not limit the right of the Court to resolve the matter exaequo et bono, if the sides agree (clause 2, article 38). Arbitrators'decisions (exaequo et bono) need not base on any particular laws and rules. Arbitrators may resolve their disputes based on legal principles, which the arbitrators consider as fair for resolving the conflict; however, it is prohibited in China ***[9]***

9. Grounds for setting aside the award

Clause 1 of Art. 52 of the Arbitration Law provides for a new ground for setting aside an arbitral award. So, according to paragraph 1 of this article, in order to set aside an arbitral award by a court, the party filing a petition for cancellation must provide evidence that: on the same grounds, a court decision or an arbitral award or a court or arbitration ruling on the termination of proceedings in the case in connection with the refusal of the plaintiff from the claim;

This subparagraph should be deleted from the new Arbitration Law, because it is contrary to the UNCITRAL Model Law on International Commercial Arbitration. In practice, such a contradiction can lead to certain problems***[10]***

An annulment of the decision in China should be initiated by an individual who is interested in doing so within six months of the decision's issuance. The Court must make a judgment on the removal

of the award or denial of the application submitted by the concerned party within two months of the period when the application for annulment of the decision was filed. In contrasts with Kazakhstan, China has also taken additional steps to strengthen the legal force of foreign, as well as related to foreign countries, arbitration awards. According to the Decree on Foreign Arbitration and Foreign Arbitration, no court can refuse to execute a decision of an international arbitration body sans the agreement of the SPC. Usually, the process of recognition and execution is delayed for at least one year. Acceptance and execution of an arbitral decision can be declined at the request of the party against whom it was made, provided that the party submits to the eligible Court in the location where acceptance and execution are sought that: If the Court decides that the international arbitral decision is not entitled to recognition or compliance, it will be abrogated only after approval by the PRC's SPC.

10. Transitional provisions

International arbitration tribunals and arbitration courts established in the Republic of Kazakhstan before the entry into force of this Law are expected to make necessary amendments to their provisions, laws, or regulations within two years of the date of entry into force of this Law **(Article 59)**

In contrasts with Kazakhstan, in China Arbitration institutions established before the entry into force of this law must be reorganized in accordance with the requirements of this law. The arbitration bodies' activities, which will not be reorganized, must be suspended one year after the entry into force of this law.

The activities of other arbitration institutions established before the entry into force of this law, which do not comply with this law, must be suspended immediately after the entry into force of this law (Article 79)

The arbitration institutions in China, created before the Law comes into force, must be reorganized, according to the requirements of this Law. The arbitration bodies' activities, which will not be reorganized, should be suspended one year after coming to this law's effect. The activities of other Arbitration were before the entry into force of this Law, which does not comply with this Law, should be suspended immediately after the come into effect of this Law — article

79. In Kazakhstan, there is no such norm. In practice, when in 2016 a new law on Arbitration was passed, the arbitration courts that were in effect at the time had to bring their regulations into line with the new Law on Arbitration.

International arbitrations and arbitration courts established in the Republic of Kazakhstan before enacting this Law are obliged to make appropriate changes to their provisions, statutes, or regulations within two years from the date of enactment of this Law (Article 59). Suppose the judgment is legitimate, enforceable, and has not lost force, and the parties are legally competent. In that case, the dispute may be subject to Arbitration, and the parties may reapply to Arbitration. They provided, of course, if the parties did not use the right presented by the Arbitration Law to renounce the arbitration agreement unilaterally. After the Court quashed the initial ruling, the resumption of the dispute in Arbitration seems to be no barrier to the arbitration case being considered in the same composition. However, this can only be accomplished with the consent of the parties to the arbitration proceedings.

Conclusion

Arbitration law in China and Kazakhstan includes General provisions and Special provisions for Arbitration involving foreign elements. In Kazakhstan, a similar arbitration law has been in force since 2016, and previously there was a separate law on Arbitration for domestic disputes and a different law on international Arbitration. Based on the findings of the comparative analysis, it can be concluded that the arbitration laws of China and Kazakhstan generally conform to international standards and that the arbitration procedure is similar in the main points and principles required for Arbitration, in which the parties independently determine the procedure and conditions of the proceedings, as well as the arbitrators' autonomy.

However, there are several distinctions to be made: 1) There is no competence-competence principle in China; if one party goes to Arbitration and the other to the People's Court, the People's Court will recognize the question of competence. If, on the other hand, the Arbitration has already started the process of assessing its competence, the people's Court no longer has such an advantage; 2) Ad hoc arbitrations are forbidden in China, and the Legislator

responds by demanding the name of the arbitration institution as a prerequisite of a valid arbitration agreement; 3) There must be one or three arbitrators in the Arbitration; 4) China has strict requirements for arbitrators to resolve domestic arbitration disputes and some less stringent requirements for arbitrators to resolve international disputes; 5) there is no language provision in Chinese arbitration law; 6) there is no provision on the allocation of costs associated with the resolution of the dispute to Arbitration; 8) Different supplementary provisions, when arbitration institutions established before the entry of the applicable arbitration law in force needs to be reorganized (article 79).

In Kazakhstan practice, the principle of competence-competence fully observed; 2) the arbitration ad hoc was recognized; 3) the Arbitration must consist of an odd number of arbitrators; 4) the requirements for arbitrators are different (Art. 13), where the number of arbitrators must be odd and the arbitrator may be an independent and disinterested individual aged 30 years, with higher education and experience in the specialty of at least 5 years. In the case of single Arbitration, the arbitrator must have a higher legal education. If the Arbitration is collegial, then the Chairman of the Arbitration must have a higher legal education; 5) there is a provision where the Arbitration is conducted in the language of the statement of claim or agreement. 28); 6) Arbitration costs are distributed in proportion to the satisfied requirements. 42); 7) Supplementary provisions are different wherein Kazakhstan, arbitrations acting before the introduction of a new arbitration law for domestic and international arbitrations must amend their provisions, statutes, regulations within two years. (Art. 59).

In some cases, the Republic of Kazakhstan's Law on Arbitration and the People's Republic of China's law reflect the UNCITRAL Model Law's spirit on International Commercial Arbitration of 1985, as amended in 2006 (the "Model Law").

The adoption of the recommended provision by the SPC and bringing the regulation in line with the UNCITRAL Model Law on ICA, the European Convention, the New York Convention in December 2015 would help to resolve at least some of the contentious and outstanding issues **[11].** China has not ratified the UNCITRAL Model Law of June 21, 1985, which covers all ICA procedural matters, and it is not part of its legal framework. However, the arbitration Act

of 1994 does not explicitly prohibit its application. Despite this, the 1994 Law still reflects some provisions of the Model law, which directly or indirectly indicates that the arbitration Act of 1994 is based on the Model Law. If we compare the Arbitration Law in China and the UNCITRAL Model Law, we can conclude that the differences do not relate to the basic provisions and basic principles. Absolutely complies with international standards the principle of autonomy of the parties to choose the Arbitration, independence, which means the arbitration institute's insubordination to any governmental authority, and the principle of independence of the arbitration agreement. But such a principle as competence-competence article 20 does not apply in China.

UNCITRAL Model law includes such kinds of differences: 1) applies only to international disputes; 2) adjudicated ad hoc; 3) article 16 provides that the arbitral Tribunal shall decide for itself the question of its competence as to the validity of the arbitration agreement; 4) the parties themselves decide the question of the number of arbitrators, if there is no agreement then it is should be three arbitrators; 5) there are no minimum requirements for arbitrators; 6) under article 17, about interim measures, the parties may apply directly to the Court; 7) according to article 27, the assistance of the Court in obtaining evidence, the parties must apply to Arbitration first, or the Arbitration itself uses to the Court; 8) under article 29, the award shall be made by a majority greater than one arbitrator.

The following are the distinctions between the Chinese Arbitration Law and the UNCITRAL Model Law: 1) provides for provisions concerning domestic and international Arbitration; 2) Only institutional arbitration is allowed, while ad hoc arbitration is not; 3) The institute, not the arbitrators, determines the Arbitration's competence; if the other party goes to Court, the Court determines the competence; 4) Number of arbitrators: one or three; if the parties cannot agree, the president of the arbitration commission determines the number; 5) There are minimum criteria for arbitrators in terms of qualification, experience, expertise, and knowledge; 6) If an interim measure of security is necessary under article 68, the party must appeal to Arbitration, which will then forward the request to the Court; 7) According to article 53, a decision is taken to include a

majority; if this is not the case, the presiding arbitrator makes the decision.

Recommendations for the Mainland China

The number of questions provided by the leading arbitration institutions' provisions is not expressly defined in the Chinese Arbitration Law.

I recommend using the Provisions of the CIETAC, SHIAC, and SCIA rules that have not been reflected in the Arbitration Law

Distribution of arbitration costs.

The arbitration law does not provide the obligation of the losing party to pay the arbitration costs. I recommend settling this issue by taking the practice of CIETAC and SHIAC, SCIA. This problem can be resolved by arbitration rules, which require the losing party to cover the costs associated with the arbitration consideration of the dispute. Some regulations allow arbitrators to settle this problem by allocating arbitration costs between the parties depending on the conditions that have been met.

Language of the Arbitration

In practice, there are also problems related to the language in which Arbitration should be conducted. Chinese arbitration law does not include regulations governing the language that should be used in the arbitration process.

I recommend using the practice of the well-known arbitrations CIETAC in its regulations foresaw this gap. The rule ensures that when the sides have chosen the language they want to resolve the dispute in Arbitration, it will have an advantage. Suppose the parties do not agree on which language the Arbitration will be conducted. In that case, the language of the Arbitration will be Chinese or other languages that CIETAC will indicate in the condition of the lawsuit. To address this gap, i can recommend Article 28 of the AL in Kazakhstan. Article 28 of the AL in Kazakhstan on the Language of Arbitration says that the parties can, at their discretion, agree on the language (s) that will be used during the Arbitration. In the lack of arrangement, the language of the Arbitration shall be definable by the definition of Arbitration, depending on the language in which the

claim is filed in the Arbitration or the language of the arbitration arrangement.

Competence-Competence

The UNCITRAL Model Law allows an arbitral tribunal to decide on its competence (art. 16) and define the legality of the arbitration arrangement. Under the law on Arbitration, the arbitration committee may decide on the legality of the arbitration arrangement if the force is imposed on the Court (art. 20). The arbitration committee's decision on the legality of the arbitration arrangement is issue to revision by the Court by cancellation or execution of the decision. To improve Chinese law, it is mandatory to bring the arbitration law in line with this matter. In most cases, it is preferable to refer this matter to Arbitration.

I recommend that the arbitration process be strengthened and that the above recommendations be taken into account for international parties' trust, as the common Law was developed to remove major discrepancies in domestic laws on Arbitration and to reform and harmonize the arbitration system worldwide.

The adoption of the Supreme People's Court's recommended provision and bringing the regulation in line with the UNCITRAL Model Law on International Commercial Arbitration, the European Convention, the New York Convention in December 2015 would help resolve at least some of the contentious and outstanding issues.

Recommendations for the Republic of Kazakhstan

The terminology of the Arbitration Law needs to be brought in line with the UNCITRAL Model Law.

The Law on Arbitration should be brought as close as possible to the UNCITRAL Model Law "On International Commercial Arbitration", excluding various innovations from it in comparison with the Model Law, since all these innovations will worsen the legal position of Kazakhstan arbitrations in comparison with foreign international commercial arbitration tribunals of those countries where laws are adopted on the basis of the Model Law. Otherwise, the opposite aim would be accomplished in the not-too-distant future: Kazakhstan's arbitration status will deteriorate dramatically, setting them back another step in their progress.

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