

Enforcement of foreign judgments and arbitral awards in Kazakhstan: new development

Enforcement is a key issue to consider before commencing civil proceedings and arbitration, especially in jurisdictions such as Kazakhstan. However, the situation in this country seems to be changing. Kazakhstan Government has adopted a rather favourable attitude towards the recognition and enforcement of foreign judgments and arbitration awards by enacting new laws which liberalise the enforcement process.

Background

In the past years, the Kazakh courts would recognise and enforce foreign judgments mostly on the grounds of an international treaty with the relevant state on the mutual legal assistance ratified by Kazakhstan. Since 2016, however, there has been a significant move towards the improvement in this area. With the adoption of a new Code of Civil Procedure, the enforcement of foreign judgments in the absence of an international treaty or a relevant law may still be authorised on the basis of reciprocity. Pursuant to the recently enacted Law "On Enforcement Proceedings and Status of Enforcement Officers", enforcement of the vast majority of commercial judgments has been transferred to special licensed private entrepreneurs – private enforcement officers. Previously they had been subordinated to the courts, and now they are administered by the Ministry of Justice (including its territorial agencies), who is responsible for monitoring issues relating to

the enforcement of foreign judgments and arbitration awards in Kazakhstan. In this case, the decision is left in the hands of the Ministry of Justice, which is considered on a case-by-case basis whether a foreign judgment should be enforced. There may be some practical limitations, e.g. the criteria the ministry will apply in such cases, enforcement against entities affiliated with the state and the receptivity by Kazakh courts of the idea of reciprocity. But the recent development in the attempt by the Kazakhstan Government to diversify the economy and create favourable and attractive conditions for investment and finance has shown that Kazakhstan has real commitment to bring its standards to international levels.

Foreign arbitration awards are generally recognised and enforced by Kazakh courts by virtue of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, the European Convention on International Commercial Arbitration 1961, and the ICSID Convention 1965, although not without certain issues.

AIFC Court and International Arbitration Centre

In 2015, the Kazakhstan Government has established a new financial centre - the Astana International Financial Centre (AIFC) - which aims to turn Astana into a regional financial

hub. It operates within a special legal regime based on English law and the standards of leading global financial centres and has its own court and arbitration centre.

The AIFC Court and International Arbitration Centre (IAC) were launched on 1 January 2018. Both institutions are created to resolve civil and commercial disputes between participants of the AIFC and the third parties.

AIFC Court

The AIFC Court is a two-tier English language common law court system, which is separate and fully independent from the Republic of Kazakhstan judicial system. It applies English law legal principles and follow English law procedures rather than those of the Kazakhstan national law. The AIFC Court adjudicates exclusively all claims arising out of the AIFC and its operations, and other claims in which all parties to the dispute agree in writing to the jurisdiction of the AIFC Court.

The AIFC Court operates a Court of First Instance and a Court of Appeal and has jurisdiction over civil, commercial and certain regulatory matters, falling within its statutory jurisdiction. It does not have jurisdiction over administrative and criminal matters. Decisions of the Court of Appeal are final and not subject to appeal, binding on all natural and legal persons. The AIFC Court has its own procedural rules, enforcement powers, a special fast track for small claims, and its decisions are supported by a robust enforcement system within the Republic of Kazakhstan.

Decisions of the AIFC Court are to be enforced in the Republic of Kazakhstan in the same way, and on the same terms, as decisions of the courts of the Republic of Kazakhstan. Decisions of the courts of the Republic of Kazakhstan are to be enforced in

the AIFC in accordance with legislation of the Republic of Kazakhstan. The AIFC Court has exclusive jurisdiction to interpret AIFC Acts.

IAC

The IAC provides an alternative to court litigation and seeks to establish and develop a fully independent arbitration and alternative dispute resolution system for the expeditious resolution of civil and commercial disputes in the AIFC. It has its own panel of world leading arbitrators and mediators, and hears disputes on the basis of an arbitration agreement between the parties. Arbitrations and mediations are governed by the IAC Arbitration and Mediation Rules, by UNCITRAL Arbitration Rules and ad hoc arbitration and mediation rules subject to the agreement of the parties to a case. Arbitration awards of the IAC are to be recognised and enforced in the Republic of Kazakhstan in the same way, and on the same terms as, arbitration awards issued by arbitration institutions in the Republic of Kazakhstan. Awards of arbitration courts in the Republic of Kazakhstan are to be recognised and enforced in the AIFC in accordance with legislation of the Republic of Kazakhstan.

Notably, a number of Memoranda of Understanding concluded between the AIFC, the Kazakhstan Supreme Court, the Ministry of Justice and other government agencies that are expected to assist in the enforcement of AIFC Court judgments, decisions and orders in the Republic of Kazakhstan. The AIFC Court is to collaborate and establish working relationships with other courts in Kazakhstan, the Eurasia region, and other jurisdictions, particularly those with close trading links to Kazakhstan. Kazakhstan has entered into a number of treaties with other states in the region, which govern the reciprocal enforcement of court judgments including CIS countries, Turkey,

Lithuania, North Korea, China, Vietnam, India, Pakistan, Mongolia and United Arab Emirates.

Conclusion

The current law of the Republic of Kazakhstan is being systematically modernised, as evidenced by recent changes in the Kazakhstan legislation aimed at the improvement of the country's investment climate. The recently launched AIFC Court and IAC with their own independent legal

system and enforcement powers appear to be a more predictable and straightforward jurisdiction to recognise and enforce both foreign and domestic judgments and arbitration awards. This development will hopefully enable Kazakhstan to evolve into an arbitration-friendly jurisdiction, in which the enforcement process is a truly strong feature of its judicial system. Time alone, however, will tell if this is going to be the trend for the future.

CIS London & Partners will keep you abreast of any future developments in the area.



Contact details:

Svetlana London

Managing Partner

svetlana.london@cislondon.com

+44 (0) 20 7242 0484



Contact details:

Kulzhan Mehrabi

Senior Counsel

kulzhan.mehrabi@cislondon.com

+44 (0) 20 7242 0484