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LEGAL MECHANISMS OF FUNCTIONING OF THE AIFC ARBITRATION SYSTEM

The International Arbitration Center (IAC) and the Astana International Financial Center (AIFC) Court together form the dispute resolution mechanism in the AIFC. The IAC was set up to provide an alternative to court litigation, which provides independent, fair and high-quality arbitration. Due to the particularity of AIFC in Kazakhstan's legal system, the dispute resolution mechanism of the AIFC has been paid more attention. To provide investors with efficient and friendly investment environment, it is necessary to study the AIFC dispute resolution mechanism under the existing legal framework. The purpose of the article is to identify the legal system of the functioning of the IAC arbitration as part of the AIFC dispute resolution mechanism and its effectiveness, which is achieved by analyzing the arbitration proceedings and the affecting factors. Based on the study, the AIFC dispute resolution mechanism made up by the IAC and the Court practices with the widely-accepted international principles and standards. It is a combination of the novelty of the practice of the AIFC scheme and Kazakhstan's domestic arbitration ground. Such research hopefully helps the investors to know about the AIFC dispute resolution mechanism, and tries to trigger further study to promote the development of the AIFC.

Key words: Kazakhstan, dispute resolution, arbitration, Astana International Financial Center, International Arbitration Center, the AIFC Court, arbitration procedure, legal system.

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АХҚО төрелік жүйесінің жұмыс істеуінің құқықтық механизмдері

Халықаралық төрелік орталық (ХТО) мен Астана халықаралық қаржы орталығы (АХҚО) соты бірлесіп АХҚО дауларды шешу механизмін құрайды. ХТО тәуелсіз, әділ және жоғары сапалы төрелікті қамтамасыз ететін сот ісін жүргізуге балама ретінде құрылды. Қазақстанның құқықтық жүйесіндегі АХҚО-ның ерекшелігіне байланысты АХҚО-да дауларды шешу механизміне көбірек көңіл бөлінеді. Инвесторларға тиімді және қолайлы инвестициялық ортаны қамтамасыз ету үшін қолданыстағы заңнамалық база шеңберінде АХҚО дауларды шешу механизмін зерделеу қажет. Мақаланың мақсаты – АХҚО дауларды шешу тетігінің бөлігі ретінде ХТО төрелігінің жұмыс істеуінің құқықтық жүйесін анықтау, оған төрелік іс жүргізуді және сот пен ХТО арасындағы өзара іс-қимылды талдау арқылы қол жеткізіледі. Зерттеу негізінде ХТО және Соттан тұратын АХҚО дауларды шешу механизмі жалпы қабылданған халықаралық қағидаттар мен стандарттарға сәйкес тәжірибеде жүзеге асырылады деген қорытынды жасауға болады. Бұл АХҚО схемасы тәжірибесінің жаңалығы мен қазақстандық отандық төрелік базасының үйлесімі. Бұл зерттеу инвесторларға АХҚО дауларды шешу механизмі туралы білуге көмектеседі және АХҚО-ның дамуына жәрдемдесу үшін одан әрі зерттеулерді бастауға тырысады деп үміттенеміз.

Түйін сөздер: Қазақстан, дауды шешу, төрелік, Астана халықаралық қаржы орталығы, Халықаралық төрелік орталығы, АХҚО Соты, төрелік процесс, құқықтық жүйе.

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Правовые механизмы функционирования арбитражной системы МФЦА

Международный арбитражный центр (МАЦ) и суд Международном финансовом центре «Астана» (МФЦА) вместе образуют механизм разрешения споров в МФЦА. МАЦ был создан в качестве альтернативы судебным разбирательствам, обеспечивающей независимый, справедливый и высококачественный арбитраж. В связи с особенностью МФЦА в правовой

системе Казахстана, механизму разрешения споров в МФЦА уделяется повышенное внимание. Для обеспечения инвесторов эффективной и дружественной инвестиционной средой необходимо изучить механизм разрешения споров МФЦА в рамках существующей правовой базы. Целью статьи является выявление правовой системы функционирования арбитража МАЦ как части механизма разрешения споров МФЦА, что достигается путем анализа арбитражного разбирательства и взаимодействия суда и МАЦ. На основании проведенного исследования можно сделать вывод, что механизм разрешения споров МФЦА, состоящий из МАЦ и Суда, практикуется в соответствии с общепринятыми международными принципами и стандартами. Это сочетание новизны практики схемы МФЦА и казахстанской внутренней арбитражной базы. Данное исследование, как мы надеемся, поможет инвесторам узнать о механизме разрешения споров МФЦА и попытается инициировать дальнейшие исследования для содействия развитию МФЦА.

Ключевые слова: Казахстан, разрешение спора, арбитраж, Международный финансовый центр «Астана», Международный арбитражный центр, Суд МФЦА, арбитражный процесс, правовая система.

Introduction

The Astana International Financial Center is a territory within the city of Astana, with limited borders and a special legal regime, as stipulated in the Constitutional Statute on Astana International Financial Centre. The establishment and development of the AIFC have become an important measure to facilitate Kazakhstan's integration to the international financial system and promote the regional development. The International Arbitration Center is one of the main bodies set up under the AIFC framework.

With the continuous development of globalization, arbitration has become an important means to resolve national and international commercial and investment disputes. Registered as an AIFC Body in 2017, the IAC is an independent legal entity which is separate from Kazakhstan's arbitration and judicial system. It tries to provide an independent, economical and expeditious alternative to court litigation. It has now cooperated with leading arbitration institutions in countries and regions such as the United Kingdom, China and the Middle East.

Although the IAC has achieved a lot in the last four years, it still lacks in terms of attractiveness and regional impact, and many investors are not aware of this new arbitration institution and are unfamiliar with its arbitration procedures and rules. To date, there is not much academic research on this arbitration institution. Therefore, it is necessary to analyze the existing legal documents of the IAC in order to understand and study arbitration at the IAC. The object of this study is the IAC as one main part of the AIFC dispute resolution mechanism, and the subject is how the IAC arbitration functions under the AIFC legal framework.

The purpose of this article is to identify the legal system of the functioning of the IAC arbitration as part of the AIFC dispute resolution mechanism. It is achieved by analyzing two main problems: the legislation of the IAC arbitration and the interaction between the IAC and the AIFC Court. To this end, the study considers some of the key issues of the IAC arbitration procedure, as well as its relationship with the AIFC Court, domestic arbitration in Kazakhstan and international practice.

Methods and materials

The sources used during the writing of the article were the legislation documents on the IAC arbitration, mainly based on the AIFC Arbitration Regulations (2017) and the IAC Arbitration and Mediation Rules (2018), as well as other official documents released by the AIFC. The scientific works on the IAC are not really sufficient to date, although legal professions such as lawyers or professors have analyzed briefly on the establishment of the IAC and basic provisions of the legislation. Although the cases are not published because of the confidentiality of arbitration, the legislation provided by the AIFC is comprehensive and detailed, on which the analysis of the article is based. The following methods were used during the analysis of the main legal aspects of the article: analysis and synthesis, comparative analysis, scientific generalization, etc.

During the study, both general research methods (analysis, synthesis, generalization of scientific, normative and practical materials, a systematic approach, etc.) and particular methods of comparative jurisprudence and the historical approach were used.

Results

In general, the procedural rules or regulations of the IAC are broadly similar in content and structure to those of the leading arbitral institutions, in which they contain the standard elements that practiced internationally these days. While it is not yet possible to draw definitive conclusions about the effectiveness of the AIFC arbitration system, there are several influencing factors that can be analyzed. These include the relationship between the AIFC Court and the IAC, the enforcement of the arbitration awards made by IAC, and the relationship between the IAC arbitration system and the domestic laws.

The establishment of the AIFC Court and the IAC is based on English law with independent judicial system and jurisdiction. As it is separate from the Kazakhstan's arbitration and judicial system, the risk underlying the Kazakhstan's domestic arbitration laws and arbitration systems can be avoided. The advantages of the IAC arbitration reflects in two aspects: (i) it provides a systematic scheme for the domestic application of extraterritorial law, which has a positive effect on promoting arbitration practice in line with international standards and gaining investors' trust; (ii) the IAC arbitration award is recognized and enforced via the AIFC Court, while there are cases where a Kazakh court may refuse to recognize and enforce arbitral awards on questionable grounds (Tukulov 2018).

The relationship and interaction between the IAC and the AIFC Court is noteworthy. The Court play a critical role in supporting the practice of arbitration by enforcing arbitration agreements, providing a mechanism for challenging arbitration awards, and clarifying the legal framework for arbitration, especially under the AIFC framework. The AIFC Court can be seen as an institutional arrangement between arbitration and domestic courts. It has made institutional adjustments in the framework of Kazakhstan's domestic courts, mixing some elements of autonomy in arbitration, and provided guarantees for the conduct of the arbitral proceedings and the enforcement of arbitral awards. The participants may apply to the Court for evidence, property or act preservation in the arbitration proceedings according to the above provisions. And after the arbitral award is made, an application may be made to the Court for enforcement of the arbitral award. The AIFC Court and the IAC co-exist in the AIFC dispute resolution mechanism to meet the complex needs of the parties.

The AIFC legal system draws on the advanced judicial experience of various countries. It transplanted Common Law and successfully implemented the law of other countries in this financial hub. It should be noted that this transplantation is by no means a simple process of copying or imitation, but a modified and conditional transplantation that takes into account the domestic conditions of Kazakhstan. As a young financial hub in the Eurasia region, the AIFC at this stage is still on a rapid development. The legislation and practice have been improved and better adjusted into Kazakhstan's domestic legal system in the four-year-practice.

Discussion

As economic growth and diversification accelerates in Kazakhstan, the government has implemented broad measures to attract international investors and boost innovation. Among these efforts, Astana International Financial Centre was established in 2018, aiming at creating a favorable investment environment and attracting investors from all over the world. A unique legal system – AIFC legal system – was then established, which is based on the law of England and Wales. The AIFC, as a financial hub in Kazakhstan, has an independent judiciary separate from the Kazakh courts. As an important part of the AIFC, the AIFC Court and the IAC are set up according to the AIFC Constitutional Statute to deal with investment disputes within the AIFC. The IAC provides a platform for investors to settle disputes by arbitration as an alternative to court litigation. The IAC arbitration system constitutes an important and special part of Kazakhstan's international commercial arbitration system.

Although the AIFC has only been in operation for four years, strong business confidence in the dispute resolution institutions of the AIFC was shown by the volume of cases, recording 939 cases resolved by the AIFC Court and the IAC, and 918 mediation and arbitration awards of the IAC in 2021 (Annual Report on the Activities of the AIFC, 2021). This is certainly a success for the young AIFC. Meanwhile, given the advantages such as flexibility and convenience that arbitration offers, the IAC may even be more popular with investors than AIFC Court in the future.

Overview of the AIFC arbitration system

The IAC is established by Article 14 of the AIFC Constitutional Statute. According to the first paragraph of Article 14, the IAC hears disputes on

the basis of an arbitration agreement between the parties (Constitutional Statute, 2019). In 2017, the AIFC Arbitration Regulations (Resolution of the AIFC Management Council, 2017) was approved by Resolution of the AIFC Management Council and provided the foundation for AIFC arbitration system. The 2017 AIFC Arbitration Regulations is based on the UNCITRAL Model Law and is more liberal than the Kazakhstani domestic rules. In 2018, the Astana International Arbitration Centre Arbitration and Mediation Rules (Astana International Financial Centre Arbitration and Mediation Rules, 2018) were approved, by which the AIFC arbitration system were further refined. The IAC Arbitration and Mediation Rules were made to govern and provide for practice and procedure in arbitration and mediation administered at the IAC subject to agreement of the parties to a case. Basically, these legal documents constitute the legal framework of the AIFC arbitration system.

The AIFC Arbitration Regulations covers the aspects of arbitration such as scope of its application, requirements for arbitration agreement, composition of arbitral tribunal and its jurisdiction, conduct of arbitral proceedings and issues concerning recognition and enforcement of award.

An arbitration agreement is the basis and premise of effective arbitration. The AIFC Arbitration Regulations stipulates that there are two forms of arbitration agreement, namely, an an arbitration clause in a contract or in the form of a separate agreement, and both of them shall be in writing. The requirement that an arbitration agreement be in writing can be met by an electronic communication including e-mail, telegram, telex or teletype. Also, if an exchange of statements of claim and defense which contains an arbitration agreement can be considered as in the form of writing. These provisions expand the recognizable scope of the arbitration agreement and are more flexible and sufficient to demonstrate the legislative technical inclusiveness of the AIFC arbitration with respect to the written form of the arbitration agreement.

The IAC has its own panel of international arbitrators and mediators who are greatly experienced, independent and impartial. Until 2021, there are 41 arbitrators and mediators on the IAC Panel (Annual Report on the Activities of the AIFC, 2021). The parties are free to determine the number of arbitrators, the procedure for appointment of arbitrators, and the procedure for challenging an arbitrator. And similar to Law on Arbitration of Kazakhstan, the AIFC Arbitration Regulations

stipulates the appointment of substitute arbitrator (Article 24) (Astana International Financial Centre Arbitration and Mediation Rules, 2018), which is also a feature of Kazakhstan's arbitration system (Lai 2015). A substitute arbitrator shall be appointed where the mandate of an arbitrator terminates. This substitute arbitrator system has a positive significance for improving the efficiency of arbitration, particularly avoiding the adverse effects of the arbitrator's withdrawal from the tribunal on the arbitration process.

The jurisdiction of arbitration tribunal derives from the arbitration agreement between the parties and from the limitations imposed by law on the validity of that agreement. The issue of jurisdiction is the primary issue that must be solved in the arbitration procedure. It is the cornerstone and condition of the arbitration procedure. According to Article 26 of the AIFC Arbitration Regulations, the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

As one of the most important features and principles of arbitration, party autonomy is reflected in the arbitration procedure. The parties can agree on most of the matters in the arbitration procedure. Therefore, on the conduct of arbitral proceedings, the AIFC Arbitration Regulations and the IAC Arbitration and Mediation Rules provide sufficient rules and procedures for the parties. For example, expedited procedure can be conducted with the agreement between the parties in the cases where the amount in dispute does not exceed the aggregate equivalent of 5 million dollars. Basically, awards in expedited procedure should be made within 6 months from the date when the tribunal is constituted (Article 31) (Astana International Financial Centre Arbitration and Mediation Rules, 2018). Besides, an emergency arbitrator may be appointed by the IAC Chairman at the request of the parties, who shall take temporary relief measures in the event of an evidence, property or act emergency. As a special remedy before the constitution of the arbitral tribunal, the emergency arbitrator system provides temporary relief for the parties, which helps to avoid the risk of loss or damage of evidence and property involved.

The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal. The arbitral tribunal shall decide the dispute in accordance with rules of law chosen by the parties as applicable to the substance of the dispute. Such law chosen by the parties should refer to the

substantive law of the given state, not to its conflict of laws rules. In the absence of such agreement, the tribunal shall choose to apply the laws that is most appropriate according to the substance of the dispute. The issued awards may be corrected (if there are any errors in computation, any clerical or typographical errors) and interpreted by the tribunal. Also, the AIFC Arbitration Regulations provides a remedy by setting aside an award, and the IAC award may be set aside by the AIFC Court only. In addition, if appropriate or requested by a party, the AIFC Court may suspend the setting aside proceedings and the arbitral tribunal may resume the arbitral proceedings. In this way, it allows the arbitral tribunal to remedy the defects in the arbitral award itself, so that the dispute can be resolved quickly through arbitration (Wang&Su 2022).

Factors affecting the effectiveness of AIFC arbitration system

1. The interaction between the IAC and the AIFC Court.

By having procedural rules that can potentially be independent from the local legislature, the AIFC is able to develop cross-institutional mechanisms that are responsive to parties' needs and market preferences. Under the AIFC framework, the IAC and the Court form the dispute resolution mechanism within the Centre and play an important role in the resolution of disputes, by which, the AIFC combines both litigation and arbitration, as well as mediation, to provide varieties for participants to settle their disputes.

As can be seen from the procedural provisions, the AIFC Court and the IAC have a close connection in the dispute resolution procedures. Although arbitration and litigation proceedings do not interfere with each other, there is a close relationship between arbitration and the judiciary. In accordance with Article 9 of the AIFC Constitutional Statute, the AIFC Court and the IAC are independent in their exercise of the powers given to them, and the AIFC Court shall not intervene except to the extent provided in the AIFC Arbitration Regulations. The Court do not replace arbitration, instead, the Court is supposed to complement it and facilitate effective arbitration, as stipulated in Article 26 of the AIFC Court Regulations (Resolution of the AIFC Management Council, 2017).

The Court is playing an important role in arbitration proceedings, providing judicial support to aid the conduct and development of the arbitration process and / or to ensure the enforcement of resultant arbitral awards (Dimitropoulos, 2021).

According to the AIFC Arbitration Regulations, the Court's support for the arbitration process can be reflected in the following ways:

- appointment of an arbitrator(s) in the absence of mutual consent of the parties and resolution of other disputes related to the formation of an arbitration tribunal, challenge, replacement of arbitrators and termination of the functions of the tribunal;
- consideration of the issue of whether the arbitral tribunal has jurisdiction to consider the dispute;
- enforcement of interim measures taken by the arbitration tribunal in the territory of the AIFC;
- judicial assistance in obtaining evidence;
- consideration of a petition for the annulment of an arbitral award;
- recognition and enforcement of an arbitral award in the territory of the AIFC, etc.

Overall, the impact of courts on arbitration is complex and multifaceted, and can depend on a variety of factors, including the nature of the dispute, and the parties involved. However, courts play a critical role in supporting the practice of arbitration by enforcing arbitration agreements, providing a mechanism for challenging arbitration awards, and clarifying the legal framework for arbitration.

A recent case is a good example of the relationship between the Court and the IAC (AIFC Court Case, 2023). In this case, the claimant submitted an application to the AIFC Court for an anti-suit injunction, believing that the litigation procedure in the Specialized Inter-District Economic Court of Karaganda Region should be dismissed. The case was based on two separate contracts between the parties, one of which contained an arbitration clause, while the other appointed to submit the dispute to the Karaganda Court. The Justice considered that the application should be made promptly or before the court proceedings were too far advanced, and there seemed not to be any substantial overlap between the two proceedings. So the application was dismissed. In this case, the possible overlap arises because there are two different dispute resolution procedures. If a substantive overlap does exist, then does the AIFC Court have the competence to terminate proceedings in another court and refer the dispute to the IAC arbitration centre for resolution? As discussed above, the Court is involved in the consideration of the issue of whether the arbitral tribunal has jurisdiction to consider the dispute. In this case, the Justice took a cautious approach, believing that both the judge and the arbitrator in the case were capable of properly dealing with the small overlap that might exist.

The involvement of the Court may impose limitations on party autonomy of arbitration, which is one of the most important features of arbitration procedures. In fact, the AIFC Court plays a significant supervisory role over arbitral proceedings to promote justice and efficiency. Confidentiality, as one of the advantages and essential attributes of arbitration, distinguishes arbitration from litigation proceedings. Parties who choose arbitration as a means of resolving their disputes are also persuaded that it will preserve their private nature and protect their image and reputation. However, one exception for confidentiality of arbitration is an order issued by the AIFC Court. According to the Article 27 (23) of the AIFC Court Rules (AIFC Court Rules, 2018), although arbitration claims are to be heard confidentially as a matter of principle, the Court may order that an arbitration claim be heard in public.

It is a common practice in various countries for courts to intervene in arbitration, both in terms of support and assistance from the courts and in terms of supervision and review of arbitration by the courts. The legitimacy of court intervention in arbitration is mainly reflected in the smooth conduct of the arbitral proceedings and the substantive fulfilment of the arbitral award through the respect and guarantee of the state authorities. On the other hand, it is also necessary to consider the problem of the appropriateness of judicial intervention, which means that the court's intervention in the arbitration should ensure the fairness, impartiality and effectiveness of the arbitration, while at the same time ensuring the autonomy and efficiency of the arbitration. In fact, court assistance is helpful for the fairness and efficiency of the arbitration process, but excessive intervention may deviate from the parties' need for autonomy, convenience and efficiency of arbitration. Therefore, for the AIFC, the effective operation of the AIFC dispute resolution mechanism can only be achieved through a healthy interaction and synergy between the IAC arbitration and the Court.

Overall, the impact of courts on arbitration is complex and multifaceted, and can depend on a variety of factors, including the jurisdiction in which the arbitration is taking place, the nature of the dispute, and the parties involved. However, courts play a critical role in supporting the practice of arbitration by enforcing arbitration agreements, providing a mechanism for challenging arbitration awards, and clarifying the legal framework for arbitration.

2. The enforcement of arbitral awards

The effectiveness of the enforcement of the AIFC arbitration awards depends on various factors such as the legal framework, the institutional capacity of the AIFC and the national courts, and the willingness of the parties to comply with the awards.

The legal framework of the AIFC arbitration is based on the AIFC Arbitration Regulations, which are designed to ensure that the arbitration proceedings are conducted fairly, efficiently, and transparently. The regulations provide for the recognition and enforcement of awards by the AIFC Court and national courts in Kazakhstan, as well as in other countries that have signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The institutional capacity of the AIFC also plays an important role in the enforcement of arbitration awards. The AIFC has established a panel of international arbitrators, who have the necessary expertise and experience to resolve complex disputes. The AIFC also has a court that has the power to enforce arbitration awards within the AIFC's jurisdiction.

However, the effectiveness of the enforcement of the AIFC arbitration awards may be affected by the willingness of the parties to comply with the awards. In some cases, parties may challenge the validity or enforceability of the awards, which can lead to delays and additional costs. Moreover, the enforcement of the awards may also be affected by the national courts' willingness to recognize and enforce them.

Under the AIFC mechanism, arbitral awards made by the IAC should be recognized and enforced through the AIFC courts. As can be seen through the Orders or Judgments of the Court, the AIFC Court supports the recognition and enforcement of IAC arbitral awards in an objective manner, as long as there are no circumstances in which recognition and enforcement should be refused.

In the case between Success K LLP and Ministry of Healthcare of the Republic of Kazakhstan in 2021, the Parites submitted two Applications, one by Success seeking recognition and execution of the Final Award and one by the Ministry seeking to have the Final Award cancelled or set aside and refusal of its recognition and enforcement on the ground that the arbitration agreement was and is invalid under the law of the Republic (AIFC Court Case, 2021). Analyzing the reasons and cases submitted by the Ministry, the Court found that the IAC arbitration

agreement operates independently of the rest of the Contract between the Parties, and the arbitration tribunal was the forum with jurisdiction to determine the validity of the Contract. The recognition and execution of the IAC arbitration award was supported by the Court.

Overall, the effectiveness of the enforcement of the AIFC arbitration awards depends on multiple factors, including the legal framework, the institutional capacity of the AIFC, and the willingness of the parties to comply with the awards. However, in the specific judgment of each case, whether an arbitral award can be recognized and enforced may require the Court to conduct a thorough review of the merits of the case and the relevant legal provisions.

3. The interaction between the AIFC arbitration system and national legal system

The Court and arbitration serve different functions and are governed by different rules, for foreign investors, the international arbitration seems to be more attractive since domestic courts are perceived as institutions reflecting national tradition and custom. So the main attractiveness of the IAC arbitration lies in the fact that it is exempt from the Kazakhstani Law On Arbitration. The AIFC Arbitration Regulations is based on the UNCITRAL Model Law and is more liberal than the Kazakhstani domestic rules.

As can be seen, the AIFC law regulates its relationship with the laws of Kazakhstan relatively clearly. Under Article 4 of the Constitutional Statute No. 438-V ZRK of 7 December 2017, the law of the AIFC consists of the Constitutional Statute and AIFC Acts (of which the AIFC arbitration Regulations are one) not inconsistent with it, while the law of the Republic of Kazakhstan only “applies in part to matters not governed by this Constitutional Statute and AIFC Acts”. Both IAC Arbitration and the AIFC Court have adopted practices to respect and protect such independence of the AIFC in the Kazakhstani jurisdiction.

In the case between Success K LLP and Ministry of Healthcare of the Republic of Kazakhstan in 2021, the Ministry submitted that the Law on State Property applies directly to invalidate the arbitration agreement since the Ministry had to agree on the conclusion of an arbitration agreement with the authorized body for state property management. The Court held that, although the Parties have chosen the Contract to be governed by the substantive law of Kazakhstan, this does not directly invalidate arbitration agreements involving state property.

The Article 8(10) of the Law on Arbitration of Kazakhstan itself strongly supports this. Not to mention that the AIFC Court clarified the Article 8.10 of the Law On Arbitration did not apply to the arbitration clauses governed by the AIFC law (Korobeinikov et al. 2022).

If, in discussing the validity of an arbitration agreement, the provisions of substantive domestic laws are simply applied, that would circumvent and undermine Regulation 7 of the AIFC Arbitration Regulations, in a way which cannot have been envisaged. This would be a violation of the principles and original intent of the AIFC as an independent jurisdiction in Kazakhstan.

The AIFC arbitration system operates autonomously within the AIFC, this allows for the creation of arbitration rules and procedures that are tailored to meet the specific needs and expectations of international parties conducting business within the AIFC. The AIFC’s legal autonomy, combined with cooperation and compliance with Kazakhstan’s legal requirements, helps create a trusted and neutral forum for resolving international commercial disputes. This interaction is vital to the success of the AIFC as an international financial and arbitration center.

Conclusion

This article has analyzed how arbitration functions under the AIFC legal framework: the arbitration proceedings and three mentions that may affect the effectiveness of the IAC arbitration system. The IAC has been established for civil and commercial disputes as an alternative to litigation and has included procedures for expedited arbitration, the appointment of emergency arbitrators, and the resolution of investment treaty disputes. Meanwhile, the AIFC Court plays an essential role to facilitate effective arbitration. The AIFC Court supervises and supports the arbitration process, in turn, the efficiency and autonomy of the IAC arbitration provides an favorable alternative dispute resolution method to litigation proceedings. The IAC arbitration awards are recognized and executed by the Court’s orders or judgments, thus, difficulties in recognizing and enforcing IAC arbitral awards through other domestic courts are avoided. The dispute resolution mechanism under the AIFC by the IAC and the Court together also ensures the independence of the AIFC’s jurisdiction in Kazakhstan. It is a combination of the novelty of the practice of the AIFC scheme and Kazakhstan’s domestic ground.

The speedy and effective dispute resolution mechanisms anchored within the national legal systems has become an essential part to attract investors. Over the years, Kazakhstan has engaged in numerous reforms aimed at diversification of the national economy and encouragement of foreign direct investment (Woolf 2019). To date, the AIFC has become a prominent achievement not only in economic development but also in dispute resolution system in Kazakhstan. “The basis for building a strong economy and a decent business climate is a fair and impartial judicial system, which should become the main guarantor of the legitimate interests and rights of investors. In the context of resolving investment disputes, I call for the full use of the independent Astana

International Financial Centre Court and the International Arbitration Centre”, said Kassym-Jomart Tokayev on February 22, 2022 (Annual Report on the Activities of the AIFC, 2021).

The focus of the AIFC dispute resolution mechanism should be to provide efficient, convenient and reliable dispute resolution by practising international leading edge standards and practices. The IAC arbitration should ensure the realization of the maximum scope of party autonomy while ensuring fairness and justice. It is expected to give full play to the advantages of AIFC based on extraterritorial laws, and provide a friendly investment environment for attracting investors. The AIFC arbitration will have to prove and justify why it is the best choice for local and foreign investors to resolve the disputes.

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