

On Arbitration Courts

Invalidated Unofficial translation

The Law of the Republic of Kazakhstan, dated 28 December, 2004 No 22.

U n o f f i c i a l t r a n s l a t i o n

Footnote. The Law of the Republic of Kazakhstan dated 08.04.2016 No. 488-V (enforced upon the expiry of ten calendar days after the day of its first official publication) expired.

This Law regulates procedure for the formation, activity, and enforcement of the decisions of arbitration courts of the Republic of Kazakhstan.

Chapter 1. GENERAL PROVISIONS

1. Scope of this Law

This Law shall be applied in relation to disputes between individuals and (or) legal entities that emerged from civil law relations, unless otherwise stipulated by legislative acts of the Republic of Kazakhstan.

Footnote. Article 1 is in the wording of the Law of the Republic of Kazakhstan, dated 03.07.2013 No 125 -V (shall be enforced upon expiry of ten calendar days after its first official publication).

2. Basic definitions, used in this Law

The following basic definitions shall be used in this Law:

- 1) arbitration agreement – a written agreement of parties on transfer of dispute, arising or that may arise from civil law relations on hearing in arbitration court;
- 2) arbitration court – institutional arbitration court, arbitrage business or arbitration court, formed by the parties to decide a particular dispute (hereinafter - the arbitration court for deciding the dispute);
- 3) arbitral proceedings - the process of the adjudgement in the arbitration court and rendering a decision by the arbitration court;
 - 3-1) parties of the arbitral proceedings - a plaintiff and a defendant, enclosing the arbitration agreement;
- 4) rule of the arbitration court - the organization procedure of institutional arbitration court, arbitrage business;
- 5) an awarder -an individual, elected by parties or appointed in the agreed manner by parties in accordance with the provisions of this Law for deciding the dispute in the arbitration court;

5-1) public policy of the Republic of Kazakhstan - the basis of state and social structure enshrined in the Laws of the Republic of Kazakhstan;

6) a competent court - the court of the judicial system of the Republic of Kazakhstan that is authorized to hear cases of disputes, arising from civil law relations between the parties in the first instance, according to the civil procedural legislation of the Republic of Kazakhstan;

7) customary business practices - settled and widely applied rules of conduct in the field of civil law contracts regardless of whether they are recorded in any document.

Footnote. Article 2, as amended by the Laws of the Republic of Kazakhstan dated 04.05.2009 No 156-IV (shall be enforced from 08.11.2009); dated 03.07.2013 No 125-V (shall be enforced upon expiry of ten calendar days after its first official publication)

3. The legislation of the Republic of Kazakhstan on arbitration courts

1. The legislation of the Republic of Kazakhstan on arbitration courts shall be based on the Constitution of the Republic of Kazakhstan and consists of this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If other rules than those which were contained in this Law, were established by the international treaty, ratified by the Republic of Kazakhstan, then the rules of the international treaty shall be applied.

4. The principles of arbitral proceedings

The arbitral proceedings shall be carried out in compliance with the principles of:

1) autonomy of the parties, meaning that the parties in prior consent between them shall have a right to decide independently issues on the procedure and conditions of the arbitral proceedings implementation on arising dispute;

2) legality, which means that the awarders and the courts in their decisions are governed only by the norms of the Constitution of the Republic of Kazakhstan, legislative and other regulatory legal acts of the Republic of Kazakhstan;

3) independence, which means that the awarders and courts in deciding the dispute, referred to them are independent, render decisions under conditions precluding any influence on them;

4) contentiousness and equality of the parties, meaning that the parties in the arbitral proceedings shall use the same measure of rights and incur the same measure of obligations, choose their position, the methods and the means to defend it on a stand-alone basis and independently from the arbitration court and other agencies and bodies;

5) justice, which means that the awarders and arbitration courts on deciding the dispute, referred to them, and the parties of the arbitral proceedings shall act in good faith, respecting the imposed requirements, the ethical principles of the society and rules of business ethics;

6) confidentiality, which means that the awarders shall not disclose any information that has become known in the course of the arbitral proceedings, without the consent of the parties or their legal successors and cannot be interrogated as witnesses on the information became known to them in the course of the arbitral proceedings, except when the Law provides for the duty of a citizen to report the information to the appropriate body.

5. Types of arbitration courts

1. Arbitration courts in the Republic of Kazakhstan can be created in the form of institutional arbitration court, arbitrage business or arbitration court to decide a particular dispute.

2. Institutional arbitration courts can form as legal entities, established under the laws of the Republic of Kazakhstan and their associations (unions).

For the formation of institutional arbitration court, the persons, referred to this paragraph shall adopt rules of arbitration court, the list of awarder that will operate in this arbitration court.

2-1. The arbitrage business for deciding the dispute relating to the conclusion of transactions shall be created by a goods exchange as institutional arbitration.

For the formation of institutional arbitrage business the goods exchange shall approve the rules of arbitration court, the list of awarders that will operate in this arbitration court.

3. The arbitrage court for adjudgement shall be created by the parties to decide the dispute arising from their civil law relations, and shall act up to deciding the dispute or up to deciding by parties on submission of the dispute to the competent court.

The organization and procedure of the arbitration court activity, created for deciding particular dispute shall be determined by agreement of the parties.

4. Arbitration courts in the Republic of Kazakhstan cannot be formed by government bodies, state enterprises and natural monopolies and the entities which hold a dominant position on the market of goods and services.

Footnote. Article 5, as amended by the Laws of the Republic of Kazakhstan dated 04.05.2009 No 156-IV (shall be enforced from 08.11.2009) dated 03.07.2013 No 125-V (shall be enforced upon expiry of ten calendar days after its first official publication)

6. Proper Law in the activity of the arbitration courts

1. The arbitration court shall consider the disputes in accordance with the Constitution, the Laws and other regulatory legal acts of the Republic of Kazakhstan.

2. The arbitration court shall decide in accordance with the terms of the contract and taking into account the customary business practices.

3. In the case of absence of legal standard, regulating contentious relationship, the arbitration court shall apply the legal standards, regulating similar relationship, and in

the absence of such rules shall decide the difference based on general principles and laws.

7. Submission of the dispute on deciding of the arbitration court

1. The dispute can be referred on adjudgement of arbitration court in the presence of agreement, concluded between the parties of the arbitration agreement, and in accordance with the legislation of the Republic of Kazakhstan on goods exchanges.

2. The arbitration agreement can be concluded by the parties in relation to disputes which have arisen or which may arise between the parties due to particular legal relationship.

3. *Is excluded by the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall be enforced upon expiry of ten calendar days after its first official publication)*

4. In relation to dispute that is on adjudgement in the competent court, the arbitration agreement may be concluded before the rendering of decision on the dispute, specified by the court.

5. Disputes are not under the arbitral tribunals jurisdiction, which affect the interests of the state, state enterprises, minors, persons found according to the procedure provided for by the law incapable or partially capable, persons that are not parties of the arbitration agreement, the disputes from contracts for services, works, the production of goods by subjects of natural monopolies, subjects with a dominant position on the market of goods and services, as well as the bankruptcy or rehabilitation, except as permitted by applicable the Laws of the Republic of Kazakhstan.

6. The arbitration court may not consider disputes, arising from personal non-property relations, not related to property, related to the life and health, privacy, personal and family secret, the right to name of the person.

Footnote. Article 7, as amended by the Laws of the Republic of Kazakhstan dated 04.05.2009 No 156-IV (shall be enforced from 08.11.2009) dated 17.02.2012 No 564-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 03.07.2013 No 125-V (shall be enforced upon expiry of ten calendar days after its first official publication).

7-1. The arbitration agreement and filing of suit on the merits in the competent court

1. The competent court, in which the suit was submitted on the subject of the arbitral proceedings, shall, if either party requests it not later than submitting his first statement of case to refer the parties to arbitration court, unless it finds that the arbitration agreement is nude, became inoperative or cannot be enforced.

2. Filing of suit, referred to in paragraph 1 of this Article, in the competent court does not limit arbitral proceedings which may be commenced or continued and the

arbitral award was rendered while the competent court is considered the issue on competence to him the subject of the arbitral proceedings.

Footnote. The Law is supplemented by Article 7-1 in accordance with the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall be enforced upon expiry of ten calendar days after its first official publication).

8. Inadmissibility of interference in the activity of the arbitral court

Interference of government bodies and other institutions in activity of arbitration court shall not be allowed, except to the extent that this is provided by the legislative acts of the Republic of Kazakhstan.

9. Language of the arbitral proceedings

1. Proceedings in the arbitration courts are in Kazakh language, and if necessary, along with Kazakh, Russian or other languages ??by agreement of the parties shall be used.

2. In the case of failure to reach an agreement by the parties on the language of the arbitration, the language of the arbitral proceedings shall be established by the arbitration court.

3. Participants in the case that are not fluent in the language in which the arbitration proceeding is conducted shall be provided by the right to insight with materials of the case, participation in the arbitration court through an interpreter, the right to act in the arbitration court in their native language.

4. Party, submitting the documents and other materials are not in the language of the arbitral proceedings, shall ensure their translation.

5. Documents and other materials are given to the persons, involved in the case, translated into their native language or another language, which they can speak.

Footnote. Article 9, as amended by the Law of the Republic Kazakhstan dated 05.02.2010 No 249-IV.

10. The form and content of the arbitration agreement

1. The arbitration agreement shall be concluded in writing. The arbitration agreement shall be recognized concluded in writing, if it is contained in the document, signed by the parties or concluded by exchange of letters, teletype messages, telegram messages or other means of electronic or other communication which provide a record of such agreement.

2. The reference in the contract to a document, containing the condition on the submission of the dispute to arbitration court is the arbitration agreement, provided that the contract is in writing and the reference is such that it makes the arbitration agreement as a part of the agreement.

3. Unless otherwise agreed by the parties, the submission of the dispute in institutional arbitration court the rules of institutional arbitration court shall be considered as an integral part of the arbitration agreement.

4. The validity of the arbitration agreement may be terminated by agreement of the parties in the same way in which it was concluded.

Chapter 2. COMPOSITION OF ARBITRAL TRIBUNAL

11. Requirements for judges of the arbitration court

1. The awarder can be elected (appointed) independent of the parties and not interested in the outcome of the case, individual, having the necessary knowledge, with higher education and professional experience of not less than two years, who has reached the age of twenty-five years, and given consent to the performance of the obligations of the awarder.

2. The awarder, deciding the dispute singly, must have a higher legal education and work experience of not less than two years in the legal profession. In the case of the collective deciding the dispute the chairman of the arbitration court shall have a higher legal education.

3. Requirements for candidates to the awarders shall be determined by the parties directly in the formation of the composition of arbitral court or determined by rules in the institutional arbitration courts.

4. The awarder may not be a person:

1) elected or appointed in accordance to the procedure provided by the legislation of the Republic of Kazakhstan, the judge of the competent court;

2) judged incapable or partially incapable by the court according to the procedure provided for by the law;

3) has an unexpunged or outstanding conviction, or a person that is charged with a crime;

4) that is a public servant, deputy of the Parliament of the Republic of Kazakhstan, deputy of maslikhat, carried out his activity on a permanent or free basis, paid at the expense of state budget, and military.

Footnote. Article 11, as amended by the Laws of the Republic of Kazakhstan dated 05.02.2010 No 249-IV; dated 03.07.2013 No 125-V (shall be enforced upon expiry of ten calendar days after its first official publication).

12. The number of awarders on the adjudgement

1. Parties shall have a right to determine the number of awarders, which must be odd.

2. Unless otherwise agreed by the parties, three awarders shall be elected (appointed) for deciding the dispute in the arbitration court.

13. The composition of arbitral court

1. Formation of the composition of arbitral court shall be carried out by election (appointment) of the awarders (awarder).

2. In the institutional arbitration court the formation of the composition of arbitral court shall be carried out in order, according to the procedure provided for by the regulations of the institutional arbitration court.

3. In the arbitration court for deciding a particular difference the formation of the arbitration court shall be carried out according to the procedure, agreed by the parties.

4. Unless otherwise agreed by the parties, the formation of the membership of the arbitration court for deciding the particular difference shall be carried out in the following order:

1) during the formation of the arbitration court, which consists of three awarders, each party shall select one awarder and the two awarders thus selected shall select the third awarder.

If one party fails to select the awarder within fifteen days after receipt of the request to do so from the other party, or two selected awarders within fifteen days after their selection fail to select the third awarder, then the adjustment shall be terminated and this dispute can be referred to the competent court;

2) if the dispute is entitled to the deciding by the awarder singly and after address of one party to the other with a proposal on the election of the awarder, the parties within fifteen days fail select the awarder, then the adjustment in the arbitration court shall be terminated and the dispute can be referred for deciding to the competent court.

13-1. Terms of activity of the institutional arbitration court

The institutional arbitration court shall keep a register of its awarders. Information about the institutional arbitration court, including its legal address and rules, as well as the register of arbitrators shall be placed in the media, including on websites for free familiarization of individuals and legal entities. The information about the decisions of the arbitration court shall be placed if given the consent of the parties of the dispute.

The register of awarders shall contain the name, first name, middle name (in its presence) of the awarder, work experience with the indication of place of employment, position and period of work, degree and academic title (if its presence), the number of trying case.

Footnote. The Law is supplemented by Article 13-1, in accordance with the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall be enforced upon expiry of ten calendar days after its first official publication).

14. Challenge to the awarder

1. In the case of non-compliance of the awarder to requirements of Article 11 of this Law, the parties may challenge the awarder.

2. When an individual is approached in connection with his possible election (appointment) as the awarder this person shall disclose the circumstances that are the

grounds for his challenge in accordance with Article 11 of this Law. If these circumstances arose during the arbitral proceedings, the awarder shall promptly notify the parties about it and declare a resignation.

3. A party may challenge an awarder selected by him in accordance with this Article only if the circumstances which are grounds for challenge become aware to the party after the election of this awarder.

4. In the institutional arbitration court the challenge procedure the awarder can be determined by rules of the institutional arbitration court.

5. In the arbitration court for deciding a particular difference the challenge procedure the awarder can be agreed by the parties.

6. If the challenge procedure the awarder is not agreed by the parties or not determined by the rules of the institutional arbitration court, a written reasoned statement on challenge the awarder shall be applied by a party within five days after the party has become aware of the fact that the composition of the arbitration court has been formed and there are grounds for challenge the awarder in accordance with Article 11 of this Law.

If the awarder that shall be challenged, does not tender a resignation or the other party does not agree with the challenge the awarder, the issue on challenge the awarder shall be decided by awarders that are included in the composition of the arbitration court, within ten days from receipt of the written reasoned request of the party.

The issue of challenge the awarder, considering the dispute singly, shall be determined by this awarder.

15. Termination of the powers of the awarder

1. The powers of the awarder can be terminated by agreement of the parties in connection with the resignation of the awarder or the challenge the awarder on the grounds, provided by this Law, as well as in the case of death of the awarder.

2. The powers of the awarder shall be terminated after a decision in a particular case. In the cases, provided in Articles 37-40 of this Law, the powers of the awarder shall be renewed, and then terminated after the enforcement of the procedural actions, provided by these articles.

16. Replacement of the awarder

In the case of termination of the powers of the awarder another awarder shall be elected (appointed) in accordance with the rules that applied during the election (appointment) of the replaced awarder.

Chapter 3. EXPENSES, RELATING WITH DECIDING A DIFFERENCE IN THE ARBITRATION COURT

17. Expenses, related with deciding a difference in the arbitration court

1. Expenses, linked with deciding a dispute in the arbitration court shall include:
fee of the awarders;

expenses, incurred by the awarders in relation with participation in the arbitral proceedings, including expenses for travelling to the place of adjustment, accommodation and food;

amounts to be paid to the experts, specialists and interpreters;

expenses, incurred by the awarders in relation with the inspection and examination of written and physical evidence at their location;

expenses, incurred by the witness;

expenses on payment the services of the representative by a party in whose favor the decision of the arbitration court was;

expenses on organizational and material support of the arbitral proceedings.

2. In the institutional arbitration court the amount of fee of the awarders shall be determined by the composition of the arbitration court in accordance with the schedule of fees of the awarders, provided by the rules of the institutional arbitration court.

In the absence of indication on fixed amount of fee of the awarders in the rule of the institutional arbitration court the arbitration court can determine the amount of fee of the awarders in each specific case of the proceedings on the dispute, taking into account the value of the suit, the complexity of the dispute, the time spent by the awarders on the arbitral proceedings, and any other circumstances relevant to the case.

3. In the arbitration court for deciding a particular difference the amount of fee of the awarders shall be determined by agreement of the parties, and in the absence thereof - by the arbitration court for deciding the particular difference according to the procedure, provided for the institutional arbitration court.

18. Allocation of charge, related with the deciding a difference in the arbitration court

1. The allocation of charge, related with the deciding a difference in the arbitration court between the parties shall be carried out by the arbitration court in accordance with the agreement between the parties, and in the absence thereof - in proportion to satisfied and rejected requirements.

2. The expenses on payment of representative services by the party in whose favor a decision of the arbitration court is rendered, as well as any other expenses, linked with the arbitral proceedings may be referred to the other party by decision of the arbitration court, if the demand on compensation of incurred expenses was claimed during the arbitral proceedings and satisfied by the arbitration court.

3. The allocation of charge, related with the deciding a difference in the arbitration court shall be stated in the decision or ruling of the arbitration court.

4. In the case of renunciation of suit by the plaintiff the incurred expenses shall not be compensated by the defendant.

Chapter 4. ARBITRAL PROCEEDINGS

19. Solution of a question of competence of the awarder

1. The arbitration court shall decide independently the issue on presence or absence of his powers to consider submitted on his deciding difference, including the cases when one of the parties is against the arbitral proceedings on grounds of absence or invalidity of the arbitration agreement.

2. Party has a right to declare the lack of powers of the arbitration court to consider the submitted on his deciding difference until the submission of first statement on the merits of dispute.

3. Party has a right to declare that the arbitration court exceeded its powers if in the course of the arbitral proceedings will be the matter of the dispute the consideration of which is not provided by the arbitration agreement or which cannot be a matter of the arbitral proceedings in accordance with the Law or the rules of the arbitral proceedings.

4. The arbitration court is obliged to consider the statement made in accordance with paragraphs 2 and 3 of this Article. According to the results of the statement consideration shall be rendered the decision.

5. If the arbitration court on considering the issue on its power renders a decision on the absence of arbitration court of powers in the

adjudgement, the arbitration court may not consider the dispute on the merits.

20. Determination of rules of the arbitral proceedings

1. The institutional arbitration court shall carry out the arbitral proceedings in accordance with the rules of the institutional arbitration court, unless the parties have agreed on implementation of other rules of the arbitral proceedings.

2. The arbitration court for deciding the particular difference shall carry out the arbitral proceedings in accordance with the rules, agreed by the parties.

3. The rules of the arbitral proceedings, agreed by the parties in accordance with paragraphs 1 and 2 of this Article shall not be contrary to the mandatory provisions of this Law, not granting to the parties a right to negotiate on certain issues.

In a part of, not agreed by the parties, not determined by the rules of the institutional arbitration court and this Law, the rules of the arbitral proceedings shall be determined by the arbitration court.

21. The place of the arbitral proceedings

1. In the arbitration court for deciding a particular difference, the parties are free to agree on the place of the arbitral proceedings. Unless otherwise agreed by the parties, the place of arbitral proceedings shall be determined by the arbitration court for deciding a particular difference, having regard to all circumstances of the case, including the convenience factor of the parties.

2. In the institutional arbitration court the place of arbitral proceedings shall be determined in accordance with the rules of the institutional arbitration court.

If in the rules of the institutional arbitration court no any indication on the place of the arbitral proceedings or the procedure of its determining, the place of the arbitral proceedings shall be determined by the composition of the arbitration court, having regard to all circumstances of the case, including the convenience factor of the parties.

22. The suit and points of defense

1. The plaintiff shall recite his demands in the suit, which shall be submitted in writing to the arbitration court. A copy of the suit shall be referred to the defendant.

2. The suit shall include:

- 1) the date of filing of the suit;
- 2) the name of the parties, their place of residence or, if the parties are legal entities, location, bank details;
- 3) foundation of production before the arbitration court;
- 4) the plaintiff's demands;
- 5) the circumstances, on which the plaintiff bases his demands;
- 6) evidence that confirm the plaintiff's demands;
- 7) a price of the suit if the suit is to be evaluated;
- 8) the list of attached documents to the suit and other materials.

The suit must be signed by the plaintiff or his representative. If the suit is signed by the representative of the plaintiff, to the suit shall be attached the letter of attorney or other document, confirming the representative's power.

3. The rules of the arbitral proceedings can provide additional requirements for the content of the suit.

4. The defendant has a right to present to the plaintiff and the arbitration court points of defense, stating there their defensive pleading. The defensive pleading shall be presented to the plaintiff and the arbitration court in the manner and time, provided by the rules of arbitral proceedings.

If the term of presentation of points of defense is not determined by the rules of the arbitral proceedings, then these points of defense shall be provided not less than ten days before the first meeting of the arbitration court.

5. In the course of the arbitral proceedings the party may amend or supplement his suit or defense against the suit.

23. Initiating of the arbitral proceedings

1. The arbitration court taking a suit, shall decree on initiating of the arbitral proceedings in accordance with the regulations (rules) or the rules of civil procedure legislation of the Republic of Kazakhstan shall inform the parties about the place of examination, shall proposes presenting a written response on the suit to the defendant.

2. Failure to provide answer by the defendant cannot serve as an obstacle to the adjustment.

24. Return of the suit

1. The arbitration court shall return the suit if:

- 1) there is no arbitration agreement between the parties;
- 2) affect the interests of third parties that are not parties of the arbitration agreement;
- 3) the suit, submitted in the arbitration court not provided in the arbitration agreement;
- 4) the suit is signed or submitted by a person not authorized to sign or present it;
- 5) the plaintiff submitted a statement for the return of the suit;
- 6) there is a case on the dispute between the same parties on the same subject and the same grounds in the proceedings of the same or another arbitration court.

2. The return of the suit does not prevent the reproduction before the court by the plaintiff to the arbitration court with the suit to the same defendant, on the same subject and the same grounds.

25. Submission of a counterclaim and offsetting of counter-claims

1. The defendant has a right to present the counterclaim to the plaintiff on conditions that there is a mutual relationship of counterclaim with the requirements of a claim of the plaintiff, as well as on conditions that the counterclaim may be considered by the arbitration court in accordance with the arbitration agreement.

2. The counterclaim may be presented in the course of the arbitral proceedings before the deciding by the arbitration court unless the parties have agreed a term for presenting a counterclaim.

3. The counterclaim must meet the requirements of the paragraph 2 of Article 22 of this Law.

4. The plaintiff has a right to present a counter-claim in the manner and time, provided by the regulation or rules of the arbitral proceedings.

5. If otherwise agreed by the parties, the defendant has a right to require the offsetting of counter-claim in compliance with the requirements of civil legislation.

26. Introduction and examination of evidence

1. Each party must prove the circumstances to which it refers as to substantiate their claims and counter-arguments. The arbitration court has a right to propose submitting additional evidence to the parties to if it considers that presented evidence were insufficient.

2. The arbitration court is obliged to examine of evidence immediately all available evidence in the case.

27. Participation of parties in the sitting of the arbitration court

1. Equal opportunity to present their positions and to protect their rights and interests shall be given to each party.

2. If the parties did not agree otherwise, the arbitral proceedings shall be carried out in the sitting of the arbitration court with the participation of the parties or their representatives.

The powers of the representative shall be executed in compliance with the requirements, provided for by the civil procedural legislation of the Republic of Kazakhstan.

3. The notice of the time and place of the sitting of the arbitration court shall be given to the parties with due advance and in a proper manner.

If the parties did not agree otherwise, copies of all documents, materials and information submitted to the arbitration court by a party, must be transferred to the other side of the arbitration court. Amicus brief on which the arbitration court bases its decision shall be transmitted to the parties by the arbitration court to the parties.

4. If the parties did not agree otherwise, the membership of the arbitration court shall consider the case in a closed session.

28. Rights of the parties

Parties, participated in the arbitral proceedings shall have the right to:

- 1) get to know the materials of the case, make extracts from it and make copies;
- 2) tender evidence;
- 3) present petitions, challenge the awarders;
- 4) ask questions to the participants of the proceedings, give oral and written explanations;
- 5) submit their arguments on all issues, arising in the course of the process;
- 6) resist motions and arguments of another party;
- 7) get to know record of the arbitration court and submit written comments on it;
- 8) apply before a competent court on compulsory enforcement of the decision of the arbitration court;
- 9) appeal of the decision of the arbitration court to the extent permitted by applicable law.

29. The consequences of failure to provide by the parties of documents and other materials or default in appearance of the parties

1. Failure to provide the documents and other materials, as well as default in appearance in the arbitration court of the parties or their representatives duly notified of the time and place of the sitting of the arbitration court, is not an obstacle for the arbitral proceedings and rendering the decision by the arbitration court, if the cause of failure to provide documents and other materials, or default in appearance of parties in the sitting of the arbitration court shall be considered as unreasonable.

2. Failure to provide statement of defence by the defendant against the suit cannot be considered as recognition of the plaintiff's claims.

30. Calling for and carrying out expert examination

1. Unless otherwise agreed by the parties, the arbitration court may appoint an expert examination to explain issues, arising on the adjustment requiring specialized knowledge, and to require the submission of necessary for the examination documents, other materials or objects from the parties.

The arbitration court has a right to decide other issues, related to the participation of experts in the arbitral proceedings, including the allocation of expenses to pay for examination and participation of the expert, if these issues were not specifically specified by the parties.

2. The expert opinion shall be submitted in writing.

3. Unless otherwise agreed by the parties, the expert on condition that any party requests it or the arbitration court considers it necessary must after delivery of the expert opinion to participate in the sitting of the arbitration court where to the parties and the awarders shall be given an opportunity to ask expert the questions, related to the carrying out of examination and provided expert opinion.

31. Record of the arbitration court

1. Unless otherwise agreed by the parties, the record of the arbitration court shall be kept.

2. The record of the arbitration court shall reflect all significant moments of the proceedings.

The record of the arbitration court shall specify:

- 1) year, month, date and place of the sitting of the arbitration court;
- 2) the time of start and end of the sitting of the arbitration court
- 3) the name of the arbitration court, considering the case, the names and initials of the awarders, the secretary of the sitting of the arbitration court;
- 4) the name of the case;
- 5) information on the appearance of the persons, involved in the case, representatives, witnesses, experts, specialists, translators;
- 6) information on the explanation to the persons, involved in the case, to the representatives of their procedural rights;
- 7) ordinances of the chairperson and determination, rendered by the arbitration court in the sitting of the arbitration court;
- 8) statements, motions and explanations of the persons, involved in the case, and representatives;
- 9) the testimony of witnesses, oral explanations by experts of their opinions, comments of the experts;

10) information concerning the disclosure of the documents, data of examination of physical evidence, listening to recordings, watching video, film materials;

11) the content of the questions and answers that took place in the meeting room of the arbitration court;

12) information concerning the disclosure and explanation of the content of the decision and the determinations, clarification of the procedure and period for their appeal;

13) information concerning the clarification to persons, involved in the case, the right to review the record and make some comments;

14) the date of the drawing up record.

3. The record shall be drawn-up by a secretary of the arbitration court that shall be appointed by the arbitration court under agreement of the parties of the arbitral proceedings or in accordance with the rules of the institutional arbitration court.

4. The persons, involved in the case and their representatives shall have a right to apply for disclosure of any part of the record, on placing on the record of information about the circumstances which are significant for the case according to their opinion.

5. The record shall be drawn up and signed not later than three days after the sitting of the arbitration court.

The drawing-up and signing of the record of the arbitration court on hard cases can be made over a longer period, but not later than ten days after the sitting of the arbitration court.

6. The record shall be signed by the chairman and the secretary. All corrections, amendments, additions shall be specified in the record and certified by their signatures.

32. Assistance of the competent court in granting of interim measures

1. Unless otherwise agreed by the parties, the arbitration court can order, at the request of any party, on adoption of such interim measures in respect of the subject of the dispute, which he considers as necessary, and shall render a determination about it.

2. Application for interim relief, considered in the arbitration court, shall be submitted by the party to the competent court at the place of arbitral proceeding or at the location of the property in respect of which can be taken interim measures.

The application for interim relief shall include evidence of submission of the suit to the arbitration court.

3. Consideration of the application for interim relief by the competent court, adjudicated in the arbitral court, and rendering of determination granting of interim measures or about reject in its granting shall be carried out according to the procedure, prescribed by the civil procedure legislation of the Republic of Kazakhstan.

4. The determination on for interim relief, considered in the arbitration court can be set aside by the competent court, which rendered this determination according to the

statement of one party. The decision of the awarder on reject of plaintiff's claims is a ground for cancellation by the competent court of the interim measures.

Footnote. Article 32, as amended by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

Chapter 5. THE DECISION OF THE ARBITRATION COURT

33. A binding arbitration of the arbitration court

Both parties, concluded the arbitration agreement, shall accept the responsibility to implement the decision of the arbitration court. The parties and the arbitration court shall apply every effort that the arbitration decision was legally enforceable.

34. Deciding by the arbitration court

1. The arbitration court by majority of the awarders' votes that are the membership of the arbitration court, shall decide after investigating the circumstances of the case.

The decision is announced at the sitting of the arbitration court. The arbitration court has a right to announce only the operative part of the decision. In this case, if the parties did not agree the term for sending of the decision, a reasoned decision shall be sent to the parties within thirty days from the date of announcement of the operative part of the decision.

A judge that does not agree with the decision of the majority of members of the arbitration court has a right to express his special opinion, which is attached to the decision. Parties shall have a right to get to know with the special opinion of the awarder.

2. The arbitration court has a right if it deems necessary, to postpone deciding and call the parties on the additional sitting subject to paragraph 3 of Article 27 of this Law

3. If in the course of the arbitral proceedings the parties settle the dispute by conclusion of a settlement agreement that would not contradict the legislation of the Republic of Kazakhstan and will not violate the rights and lawful interests of other parties, the arbitration court shall terminate the proceedings at the request of the parties and in the absence of the objections from his side shall fix this settlement in the form of the arbitration decision on agreed terms.

The arbitration decision on agreed terms shall be rendered in accordance with the provisions of Article 35 of this Law and shall state that it is the decision of the arbitration court. The decision of the arbitration court has the same status and effect as any arbitration decision on the merits.

4. The decision of the arbitration court shall be deemed adopted in the place of the arbitral proceedings and shall be enforced in a day when it is signed by the awarder (awarders).

35. The form and content of the decision of the arbitration court

1. The decision of the arbitration court shall be made in writing and shall be signed by the awarders that are the members of the arbitration court, including the awarder, having a special opinion.

2. The decision of the arbitration court shall specify:

- 1) the date of the deciding;
- 2) the place of the arbitral proceedings, determined in accordance with Article 21 of this Law;
- 3) the composition of the arbitration court and the order of its formation;
- 4) the names of the dispute parties, surnames and initials, posts of their representatives with an indication of powers;
- 5) the foundation of the competence of the arbitration court;
- 6) the claims of plaintiff and the counter-arguments of defendant, the motions of the parties;
- 7) the nature of the dispute, statements, motions, explaining the persons involved in the proceedings;
- 8) the circumstances of the case, established by the arbitration court, the evidence on which were based the findings of the arbitration court about these circumstances, the regulatory legal acts of the Republic of Kazakhstan, which the arbitration court guided for deciding.

In the operative part of the decision shall be indicated the findings of the arbitration court to satisfy or rejection of each stated count, the amount of costs, related to the deciding the dispute in the arbitration court, the allocation of these costs between the parties, and if necessary, time limit and procedure for enforcement of adopted decision.

3. After deciding shall be served or sent a copy of the decisions to each party, issued in accordance with paragraph 1 of this Article.

36. Legality and relevancy of the decision

1. The decision of the arbitration court shall be lawful and relevant.

2. The arbitration court shall base its decision only on the evidence that had been investigated in a sitting of the arbitration court.

37. Additional decision

1. Unless otherwise agreed by the parties, either party with notice to other party can within ten days after receiving the decision of the arbitration court to apply to the same arbitration court with statement on adoption of additional decision concerning the claims which were filed during the arbitral proceedings but were not reflected in the decision. Specified statement must be considered within ten days of receiving by the composition of the arbitration court, deciding the dispute.

2. After considering the results of relevant application shall be adopted either additional award, which is an integral part of the decision of the arbitration court, or

determination on refusal to grant approval of application on adoption of additional agreement.

38. The adjudgement in the arbitration court upon newly discovered facts

1. The decision of the arbitration court can be reviewed at the request of one of the parties of the arbitration agreement or any person whose rights are affected by newly discovered facts. The grounds for review of the decision of the arbitration court upon newly discovered facts are:

1) essential circumstances for the case that were not and could not be known to the applicant party;

2) established by the enforced decret misrepresentation of the witness, misleading expert opinion, designedly wrong translation, forgery of documents or material evidence, which led to the adoption of unlawful or unreasonable decision;

3) established by the enforced decret the criminal actions of the parties, other people, involved in the case, or their representatives or criminal acts of the awarders, committed on considering the case.

2. Application for review of the arbitration decision upon newly discovered facts shall be filed and considered in the arbitration court that rendered the decision within three months from the date of establishment of the circumstances constituting a ground for review according to procedure, determined by this Law.

In the case of impossibility of sitting of the arbitration court, including the institutional arbitration court which rendered a decision in the previous composition, the application on review of the decision upon the newly discovered facts shall be considered by the new composition of the arbitration court, formed in according to the procedure by this Law.

39. Explanation of decision

1. Unless otherwise agreed by the parties, either party with notice to the other party can apply to the same arbitration court for explanation of the decision within ten days after receiving the decision of the arbitration court. The application on explanation of the decision must be considered within ten days of its receipt by the arbitration court, deciding the dispute.

2. The arbitration court shall explain adopted decision without changing its content.

3. After considering the results of review of the relevant application shall be made either explanation of the decision, which is an integral part of the decision of the arbitration court or the determination on refusal to explain the decision.

40. Correction of clerical errors, typographical errors, arithmetical errors

1. The arbitration court has a right at the request of any party or of its own initiative to correct committed clerical errors, typographical errors, obvious arithmetic errors.

2. The arbitration court shall render a determination on correction of clerical errors, typographical errors, arithmetical errors, which is an integral part of the decision.

41. Determination of the arbitration court

The arbitration court shall render a determination on issues not affecting the merits of the dispute which must be motivated.

42. The termination of the arbitral proceedings

The arbitration court shall render a determination on the termination of the arbitral proceedings in the cases if:

the plaintiff waives his claim, unless the defendant expresses counter-arguments against the termination of the arbitral proceedings in connection with the existence of a legitimate interest in deciding the dispute on the merits;

the arbitration court renders a determination on the absence of the arbitration court's competence to consider the transferred adjustment;

there is enforced adopted on the dispute between the same parties on the same subject and for the same reasons decision of the competent court or arbitration court;

the parties came to agreement on the termination of the arbitral proceedings;

legal entity which is a party of the arbitral proceedings is liquidated;

an individual died (declared dead) that is the party of the arbitral proceedings or he is found to be missing;

the plaintiff closed a case, and the refusal is adopted by the arbitration court.

43. Storage of decisions and cases

1. The decision of the arbitration court to decide the particular difference within a month after its adoption shall be directed together with the case materials for storage in one of the institutional arbitration courts.

2. A considered case shall be stored in the institutional arbitration court at least five years from the date of deciding if another period of time is not determined by the rules of the institutional arbitration court.

44. Appeal against a decision of the arbitral tribunal

1. The decision of the arbitration court can be appealed in the competent court by the parties of the arbitral proceedings or a third party, whose rights and obligations were affected according to the procedure provided for by the civil procedure legislation of the Republic of Kazakhstan.

2. The arbitration decision can be appealed only in cases where the party of the arbitral proceedings or the person whose rights and obligations were affected that have appealed against the decision of the arbitration court shall furnish proof that:

1) the arbitration agreement is invalid according to the grounds, provided by the Laws of the Republic of Kazakhstan;

2) the decision of the arbitration court was rendered in a dispute, not provided by the arbitration agreement or not falling within its terms, or contains decisions on issues beyond the scope of the arbitration agreement, and also because of not jurisdictional dispute to the arbitration court.

If the decision of the arbitration court on issues which covered by the arbitration agreement, can be separated from decisions on issues that are not covered by such agreement, only that part of the arbitration decision which contains decisions on issues, not covered by the arbitration agreement may be set aside;

3) the membership of the arbitration court or the arbitral proceedings did not meet the requirements of the legislation of the Republic of Kazakhstan on the arbitral proceedings;

4) the party was not noticed in a proper way on election (appointment) of the awarders or the time and place of the sitting of the arbitration court or for other reasons was unable to present his explanations to the arbitration court;

5) the decision of the arbitration court is not in compliance with the principle of legality and public policy of the Republic of Kazakhstan;

6) *is excluded by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV;*

7) the Law or other regulatory legal act on the basis of which was adopted a decision of the arbitration court, is recognized as unconstitutional by the Constitutional Council of the Republic of Kazakhstan.

3. In the case of cancellation of the arbitration decision either party has a right to apply to the arbitration court in accordance with the arbitration agreement.

In case of the complete or partial cancellation of the arbitration decision as a consequence of the invalidity of the arbitration agreement or because the decision was adopted on a dispute not provided by the arbitration agreement or not falling within its conditions, or contains a decree on issues, not covered by the arbitration agreement, the relevant dispute is not subject to the further consideration in the arbitration court.

Footnote. Article 44, as amended by the Laws of the Republic of Kazakhstan dated 05.02.2010 No 249 -IV; dated 10.07.2012 No 32 -V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 03.07.2013 No 125 -V (shall be enforced upon expiry of ten calendar days after its first official publication).

Chapter 6. ENFORCEMENT OF THE ARBITRATION JUDGMENT

45. Enforcement of the arbitration judgment

1. The decision of the arbitration court shall be subject to the mandatory enforcement in the manner and time, established in the decision.

2. If the term is not established in the decision of the arbitration court, it shall be subject to immediate enforcement.

46. Compulsory enforcement of the arbitration judgment

If the decision of the arbitration court is not enforced voluntarily in the established term, it shall be subject to the compulsory enforcement.

The compulsory enforcement of the arbitration court shall be carried out under the rules of the enforcement proceedings in effect at the time of enforcement of the arbitration judgment on the basis of the writ obligatory, issued by the competent court on the compulsory enforcement of the arbitration judgment.

47. Collection of expenses, related with compulsory enforcement of the arbitration judgment

Additional expenses, related with the compulsory enforcement of the arbitration judgment shall be assigned on the party not enforced the decision voluntarily.

48. Grounds for refusal in the issuance of the writ obligatory

1. In considering the application on issuance of the writ obligatory by the competent court may not review the decision of the arbitration court on the merits.

2. The competent court shall render a determination on refusal in issuance of the writ obligatory in cases where:

1) the party against whom was rendered the arbitration judgment, shall submit to the competent court the evidence that:

the arbitration agreement is invalid;

the arbitration judgment was adopted on a dispute, not provided by the arbitration agreement or not falling within its conditions, or contains decisions on issues beyond the scope of the arbitration agreement, and also because of jurisdictional dispute to the arbitration court. If the decree of the arbitration court on issues, covered by the arbitration agreement, can be separated from issues which are not covered by such agreement that in issuing the writ obligatory on the compulsory enforcement of that part decision of the arbitration court which contains decisions on issues, covered by the arbitration agreement, cannot be denied;

the membership of the arbitration court or the arbitral proceedings did not meet the requirements of the legislation of the Republic of Kazakhstan on the arbitral proceedings;

The party against whom was rendered a decision of the arbitration court was not notified in a proper way about the election (appointment) of the awarders or the time and place of the sitting of the arbitration court or for other reasons unable to present his case to the arbitration court;

one of the parties during the conclusion of the arbitration agreement was completely incapable or partially incapable;

there is enforced, rendered on the dispute between the same parties on the same subject and for the same reasons the decision of the competent court or arbitration court, or determination of the competent court or arbitration court to terminate the proceedings in connection with the refusal of the plaintiff's claim;

deciding by the arbitration court became possible as a result of the offense, established by the court sentence;

2) the competent court shall establish that:

the dispute cannot be a subject of the arbitral proceedings in accordance with the legislation of the Republic of Kazakhstan;

the arbitration decision is not in compliance with the requirements, established by subparagraphs 1) and 2) of paragraph 2 of this Article, and the public policy of the Republic of Kazakhstan.

3. The parties shall have a right to appeal the decision according to the procedure provided for by the civil procedure legislation of the Republic of Kazakhstan in the case of rendering a determination by the competent court on refusal to issue a writ obligatory.

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