

On International Arbitration

Invalidated Unofficial translation

The Law of the Republic of Kazakhstan dated 28 December 2004 No. 23.

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.

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Footnote. The Title of the Law is in the wording of the Law of the Republic of Kazakhstan dated 03.07.2013 No. 125-V (shall enter into force upon expiry of ten calendar days after its first official publication).

This Law regulates the relations arising from international arbitration activity in the territory of the Republic of Kazakhstan, as well as the procedure and conditions of recognition and enforcement of international arbitration awards in Kazakhstan.

Footnote. The preamble is in the wording of the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall enter into force upon expiry of ten calendar days after its first official publication).

Chapter 1. GENERAL PROVISIONS

1. Scope of application

This Law shall apply to disputes that arise from civil law relations with the participation of individuals and legal entities and that are to be resolved by international arbitration unless otherwise established 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 enter into force upon expiry of ten calendar days after its first official publication).

2. The basic definitions used in this Law

The following basic definitions shall be used in this Law:

- 1) public policy of the Republic of Kazakhstan - the foundation of the state and social structure established in the legislative acts of the Republic of Kazakhstan;
- 2) competent court - a court of the judicial system of the Republic of Kazakhstan, which is authorized to consider cases on disputes arising from civil law relations in the first instance according to the civil procedure legislation of the Republic of Kazakhstan

;

3) arbitration - an international arbitration constituted specially to consider a particular dispute or a permanent arbitration or an arbitrator considering a dispute solely;

4) an arbitration agreement - a written agreement between the parties on submission of a dispute that arose or may arise from civil law relations to arbitration, which may be concluded in the form of an arbitration clause in a contract or by exchange of letters, telegrams, telephone messages, telex, fax, electronic documents or other documents defining the subjects and contents of the expression of their will;

5) arbitral proceeding - a process of consideration of a dispute in an arbitration with making an arbitral award;

6) parties to the arbitral proceeding - the claimant and the respondent that concluded the arbitration agreement;

7) arbitration rules - the procedure of organising the activity of a permanent international arbitration;

8) award - a decision rendered by the arbitration;

9) arbitrator - an individual elected by parties or appointed according to the procedure agreed by the parties in accordance with this Law in order to resolve dispute in arbitration;

10) business practices - rules of conduct that established and widely used in the field of civil law contracts and that are consistent with applicable law regardless of whether they are recorded in any document.

Footnote. Article 2 is in the wording of the Law of the Republic of Kazakhstan dated 03.07.2013 No 125 -V (shall enter into force upon expiry of ten calendar days after its first official publication.)

3. Legislation of the Republic of Kazakhstan on international arbitration

1. The legislation of the Republic of Kazakhstan on international arbitration is 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 an international treaty, ratified by the Republic of Kazakhstan establishes rules other than those contained in this Law, then the rules of an international treaty shall be applied.

Footnote. Article 3 is in the wording of the Law of the Republic of Kazakhstan dated 03.07.2013 No 125 -V (shall enter into force upon expiry of ten calendar days after its first official publication.)

4. Principles of arbitration proceeding

Arbitral proceeding shall be dealt in compliance with the following principles:

1) autonomy of the will of the parties meaning that the parties, upon prior agreement between themselves, shall have the right to determine independently the procedure and conditions of arbitral proceeding in respect of the arisen dispute;

2) legality meaning that arbitrators and arbitral courts in their decisions shall only be governed by provisions of applicable law under to the agreement between the parties;

3) adversary and equality between the parties meaning that the parties to arbitral proceedings shall have equal rights and responsibilities, and select their positions and the means and manner of defending their position themselves, independent from the arbitral court, other authorities and persons;

4) equity, meaning that arbitrators, arbitral courts during the resolution of disputes, submitted to them and the parties to arbitral proceedings shall act in good faith and observe the established requirements, moral principles of the society, and rules of business ethics;

5) confidentiality meaning that arbitrators shall not disclose information, which became known to them in the course of arbitral proceedings, without prior consent of the parties or their legal successors, and may not be interrogated as witnesses with respect to circumstances that became known to them during arbitration proceedings, except the cases where the law explicitly provides for the duty of a citizen to report information to a relevant authority.

4-1. Waiver of the right to objection

A party which knows, that any of the provisions of the this Law or any requirement of the arbitration agreement have not been observed, and nevertheless continues to take part in arbitral proceedings, without stating its objection to such non-compliance within the period, specified by the regulations of the institutional arbitration for this purpose shall be deemed to have waived its right to objection.

Footnote. The Law was supplemented by Article 4-1 in accordance with the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

5. Inadmissibility of interference in the activity of arbitral court

Arbitrators and arbitral courts, during resolution of disputes submitted to them, shall be independent and make decisions under the conditions excluding any interference in their activity by the state agencies and other organizations, except as otherwise provided by this Law.

Footnote. Article 5 as amended by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

6. Submission of a dispute to arbitral court

1. A dispute may be submitted to an arbitral court if there is an arbitration agreement between the parties.

2. An arbitration agreement may be concluded by the parties in relation to disputes, which have arisen or may arise between the parties from a certain civil law contract.

3. An arbitration agreement in relation to a dispute, which is considered by a competent court, may be concluded prior to the passing of a judgment by this court. In

this case, the competent court shall decree on dismissal of an application without prejudice.

4. Disputes arising from civil law contracts between individuals, commercial and (or) other organizations may be submitted to arbitration under the agreement between the parties if at least one of the parties is a non-resident of the Republic of Kazakhstan.

5. Unless as otherwise agreed by the parties, the rules of permanent arbitration upon the submission of a dispute to permanent arbitration shall be considered as an integral part of an arbitration agreement.

6. The effect of an arbitration agreement may be terminated upon the agreement of the parties in the same procedure as it has been concluded.

7. Disputes, which affect the interests of minor persons, persons recognized as disabled or impaired according to the law, shall not be subject to the arbitration.

Footnote. Article 6 is in the wording of the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV; as amended by the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall enter into force upon expiry of 10 calendar days after its first official publication).

6-1. Arbitration agreement and filing of a claim on the merits of a dispute to a competent court

1. A competent court, where a claim on the subject of arbitral proceedings has been filed, shall, if any of the parties asks for it, no later than submission of its first application on the merits of a dispute, direct parties to arbitration, unless it finds out that the arbitration agreement is void, become invalid or cannot be performed.

2. Notwithstanding the filing a claim, specified in paragraph 1 of this article, arbitral proceedings may be commenced or continued and the arbitral award may be rendered while a competent court considers the matter of the jurisdiction of the subject of arbitral proceedings.

Footnote. Chapter 1 was supplemented by article 6-1 in accordance with the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

Chapter 2. MEMBERSHIP OF ARBITRAL COURT

7. Arbitrators

1. An individual who is not directly or indirectly interested in the outcome of a case, independent from the parties, and has agreed to act as an arbitrator, has reached the age of twenty-five years, and has a higher education, shall be elected (appointed) as an arbitrator.

2. An arbitrator, solely considering a case must have a higher education in law and not less than two years' experience of work in a legal field. In case of collegial resolution of a dispute, a chairman must have a higher education in law.

3. Additional requirements to candidates for arbitrators may be agreed directly by the parties or specified by the rules of permanent arbitration.

4. The person cannot be an arbitrator if he:

1) is elected or appointed as a judge of a competent court in the procedure, established by a legislative act of the Republic of Kazakhstan;

2) is recognized by a competent court disabled or impaired, established by law of the Republic of Kazakhstan;

3) has a record of unexpunged or outstanding conviction;

4) is a state servant, a deputy of the Parliament of the Republic of Kazakhstan, a deputy of a maslikhat, performing his/her activity on permanent or acquitted basis, paid at the expense of the state budget, and military servants.

Footnote. Article 7 as amended by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

8. Number of arbitrators when considering a dispute

1. The parties shall have the right to determine the number of arbitrators, which must be odd.

2. Unless as otherwise has been agreed by the parties, three arbitrators shall be elected (appointed) to resolve a dispute.

9.Membership of arbitral court

1. The arbitral court shall be formed by way of electing (appointing) arbitrators (an arbitrator) upon the agreement of the parties.

2. In permanent arbitral court, arbitral court shall be formed in the order, established by the rules of permanent arbitral court.

3. In arbitration for settlement of a certain dispute, an arbitral court shall be formed in the order, agreed by the parties.

4. A citizen of the Republic of Kazakhstan, a foreign person or a stateless person may be elected as an arbitrator upon the agreement between the parties.

5. In formation of membership of an arbitration, consisting of three arbitrators, unless as otherwise has been agreed by the parties, or if the dispute is not considered by the permanent arbitral court, each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator.

6. If there is no agreement between the parties a competent court within thirty calendar days may upon the proposal of one of the parties to appoint arbitrators (an arbitrator) from the persons, being a member of permanent arbitral courts, to the extent when:

1) the party fails to appoint an arbitrator within thirty calendar days upon the receipt of a proposal to do so from another party;

2) two arbitrators within thirty calendar days from their appointment, fail to elect the third arbitrator;

3) the parties fail to come to agreement concerning the election of an arbitrator, solely considering the dispute.

7. In consideration of a dispute by permanent arbitral court, unless the parties have agreed about the membership of arbitral court, arbitrators (an arbitrator) may be appointed by a chairman of the permanent court within thirty calendar days.

Footnote. Article 9 is in the wording of the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

9-1. Operational environment of permanent arbitral court

Permanent arbitral court shall maintain a register of its arbitrators. The information about permanent arbitral court, a legal address, rules and regulations as well as the register of arbitrators shall be placed in public telecommunication networks and in the mass media for free familiarization of individuals and legal entities. The information about arbitral awards shall be available upon the consent of the parties to a dispute.

Footnote. The Law was supplemented by the article 9-1 in accordance with the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV; is in the wording of the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall enter into force upon expiry of ten calendar days after its first official publication).

10. Challenge to arbitrator

1. The parties may challenge an arbitrator if he/she does not comply with the requirements set forth in Article 7 of this Law.

2. In case of reference to an individual in connection with his/her possible election (appointment) as an arbitrator, the specified person must notify about the existence of circumstances, which are the grounds for his/her challenge in accordance with Article 7 of this Law. If such circumstances arise in the course of arbitral proceedings, the arbitrator shall immediately notify the parties about them and self-disqualify from a case.

3. A party may challenge to arbitrator, appointed by him/her under this article provided that the circumstances on which the challenge is based become known to him /her after the appointment of this arbitrator has been made.

4. In permanent arbitral court, the procedure for challenge to arbitrator may be established by its rules.

5. In arbitration for settlement of a certain dispute, the procedure for challenge of an arbitrator may be agreed by the parties.

6. If the procedure for challenge of an arbitrator has not been agreed by the parties or established by the rules of permanent arbitral court, a written reasoned statement on challenge to arbitrator should be submitted to arbitration within thirty days after the circumstances on which the challenge is based became known to the party.

If an arbitrator who has been challenged, dismisses it or one of the parties disagrees to the challenge an arbitrator, the case of the challenge shall be resolved by arbitrators,

being the members of arbitral court within the period of ten days upon the receipt of a written reasoned statement of the party.

The decision on the challenge of an arbitrator, solely considering the dispute, shall be made by this arbitrator.

If an arbitrator, solely considering the dispute, refuses to satisfy a petition of one or both parties, or one of the parties does not agree to the challenge, the decision on the challenge shall be made by entering into an agreement between the parties on the termination of arbitral proceedings

Footnote. Article 10 as amended by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

11. Termination of powers of an arbitrator

1. The powers of an arbitrator may be terminated by agreement between the parties on the grounds, provided by this Law as well as in the event of failure to perform his/her functions within the established period for consideration of a dispute or incapability to perform its liabilities due to illness or death or due to the refuse from his/her powers on consideration of a dispute.

2. When the powers of the arbitral court or of an arbitrator, solely considering the dispute, are terminated, proceedings related to the dispute under consideration shall be suspended until another arbitral court have been elected (appointed).

3. The powers of an arbitrator shall be terminated after rendering of arbitral award on the certain case or in the event of the parties have agreed on such termination. In the cases, stipulated by article 30 of this Law the powers of an arbitrator shall be resumed and then terminated after performing procedural acts, specified in the said article.

Footnote. Article 11 as amended by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

12. Substitution of an arbitrator

To the extent of termination of the powers of an arbitrator, another arbitrator shall be elected (appointed) pursuant to the rules which were applicable to the election (appointment) of the arbitrator being substituted.

The substitute arbitrator, thus elected (appointed), shall have the right to call rehearing of the case.

Chapter 3. COSTS, RELATED TO RESOLUTION OF A DISPUTE IN ARBITRATION

13. Costs, related to resolution of a dispute in arbitration

1. The costs, related to the resolution of a dispute in arbitration shall include: arbitrators' fees;

expenses, incurred by the arbitrators in connection with arbitral proceedings, including travelling expenses to the place of arbitration, accommodation and meals expenses;

sums, payable to experts and translators/interpreters;

expenses, incurred by the arbitrators in connection with inspection and study of written and physical evidences at its place of location;

expenses, incurred by witnesses;

expenses on paying for the services of a representative by the party in whose favour the award was issued;

expenses on organizational and material support of arbitral proceeding.

2. In permanent arbitral court, the arbitrators' fees shall be determined by the membership of arbitral court in accordance with the schedule of fees, provided by the rules of the permanent arbitral court.

If the rules of permanent arbitral court do not specify a fixed rate of arbitrators' fees, the arbitral court may determine the rate of arbitrators' fees for each specific case with regard to the value of a claim, complexity of the dispute, time spent by arbitrators in carrying out arbitral proceedings, and other circumstances pertaining to the case.

3. In order to settle a certain dispute the rate of arbitrators' fees shall be determined by agreement of the parties, and in the absence of such agreement, by the arbitral court for resolving a specific dispute in the order, provided for permanent arbitral court.

14. Distribution of costs, related to resolution of a dispute in arbitration

1. The distribution of costs, related to resolution of a dispute in arbitration between the parties shall be distributed by the arbitral court in accordance with the agreement of the parties, and in the absence of such agreement, proportionate to satisfied and denied claims.

2. The costs, related to the payment for the services of a representative by the party in whose favour the award was issued, as well as other expenses, related to arbitral proceedings may be charged to the other party subject to a decision of the arbitral court if a claim to compensate expenses incurred is made during arbitral proceedings and is satisfied by the arbitral court.

3. Distribution of the arbitral costs shall be specified in the award or writ of the arbitral court.

Chapter 4. COMPETENCE OF ARBITRATION

15. The right of an arbitral court to make a resolution on its competence

1. An arbitral court independently decides on the existence or lack of its powers (jurisdiction) to consider a dispute, including in the cases where one of the parties objects to arbitral proceedings on the ground of invalidity of the arbitration agreement.

2. A party shall have the right to raise a plea that the arbitral court does not have powers to consider a dispute before the submission of the first statement on the merits of the dispute.

3. A party shall have the right to raise a plea that arbitral court is exceeding the scope of its powers if in the course of arbitral proceedings a subject-matter of the proceedings has become the matter which is not stipulated by the arbitration agreement, or which cannot be the subject-matter of arbitral proceedings in accordance with norms of law, being applied to these proceedings or the rules of arbitral proceedings.

4. The arbitral court shall be obliged to consider a plea filed in accordance with paragraphs 2 and 3 of this article within ten days. Upon the results of considering the plea, a ruling shall be issued.

5. If arbitral court, when considering the matter of its jurisdiction, issues a ruling on the lack of jurisdiction of arbitral court to consider a dispute, then it can not consider a dispute on its merits.

15-1. Powers of an arbitral court to order adoption of measures for security for a claim

1. Unless as otherwise has been agreed by the parties, an arbitral court may upon the request of any of the parties order adoption of measures by any of the parties for security for a claim in respect of the subject-matter of the dispute, which they deem required, whereof it makes determination.

2. The application for security for an arbitrated claim shall be submitted by a party to a competent court at the place of arbitral proceeding or by the place of location of the property, in respect of which the measures for security for a suit may be adopted.

Footnote. Chapter 4 was supplemented by the article 15-1 in accordance with the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

Chapter 5. CONDUCT OF ARBITRAL PROCEEDING

Footnote. Chapter 5 is in the wording of the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

16. Determination of rules of arbitral proceedings

1. Permanent arbitral court shall conduct arbitral proceedings in accordance with its rules.

2. An arbitration for settlement of a particular dispute shall conduct arbitral proceedings in accordance with the rules, agreed by the parties.

The rules of arbitral proceeding, not specified by the rules of permanent arbitral court and provisions of this Law and not agreed by the parties shall be determined by arbitral court.

17. Place of arbitration

The parties may agree on the place of arbitration at their discretion, except for the case when a dispute is submitted for consideration to permanent arbitral court. In the absence of such agreement, the place of arbitration shall be determined by the arbitral court with respect to the circumstances of the case, including the convenience of the parties.

18. Statement of claim and statement of defence

1. A plaintiff state his claims in the statement of claim which is filed to arbitral court in writing. A copy of a claim shall be communicated to the defendant.

2. Statement of claim shall include the following:

- 1) date of filing a claim;
- 2) names of the parties, their mailing addresses, and bank details;
- 3) grounds for application to the arbitral court;
- 4) statement of claim of a plaintiff;
- 5) circumstances on which a plaintiff is basing his claims;
- 6) evidence, confirming the grounds for claims;
- 7) amount of the claim, if the claim is subject to valuation; and
- 8) a list of documents and other materials, enclosed to a claim.

A claim shall be signed by a plaintiff, or by a representative of a plaintiff with the enclosed original power of attorney or another document, attesting the powers of a representative.

3. Arbitration rules may provide additional requirements for the content of a claim.

4. A defendant shall have the right to present a statement of defence to a plaintiff and arbitral court, containing its objections to the claim. Statement of defence shall be provided to a plaintiff and arbitral court in the order and within the deadline, specified by the rules of arbitration.

If the rules of arbitration do not specify the deadline for filing statement of defence, then it shall be presented at least ten days before the first hearing of the arbitral court, unless as otherwise, established by this Law.

5. During the arbitral proceedings a party shall have a right to amend or supplement his claims or statement of defence.

19. Initiation of arbitration

1. An arbitral court having accepted a claim, shall make a determination concerning the initiation of arbitral proceedings in accordance with the rules of arbitration or the rules, agreed between the parties, notifying the parties about the place of arbitration, proposing the defendant to submit a statement of defence in writing.

2. Failure to submit objections by the defendant cannot interfere with the consideration of the dispute.

20. Commencement of arbitral proceedings

1. Unless as otherwise has been agreed by the parties, the arbitrator shall preliminary and for a proper purpose present to the parties a communication of the time and place of the arbitration.

2. Unless as otherwise has been agreed by the parties, the copies of all documents materials and information, which are submitted to the arbitration by one of the parties, shall be presented by the arbitration to another party within seven calendar days upon the date of their submission to the arbitration. Expert opinions shall be submitted by arbitration to the parties prior to a commencement of arbitral proceedings.

21. Returning of statement of claim

1. An arbitral court shall return the claim if:

- 1) there is no arbitration agreement between the parties;
- 2) a claim is filed to an arbitral court, not stipulated by the arbitration agreement;
- 3) a subject-matter of a claim is beyond the scope of arbitration agreement;
- 4) statement of claim is signed by a person, not authorized to do so;
- 5) a plaintiff has filed an application to return a claim;

6) a same or another arbitral court is processing a case, on a dispute between the same parties, regarding a same subject-matter, and on the same grounds.

2. Upon returning a claim, an arbitral court shall issue a reasoned ruling.

3. A return of a claim shall not prevent a plaintiff from re-applying to arbitral court with an action against the same defendant, regarding the same subject-matter, and on the same grounds.

22. Language of arbitral proceedings

1. Parties may, at their discretion, agree on the language or languages to be used in arbitration proceedings. In failure to reach such agreement, an arbitral court shall establish the Kazakh language, along with Russian or other languages, to be used in arbitral proceedings.

Participants of the case who do not speak the language in which arbitral proceedings are being conducted shall be given a right to review case materials and participate in arbitral proceedings with an interpreter, and speak in arbitral court in their native language.

2. A party, submitting documents and other materials in a language other than language(s) of arbitral proceedings shall submit a translation thereof, provided that the rules of arbitration or agreement between the parties may establish additional requirements.

3. The arbitral court may oblige parties to provide a translation of documents and other materials into the language(s) of arbitral proceedings.

23. Failure to present documents or failure to appear by a party

1. Failure to present documents and other materials, and to appear in arbitral sessions by one of the parties or their representatives, having been duly notified of the

time and place of an arbitral session, shall not be impediment for arbitral proceedings and issuance of award by arbitral court pursuant to presented materials and other evidences and decision making by arbitral court, if an arbitral court deems the reason of a failure to present documents and other materials or to appear in arbitral sessions invalid.

2. Failure to present objections to the claim by the defendant cannot be considered as the admission of a plaintiff's demands.

24. Receipt of written communications by parties

Unless as otherwise has been agreed by parties:

1) any written communication shall be deemed as received, if it has been delivered personally to a recipient, by his/her permanent place of residence or mailing address, when the same cannot be determined by reasonable inquiry, a written communication shall be deemed accepted if it has been sent to a latter known location by registered mail or otherwise, providing registration of attempt to deliver this communication;

2) a written communication shall be deemed received on the date of such delivery.

25. Rights of the parties

Parties, participating in arbitral proceedings shall be entitled:

1) to acquaint themselves with case materials and make copies from the same;

2) to present evidences;

3) to file petitions, recusal of arbitrators;

4) to pose questions to case participants, and to give oral and written explanations;

5) to make arguments on all matters, arising during proceedings;

6) to object to petitions and arguments of other party;

7) to petition before a competent court for enforcement of an arbitral award in accordance with the legislation of the Republic of Kazakhstan;

8) to appeal arbitral awards in cases, provided by this Law.

25-1. Participation of parties in arbitral session

1. Each of the parties shall be provided with equal opportunities for statement of its position and protection of its rights and interests.

2. Unless as otherwise has been agreed by parties, arbitral proceedings shall be performed in closed arbitral session with participation of parties or their representatives

Powers of representatives of parties shall be filed in accordance with observance of requirements, stipulated by the civil procedural legislation of the Republic of Kazakhstan.

25-2. Presentation and investigation of evidence

Each of the parties must prove those circumstances, which it refers to as grounds for its claims and objections. An arbitrator shall have a right, provided evidence shall be considered insufficient, to propose parties to introduce additional evidence.

An arbitrator shall be obliged to immediately examine all existing evidence.

25-3. Expert, appointed by arbitral court

1. Unless as otherwise has been agreed by parties, participating in arbitral proceedings, an arbitral court may:

1) appoint one or several experts to report to arbitral court on specific issues to be determined by arbitral court;

2) require a party to provide to an expert any relevant information or to produce or provide access to any relevant documents, goods or other property for inspection by an expert.

2. Unless as otherwise has been agreed by parties, if a party requests it or if an arbitral court considers it necessary, an expert shall, after presenting of his/her written or oral report, participate in a hearing at which parties shall have an opportunity to question an expert and to provide expert witnesses in order to testify on the points at issue.

25-4. Assistance of a competent court in granting of interim measures and obtaining evidence

1. Parties of arbitral proceedings shall have a right to apply to a competent court for measures to secure a claim. An adoption of the decision by a competent court for securing of a claim shall not be unconsentant with arbitration agreement.

2. An application for security of a claim being examined by the arbitral court shall be filed to the competent court at the place of arbitral proceedings or location of property in relation to which the measures to secure a claim may be taken.

3. An examination by a competent court of an application for security of a claim being considered by arbitral court and issuance of the decision on security of a claim or refusal to secure the same shall be carried out in the order, established by the civil procedure legislation of the Republic of Kazakhstan.

4. Decision on security of a claim, being examined by arbitral court may be cancelled by a competent court which issued that ruling pursuant to an application of one of the parties.

5. An arbitral court or a party with arbitral court's consent may apply to a competent court, seeking assistance in obtaining evidence. A competent court shall examine an application in accordance with the legislation of the Republic of Kazakhstan.

25-5. Counter-claiming and offset of counter-claims

1. A defendant shall have a right to present a counter-claim to a plaintiff, provided that there is a mutual connection between a counter claim and claims of a plaintiff, as well as provided that a counter claim may be considered by an arbitral court in accordance with arbitration agreement.

2. A counter claim may be presented during arbitral proceeding prior to the award by arbitral court, unless other period has been set forth by parties for presentation of a counter-claim.

3. A counter-claim shall comply with the requirements of paragraph 2 Article 18 of this Law.

4. A plaintiff shall have a right to present objections against a counter claim in the order and within a period, stipulated by rules or regulations of arbitral proceedings.

5. Unless as otherwise has been agreed by parties, a defendant shall have a right to request offsetting of a counter-claim with observance of requirements of the civil legislation of the Republic of Kazakhstan.

Chapter 6. ADJUDGEMENT OF ARBITRAL AWARD AND TERMINATION OF PROCEEDING

26. Norms, applicable to the merits of a dispute

1. An arbitral court shall settle the dispute in accordance with rules of law, chosen by parties as applicable to the examination of a dispute. Any reference to the law or legal system of any state shall be construed as directly referring to a substantive law of that state and not to its conflict rules.

2. If parties have not reached an agreement on applicable law, an arbitral court shall determine applicable law in accordance with the legislation of the Republic of Kazakhstan.

3. In the absence of rules, governing a specific legal relationship, an arbitral court shall decide in accordance with the customs of business turnover applicable to the given transaction.

27. Settlement agreement

1. If parties settle a dispute during arbitral proceedings, an arbitral court shall terminate proceedings and, at the request of parties, record this settlement in the form of an arbitral award on agreed terms.

2. An arbitral award on agreed terms shall be issued in accordance with the provisions of the article 28 of this Law. Such an award shall be subject to execution in the same order as any other award on the merits of a dispute.

28. Form and content of award

1. An award shall be made in writing and shall be signed by arbitrators, the members of arbitration including an arbitrator having a special opinion, whose opinion in writing is an integral part of award. If an arbitral proceeding was carried out collegially, an award may be signed by the majority of arbitrators, the members of arbitration, provided that a valid reason for any omitted signatures of other arbitrators is stated.

2. An award shall contain the date and place of arbitration, and state the reasons upon which it is based.

3. After award is made, a copy of award shall be served or sent to each party.

29. Termination of arbitral proceedings

1. An arbitral proceedings shall be terminated by a ruling on the termination of arbitral proceedings on the grounds, provided by paragraph 2 of this article.

2. An arbitral court shall issue a ruling on the termination of arbitral proceedings if:

A plaintiff has withdrawn his claim and such withdrawal has been accepted by arbitral court, unless a defendant objects to the termination of arbitral proceedings due to his/her legitimate interest in a settlement of a dispute on its merits;

An arbitral court has issued a determination that it has no jurisdiction to examine a dispute;

there is a judgment of a competent court or arbitral court that has entered into legal force and was issued in relation to a dispute between the same parties, regarding the same subject- matter, and on the same grounds;

parties have agreed on termination of arbitral proceedings;

a commercial organization that is a party to arbitral proceedings has been liquidated

;

an individual who is one of the parties to arbitral proceedings has died (declared deceased) or is declared missing.

Footnote. Article 29 as amended by the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall enter into force upon expiry of ten calendar days after its first official publication).

30. Correction and interpretation of award. Additional award

1. Within sixty calendar days after the receipt of award, unless parties have agreed on another term:

1) each of parties, with notice to other party, may request an arbitral court to correct any errors in computation in award, clerical or typographical errors or any errors of a similar nature;

2) each of party, with notice to other party, may request that arbitral court give a clarification of any specific paragraph or part of an award.

If an arbitral court considers a request to be justified, it shall make corrections or give an interpretation within thirty calendar days of receipt of a request. A clarification of the issued award shall be an integral part of an arbitral award.

2. Within sixty calendar days from the date of making an award, an arbitration may on its own initiate to correct any error, described in subparagraph 1) of paragraph 1 of this article.

3. Unless as otherwise has been agreed by parties, each of parties, with notice to other party, may, within sixty calendar days upon a receipt of an award, request an

arbitral court to make an additional award as to claims, presented during arbitration but was not determined in the award. If an arbitral court considers a request to be justified, it shall make an additional award within sixty calendar days upon receipt of a request.

4. Where necessary, an arbitral court may extend a term, but by no more than 60 days, within which it is necessary to correct errors, give a clarification or make an additional award in accordance with paragraph 1 or 3 of this article.

Footnote. Article 30 as amended by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

Chapter 7. APPEAL OF AWARD

31. Motion for cancellation of an arbitral award

1. Arbitral award may be appealed by parties or third parties whose rights and obligations were affected in a competent court only by way of submitting a motion for the cancellation in accordance with the civil procedural legislation of the Republic of Kazakhstan.

2. An arbitral award may be cancelled by a competent court only if:

1) a party, filing a motion for the cancellation shall present the evidence that:

a party to the arbitration agreement was declared by a competent court legally incapable, or arbitration agreement is not valid under the law to which the parties have subjected it, and in the absence of such reference, under the legislation of the Republic of Kazakhstan;

a party was not given a proper notice of appointment of an arbitrator or of arbitral proceeding, or was unable to submit explanations for other reasons deemed valid by a competent court;

an award was issued in relation to a dispute, not provided by or not subject to the terms of arbitration agreement, or it contains decisions on matters beyond the scope of arbitration agreement, or a dispute is not subject to the jurisdiction of an arbitral court.

If the decisions on matters, covered by arbitration agreement can be separated from those not so covered, only a part of an award containing decisions on matters, not covered by arbitration agreement may be cancelled;

A membership of arbitral court or arbitration procedure was not in accordance with agreement of parties and rules of arbitration;

2) a competent court determines that an award is in conflict with a public policy of the Republic of Kazakhstan, or a dispute in relation to which an award was issued cannot be a subject of arbitral proceedings under the legislation of the Republic of Kazakhstan.

3. A motion for cancellation may not be filed upon expiry of three months from the date on which a party filing that motion had received an award or, if a request had been

made according to the Article 30 of this Law, from the date on which that award for this request has been made by arbitration.

4. Pursuant to a motion of one of parties, a competent court may suspend proceedings in relation to the motion, seeking the cancellation of an award for a period of time, determined by it in order to resume arbitral proceedings or to take other measures that will eliminate grounds for cancellation of an award.

5. A competent court shall issue a determination, concerning the cancellation of an award. This determination may be appealed or protested in accordance with the civil procedural legislation of the Republic of Kazakhstan.

Footnote: Article 31 as amended by the Law of the Republic of Kazakhstan dated 03.07.2013 No 125-V (shall enter into force upon expiry of ten calendar days after its first official publication).

Chapter 8. RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

32. Recognition and enforcement of arbitral awards in the Republic of Kazakhstan

An arbitral award shall be deemed binding and, upon a written application to a competent court, shall be enforced in accordance with the civil procedural legislation of the Republic of Kazakhstan.

Footnote. Article 32 is in the wording of the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

33. Grounds for refusal of recognition or enforcement of an arbitral award

1. A competent court shall refuse to recognize or enforce an award notwithstanding a country in which it has been made, on the following grounds:

1) if that party provides a competent court with evidence that:

one of parties to arbitration agreement was declared by a competent court legally incapable or partially incapacitated;

arbitration agreement is not valid under law to which parties have subjected it, and in the absence of such instruction – under the legislation of the Republic of Kazakhstan ;

a party against whom an award is made was not given a proper notice of appointment of an arbitrator or of arbitral proceedings, or was unable to submit explanations for other reasons, deemed valid by a competent court;

an award was issued in relation to a dispute, not stipulated by or not subjected to the terms of arbitration agreement, or it contains decisions on matters beyond the scope of arbitration agreement, or a dispute is not subject to a jurisdiction of arbitral court.

If decisions on matters, covered by arbitration agreement can be separated from those not covered by such decision, only that part of award which contains decisions on matters, not covered by arbitration agreement may be cancelled;

A membership of arbitral court or arbitral procedure didn't comply with agreement of parties or, in failure to reach such agreement, do not comply with the law of a country where an arbitration took place;

An award has not yet become binding for parties or has been cancelled or suspended by a court of a country, under the law of which that award was issued;

2) if a competent court establishes that a recognition and enforcement of award is contrary to the public policy of the Republic of Kazakhstan, or a dispute in relation to which an award was made cannot be a subject of arbitral proceedings under the legislation of the Republic of Kazakhstan.

2. A competent court shall issue a determination, concerning a recognition and enforcement of award. This determination may be appealed or protested in accordance with the civil procedural legislation of the Republic of Kazakhstan.

Footnote. Article 33 as amended by the Law of the Republic of Kazakhstan dated 05.02.2010 No 249-IV.

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