

# RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRAL AWARD IN KAZAKHSTAN

Author: Timoshenko A. N., Partner Unicase Law Firm

unicase

Legal entities and individuals often choose foreign arbitration tribunals to resolve arising disputes. Although the award is usually final and binding on both parties to the dispute, they do not always comply with them in good faith and voluntarily. Accordingly, it becomes necessary to enforce foreign arbitral awards in Kazakhstan. In this material, we will answer the main and frequently asked questions arising in the process of recognition and enforcement of arbitral awards in the Republic of Kazakhstan.

## 1. What are the grounds for the recognition and enforcement of foreign arbitral awards in the Republic of Kazakhstan?

Foreign arbitral awards are recognized and enforced by Kazakh courts if their recognition and enforcement are provided for by the legislation of the Republic of Kazakhstan, an international treaty ratified by the Republic of Kazakhstan, or based on reciprocity. The legislation of the Republic of Kazakhstan governing the recognition and enforcement of arbitral awards includes the **Civil Procedure Code of the Republic of Kazakhstan, the Law "On Arbitration", the Law "On Enforcement Proceedings and the Status of Bailiffs"**. Examples of international treaties are the New York Convention of 1958, the European Convention of 1961, as well as multilateral and bilateral agreements on legal assistance. These include agreements between the Republic of Kazakhstan and Turkey, the United Arab Emirates, Kyrgyzstan, Turkmenistan, etc.

## 2. What is the procedure for the recognition and enforcement of a foreign arbitral award in the Republic of Kazakhstan?

For the recognition and enforcement of a foreign arbitral award, the party in whose favor the award was made must **apply to the competent authority with an application for the enforcement** of this award and **the issuance of a writ obligatory**. The judicial authority considers the application **within 15 working days** from the date of its receipt. Further, the judge appoints the date, place and time of consideration of the application, about which he notifies the parties. **The failure of the parties to appear is not an obstacle to the consideration of the application, only if the debtor does not receive a petition to postpone the case, indicating a valid reason for the impossibility of being present at the consideration.** Based on the results of the consideration, the court issues a ruling on the issuance of a writ obligatory and the writ obligatory itself or a ruling on the refusal to issue it. After receiving the writ obligatory, bailiff continues the process of execution of the foreign decision.

## 3. What documents complainant submits to the judicial authority along with the application?

When submitting the application for enforcement of an arbitral award complainant provide duly certified genuine foreign award or a duly certified copy of it. Moreover, the list of required documents includes genuine arbitration agreement or its duly certified copy. If the arbitral award is in a foreign language, then the application must also be accompanied by a duly certified translation of this award into Kazakh or Russian. The Code of Civil Procedure of the Republic of Kazakhstan to documents issued by foreign authorities contains a requirement for consular legalization or apostille affixing. At the same time, between the parties to The Hague Convention of 1961 (Kazakhstan joined on October 30, 1999), the requirement to legalize foreign official documents has been canceled, and it is **enough to carry out the apostille procedure**. Thus, when submitting documents to the judicial authorities, it is sufficient **to attach a notarized copy of the arbitral award and the arbitration agreement with an apostille** affixed to the

application for the countries participating in this convention. If representatives of the parties submit the documents to the court, then the parties must legalize power of attorney to represent interests.

#### **4. Which judicial body should consider an application for the recognition and enforcement of the award?**

The choice of the judicial authority for filing the application depends on the parties to the dispute. If one of the parties is an entity carrying out entrepreneurial activity without forming a legal entity, then this dispute **will be resolved in specialized interdistrict economic courts**. In the event that a party to the dispute is an individual who does not engage in entrepreneurial activity, then the application **must be submitted to the district court of general jurisdiction**. The complainant submits application to the competent authority at the place of residence of the debtor-individual or at the location of the body of the debtor-legal entity. In the event that these data are not available, the application is submitted at the location of the debtor's property.

#### **5. What is the amount of the state duty paid when applying for the issuance of a writ obligatory?**

The state fee charged on applications for the issuance of writs of execution for the enforcement of arbitral awards is **5 MCI (approximately US \$ 33-34 at the time of publication)**. The complainant must attach the receipt for payment of the state fee to the application. Representative can also pay the fee, if there is a corresponding authority in the power of attorney.

#### **6. What is the deadline for filing an application for the issuance of a writ obligatory for the enforcement of an arbitral award?**

The party in whose favor the award was made may apply for the issuance of a writ obligatory **within 3 years** from the date of the expiry of the term for the voluntary execution of the arbitral award. The judiciary can restore the deadline for filing an application if the court finds the reasons for the omission valid.

#### **7. In what cases can the court refuse to recognize and enforce arbitral awards?**

If there is at least one of the following grounds, the court will refuse to issue a writ obligatory for compulsory recognition and enforcement of a foreign arbitral award.

- 1) the invalidity of the arbitral award under the laws of the state to which the parties subordinated it, and in the absence of an indication of the applicable law - under the law of the country where the award was made;
- 2) the arbitral award was made on a dispute that is not provided for by the arbitration agreement or does not fall under its terms, or contains decisions on issues beyond the scope of the arbitration agreement, as well as due to the fact that the dispute is not subject to arbitration;
- 3) a court-recognized incapacity or limited legal capacity of one of the parties to the arbitration agreement;
- 4) the inability of the party against whom the decision was made to submit its explanations due to failure to properly notify the appointment of an arbitrator, arbitration proceedings or for other reasons recognized by the court as valid;
- 5) there is a court or arbitration decision that has entered into legal force on a dispute between the same parties, on the same subject and on the same grounds, or there is a court or arbitration ruling to terminate the proceedings in connection with the plaintiff's refusal from the claim;
- 6) inconsistency of the composition or the arbitration procedure of the proceedings with the agreement of the parties, and in the absence of such an agreement - with the laws of the country where the arbitration agreement was held;
- 7) the arbitral award has not yet become binding on the parties or its cancellation, as well as the suspension of the execution by the court of the country in which it was made;
- 8) establishment of the facts of contradiction of the arbitral award to the public order of the Republic of Kazakhstan or inconsistency of the dispute, on which the arbitral award was made, with the subject of arbitration in accordance with the law.

## **8. What you need to know in order to reduce the risk of refusal to issue a writ obligatory for the enforcement of a foreign arbitral award?**

Judicial practice allows us to conclude that, in general, the judiciary refuse to take issuance of a writ obligatory due to the absence of an international agreement or due to failure of properly notification the counterparty about the appointment of arbitration proceedings. In this regard, in order to be confident in the successful recognition and enforcement of a foreign arbitral award the parties should follow certain recommendations:

- 1) at the stage of concluding a contract and drawing up an arbitration agreement, it is recommended to choose the arbitration court whose decisions are recognized and enforced in Kazakhstan. For example, the London International Arbitration Court, the Arbitration Institute of the Stockholm Chamber of Commerce, the International Court of Arbitration at the International Chamber of Commerce;
- 2) prescribe in the arbitration clause all categories of disputes subject to arbitration;
- 3) it is necessary to study the counterparty, namely, whether he is a citizen of a country party to international agreements or bilateral treaties on legal assistance. So, in the event of a problem of recognition and enforcement of an arbitral award, the courts, referring to international sources, are more likely to recognize and enforce a foreign arbitral award;
- 4) make sure that your counterparty received a notice of the appointment of an arbitrator, arbitration proceedings and other objective circumstances. Otherwise, the debtor will refer to the failure to notify him properly and the impossibility of submitting his explanations;
- 5) when submitting an application to the judicial authority, comply with all the requirements for the attached documents.

Thus, compliance with these recommendations significantly increases the likelihood of recognition and enforcement of foreign arbitral awards.

Email: [artem.t@unicaselaw.com](mailto:artem.t@unicaselaw.com)

Al-Farabi 19  
block 1B, office 204  
Almaty, RK, 050059

[www.unicaselaw.com](http://www.unicaselaw.com)