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A Comprehensive Study on Enforcement of Contract in Kazakhstan.

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Introduction

The events that have occurred on the territory of the former Soviet states over the last decade have not only changed the political map of the world. Those events have also created a new phenomenon in the world economy: advanced and productive agricultural, commercial and industrial economies in transition from state-run economies to economies where, at least in theory and certainly in design, the state is another player in a society and an economy governed by law and by laws. This fact appears to be no less significant for world history than the political aspects of the collapse of the Soviet block, since it has always been the private economy that has had a direct impact on the welfare and happiness of the people. Thus, any move from the dominion of state ownership and a vertical, essentially administrative, economy towards the horizontal relations among private economic entities, including foreign citizens and companies, where the state, and in particular the Republic of Kazakhstan, acts as an equal participant of legal relations, must be recognized as a gigantic advancement in economic history. [1]

Transition to At-Will Economy

Kazakhstan has already made long strides down that path. The State is no longer an all-out allocation system. On the contrary, it now enters into legal relations with private persons and companies, including foreign ones, that are based on declarations of parties' will, rather than on an administrative act of the State. Certainly the framework for its transition has been realized.

This transition from a state-run economy to an at-will economy has required recognition and acceptance of the fact that relations with regard to property that are based on a free declaration of will should be documented. Whether or not title to a particular property must be documented, the transfer of title – the exchange of goods

[1] **Enforcement of Contract in Kazakhstan by OI Chensova**

and services – requires some form of an agreement or a contract. And that, of course, is why we are here: what has emerged in Kazakhstan as that staple of a market economy, the contract? [2]

New Concept of Contract Law

It should be born in mind that the concept of "contract law" as a separate branch of law does not exist in Kazakhstan or, for that matter, in most of the other CIS countries. This is the result of the historical evolution of the legal doctrine that has prevailed in these countries. Therefore, when talking about contract legal relations in Kazakhstan one should talk about "civil law", a huge stratum of the legal system that regulates relations connected with property that are based on the equality of participants. "Civil law" also regulates some non-property personal relations, provided they are connected with property.

There is no doubt that contractual relations are the basis for and the most important stratum of civil relations in general and of economic relations in particular. But this concept, which is most likely axiomatic for the majority of the people who are here today, is still a novel concept in Kazakhstan. Thus, for example, quite recently, when the Civil Code was being developed, that is, in 1991-1994, there were serious debates whether the Civil Code should encompass only domestic individual property relations, and whether it should leave manufacturing, for example, under a direct regulation by the State. If that policy had been adopted, the sphere of contractual relations would have encompassed only a narrow sector relating to the disposition of individual personal property. This would also have meant the dominion of the old Soviet system in the economy. Fortunately that narrow concept of contract was rejected and today there are foreign and Kazakhstani companies actively working together on a Kazakhstani market. This fact by itself is already a giant stride.

Kazakhstan needs such an inflow of foreign investments. The Government also sincerely aims at protecting such investments and at performing any obligations assumed under commercial contracts. But concluding and implementing contracts in Kazakhstan, especially those contracts where the State is a party, often means encountering a whole range of problems. These problems are for the most part not the result of imperfections in the legislation. Although perhaps far from perfect, the legislation nevertheless corresponds with general notions of equity and allows the conduct of normal business operations. Rather, the problems arise because of deficiencies in the administrative and judicial systems and in the general level of training provided to State servants. [3]

Civil Code

The civil legislation of Kazakhstan that regulates contractual relations is mainly the Civil Code (General Part) adopted 27 December 1994 and enacted 1 March 1995. That Code consists now

[2] **Economy Profile of Kazakhstan.**
[3] **Economy Profile of Kazakhstan**

of only a General Part that sets forth basic principles on which civil legal relations are built. A Special Part that will regulate individual types of transactions and civil legal relations in general is now being developed and probably will be adopted in the near future.

Moreover, even though the Civil Code is a complicated and rather extensive document, it cannot fully encompass all the relations ensuing from contract. That is why in the Republic there are a lot of special laws that regulate this or that specific type of legal relations. The following are the basic laws that are most often applicable to business activity in Kazakhstan.

- Law "Concerning Joint-Stock Companies" # 281, dated 10 July 1998, – regulates the procedure for creation and operation of JSCs.
- Law "Concerning Limited and Additional Liability Partnerships" # 220-1 ZRK, dated 22 April 1998.
- Presidential Edict having the authority of law "Concerning Business Partnerships" # 2255, dated 2 May 1995, – regulates the procedure for creation and operation of general and special partnerships.
- Presidential Edict having the authority of law "Concerning Subsoil and Subsoil Utilization" # 2828, dated 27 January 1996, – regulates the relations arising in case of natural resources utilization.
- Law "On Foreign Investments" dated 27 December 1994 as amended by Law # 115-I, dated 2 June 1997, – regulates the relations arising in case of investments and contains legal guarantees for protection of investors' interests.
- Presidential Edict having the authority of law "Concerning Land" # 2717, dated 2 December 1995, – regulates land relations.
- Presidential Edict having the authority of law "Concerning Insurance" # 2475, dated 3 October 1995.
- Various acts of banking legislation, primarily Presidential Edict having the authority of law "Concerning Banks and Banking" # 2444, dated 31 August 1995.
- Law of the Republic of Kazakhstan "Concerning Currency Regulation" # 54-1, dated 24 December 1996, – establishes rules of currency (including foreign currency) turnover on the territory of Kazakhstan. This Law, inter alia, prohibits foreign currency settlements between residents of the Republic, including joint ventures and subsidiaries of foreign companies created in Kazakhstan. [4]

The Fundamentals

There are also many other acts that affect contractual relations within a particular sphere of activity.

In addition to the Civil Code and to industry-specific or issue-specific laws, contractual relations are still governed in part by the *Fundamental Principles of Civil Legislation of the USSR and the Republics* (hereinafter "the Fundamentals"). That law was adopted by the USSR in May 1991 and was to come into effect in January

[4] **Competition Law and Policy in Kazakhstan**

1992. In the meantime, however, the Soviet Union dissolved and in December 1991 the Republic of Kazakhstan came into existence. Nevertheless, in January 1993, the Republic adopted the *Fundamentals* as the law of Kazakhstan. They remain in force as a Special Part of the civil legislation, starting from Article 74 of the *Fundamentals*, and they relate to specific types of relations. The *Fundamentals* create an opportunity for parties to choose a law other than the law of the Republic of Kazakhstan for examining their dispute.

The Special Part of the Civil Code of Kazakh SSR also remains in effect and continues to be significant for contractual relations. But if there is a contradiction between the Special Part of the old Civil Code of the Kazakh SSR and the Fundamentals, the latter shall govern.

Overview of the Civil Code of the Republic of Kazakhstan

The Civil Code of 1994 largely replaced an obsolete Soviet civil code (Civil Code of Kazakh SSR) that was fully geared to the interests of an administrative command economy and political system. The new Civil Code was and is also intended to replace the *Fundamentals*. The *Fundamentals* were the first and in fact a rather successful attempt to reform civil law by adapting it to the needs of an emerging market economy. Certain parts of both the old Civil Code and the Fundamentals are still in effect in Kazakhstan, since the Special Part of the Civil Code of the Republic of Kazakhstan has not been passed yet. [5]

On the whole, the Civil Code adopted in 1994 provided a legislative framework for new market relations. It secures the following principles: equality of subjects of civil legal relations; free declaration of will as the basis of civil legal relations; generally permissible character of regulation of activities (i. e., participants of civil legal relations are entitled to do anything that is not explicitly prohibited by law); freedom of contract; and inviolability of property. The State cannot any longer interfere directly with business activity, with private matters or with personal life. The State is now one of the participants in civil legal relations and it has the same rights and obligations that other participants in such relations do. Foreign individuals and companies as well as stateless persons are given the same civil rights and obligations that are enjoyed by Kazakhstani citizens and entities. [6]

Once the rights and obligations of the parties under the Contract are decided by the State Courts and judgment is given by such court then the claimant can ask the court for issuing write of execution as a matter of right. Such write is submitted for execution. Until enforcement of the judgment, the contract remains unenforced. Such writ of execution can be issued in summary without any further recognition by the court and it can be submitted directly for execution. In Kazakhstan, the judgments of the court are given mandatory protection under the judicial sphere to ensure their enforcement. The Civil Code of RK provides that any judgment by the court that enters legal force shall be mandatorily enforced in the territory of Kazakhstan. However, in practice

[5] **Law of Republic of Kazakhstan**
[6] **Doing business in Kazakhstan.**

enforcement of judgments is a serious issue. The main reason for the same is an absence of an efficient mechanism for enforcing the acts of the judiciary. Currently, there exist fundamental gaps in the current legislation even when strict responsibility for non enforcement of judgments is provided. These gaps are not only related to the judgment debtors but also officials of state agencies and other law enforcement officials. The Republic of Kazakhstan requires new laws relating to enforcement proceedings and the status of bailiffs as well as law enforcement officers while enforcing a judgment. Prompt decisions are required to be made to improve the technical and material support activities provided to law enforcement officers. As an initiative to work efficiently, there pay scales are required to be increased while also reducing the excessive burden from them. For the same, in 2002 the Supreme Court adopted a normative Resolution titled Responsibility for Malicious Non-Enforcement of Judicial Acts. It provided for enhancement of judicial performance to ensure enforcement and also providing for the guilt of persons having a responsibility to enforce the judgment. Thus, the courts in Kazakhstan are actively working to ensure that the judgments are enforced as against the debtor so that rights and liabilities are protected.

In Kazakhstan, the law is conservative in relation to the enforcement of a foreign court's judgment. As per the general rule which was effective until 2015, the judgment of foreign courts was recognized and enforced by the state courts, when an international treaty with the foreign state on mutual legal assistance existed. However, there are only a few of such mutual legal assistance treaties. Thus, in practice, the enforcement of foreign judgments was not possible in the legal scenario of Kazakhstan. In contrast, the foreign arbitral awards are enforced without many issues by the courts, since Kazakhstan is a party to the ICSID Convention 1965, European Convention on International Commercial arbitration 1961 and New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. In Kazakhstan, the situation relating to the enforcement of foreign judgments is changing with the adoption of the new Civil Code effective from January 1, 2016. Now, judgments of foreign courts may be recognized and enforced is the same is provided under the laws of Kazakhstan and/or ratified by Kazakhstan under the international treaty or as per reciprocity. [7]

Legal Entities

Thus, a foreign company may operate in Kazakhstan either directly or through a permanent establishment such as an affiliate or a representation office. Alternatively, it may create a new legal entity, which can be either a joint venture or a 100% owned subsidiary in any of the various forms provided for by Kazakhstani legislation.

A system of such legal entities has been established. This system now comprises joint-stock companies of three types (closed, open and public), business partnerships, including limited liability, additional liability, general and special partnerships, production cooperatives and State enterprises. All these forms of legal entities are available for creation of joint ventures on the territory of Kazakhstan and they differ from each other by the

[7] Doing business in Kazakhstan

degree to which founders are liable for debts of the legal entity. For example, in a general partnership, the founders are liable for all their personal property, while in a limited liability partnership the founders' liability is limited to the contribution they made to a charter capital. [8]

The State also acts as a participant in civil legal relations through its agencies (ministries, State committees, or the Government proper) according to their competencies and it satisfies its liabilities from the State treasury. An administrative territorial unit (province or city) also acts as an individual legal entity that satisfies its liabilities from a correspondent local budget. This means that any entity operating in Kazakhstan may enter into an agreement with the Republic or with a territorial unit, provided that the latter has authority to enter into such an agreement.

Moreover, if a State agency while concluding a contract on behalf of the Government has exceeded its authority, the contract remains in effect and will result in binding obligations for the Government or its administrative unit, provided the private party acted in good faith while concluding the contract, i. e., did not know and could not have known about such *ultra vires* conduct.

Contract law plays a pivotal role in formation and safeguarding the rights and duties of parties to the contract. It helps in building business relationships by also ensuring their legal existence. These relationships are sensitive and hence require an effective set of rules to govern them. Contract law helps in providing a legal mechanism for equal and fair realization of business relationships. Enforcement of contracts is fundamental to the contract. If a contract cannot be enforced, then it becomes null and void. For every contract to be valid, it must be enforceable by law. In a layman's language, enforcement of contract means the contract must be effective and valid to be worked upon. Enforcement of contracts is considered together with dispute resolution under the contract law. Efficient practices of contract enforcement reduce uncertainty whereby enhancing the predictability of healthy contractual relations. Settlement of contractual disputes leads to enforcement of the contract, which is largely done as per the laws of the State. Therefore, with the principles of contract law, legal institutions also play an important role in ensuring implementation and enforcement of the contracts. These legal institutions comprise the courts, judiciary, personnel of the legal profession, arbitration, mediation, and other such institutional mechanisms.

With cumbersome and bureaucratic procedures relating to enforcing of commercial transactions, resolving of contractual disputes becomes costly and time-consuming. Such a weak system of contract enforcement reduced the pace of trade and investment and thereby affects the overall growth of an economy. Thus, the study of the enforcement of contracts in countries is done before investing in their business projects. The principles of enforcement of contract help in securing the rights and obligations of the parties, in case the parties fail to act as per the provisions of the contract with which they were bound. The aim of this article is to understand and analyse the provisions of contract law relating to the enforcement of contracts and thereby comparing these

[8] **Kazak Contract**

provisions as under Lithuania and Kazakhstan. The principles of contract laws are based on principles of equity and common law and hence in most of the countries, they stand the same. However, there are changes in them to suit the needs and demands of the individual countries. These similarities and differences would be highlighted in the paper below. This paper would study the aspects of judicial and non-judicial enforcement and the process related to them. Further, it would analyse the problems related to enforcement of contracts in both these countries so that efficacious solutions can be found.

The legal framework in Kazakhstan is normative. The legislation, including the 1995 Constitution, 2000 Constitutional law and others ensure implementation of significant principles determined by the courts. Even for contract legal relations, a normative legal basis of the administration of justice and enforcement of judgments is formed. The contract law is divided under the General Part (1994) and the Special Part (1999) of the RK Civil Code. These laws together regulate the general and specific provisions and principles of contract law, also including the various types of individual contracts. However, the current legislation is not sufficient in coping with the mechanisms of the enforcement of the contract. The existing Civil Code cannot effectively deal with business disputes and their resolutions as to contracts. The present framework requires special regulations that can ensure an adequate way of dealing with dispute resolutions. [9]

An agreement between two or more persons regarding establishment, termination or modification or civil rights and liabilities is defined as a contract under the Civil Code of the Republic of Kazakhstan. The definition provides that from a contract not only rights but also liabilities are a part of the contract. However, the practice in Kazakhstan shows that contracting parties often fail to perform their duties under good faith and at certain times even completely fail to perform the obligations. This leads to damage and loss to the other party to contract. This non-performance requires enforcement of contracts by way of litigation. The obligations under contracts are enforced by awarding fine and penalty. The most common way of minimizing the risks related to unconscionable behaviour in contract law is by awarding a penalty. The penalty is of two types i.e. contractual and legal penalty. Article 295 of the Civil Code of RK provides that the lender has the right to demand penalty, as determined under the legislation in the case of the failure of the other party to act as per the contract. The contractual penalty is mentioned under Article 293 of the Civil Code of RK. Other ways, which help in ensuring obligation, is by a pledge, guarantee, surety, deposit and hold and guarantee fee.

The situation of arbitration tribunals in Kazakhstan is complex and complicated. As per the Constitution, the state judicial system of Kazakhstan does not include within itself the arbitration tribunals. However, under civil legislation, the possibility of protecting civil right

[9] **Business in Kazakhstan**

through such tribunals is present. Moreover, various international treaties and conventions have been ratified by the Republic of Kazakhstan that guarantees resolution of commercial disputes using mechanisms of arbitration. Arbitration tribunals have been rapidly developing in the Republic. These tribunals are not only used by the people of Kazakhstan to get their contractual issues resolved but also by foreign investors. The major problem with dispute resolution through arbitration in Kazakhstan is that the Civil Code 1999 does not provide for enforcement of awards by the tribunals. This served as a ground for refusing the orders of arbitration tribunals by the civil courts and thereby depriving these awards of any legal effect. This puts the arbitration tribunals in an unequal position with the courts. Initially, the Supreme Court passed a Resolution in 2001 whereby stating that the awards passed by the arbitration tribunals of Kazakhstan should be enforced in a like manner as the judgment of a civil court. However, a different stand was taken by the government of Republic, thereby vitiating the Resolution of Supreme Court. In present, the arbitration tribunals are not yet recognized under the Constitution and there stands no enforcement of arbitration awards. Thus, in reality, the arbitration tribunals do not function in Kazakhstan. [10]

Problems that May Arise

At this point, it should be mentioned that some of the main problems that may arise in Kazakhstan when entering into contractual relations.

First Problem

First of all a purely legal problem is that old Soviet legislation that does not completely meet today's requirements is still being applied as the civil legislation devoted to specific types of civil legal relations. The *Fundamentals* of civil legislation were, on the whole, oriented to the market economy. But as the first experiment of market legislation, they regulate specific relations of civil law in a largely unsatisfactory way. It is enough to note that the text of the *Fundamentals* consists of 170 clauses, while only the General Part of the contemporary Civil Code includes 405 clauses. The Special Part being developed will supposedly contain more than 1,000 clauses. Therefore, the *Fundamentals* do not provide answers to most questions arising in connection with implementation of a particular contract. This results in the unpleasant necessity of having to overload the text of a contract with specific details which complicate the contract's structure, create the risk of internal discrepancies, and sacrifice clarity in the text of a contract.

As for the Special Part of the Civil Code of Kazakh SSR, it is simply not appropriate for entrepreneurial activities because its drafters proceeded from the concept of denial of private ownership and private entrepreneurship. As

[10] **Competition Law and Policy in Kazakhstan.**

a practical matter, therefore, the only sphere where the old Civil Code is operative is in domestic relations of individuals connected with their personal property.

Second Problem

The second legal problem is that there are contradictions between the Civil Code and specific laws. This problem could be viewed as purely technical except for one troubling circumstance: there is a general trend to exclude some civil legal relations from the sphere of application of the Civil Code. This trend was first evident in the process of developing the banking legislation. Undoubtedly, regulating specific types of legal relations requires legislation of a particular character, but such particularity should not run contrary to general principles of civil law. Unfortunately, this concept is not being observed in Kazakhstan and the result diminishes the status and the effect of the Civil Code.

This problem has been further aggravated recently by the adoption of a law "On Normative Legal Acts" which puts codes on the same level with laws. Thus, the legislator who is developing a new law is no longer concerned about its compliance with the Code. In the event there are contradictions between such new law and the Code, the new law's norms will be applied as the norms of a more recent act, even if they are in conflict with fundamental principles of civil law expressed in the Code. All this greatly undermines the significance of the Civil Code which, as it was originally envisaged, was supposed to be global for civil legal relations.

Third Problem

The third problem is that there are some difficulties with enforcement of contracts. This problem is directly connected with imperfections in the judicial system.

The main problem in this respect is the quality of the training provided to judges, including judges of the Supreme Court. Their training leaves much to be desired. Incorrect application of law norms by courts is not rare. The reason is that judges appear not to be ready to apply new market laws that differ from Soviet laws in principle. Another problem is that disputes arising from contracts in business relations are considered by special boards on business disputes. The courts are in fact divided into boards on civil affairs and boards on business disputes. This is surprising and incomprehensible since, from a legal perspective, there should be no distinctions between a dispute between a seller and a buyer of a car and a dispute between entrepreneurs with regard to performance of a supply contract. Both such matters should be referred to the same category of judicial cases Â– civil disputes - and should be regulated by the same legislation. In Kazakhstan, however, civil disputes are examined by different boards and in accordance with different procedural laws, depending on whether they involve business entities.

The reason behind this phenomenon is historical. In Soviet times, civil disputes considered by courts were invariably domestic disputes with regard to personal property. There was neither private ownership of means of production nor private entrepreneurship. Disputes that arose among economic entities, which were for the most part state enterprises (except collective farms that were cooperatives in a technical sense), were considered by arbitration courts that were, as a practical matter, state administrative allocation agencies. And those arbitration courts, as they were called, based their decisions on the state-planned allocation.

After the state arbitration system was abolished as meaningless for market conditions, arbitration courts merged with the general courts and became boards on business disputes. It appeared that their judges were not ready to apply market legislation. At the same time, however, boards on civil disputes preserved their exclusive, narrow sphere and they were not ready to consider economic disputes.

As a consequence, the courts generally are not yet ready to apply the Civil Code. Instead, they prefer to apply specific laws, even when they conflict with the Civil Code. This ignores the formative function of the Civil Code. [11]

Courts Slow to Act

Court decisions are also not as prompt as the current law intends. According to the Law "Concerning Procedure for Consideration of Economic Disputes by Arbitration Courts of the Republic of Kazakhstan", dated 17 January 1992, which is the procedural law governing the review of business disputes by boards on business disputes, a court shall make a decision on any given case within one month from the date of adoption of the case for consideration. In exceptional cases the term can be extended.
After that, court rulings may be presented for executory proceedings within three years from the date of issuing a court ruling, that is to say, court orders shall be enforceable for three years. The law "Concerning Executory Proceedings and Status of Judicial Executors" # 253, dated 30 June 1998, regulates enforcement of court rulings.

In reality, however, courts generally fail to make decisions within the aforementioned procedural time frames for two principal reasons. First, court schedules are overloaded. Secondly, one month is insufficient for the complete consideration of a case, and the attempts to adhere to such a timetable frequently result in incomplete and inefficient consideration of a case. More often, after the expiration of the one month period the court adopts a resolution to suspend the case, thus dragging out the consideration of the case. [12]

[11] **Economy Profile Kazakhstan**
[12] **Enforcement of contract in Kazakhstan.**

New Civil Procedure Code

It is now expected that a new Civil Procedural Code will be adopted to replace the Civil Procedural Code of Kazakh SSR and the Law "Concerning the Procedure for Business Disputes Examination by Arbitration Courts of the Republic of Kazakhstan", which was oriented to the old system of state arbitration. After that the various judicial boards will most likely merge. A true solution to this problem, however, will probably have to await a new generation of judges.

The issue of contract negotiation practices with of governmental bodies is also worth mentioning. As a rule it is not difficult to determine which State body should conduct negotiations on a given contract, since regulations on such bodies specify their authorities. For example, subsoil development contracts are concluded with the State Committee on Investments, while State property sale and purchase contracts under privatization projects are concluded with the Department of State Property and Privatization of the Ministry of Finance. As a practical matter, Working Groups composed of representatives of interested Ministries and agencies, including tax authorities, are often created for purposes of negotiating a particular contract. This practice is generally beneficial, since it allows for simultaneous review and approval of a contract by the representatives of various agencies.

Problems can arise, however, in the process of implementation of the contract, since this stage often involves local authorities that did not participate in the negotiations and that may have policies that conflict with the obligations of the Government in the contract. The result can complicate matters both for the investor, who is unable to obtain the anticipated execution of the contract, and for the Government, which finds itself unable to fulfill its contractual obligations.

Both investors and the Government also experience significant problems in drafting the language of contracts. There are a number of reasons for this:

- There is a shortage of Kazakhstani lawyers capable of drafting a contract in a professional manner. This reflects the fact that there was no need for this kind of work during the Soviet era. The few commercial contracts that were concluded during that period were prepared using printed forms developed for contracts of a certain kind, most often one page long. Such contracts did not play the role of describing the conditions of a transaction. They only confirmed its existence, like a certificate.

- There is a lack of competent legal expert evaluation of drafts of contracts. Unfortunately, State bodies are understaffed with lawyers, let alone experienced lawyers. Thus, the State is often not in a position to determine whether the contract that it signs is a good contract, or whether it contains contraventions of the law.

- Legal nihilism. Frequently civil officers (and in some cases, investors) simply do not realize the necessity of a thorough legal development of the text of their contract. They are content to limit their contract to the essential business or financial elements. Only later, during a court or an arbitration proceeding, do they learn that a significant portion of their contract is invalid.

• The next problem that we need to recognize has to do with the conduct of investors themselves and their legal advisers. Unfortunately, investors, in their pursuit of the most favourable terms, have been known to attempt to bypass the law and to include obviously improper provisions in a contract. Such investors may believe that certain provisions of the legislation are unfair and they attempt to "correct" the situation through the text of the contract. Their legal counsel may then be persuaded to follow the wishes of their client. This policy is extremely short-sighted and only worsens the position of the investor, since an illegal provision included in a contract, even if it has been endorsed by the Government, will not amend a provision of the law. The result will be a contract that is impossible to implement or to enforce. [13]

Conclusion

In conclusion, Kazakhstan has made the extraordinary progress since its independence in 1990. Contractual relationships in Kazakhstan are flourishing, and the lawyers are learning how to deal with contract drafting and dispute avoidance. The vast majority of contracts will work out satisfactorily or even splendidly. However, there are those contracts that go sour, by recognizing the problems that could crop up, you may be able to anticipate and avoid the problems of the past and to experience the pleasure of creating and enjoying a contract that is good for all the parties.

Kazakhstan has a traditional approach in relation to securing contractual relations. For the purposes of the enforcement of contracts, it primarily depends on legislation and judicial interventions. Kazakhstan does not follow international conventions and treaties. Kazakhstan, the provisions under the Civil Code, relating to contract law are simple and do not correspond to the international standards. The enforcement of contracts is difficult if one party is international or not subject to the Kazakhstan laws. In Kazakhstan, there are laws for the enforcement of judgment relating to dispute resolution, however, due to the intervention of judicial officers, the level of enforcement is weak. Considering the same, new laws have been passed to ensure that every judgment is enforced. The enforcement by arbitration or mediation is not permitted in Kazakhstan. Kazakhstan fails to rely on the institutions of arbitration or mediation and neither their awards are enforceable by the civil courts. Even though arbitration is provided as a remedy which can be opted by the parties, but domestic arbitral awards are not enforced by the courts, and the legislation of Kazakhstan does not consider arbitration as a part of the

[13] **Civil Code of the Republic of Kazakhstan**

judiciary. With the new Civil Code of 2015, foreign courts' judgment and foreign arbitral award are now allowed to be enforced by the courts of Kazakhstan.