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COMPARATIVE RESEARCH ON THE ARBITRATION MECHANISMS BETWEEN CHINA AND KAZAKHSTAN

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Abstract. *With the implementation and development of the Belt and Road Initiative, the economic and trade exchanges between Kazakhstan and China are increasingly close, and the emergence of disputes is inevitable. As an Alternative Dispute Resolution (ADR), arbitration is an important form of solving civil and commercial economic disputes, and has been adopted by most countries and regions in the world. Relying on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), arbitration has become the main means of dispute resolution in international commercial activities. Kazakhstan and China are also in the process of improving their domestic legal regimes in relation to arbitration in order to be in line with international legislation and practice. The exchange and cooperation between the two countries in the field of arbitration will help provide investors with an efficient and convenient dispute resolution path, thus removing obstacles to closer economic and trade contacts. By comparing and analyzing the arbitration mechanism between China and Kazakhstan, this research is to find the possible ways in which China and Kazakhstan connect and cooperate on the arbitration mechanism and to provide practical advices for investors from both sides when they choose arbitration to resolve their disputes. Through research, it is found that the arbitration mechanism between the two countries is insufficient, and the ADR mechanism including arbitration is underutilized. The practical significance of the research is to improve the acceptance and utilization of arbitration in disputes between the two countries.*

Keywords: international arbitration, Kazakhstan, China, dispute resolution, "Belt and Road".

ҚЫТАЙ МЕН ҚАЗАҚСТАН АРАСЫНДАҒЫ АРБИТРАЖДЫҚ МЕХАНИЗМДЕРДІ САЛЫСТЫРМАЛЫ ЗЕРТТЕУ

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Аннотация. «Бір белдеу, бір жол» бастамасын іске асырумен және дамытумен Қазақстан мен Қытай арасындағы экономикалық және сауда алмасулары барған сайын тығыз бола түсуде және даулардың туындауы сөзсіз. Дауларды шешудің балама әдісі

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(ДШБ) ретінде арбитраж азаматтық және коммерциялық экономикалық дауларды шешудің маңызды нысаны болып табылады және оны әлемнің көптеген елдері мен аймақтары қабылдаған. Шетелдік арбитраж шешімдерін тану және орындау туралы Нью-Йорк конвенциясына (Нью-Йорк конвенциясы) сүйене отырып, арбитраж халықаралық коммерциялық қызметте дауларды шешудің негізгі құралына айналды. Қазақстан мен Қытай халықаралық заңнама мен тәжірибеге сәйкес болу үшін арбитражға қатысты өздерінің ішкі құқықтық режимдерін жетілдіруде үстінде. Екі ел арасындағы арбитраж саласындағы алмасу және ынтымақтастық инвесторларға дауларды шешудің тиімді және ыңғайлы жолын қамтамасыз етуге көмектеседі, осылайша тығыз экономикалық және сауда байланыстарына кедергілерді жояды. Қытай мен Қазақстан арасындағы арбитраждық механизмді салыстыра және талдай отырып, бұл зерттеу Қытай мен Қазақстанның арбитраждық механизмі бойынша бірігіп, ынтымақтасуының ықтимал жолдарын табуға, сондай-ақ өз дауларын шешу үшін арбитражды таңдаған кезде екі жақтағы инвесторларға тәжірибелік кеңестер беруге арналған. Жүргізілген нәтижесінде екі ел арасындағы арбитраж механизмі жеткіліксіз екендігі және арбитражды қамтитын ДШБ механизмі жеткіліксіз пайдаланылатыны анықталды. Зерттеудің тәжірибелік маңыздылығы екі ел арасындағы дауларды шешуде арбитражды қабылдау мен қолдануды жақсарту болып табылады.

Түйін сөздер: халықаралық арбитраж, Қазақстан, Қытай, дауды шешу, «Бір белдеу, бір жол».

СРАВНИТЕЛЬНОЕ ИССЛЕДОВАНИЕ АРБИТРАЖНЫХ МЕХАНИЗМОВ МЕЖДУ КИТАЕМ И КАЗАХСТАНОМ

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Аннотация. С реализацией и развитием инициативы «Один пояс, один путь» экономические и торговые обмены между Казахстаном и Китаем становятся все более тесными, и возникновение споров неизбежно. В качестве альтернативного разрешения споров (АСР) арбитраж является важной формой разрешения гражданских и коммерческих экономических споров и был принят в большинстве стран и регионов мира. Опираясь на Нью-Йоркскую конвенцию о признании и приведении в исполнение иностранных арбитражных решений (Нью-Йоркская конвенция), арбитраж стал основным средством разрешения споров в международной коммерческой деятельности. Казахстан и Китай также находятся в процессе совершенствования своих внутренних правовых режимов в отношении арбитража, чтобы привести их в соответствие с международным законодательством и практикой. Обмен и сотрудничество между двумя странами в области арбитража могут предоставить инвесторам эффективный и удобный путь разрешения споров, тем самым устраняя препятствия для более тесных экономических и торговых контактов. Путем сравнения и анализа арбитражного механизма между Китаем и Казахстаном это исследование должно найти возможные способы, которыми Китай и Казахстан связываются и сотрудничают в арбитражном механизме, а также предоставить практические советы инвесторам с обеих сторон, когда они выбирают арбитраж для разрешения своих споров. В результате исследований было установлено, что арбитражный механизм между двумя странами недостаточным, а механизм АСР, включая арбитраж, недостаточно

используется. Практическая значимость исследования заключается в улучшении принятия и использования арбитража в спорах между двумя странами.

Ключевые слова: международный арбитраж, Казахстан, Китай, разрешение спора, «Один пояс, один путь».

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Introduction

Kazakhstan is one of the first countries to cooperate with China on the Belt and Road Initiative and an important partner for China in Central Asia. With the deepening of bilateral cooperation in economic, trade and investment, it will be more necessary to establish a mutual trust and efficient dispute resolution mechanism. As one of the Alternative Dispute Resolution (ADR), international arbitration has become an important form of solving international civil and commercial economic disputes.

Compared with other dispute resolution methods, arbitration has its particularity and advantages. First of all, party autonomy is one of the basic principles of arbitration, and it is also the biggest advantage different from judicial proceedings. Secondly, arbitration is confidential, which is one of the reasons why commercial arbitration and investment arbitration are favored in recent years. Thirdly, arbitral awards are internationally recognized and enforced.

Both Kazakhstan and China are signatories to the New York Convention and the Washington Convention, and they have made continuous efforts to create a more open and arbitration-friendly environment that aligns with internationally acceptable standards. The two countries may choose arbitration to settle their investment and trade disputes, which may become the most ideal and convenient way of dispute resolution.

Methodology and literature

In order to conduct comprehensive research on both Chinese and Kazakhstani arbitration mechanism, the research mainly uses comparative analysis and literature analysis. The main purpose of the research is to find the possible ways in which China and Kazakhstan connect and cooperate on the arbitration mechanism and to provide practical advices for investors from both sides when they choose arbitration to resolve their dispute. By relevant literature, laws and regulations, in the context of

the international arbitration mechanism of the two countries, the basic content and procedures of arbitration are analyzed.

This research mainly analyzes the arbitration mechanism based on legal documents, including domestic arbitration-related legislation of the two countries, bilateral treaties and multilateral treaties between the two countries. Most of Scholars and professions have studied international arbitration mechanism of China and Kazakhstan separately, or from a regional and multilateral perspective, which provided references and basic for this research. The main part of the paper is devoted to the study of the legislative regulation of the arbitration mechanisms of Kazakhstan and China. This research paper looks at the arbitration in China and Kazakhstan, through (i) an overview of the arbitration system in China and in Kazakhstan; (ii) a description of the peculiarities of the arbitration systems in the two countries; (iii) an analysis of the connections on arbitration between the two countries; (iv) a discussion on future cooperation between China and Kazakhstan in the field of arbitration; and (v) practical advices for investors from the two sides.

Discussion

Arbitration mechanism in Kazakhstan. To enhance its attraction to international trade and investment, Kazakhstan have made great efforts to create a favorable investment legal environment through reforming and improving investment-related legislation and judicial measures². In addition to the traditional judicial proceedings, the establishment of diversified and flexible dispute resolution mechanism, including negotiation, mediation and arbitration, will help to form a favorable and friendly environment for international economic and trade cooperation.

Kazakhstan's arbitration system has developed rapidly and is now relatively mature after several reforms. The Law on Arbitration

² China International Economic and Trade Arbitration Commission. Study on the International Arbitration System of Countries Along the Belt and Road (I) // <http://www.cietac.org/index.php?m=Article&a=show&id=18202> .(11.08.2022)

Courts³ and the Law on International Arbitration⁴ promulgated in 2004, are the first milestones in Kazakhstan's arbitration legislation. The Civil Procedural Code of Kazakhstan⁵, which came into force on January 1, 2016, contains more detailed provisions on the relationship between arbitral procedures and litigation procedures. In the same year, Kazakhstan enacted a new law on arbitration⁶, integrating the above two arbitration-related laws, and arranging arbitration proceedings as detailed as possible, which applies not only to domestic arbitration but also to international arbitration. The new Law on Arbitration follows the international common principles such as autonomy of parties and confidentiality used by most countries in their arbitration systems. This becomes undoubtedly a landmark progress for the arbitration system of Kazakhstan⁷.

Currently, the Arbitration Law of 2016, the Civil Procedural Code and the Entrepreneur Code mainly make up the domestic legal basis for arbitration activities in Kazakhstan. At the same time, Bilateral Investment Treaties (BITs), regional investment treaties or other multilateral treaties signed by Kazakhstan, for example, the China-Kazakhstan BIT⁸, may constitute a substantive legal basis for supporting the use of arbitration and other means to settle disputes within the territory of Kazakhstan⁹. In terms of procedural rules, domestic legislation recognizes and even promotes the use of arbitration mechanisms for dispute resolution. Kazakhstan has acceded to the New York Convention, the Washington Convention, the European Convention on International Commercial Arbitration (1961). By these conventions and treaties, combining with domestic legislation, Kazakhstan is obliged to recognize the force of arbitration agreements and clauses in contracts, which deal with the procedures for settling disputes, and to

recognize and enforce arbitral awards made by foreign, international, and domestic arbitration courts [1]. Article 3 of the Law on Arbitration stipulates that in case of inconsistency or contradiction between the provisions of international treaties and domestic laws, the principle of priority of international treaties is followed.

With the improvement of arbitration law and the development of arbitration mechanism, domestic arbitration institutions in Kazakhstan have been established and developed. In Kazakhstan, arbitration institutions can be divided into permanently-operating ones and ad hoc arbitration. Ad hoc arbitration are established by the disputing parties and exist only until the dispute has been settled by both parties or until the dispute is brought to court. It is less common in Kazakhstan than those done by arbitration institutions¹⁰. While permanent arbitration institutions can be established by natural or legal persons, and have arbitration rules and arbitrators list. The Arbitration Chamber of Kazakhstan, according to the Law on Arbitration, is a non-profit organization established in order to create favorable conditions for the implementation, promotion, and support of the activities of arbitrations in Kazakhstan. The well-known arbitration institutions are Kazakhstan International Arbitrage (KIA), Astana International Financial Center-the International Arbitration Center (IAC). KIA, as one of the leading arbitrations in Kazakhstan, accepts arbitration claims not only under the domestic laws of Kazakhstan, but also international arbitration claims resulting from choice of law between the parties. While IAC is established under AIFC framework, which provides an independent, convenient and fast dispute resolution approach, and operates in the highest international standards¹¹.

The characteristics and advantages of the

³ The Law of the Republic of Kazakhstan, dated 28 December, 2004 No 22 // <https://adilet.zan.kz/eng/docs/Z040000022> (12.08.2022)

⁴ The Law of the Republic of Kazakhstan dated 28 December 2004 No. 23 // <https://adilet.zan.kz/eng/docs/Z040000023> (12.08.2022)

⁵ Civil Procedure Code of Kazakhstan, dated October 31, 2015 No. 377-V LRK. // <https://adilet.zan.kz/eng/docs/K1500000377> (12.08.2022)

⁶ Law of the Republic of Kazakhstan dated April 8, 2016, No. 488, "On Arbitration" // https://adilet.zan.kz/eng/docs/Z16000488_1 (12.08.2022)

⁷ Zhenli Zhang. Research on Kazakhstan arbitration system. DeHeng Law Offices, 2019 // <http://www.dhl.com.cn/CN/tansuoccontent/0008/015401/7.aspx?MID=0902> (11.08.2022)

⁸ The Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on the Encouragement and Reciprocal Protection of Investments, signed in 1992, entered into force from 1994 // <http://tfs.mofcom.gov.cn/aarticle/h/at/200212/20021200058381.html> (11.08.2022)

⁹ China International Economic and Trade Arbitration Commission. Study on the International Arbitration System of Countries Along the Belt and Road (I) // <http://www.cietac.org/index.php?m=Article&a=show&id=18202> (11.08.2022)

¹⁰ Dispute Resolution Around the World. Kazakhstan. Baker & McKenzie CIS, Limited, 2009 // https://www.bakermckenzie.com/-/media/files/insight/publications/2016/10/dratw/dratw_kazakhstan_2009.pdf?la=en (11.08.2022)

¹¹ An Introduction by the Chairman of the International Arbitration Centre // <https://iac.aifc.kz/an-introduction/> (11.08.2022)

arbitration system in Kazakhstan can be as followed: first, to respect and guarantee the party autonomy. This is to encourage the parties to obtain reasonable results according to their preferred dispute resolution methods, and at the same time, it is conducive to expanding the application scope of arbitration and reducing the burden of litigation [2]. Second, the establishment of ad hoc arbitration system. According to Article 4 of Law on Arbitration, arbitrations in Kazakhstan may be established in the form of permanent arbitral institution or arbitration to resolve a certain dispute. "Arbitration to resolve a certain dispute" can be seen as so-called ad hoc arbitration. Through ad hoc arbitration, the parties can make independent decisions mostly on all issues involved in the arbitration procedure. In this way, it embodies the principle of party autonomy [3]. Third, mediation in arbitration system. According to Article 48 of KIA Rules of Arbitration¹², if the parties resolve disputes through amicable settlement and mediation in the arbitration process, the arbitration shall be suspended, and the results of dispute settlement shall be recorded in the form of an arbitration award according to the request of the parties. The appropriate introduction of mediation in arbitration procedures is helpful to combine the advantages of the two dispute resolution methods and to solve disputes more conveniently and fairly.

Arbitration mechanism in China. While promising to generate massive trade and growth across the economies in Asia, Europe and Africa, this grand scheme of the Belt and Road Initiative will presumably result in a corresponding increase in cross-border commercial disputes arising from various causes. For China, establishing a mutual trust and efficient international dispute settlement mechanism including arbitration system is also an important part of the implementation of the Belt and Road Initiative.

In China, although arbitration has a hundred years of history, it was not until the promulgation of the 1994 Arbitration Law that China established a modern arbitration system in a real sense, and the concept of arbitration began to be in line with international standards. This law marks the rapid development of China's arbitration, including international

commercial arbitration. This law is applicable to both domestic and international arbitration, the Chapter 7 of the Arbitration Law regulates international arbitration specially. At present, the Arbitration Law and arbitration-related rules of Civil Procedure Law make up the general regime that regulates arbitration in China¹³. In addition, it is also scattered in the Civil Code, Law on Choice of Law for Foreign-related Civil Relations and judicial interpretation related.

According to the Arbitration Law, the fundamental arbitration system includes four basic doctrines that coordinates with modern arbitration: (i) party autonomy, meaning that the parties submission to arbitration shall be made "on the basis of both parties' free will and an arbitration agreement reached between them"; (ii) denial of court jurisdiction when there is a valid arbitration agreement; (iii) independence of arbitration, including the independence of arbitration institutions and the autonomy of the arbitration agreement; and (iv) the finality of arbitral awards [4, 26 p.].

According to the legislation in China, there are two generally accepted mandatory principles that govern arbitration. First, ad hoc arbitration is prohibited in China generally. It has long been regarded as invalid under Chinese Law. In recent years, however, the establishment of ad hoc arbitration system has been widely discussed in China. Second, purely domestic disputes are prohibited from submitting to arbitration outside China. An arbitration agreement to submit a domestic dispute with no foreign element to foreign arbitration was regarded invalid by Chinese courts, while "foreign element" had been narrowly interpreted.

Similar to Kazakhstan, bilateral treaties or multilateral international treaties regulating international commercial arbitration relations concluded or signed between China and other countries are also the main content of China's international arbitration legislation. In addition to a large number of BITs, the New York Convention and the Washington Convention are the most representative international conventions to which China is currently a party. Although China only agreed to submit compensation disputes arising from expropriation and nationalization to the jurisdiction of ICSID.

¹² *Kazakhstan International Arbitrage Rules of Arbitration, approved by the decision of the General Meeting of participants of Kazakhstan International Arbitrage LLP on April 24, 2017 (as amended on March 05, 2019) // <https://arbitrage.kz/en/kia-rules-of-arbitration> (12.08.2022)*

¹³ *Zhang Shouzhi. Arbitration Procedures and Practice in China: Overview // [https://uk.practicallaw.thomsonreuters.com/3-520-0163?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/3-520-0163?transitionType=Default&contextData=(sc.Default)&firstPage=true) (13.08.2022)*

Since China's previous arbitration law does not recognize the ad hoc arbitration system, institutional arbitration in China has developed significantly over the past two decades. The China International Economic and Trade Arbitration Commission (CIETAC) was established in 1956 as the first foreign-related arbitration institution in China, and this is where China's arbitration career began. As of 2021, there are 270 arbitration institutions nationwide, and foreign-related arbitration institutions are improved. Now CIETAC is one of the main permanent commercial arbitration institutions in the world. In addition, Beijing, Shanghai and other places have also established international arbitration institutions.

Similarities and differences. Necessarily, the arbitration systems in China and Kazakhstan have similarities, since arbitration laws are based on the Model Law on Arbitration and New York Convention. Arbitration in China and Kazakhstan does not have a long history and started late, but has developed rapidly and reached a relatively mature level. In both countries, arbitration has undergone various reforms, which demonstrates the will of the governments to bring arbitration more in line with international standards. These changes are embodied in the legislation improvement over the years. Coincidentally, compared with ad hoc arbitration, institutional arbitration has made great progress in both countries.

At the same time, there are differences due to different social and economic environments. An obvious distinction is the establishment of ad hoc arbitration. Ad hoc arbitration, which has been practiced around the world for several centuries, offers a fast, cost-effective and above all flexible alternative to institutional arbitration [4, 36 p.]. Kazakhstan has followed this approach, and its domestic legislation recognizes the validity of ad hoc arbitration. China's existing arbitration law is not. This may be because institutional arbitration is more convenient for administrative supervision, thus ensuring the quality of arbitration. In recent years, China's legal professions have also paid attention to the necessity of ad hoc arbitration system, which may bring about changes and make China's arbitration more in line with international practice.

Another difference reflects in the degree of the party autonomy. As discussed above, party autonomy is more fully guaranteed in Kazakhstan in terms of the validity of the arbitration agreement, the deadline for the conclusion of an arbitration agreement, and

the system of ad hoc arbitration, etc. On the other hand, the Arbitration Law of China also respects the independence of arbitration committees and arbitration procedures, the provisions shows that arbitration committees are independent of the government authorities and have no affiliation with them. But these arbitration committees used to be affiliated to governmental administrative authorities at the beginning stage, and legislation imposes more detailed constraints on the arbitration procedure, while institutional arbitration is also subject to strict arbitration rules. In comparison, such official and administrative nature of permanent arbitration committees, together with the detailed regulations on arbitration procedures, limit the autonomy of the parties to a certain extent. The absence of an ad hoc arbitration also reflects such limitations, since ad hoc arbitration is based on the autonomy of the parties and exists in principle outside the supervision of the institution.

Results

At this stage, the existing dispute settlement system between China and Kazakhstan is initially formed, mainly reflected in BIT-based dispute settlement and multilateral treaties-based dispute settlement. BIT between China and Kazakhstan provides a remedy for two types of investment disputes. In accordance with Article 8 of the BIT, disputes arising from the interpretation or application of the BIT shall first be settled by diplomatic means to the extent possible, and if the dispute is not settled by diplomatic means, the dispute shall be submitted to the ad hoc arbitral tribunal at the request of either party. This follows the international practice, which is "diplomacy before arbitration" [5]. According to Article 9, any dispute concerning the amount of expropriation compensation between States and investors of other States may be submitted to the arbitral tribunal. This provision limits the scope to disputes relating to the expropriation compensation between States and investors of other States, which is also consistent with the reservation made when China acceded to the Washington Convention.

In the dispute mechanism based on multilateral international treaties, there are many options for resolving disputes between China and Kazakhstan. China and Kazakhstan have both joined the New York Convention, the Washington Convention and WTO, the two countries can choose ICSID and WTO dispute settlement mechanism (DSM) to

resolve disputes. Currently, ICSID is one of the most important ways to resolve investment disputes between investors and host countries. It is established on the basis of the Washington Convention and provides a relatively perfect remedy for the settlement of investment disputes between foreign investors and host governments. DSM is the main pillar of WTO multilateral trade system, it is regarded as one of the most perfect international dispute settlement mechanisms in history.

Besides, some arbitration institutions of the two countries have reached cooperation. In 2019, CIETAC signed a cooperation agreement with IAC¹⁴. In 2021, the Guangzhou Arbitration Commission of China signed a memorandum of cooperation with IAC. To meet the needs of the further development of economic globalization, cooperation between arbitration institutions is imperative. The arbitration institutions from two sides can learn from and communicate with each other in the field of dispute settlement, and jointly participate in international arbitration services and operations.

The fairness and effectiveness of international dispute settlement mechanisms directly affect investment and trade between the two countries. At present, domestic arbitration system in China and Kazakhstan has been gradually improved. China-Kazakhstan BIT provides dispute settlement clauses, and there are complementary mechanisms such as ICSID and DSM at the multilateral level. However, the connection of arbitration mechanism between the two sides is still insufficient, and the ADR mechanism including arbitration between the two countries is underutilized.

For further connection and cooperation on the arbitration mechanism between the two countries, following measures can be considered.

The BIT between China and Kazakhstan needs to be revised and improved. In fact, China and Kazakhstan have been negotiating a new bilateral investment protection agreement for several rounds in recent years, but there is no conclusion yet. The two countries should further promote the renewal of the content of bilateral treaties and the enrichment of mechanisms to provide a comprehensive and reliable legal basis for further cooperation, especially in the field of dispute settlement mechanism.

Arbitration shall be promoted as the main method of dispute settlement between the

two countries [6]. Arbitration has become a common method for dealing with international economic and trade investment disputes. First, arbitration fundamentally requires that disputes must be handled in accordance with clear legal provisions and that the arbitral institution is a neutral body independent of any disputing party, which is conducive to ensuring fairness in trade and investment disputes. Arbitration awards are compulsory and legally binding and have effect on any party to the dispute and must be enforced. Second, arbitration, as a legal method of dealing with economic and trade disputes, is more stable and predictable than political and diplomatic methods. Further, arbitration is highly flexible and efficient compared to judicial methods, which is conducive to reaching consensus among disputing parties and resolving disputes quickly and efficiently. China and Kazakhstan have maintained friendly and close relations for many years. When dealing with economic and trade investment disputes, they are also more willing to deal with economic and trade disputes in a more peaceful and friendly way to achieve mutual benefit. The problem of the scope of arbitration cases between the two countries, the recognition and implementation of arbitration awards and other key issues under arbitration mechanisms should be further clarified.

An integrated dispute resolution mechanism including arbitration should be established. China has begun to establish such integrated mechanisms for further implementation of the Belt and Road Initiative, to which China-Kazakhstan cooperation on arbitration will provide practical experience. Particularly, a joint arbitration mechanism can be established based on the China-Kazakhstan Khorgos International Border Cooperation Center [7]. At present, China-Kazakhstan joint dispute resolution platform has been set up on the China's side, which is composed of Chinese judges, judicial workers, lawyers and other professions. Due to the epidemic situation, it has not yet completed connecting and cooperating with Kazakhstan. The arbitration office is preset in this platform. However, due to the fact that the arbitration institution has not been established and the arbitrators have not been selected, the arbitration procedure has not operated yet. The Cooperation Center can be a specific place for arbitration, and arbitrators from the both countries hear the disputes jointly according to the specific rules, which will enable the

¹⁴ CIETAC signed a cooperation agreement with the Kazakhstan International Arbitration Center // <https://ishare.ifeng.com/c/s/7rM7KSsoW6> (13.08.2022)

local settlement of disputes occurring within the Centre and play a greater role as the main arbitration institution for the settlement of investment and commercial disputes between the two countries.

As investments between the two countries become closer, it is becoming more likely that disputes will be resolved within the two countries rather than international institutions. Business practitioners and investors should have a holistic understanding of arbitration procedures, fully exercise autonomy of will, and improve the efficiency of dispute settlement and reduce costs through arbitration. **Investors from both countries may consider the following suggestions when choosing arbitration as a method of dispute resolution.**

Selecting the appropriate seat of arbitration and arbitration institution. Choosing an arbitral institution in the place where the dispute arises and where the respondent is located facilitates the expeditious conduct of the arbitration proceedings, as well as the recognition and enforcement of the arbitral award. On the other hand, investors can also choose a foreign arbitration institution when they are more restricted due to the legal regulation or public policy, thus increasing their autonomy over the arbitration process. The choice of the appropriate place and institution of arbitration is an important element in the formation of an arbitration agreement, especially according to the Chinese Arbitration Law, where the arbitration agreement may be deemed invalid if the arbitration committee is not agreed upon or is unclear. Therefore, before forming an arbitration agreement, investors need to have a good understanding of the arbitration institutions and arbitration rules in both countries and identify a suitable and clear arbitration institution through the arbitration agreement.

Improving the conclusion of the arbitration agreement with reference to the model clauses of the selected arbitration institution. A valid arbitration agreement is a prerequisite and basis for submitting a dispute to arbitration, and a defective or invalid arbitration agreement will inevitably affect the conduct of the arbitration proceedings. The parties of China and Kazakhstan should understand the arbitration rules of the institutions before choosing a specific arbitral institution. Referring to the model clause provided by the chosen arbitration institution, the parties should specify and clarify the content of the arbitration agreement, in particular the choice of the arbitration institution and the specific matters to be submitted to

arbitration. In addition, the parties involved in the arbitration may also agree on additional terms according to the certain situation, such as the appointment of arbitrators, the law of the seat of arbitration and arbitration proceedings, and the language of the arbitration. In practice, the validity of arbitration clauses is evaluated under a specific body of law, and different subjects of review may reach completely different results under different applicable laws. For example, an agreement on ad hoc arbitration is an invalid arbitration clause under current Chinese law, while it is valid under Kazakh law. When drafting an arbitration clause, especially when agreeing to ad hoc arbitration, the parties to the contract may seek the help of a legal professional to clearly agree on the governing law of the arbitration clause in the arbitration clause and to include the arbitration clause in the preliminary evaluation under the legal systems of China and Kazakhstan and to ensure, as far as possible, that the arbitration clause is valid under the laws of both countries. The parties should protect their interests through the arbitration agreement while complying with the formal requirements of the arbitration agreement.

Learning about the system of recognition and enforcement of arbitral awards and the remedies available to arbitral awards. The final settlement of disputes through arbitration can be achieved only if the arbitral award is recognized and enforced. Initial cooperation has been reached between domestic arbitration institutions of China and Kazakhstan and is recognized and supported by a number of international arbitration and mediation institutions. After an arbitral award is recognized by the courts, it can be enforced in accordance with the domestic legal provisions of both countries and the principle of reciprocity. According to the domestic laws of both countries, invalidity of the arbitration agreement and violation of the arbitration procedure can be grounds for applying for setting aside the award. It is worth noting that among them, under the Kazakhstan's arbitration law, an arbitral award can be set aside by court when it is found that the arbitral award contradicts to the public policy of Therefore, parties should familiarize themselves with the public policy of Kazakhstan. The parties should therefore familiarize themselves with the public policy of Kazakhstan in order to avoid the lack of judicial support for the award at the stage of recognition and enforcement.

Conclusion

As most countries' domestic arbitration laws in the world today are based on the Model Law on Arbitration and the New York Convention, arbitration laws are already highly coordinated and the relevant systems of international arbitration have become increasingly standardized. Although the domestic arbitration mechanisms of China and Kazakhstan are different, in recent years, through the improvement of legislation and judicial proceedings, the foreign arbitration mechanisms of the two countries are more and more close to the internationally accepted principles and practices. With the deepening of international exchanges between China and Kazakhstan, a large number of investment and trade projects have been promoted, which will inevitably lead to numerous and diverse international disputes. These disputes must be resolved in an efficient and reasonable manner. And arbitration, with its characteristics of party autonomy, flexibility and convenience, is a contractual, autonomous and enforceable

means of dispute resolution. The advantages of arbitration as a means of dispute resolution in both countries should be further exploited, and the proportion of recognition and enforcement of arbitral awards should be enhanced through the signing of bilateral agreements. At the same time, the active participation and practice of investors from both countries in arbitration will also help both countries explore the establishment of a more perfect dispute resolution mechanism.

Arbitration, as a representative dispute settlement method of alternative dispute resolution, plays an important role in the settlement of transnational disputes along the Belt and Road. The cooperation practice of China and Kazakhstan in international arbitration not only helps to further promote economic and trade cooperation between the two countries, but also becomes an important legal practice experience for promoting the Belt and Road Initiative and regional integration.

REFERENCES

1. Song Xixiang. 'The Belt and Road' and Investment Arbitration Guarantee Mechanism of Kazakhstan // *The New Normal and the Great Strategy. The Proceedings of the 13th Academic Annual Meeting of the Shanghai Social Sciences Society*, 2015. -317-335 pp. // <https://kns.cnki.net/kcms/detail/detail.aspx?FileName=SHSL201511001025&DbName=CPFD2016> (11.08.2022)
2. LAI Chen-ye. Comments on the Legal System of International Commercial Arbitration in Kazakhstan // *Journal of Xinjiang University (Philosophy, Humanities & Social Science)*. – 2016. – V 44. - No.1 – pp. 80-84 // <https://kns.cnki.net/kcms/detail/detail.aspx?FileName=XJDB201601013&DbName=CJFQ2016> (11.08.2022)
3. LAI Chen-ye. On the Basic Principles and Major Features of International Commercial Arbitration in Kazakhstan // *Journal of Political Science and Law*. – 2015. – V 32. - No.3 – pp. 52-57 // <https://kns.cnki.net/kcms/detail/detail.aspx?FileName=ZFXK201503008&DbName=CJFQ2015> (11.08.2022)
4. Fan Kun. Arbitration in China: Practice, Legal Obstacles and Reforms // *ICC International Court of Arbitration Bulletin*. – 2008. – V 19. - No.2 // http://www.law.cuhk.edu.hk/download/fan_kun_19-2e09.pdf (15.08.2022)
5. Guo Ting-ting. Research on legal mechanism of investment facilitation between China and Kazakhstan: thesis for Master Degree. – Urumqi, Xinjiang University, 2018. – 60 p. // <https://kns.cnki.net/kcms/detail/detail.aspx?FileName=1018833424.nh&DbName=CMFD2020> (15.08.2022)
6. Pei Si-ze. Research on Trade and Investment Dispute Settlement Mechanism Between China and Central Asia Countries: from the Perspective of a Community of Shared Future for the Mankind: thesis for Master Degree. - Jinan, Shandong University, 2018. – 55 p. // <https://kns.cnki.net/kcms/detail/detail.aspx?FileName=1018118166.nh&DbName=CMFD2018> (15.08.2022)
7. He Li-li. China-Khorgos international border cooperation center trade dispute settlement mechanism research: thesis for Master Degree. - Urumqi, Xinjiang University, 2014. – 50 p. // <https://kns.cnki.net/kcms/detail/detail.aspx?FileName=1015087263.nh&DbName=CMFD2015> . (15.08.2022).