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The AIFC Court and the IAC - an oasis of justice recommended for companies from the CIS countries for transnational transactions

GRATA International Law Firm LLP won two civil cases in favor of its client in the Astana International Financial Centre Court and the International Arbitration Centre for a total amount of claims exceeding US\$ 4 million.

On November 16, 2021, the AIFC Court Justice Sir Rupert Jackson issued a judgement in a major civil case, the dispute in which lasted more than six years.

The interests of the Claimant were represented by Mrs. Gulnur Nurkeeva, Partner of GRATA International Law Firm LLP, who shares her impressions and recommendations about this experience in this article.

Jurisdiction of the AIFC Court

There is a misconception that the AIFC Court has exclusive jurisdiction to consider cases in disputes arising between the AIFC participants or disputes regarding transactions carried out in the AIFC and subject to the law of the AIFC.

In fact, in addition to the indicated categories of cases, the AIFC Court has the right to consider cases and make judgments on any disputes brought to the AIFC Court by an agreement of the parties.

It is sufficient for the parties to provide for a model clause in the concluded agreement specifying the exclusive jurisdiction of the AIFC Court.

This is an entirely new level of consideration of cases. Here, on the territory of the Republic of Kazakhstan, the parties can gain access to justice governed by the most prominent and highly-regarded judges with an impeccable reputation.

For example, Justice Sir Rupert Jackson, who issued a judgement in our case, is a world-renowned expert in the legal community for his contributions to the development of civil litigation in England and Wales. He was appointed as a Queen's Counsel Barrister in 1987, as a High Court Judge in the Queen's Bench Division of the High Court of England and Wales in 1999, and was an editor and Editor-in-Chief of the White Book (on civil procedure of England and Wales) from 2000 to 2017.

The AIFC Court is a paradise for reducing legal costs, but you need to hurry

Under the project of the International Transit Corridor "Western Europe - Western China" in consideration more than 50 contracts were concluded with contractors, numerous proceedings were considered by the courts of first instance, appellate courts of the Republic of Kazakhstan since 2014, and a number of resolutions of the Supreme Court of the Republic of Kazakhstan were issued.

The resolutions of the Supreme Court of the Republic of Kazakhstan on the considered project were fair and reasonable.

FIDIC Contract concluded between the Claimant and the Defendant provided for the mandatory pre-trial settlement of disputes by the Dispute Adjudication Board (England, Germany) and subsequent consideration of disputes by the International Chamber of Commerce in France (International Chamber of Commerce, ICC).

In the context of a pandemic, pre-trial proceedings and proceedings in International Arbitration in France would not only require significant financial costs for the parties, but it would also be challenging to implement due to the restrictive measures taken by countries on the entry and exit of foreign citizens.

Considering that the claim amounts to more than US\$ 3 million, the ICC arbitration fee would constitute around US\$ 250,000, excluding attorney fees, flights, etc.

The parties, realizing that such financial costs incurred initially by the Claimant, would ultimately be borne by the guilty party, agreed with our proposed decision to amend the terms of the Contract to exclude pre-trial dispute settlement procedures and transfer the dispute to the consideration at the AIFC Court.

For the Claimant, a company with a wide construction experience that has been working under FIDIC Contracts for an extensive period of time, it was surprising to find out that when concluding FIDIC Particular Conditions, provisions on mandatory pre-trial dispute settlement by the Dispute Adjudication Board, which is an integral part of the FIDIC General Conditions, can be excluded.

All applications, administration and hearings at the AIFC Court are free of charge until December 31, 2021. However, there is an interesting and worth noticing point that allows the parties to hold hearing free of charge even after this date. All parties to a contract which is agreed before December 31, 2021 and includes the AIFC Court for dispute resolution will be eligible to receive free administration of any dispute resolution at the AIFC Court under that contract before and after December 31, 2021.

As such, I would certainly recommend to all companies that are at the stage of concluding contracts with a foreign component or those whose contracts have already been concluded to make the appropriate changes, providing a clause on the jurisdiction of the AIFC Court by December 31, 2021, so that later, in the event of a dispute, to be able to take full advantage of the AIFC Court with no costs.

Given the restrictions caused by the pandemic, the territorial remoteness of the Claimant (Turkey), Judges (UK), the preparations for the court hearings were carried out online.

Due to the complexity and scope of the considered case, Justice Sir Rupert Jackson decided to arrive to Nur-Sultan city to conduct the court hearing offline. Personally, such a decision was unexpected for me.

I could not attend the court hearing offline in Nur-Sultan city due to the closed borders with China. However, Justice Sir Rupert Jackson kindly took this factor into account and allowed to hold a hybrid court hearing, both offline and online. I would especially like to point out the attentiveness and friendly attitude of the AIFC Court Registrar and the AIFC Court Registry, up-to-date and high-quality technical equipment provided by the AIFC that have all allowed to conduct a court hearing in a hybrid format flawlessly.

Although the language of the court hearings in the AIFC is English, the AIFC Court Registry has kindly provided simultaneous interpreters in the court proceedings for participants who do not speak English.

The difference between the AIFC Court and the IAC AIFC.

On September 30, 2021, the AIFC Court Justice Sir Jack Beatson issued a judgement on the enforcement and recognition of the IAC arbitral award.

Justice Sir Jack Beatson, like Justice Sir Rupert Jackson, is a highly-distinguished professional. He was an Honorary Fellow of Oxford and Cambridge universities, Law Commissioner for England and Wales, and worked on legal reform in contract and commercial law, civil evidence and financial services. He was appointed as a Queen's Counsel in 1998, as a Judge of the Supreme

Court of England and Wales in 2003, and as a Lord Justice of Appeal in the Court of Appeal of England and Wales in 2013.

On this case I also represented the interests of the Claimant in the IAC arbitration proceedings in regards to the debt incurred under the FIDIC Contract.

First of all, the difference between the AIFC Court and the IAC is confidentiality. Disputes considered by arbitration are not public.

However, if a party does not voluntarily enforce the arbitral award, then for the enforcement of the arbitral award, a rather simplified procedure is provided for issuance of a judgement by the AIFC Court on the enforcement of the arbitral award.

The court's judgement on the enforcement of the IAC's arbitral award can be found on the AIFC website.

The amount of the claim under the case considered was over US\$ 1 million. The arbitration clause provided for the consideration of disputes by the Singapore International Arbitration Center (SIAC).

As in the first considered above-mentioned case, we have prepared for the Claimant an additional agreement to the Particular Conditions of the FIDIC Contract, changing the arbitration clause for the consideration at the IAC.

Second of all, another difference between the AIFC Court and the IAC is arbitration fees. As well as in the AIFC Court, all applications, administration and hearings at the IAC are free of charge until December 31, 2021. All parties to a contract which is agreed before December 31, 2021 and includes the IAC for dispute resolution will be eligible to receive free administration of any dispute resolution at the IAC under that contract before and after December 31, 2021.

Thus, if it is important for the parties that the decision on the dispute and the hearings on the dispute would be confidential with minimum amounts of costs, then it is recommended to provide for the arbitration model clause of the IAC until December 31, 2021.

At the same time, it should be noted that the claimant is responsible for the payment of the services of the arbitrator, however the guilty party could be asked to compensate for the costs incurred by the arbitrator. The cost of the arbitrator's services in our case was US\$ 20 000.

Third of all, the language of consideration of the proceedings has varied in the AIFC Court and the IAC. In addition to the English language, the parties may provide for any other language of the proceedings that the parties and the arbitrators proposed and chosen by both parties know. Arbitrators from the EU, Hong Kong, Japan, India, Singapore, UK, USA, China and CIS countries are represented at the IAC.

Finally, it is worth mentioning that the parties do not choose a judge at the AIFC Court, a judge is appointed. Whereas the candidates for arbitrators from the list of recognized members of the IAC can be proposed by the parties. It is also necessary to take into account the schedule of arbitrators, some of them may not be available in the near future. The IAC Registry will propose candidates for arbitrators who will undertake the case for consideration as soon as possible.

To sum up, I confidently recommend the AIFC Court and the IAC not only to Kazakhstani companies, but also to companies from the CIS countries when concluding contracts with foreign counterparties.

Useful links:

1. Information about the AIFC Court and IAC Arbitration;

<https://court.aifc.kz/>

<https://iac.aifc.kz/>

2. Judgement of the AIFC Court Justice Sir Rupert Jackson as of November 16, 2021 -
[https://aifc.kz/uploads/AIFC%20Court%20and%20IAC/Judgment%20-%20AIFC%20Court%20Case%20No.%205%20of%202021%20-%2016%20November%202021%20_ENG%20\(Final\)%20\(1\).pdf](https://aifc.kz/uploads/AIFC%20Court%20and%20IAC/Judgment%20-%20AIFC%20Court%20Case%20No.%205%20of%202021%20-%2016%20November%202021%20_ENG%20(Final)%20(1).pdf) ;
3. Judgement of the AIFC Court Justice Sir Jack Beatson as of September 30, 2021-
[https://aifc.kz/uploads/AIFC%20Court%20and%20IAC/AIFC%20Court%20Case%20No.%207%20of%202021%20-%2030%20September%202021%20-%20ENG%20\(1\).pdf](https://aifc.kz/uploads/AIFC%20Court%20and%20IAC/AIFC%20Court%20Case%20No.%207%20of%202021%20-%2030%20September%202021%20-%20ENG%20(1).pdf);
4. Letter of appreciation from the Client in regards to the AIFC Court proceeding;
5. Letter of appreciation from the Client in regards to the IAC arbitration proceeding.

Practice areas

[THE ACTING LAW OF THE AIFC](#)

Locations

CHINA

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