



VALIKHAN SHAIKENOV

FOUNDING PRINCIPAL
JURIS CONSULTUS

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OVERVIEW

Valikhan Shaikenov is the founding principal and an acting expert of Shaikenov Law Experts (SHEL).

He is admitted to the Kazakhstan Bar Association and is registered as a foreign-qualified lawyer by the Superior Court of Berlin (Germany). His primary focus is on civil law, civil procedure, and international commercial and investment arbitration.

Prior to establishing SHEL and completely dedicating himself to expert work and acting as arbitrator, he had represented clients before Kazakhstan courts of all levels, including the Supreme Court, handled complex evidence-heavy transnational disputes, and acted as an independent legal expert in foreign court proceedings (England, US, and Russia) and investment arbitration (ICSID). He has also received appointments in international commercial arbitrations seated in Geneva, Stockholm, and Astana with Swiss, English, and Kazakh laws as the contract's governing laws.

In addition to general transactional expertise, he has special experience in the field of construction (including based on FIDIC contracts), international supply of goods (also involving maritime shipping), energy projects, oil and gas, shareholder disputes, banks' debt restructuring, professional negligence, derivative transactions, insolvency and rehabilitation, tax litigation, and sovereign immunity.

He has acted as counsel and assisted clients in other forms (mainly as a legal expert) in commercial arbitrations under the SCC, LCIA, ICC, UNCITRAL, and GAFTA rules and the rules of several Kazakhstan arbitration institutes. Historically, his practice has been divided mainly between representing foreign investors, foreign contractors, and international development banks.

He accepts appointments as arbitrator.

He splits his working time between Berlin and Almaty.

REPRESENTATIVE EXPERIENCE

• EXPERT SUPPORT IN FOREIGN LITIGATION*

- Acted as a claimant-appointed expert in the English court in *Rosdale Pte Limited v Degevol UK Limited (Comm)*. The dispute concerned recovering Kazakh mining assets that had been allegedly misappropriated by the companies' former directors and controllers. The case was settled shortly after submitting the claimant's expert witness statement.
- Provided expert support to the counsel of VakifBank, the second-largest bank of Turkey, on complicated questions of cross-border restructuring within *JSC BTA Bank & Anor v Tyrkiye Vakiflar Bankasi TAO [2018] EWHC 835 (Comm)* (17 April 2018). The advice concerned the legal effect of the restructuring in the UK, Turkey (through recognition), and Kazakhstan. Among other legal questions, the advice involved intricate issues of private international law, including those related to altering parties' rights to a contract initially governed by English law through a restructuring procedure governed by Kazakh law. The expert advice contributed to the client challenging the English court's jurisdiction. The English High Court of Justice rendered the judgment on satisfying the client's application.
- Acted as a defendant-appointed expert in *Anara Esim Frank vs. Robert Harrison Frank*, as executor of the estate of Norman Daniel Frank II Family Trust heard by the 430th District Court, Hidalgo County, Texas, USA (Case No. C-2416-13-J). The affidavit of expert opinion concerned the complicated questions of the Kazakh family and inheritance laws and the choice-of-law issues. The parties settled the dispute.
- Provided expert support in preparation for the commencement of court proceedings in New Zealand on recovery of debt arising from breach of profit-sharing obligations under a Simple Partnership Agreement. The extensive expert advice concerned various substantive and procedural law aspects of the contentious matter, involving the analysis of a prior Kazakhstan law judgment on the subject, summary judgment perspective in New Zealand, and other alternative strategies. The advice allowed the leading counsel to develop an optimal case strategy for defending the client's interest.

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** Expert support is different from working as counsel or representative in that it comes down solely to the analysis of questions of law. The expert support to counsel is different from acting as an expert witness in that the latter always implies an independent and impartial role of the expert.*

• COUNSEL IN ARBITRATION

- Represented as a co-counsel a large European contractor in a Stockholm-seated arbitration under the SCC rules the employer concerning a contract for a large road reconstruction financed by the EBRD. The contract was based on the FIDIC Red Book Conditions. The dispute arose concerning non-payment of amounts certified by the engineer under the contract. The main issues in dispute were concerned with the contract price escalation provisions, specifically, the base value for a material to apply the formulae prescribed by those provisions.
- Represented a top-ten largest Kazakhstan bank in a London-seated evidence-heavy commercial arbitration under the UNCITRAL Rules in a professional negligence dispute with the bank's former consultants, which arose under the Kazakh, English, and the US laws, and was based on allegedly futile promises given by the consultants.

• EXPERT SUPPORT IN INTERNATIONAL COMMERCIAL ARBITRATIONS

- Provided expert support to a consortium of foreign investors exploring an oil and gas field in Kazakhstan concerning an ongoing pricing dispute under a gas sale and purchase agreement related to a supply of gas from a major field in Kazakhstan. The dispute was triggered by the significant increase of the trunk gas pipeline transportation tariff imposed by the Kazakhstan government, which, in turn, dramatically affected the price for gas supplied under the agreement.
- Provided expert to a European group of construction companies concerning issues under a contract to execute a project known as Western Europe-Western China International Transit Corridor. The contract was based on the FIDIC Pink Book Conditions, and the main issues were concerned with: (1) the contract consequences triggered by sudden depreciation of the Kazakhstan currency (Tenge); (2) the contract price escalation provisions and the employer's refusal to pay additional escalation amounts due to the absence of approved budget; (3) legal qualification of the engineer's instruction on changing the amount of the performance guarantee and subsequent refusal of the employer to confirm such a change. We have also advised the client on the validity and effectiveness of the arbitration clause in view of the fact that the Particular Conditions did not contain a clear choice of arbitration rules, arbitral institute, and seat of arbitration.
- Provided expert support in connection with a Dubai-seated arbitration to global multidisciplinary management, engineering, and development consultancy on a series of disputable matters

related to construction under a FIDIC-based contract (Yellow Book) of a major mixed-use development located in Astana, Kazakhstan. The controversial issues involved intricate questions of contract law, construction, licensing, project management, and engineering-related regulation.

- Provided expert support in connection with a London-seated arbitration to a US mining company on questions of subsoil use and securities regulation laws. The dispute arose out of share issuance allegedly made without required permissions from Kazakhstan authorities. Our detailed analysis and perspective arguments to support the client's position allowed the leading counsel to secure a favorable settlement agreement.
- Provided expert support in connection with a Paris-seated arbitration to an Austrian plant engineering group of companies concerning various contentious matters under a FIDIC-contract (Yellow Book) for the design, manufacture, supply, and installation of the electromechanical equipment for a hydropower plant in Kazakhstan operated by a Kazakh entity owned by the Republic of Kazakhstan. We advised the client concerning design liability issues under Kazakh law. Specifically, our analysis concerned whether the client was to be treated as a designer in the capacity of a Kazakh licensed designer or as a designer of rough draft/sketch of design documentation which did not fall under the Kazakh statutory licensing requirements. Our legal opinion proved helpful during the arbitral hearings, according to the client.
- Provided pre-arbitration advice to a notable European stakeholder in the international energy industry with a regional focus on the North Sea, North Africa, and Southeast Asia concerning an agreement on exploration of an oil and gas field in the Russian Federation. Specifically, the complex analysis concerned whether the terms of contract had a binding effect and constituted obligations as a matter of Kazakh law for our client to invest hundreds of millions of dollars into the project. Our analysis offered a fundamentally new perspective of the contract's nature and its practical consequences compared to the initial assessment of the client, potentially saving the client over half a billion US dollars.

• EXPERT EVIDENCE IN INTERNATIONAL INVESTMENT ARBITRATIONS

- Acted as an investor-appointed expert witness in *Aktau Petrol Ticaret AS v. Republic of Kazakhstan* (ICSID Case No. ARB/15/8). The scope of questions encompassed complicated issues of the Kazakh procedural and substantive law, as well as enforcement proceedings in the context of alleged denial of justice and judicial expropriation ("by executive action" – namely the action of court bailiffs). In its final award, the tribunal agreed with the investor-appointed experts on every disputable question of Kazakh law and decided the case in favor of the investor.
- Provided continued expert advice to investor's counsel on various issues of Kazakh law, including the interpretation of controversial provisions of the 1994 Foreign Investments Law of the Republic of Kazakhstan, in support of the underlying *Ruby Roz Agricol LLP v. Kazakhstan* UNCITRAL investment arbitration and the ensuing set aside proceedings before the English courts.

• ADVICE ON NON-CONTENTIOUS MATTERS

CONSTRUCTION

- Advised international development banks (EBRD, EDB, and IsDB) on various aspects of the development and financing of

the US\$750 million Big Almaty Ring Motor Road (BAKAD). The BAKAD project is one of the Kazakhstan government's most significant non-oil infrastructure public-private partnership projects financed by the private sector.

- Advised a foreign investor on controversial Kazakh and choice-of-law issues arising from the construction of the trunk and flow pipelines under an EPC contract at a large Kazakhstan oil and gas field.
- Assisted a large Swiss oil service company with drafting a contract on construction of facilities at a major Kazakhstan's oil and gas field and adjusting FIDIC-based contract terms (Red Book) to the Kazakhstan local requirements.
- Advised a Korean construction company on controversial issues related to constructing and commissioning a gas-filling compressor station.
- Advised major Korean construction companies and banks on developing and financing the Apple Town residential complex in Almaty. The project is a huge elite multifunctional complex located on 27 hectares.

M&A AND CORPORATE

- Advised the Russian Federation, as a leading transactional counsel on Kazakh law, in connection with the acquisition from the Sultanate of Oman of participation interests in the Caspian Pipeline Consortium (CPC), the most important oil transportation route in the Caspian – Black Sea Region.
- Advised Atomredmetzoloto JSC, one of the world's largest uranium mining companies, in connection with the acquisition of the group of companies in the nuclear energy industry (Akbastau JSC and Karatau LLP).
- Advised a foreign investor on the issues relating to a company incorporation and participation in a Kazakhstan-Russian inter-governmental agreement.
- Advised a large media holding company in an intragroup transaction to change the Kazakhstan business owner.
- Legal support in the Kazakhstan portion of a global business pision project for a major US-based transnational IT company.

NATURAL RESOURCES

- Provided ongoing advice to the ExxonMobil group of companies concerning their projects in Kazakhstan.
- Provided extensive and ongoing expert advice to Chevron and Tengizchevroil (a joint venture between Chevron, ExxonMobil, KazMunayGas and LukArco) on subsoil use and environmental law, foreign investments, export of crude oil, corporate, and tax law issues.
- Advised EuroChem Mineral and Chemical Company, the largest manufacturer of mineral fertilizers in Russia, on subsoil use and corporate law issues.

BANKING & FINANCE

- Advised several major foreign banks on a broad range of issues pertaining to the derivative transactions regulation and issued legal opinions concerning the enforceability of certain provisions of the ISDA Master Agreement and ISDA Credit Support Annex and different aspects of applying netting, set off, and other procedures.
- Represented a large UK bank in the rehabilitation procedure

of one of the largest Kazakhstan agricultural organizations, to secure the lender's rights under the credit facility and hedging transactions.

- Advised a large Australian bank on a gold trading transaction with the National Bank of Kazakhstan.
- Advised one of the world's largest international payment systems on a broad range of issues pertaining to its activities involving services to local financial institutions.
- Advised Banque Cantonale de Genève (BCGE) in connection with its projects in Kazakhstan.
- Advised Deutsche Bank on matters related to debt securities issuance and placement.

EDUCATION

- Researcher, Martin Luther University Halle-Wittenberg, Halle, Germany, DAAD Scholarship, 2019-2021
- Legal Internship, WilmerHale, International Arbitration Group, London, UK, 2012
- Researcher, International Law Institute "ILI," Washington, D.C., USA, 2012
- Researcher, Law Library of Congress, Washington, D.C., USA, 2012
- LL.M., Georgetown University Law Center, Washington, D.C., USA, US Department of State Full Scholarship, 2012
- LL.B., Adilet Higher Law School – Academy of Jurisprudence, Almaty, Kazakhstan, (top 3% of graduating class), with high distinction, 2008

RECOGNITION

Who's Who Legal & Global Arbitration Review: Arbitration (Global Leader) (2022-2020) Individual Rankings in Legal 500, Chambers and Partners, Asialaw Profiles, IFLR, The Legal 500 Arbitration Powerlist: CIS 2020

Prior to establishing SHEL, led a leading dispute resolution practice of Aequitas Law Firm ranked under his supervision as tier 1 practice in Legal 500 (2021-2017) and band 1 in Chambers and Partners (2022, 2021, 2018, and 2014)

"He has a high level of theoretical and practical training, deep knowledge and experience."

- Chambers

"He has the ability to think out of the box and provides exclusive solutions that fit clients' requirements."

- Asialaw Profiles

"Good knowledge of law and amazing analysis."

- Chambers

"He is the first port of call on Kazakh law issues. A convincing advocate, who is considered the first port of call on Kazakh law issues. He really analyses the issues in front of him."

- Chambers

"Diligent and responsive."

- Chambers

"He's solid, commercially viable and gives realistic advice."

- Chambers

ORGANISATIONS

- Advisory Board Member, Caspian Arbitration Society, Geneva, Switzerland
- Co-Chair of the IBA Europe-Caucasus-Asia Forum, 2018-2015
- Board Member, Chamber of Commerce and Industry France – Kazakhstan, 2017-2016

ADMISSIONS

- Kazakhstan Bar Association
- Foreign Registered Lawyer at the Superior Court of Berlin, Germany

PUBLICATIONS

1. Shaikenov, A. & Shaikenov, V. (2021). Dobrosovestnost' i sostjazatel'nost' v grazhdanskom processe (otzyv na tezisy juristov firmy "Dentons" i professora M. K. Sulejmenova) [Good Faith and the Adversarial System Within Litigation (A Response to the Arguments of Members of the Law Firm Dentons and Professor M. K. Suleimenov)], from https://online.zakon.kz/Document/?doc_id=34224193.
2. Shaikenov, V., Idayatova, A., & Imanov, F. (2021). Kazakhstan Chapter. In G. Born (Ed.), International Arbitration 2021 Global Practice Guide. Chambers and Partners.
3. Shaikenov, A., & Idayatova, A. (2021). Kazakhstan: Recognition and Enforcement of Foreign Arbitral Awards. In R. Zykov (Ed.), Recognition and Enforcement of Foreign Arbitral Awards in Russia and Former USSR States. United Kingdom: Kluwer Law International B.V.
4. Shaikenov, V., Tleulina, L., & Idayatova, A. (2019). Kazakhstan. In W. J. Rowley (Ed.), The Guide to Challenging and Enforcing Arbitration Awards (pp. 376–388). London: Global Arbitration Review.
5. Shaikenov, V., & Idayatova, A. (2019). Obzor zakonodatel'stva i praktiki stran byvshego SSSR: Kazahstan [Kazakhstan: Recognition and Enforcement of Foreign Arbitral Awards]. In R. Zykov (Ed.), Priznanie i privedenie v ispolnenie inostrannykh arbitrazhnykh reshenij v Rossii i stranah byvshego SSSR. Moscow: Arbitration Association.
6. Shaikenov, V. (2019). Prizyv k ratifikacii N'ju-Jorkskoj i Evropejskoj konvencij: molchanie, razdrzhajushhee investorov i pravo [A Call to Ratify the New York and European Conventions: Silence That Irritates the Investors and the Law]. ru, 6(10), 68–75, from https://journal.arbitration.ru/upload/iblock/a55/Arbitration.ru_N6_10_June2019.pdf.
7. Shaikenov, V., & Idayatova, A. (2018). Problema vybora prava, primenimogo k arbitrazhnomu razbiratel'stvu i arbi-

trazhnomu soglasheniju, s tochki zrenija kazahstanskogo zakonodatel'stva [The Choice of Law Governing Arbitration Procedure and Arbitration Agreement in the Context of the Kazakhstan Legislation]. International Commercial Arbitration Review, 1(16), 123-133, from arbitrationreview.ru.

8. Shaikenov, A. & Shaikenov, V. (2017). Konstitucionen li MFCA i pomogut li popravki v Konstituciju? [Is the AIFC Constitutional and Will Amendments to the Constitution Legitimize It?], from https://forbes.kz//process/expertise/konstitutsionen_li_mftsa_i_pomogut_li_popravki_v_konstitutsiyu/
9. Shaikenov, V. & Idayatova, A. (2017). The Problem of Choosing the Law Applicable to Arbitration Proceedings and Arbitration Agreement from the Kazakh Legislation Perspective, from Chambers and Partners: <https://chambers.com/articles/the-problem-of-choosing-the-law-applicable-to-arbitration-proceedings-and-arbitration-agreement-from>.
10. Shaikenov, V., & Idayatova, A. (2016). Problemy regulirovaniya garantijnyh srokov v stroitel'stve po grazhdanskomu zakonodatel'stvu Kazahstana [Issues of Construction Guarantee Period Regulation under Kazakh Civil Legislation]. Expert Kazakhstan. (9), 22–23, from https://online.zakon.kz/Document/?doc_id=34755250&pos=5;-111#pos=5;-111.
11. Shaikenov, V., & Idayatova, A. (2016). Ispolnenie v Kazahstane obespechitel'nyh mer, prinjatyh rossijskim sudom [Enforcement in Kazakhstan of interim measures taken by Russian courts: reconsideration of Minsk Convention and Kiev Agreement]. Legal Insight, 5(55), 16–19.
12. Shaikenov, V., Chentsova, O., & Tleulina, L. (2016). Kazakhstan Chapter. In P. Friedland (Ed.), International Arbitration 2016 Global Practice Guide. Chambers and Partners.
13. Shaikenov, V. (2015). Prepjatstvija dlja razvitija arbitrazha v Kazahstane ili pochemu stradaet jeffektivnost' razreshenija jekonomicheskikh sporov [Impediments to Arbitration Development in Kazakhstan or Why the Effectiveness of Economic Dispute Settlement Suffers]. Expert Kazakhstan. (47), 22–23.
14. Shaikenov, V., & Khamidullina, Y. (2014). Awarding Attorneys' Fees by Kazakh Courts: Some Ambiguities. Investors' Voice. (58), 18.
15. Shaikenov, V., Chentsova, O., & Braynina, N. (2010). Kazakhstan Chapter. In R. Deyholos (Ed.), Getting the Deal Through: Oil Regulation in 29 jurisdictions worldwide (pp. 84–90). Law Business Research Ltd.
16. Shaikenov, V., Chentsova, O., & Braynina, N. (2009). Pravi-la igry v nedropol'zovanii [Rules of the game in subsoil use]. Oil and Gas of Kazakhstan (Neftegazovaya Vertikal), 20(221).
17. Shaikenov, V., Suleyeva, T., & Issyk, S. (2010). Kazakhstan Chapter. In W. E. Warner, Jr. & G. R. Skene (Eds.), Project Finance in 38 Jurisdictions Worldwide. Getting the Deal Through (pp. 113–119). London: Law Business Research Ltd.
18. Shaikenov, V., Braynina, N., & Chentsova, O. (2009). Kazakhstan Chapter. In Getting the Deal Through: Oil Regulation in 28 jurisdictions worldwide (pp. 75–81). Law Business Research Ltd.

19. Shaikenov, V. (2008). Pravovaja priroda jekonomicheskoj ocenki vreda, nanesenogo okruzhajushhej srede [Legal nature of economic evaluation of damage to environment]. In M. Suleimenov (Ed.), Gosudarstvo i grazhdanskoe pravo: Materialy mezhdunarodnoj nauchno-prakticheskoy konferencii, posvjashhennoj pamjati i 85-letiju so dnja rozhdenija d.ju.n., professora Ju. G. Basina (pp. 344–348). Almaty: NII chastnogo prava KazGJuU.
20. Shaikenov, V. (2008). Pravovaja priroda doli v hozhajstvennom tovarishhestve [The legal nature of a share in a business partnership]. In Biznes, menedzhment i pravo: Materialy nauchno-prakticheskoy konferencii studentov i molodyh uchenyh (nojabr' 2007) (pp. 15–24). Yekaterinburg: Izd. Dom UrGJuA.
21. Shaikenov, V. (2007). Voprosy sovershenstvovaniya konstitucionnogo proizvodstva [Improvement of constitutional proceedings]. Nauchnie Trudi ADILET (Scientific Papers of ADILET). (2).
22. Shaikenov, V. (2007). Pravoponimanie i sistema prava v doktrine G. F. Shershenevicha [Legal thinking and the system of law in the doctrine of G.F. Shershenevich]. In S. Udarcev (Ed.), Iz istorii pravovyh i politicheskikh uchenij. Sb. studencheskih rabot (pp. 199–201). Almaty: AJu – VShP "Adilet".
23. Shaikenov, V. (2007). Obzor vnesennyh izmenenij i dopolnenij v Grazhdanskij kodeks Respubliki Kazahstan (obshhaja i osobennaja chastj) [Review of amendments introduced to the Civil Code of the Republic of Kazakhstan (General and Special Parts)]. Predprinimatel' i pravo (Entrepreneur and Law). (10), 12–18.
24. Shaikenov, V. (2005). Preemstvennost' ponjatija iska rimskogo chastnogo prava v sovremennoj romano-germanskoj pravovoj sisteme [The Notion of "Action" in Roman Civil Law and Modern Continental Legal System]. Nauchnie Trudi ADILET (Scientific Papers of ADILET). (2).

SPEAKING ENGAGEMENTS

Valikhan regularly speaks and moderates at panels of global professional and academic seminars and conferences where speakers are the world's leading litigators and arbitration lawyers. He has spoken in the UK, Austria, Germany, Ukraine, Georgia, Belarus, Russia, Kazakhstan, Sweden, and Singapore.

LANGUAGES

English, Russian