



Artyushenko & Partners

BOUTIQUE LAW FIRM

About

ARTYUSHENKO & PARTNERS IS THE ONLY REAL-ESTATE AND CONSTRUCTION BOUTIQUE LAW FIRM IN KAZAKHSTAN.

The company was founded in 2005, practicing the law of the Republic of Kazakhstan. FIDIC member (NACEC, Russia).

Company has a niche specialization and provides law services in construction and real estate management, deals support, legal Due diligence, legal memo development, litigation in courts and arbitration. We also provide corporate legal services and investment projects legal support.

We believe it is necessary to know our client's business from inside, to understand client's goals and to provide expected and measurable result.

We have experience working in Kazakhstan with Top 100 International Contractors, JLL, World Bank Group, Thomson

Reuters, General Electric, Samruk-Kazyna National Holding and others.

Company is listed by the Best Lawyers from 2017 in Real Estate practice, the Legal 500 EMEA for real estate and construction (2016-2022); Chambers & Partners Asia-Pacific and Chambers Global in Corporate and Finance (2017-2022); and by AsiaLaw Profiles for real estate and construction (2015-2022) recommends us as a leading law firm in Real Estate and Construction in Kazakhstan.

We hold seminars on EPC and FIDIC contracts in Kazakhstan and CIS countries, on contractual relationships, construction issues, litigation, arbitration and others.





Andrey Artyushenko

Managing Partner

He has experience as a professional lawyer for over 22 years in construction (EPC, FIDIC), arbitration, deals, due diligence. Awarded the Best Lawyers rating in Real Estate Practice, Chambers Asia-Pacific Guide 2016-2022 in Corporate & Finance practice, annually since 2016 recognized as the leading lawyer in the Asialaw profiles rating in Construction and Real Estate practice, included in the Legal 500 EMEA 2016-2022 rating.

Andrey Artyushenko graduated from the Kazakh State Law Academy with specialization in Law in 2001, successfully completed several accredited FIDIC education Modules and courses, including FIDIC: CIS implementation practice (Moscow automobile and road construction state technical university).

He is an arbitrator of the Arbitration Center of the National Chamber of Entrepreneurs Atameken.

Author of the book «Overview of the construction process in the Republic of Kazakhstan» (Lawyer publishing house); co-author of the 2nd edition of the book International Construction Contract Law (2018, Lukas Klee, Wiley Blackwell publishing house).

Projects:

- Shalkia Zinc (mining and processing of minerals)
- Reconstruction of Almaty International Airport
- Balkhash Thermal power Plant
- Atyrau Refinery
- Alaigyr Joint Venture (mining)
- Construction of wind farms in Kazakhstan
- Makinskaya poultry farm
- Western Europe - Western China Transport Corridor
- Toll roads of Kazakhstan
- Aktau Seaport
- EXPO 2017
- Botanical Garden of Almaty
- Esentai Park
- Ritz-Carlton
- Abu-Dhabi Plaza Astana
- Talan Towers
- Avataria Children's Parks
- Leroy Merlin

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Gulnar Ospanova

The Partner

Partner in the Artyushenko & Partners law firm since 2011. She is a judge in a honorable retirement. She has working experience as a lawyer of over 40 years. The length of service includes service in judicial bodies (1982-1986), court (1986-2007), and the law firm (from 2007).

When working as a judge, she specialized in civil cases: commercial disputes on major investment projects with the participation of foreign investors in the banking sector, energy industries, machinery building sector, and non-ferrous metals industry in issues concerning the application of antitrust law, law on land, customs, tax, environmental laws, and laws on bankruptcy and privatization.

Clients representation in the Republic of Kazakhstan Supreme Court re cases connected with construction issues, taxation, state procurement, property rights and other.

She is a certified arbitrator of the Kazakhstan International Arbitration, the International Court of Arbitration, Arbitration center of the National Chamber of entrepreneurs Atameken, the International Commercial Arbitration Court (ICAC) of the Eurasian Mediation Center.

Projects:

- Plant to produce lubricants with capacity of 100 thousand tons per year in Almaty
- Inkai (uranium mining)
- KazMorTransFlot office building in Aktau
- Western Europe-Western China road
- Atyrau Refinery
- Almaty Financial Center
- SaryArka Shopping Center in Astana
- Hilton Uralsk
- EXPO 2017
- Abu-Dhabi Plaza Astana





Real estate construction

(EPC and EPCM contracts)

The construction market has always been quite active in Kazakhstan. Having experience since 2006 with construction companies from the World TOP 100, we have accumulated considerable knowledge and experience.

Our lawyers and partners issued a book Legal guide “The process of construction in Kazakhstan: brief overview” in Russian and English languages, firms partner become as a co-author, International Construction Contract Law 2nd edition (2018r, by Lukas Klee, Wiley Blackwell), our articles published via IBA journals, Chartered Institution of Civil Engineering Surveyors journal.

The key clients of the real estate and construction practice are Tau-Ken Samruk, General Electric, Leroy Merlin, Shalkia Zinc, Alaigyr, who are involved in the construction of infrastructure and technological projects in Kazakhstan.

We lead corporate training programs for construction and other companies to work with construction contracts and disputes in Kazakhstan and apply FIDIC contracts in Kazakhstan and other countries.

Legal services:

- Legal support in negotiations;
- Development legal support at the project design stage aimed to find optimal solutions and achieve the ultimate goals;
- Legal support for any civil construction, renovation and repairs;
- Selecting the appropriate contract form (procurement and subcontracting), including EPC, EPCM, risk assessment (consulting, legal support) in the construction and design of industrial facilities, power plants, and infrastructure projects, and the building of complex and individual structures;
- Legal expertise of contracts for construction, design, procurement and subcontracting;
- Structuring and legal support of transactions on the purchase and sale of real estate (finished, unfinished one) both as individual objects and in the complex;
- Due diligence;
- Advice on the administration of contracts;
- Legal support of claim procedures, pre-trial settlement of disputes, Dispute adjudication boards;
- Litigation in the Republic of Kazakhstan courts and arbitration, also outside Kazakhstan;
- Legal opinions on specific issues.

Relevant experience:

- **Advising General Electric** on the Badamsha project in Kazakhstan, construction of wind power plants (with a capacity of 50 megawatts), under an **EPC contract**;
- **Preparation of a comprehensive list of approvals**, permits, permits and other permits required for the commissioning and operational activities of one of the largest in the CIS **Makinskaya poultry farm** (with a capacity of 60 thousand tons per year);
- **The Leroy Merlin chain of stores** on permits for the construction of new retail parks in Kazakhstan (land, communications, networks, infrastructure, etc.);
- Consulting for the IEIT (**KBTU, KazMunayGas project**) on the project located in the SEZ Park of Innovative Technologies of Alatau;
- Consulting and support of contracts during the construction of **Almaty Financial District and Esentai Park**, with a total cost of more than 1 billion US dollars;
- **Construction of a private gas pipeline** for the industrial complex in the Republic of Kazakhstan for one of the most significant manufacturing holdings, headquartered in the USA;
- Legal support in **wind station construction** (in west Kazakhstan) for a **Japan green field construction firm**;
- The Alaigyr project, **constructing a processing plant for mining and processing polymetallic ores of the Alaigyr deposit** in the Karaganda region;
- **Legal expertise of the EPC contract and tender documentation** (according to the rules of Samruk-Kazyna) for the gas field development project, as well as the construction of a gas pipeline in the West Kazakhstan region.



Construction contracts FIDIC

Artyushenko & Partners law firm lawyers have accompanied more than 50 projects in Kazakhstan using FIDIC contracts and more than five projects in the CIS countries.

The Artyushenko & Partners law firm aim is to ensure the smooth progress of a construction project of any complexity, and its timely implementation without any unforeseen legal risks.

Having accumulated a certain amount of experience, we are open for sharing such experience, making trainings in the Kazakhstan and CIS countries, publish various thematic materials. For example, Andrey Artyushenko become a co-author of the second edition of International Construction Contract Law (by Lukas Lee, Wiley Blackwell), where he explains the features of the use of FIDIC books in our country.

Since 2018, our company has held several dozen events with recognized international and local experts on the application of FIDIC contracts both in Kazakhstan and in the CIS countries. Among the events, a conference in London can be singled out separately, which we held together with a London-based leading law firm in construction issues.

Legal services:

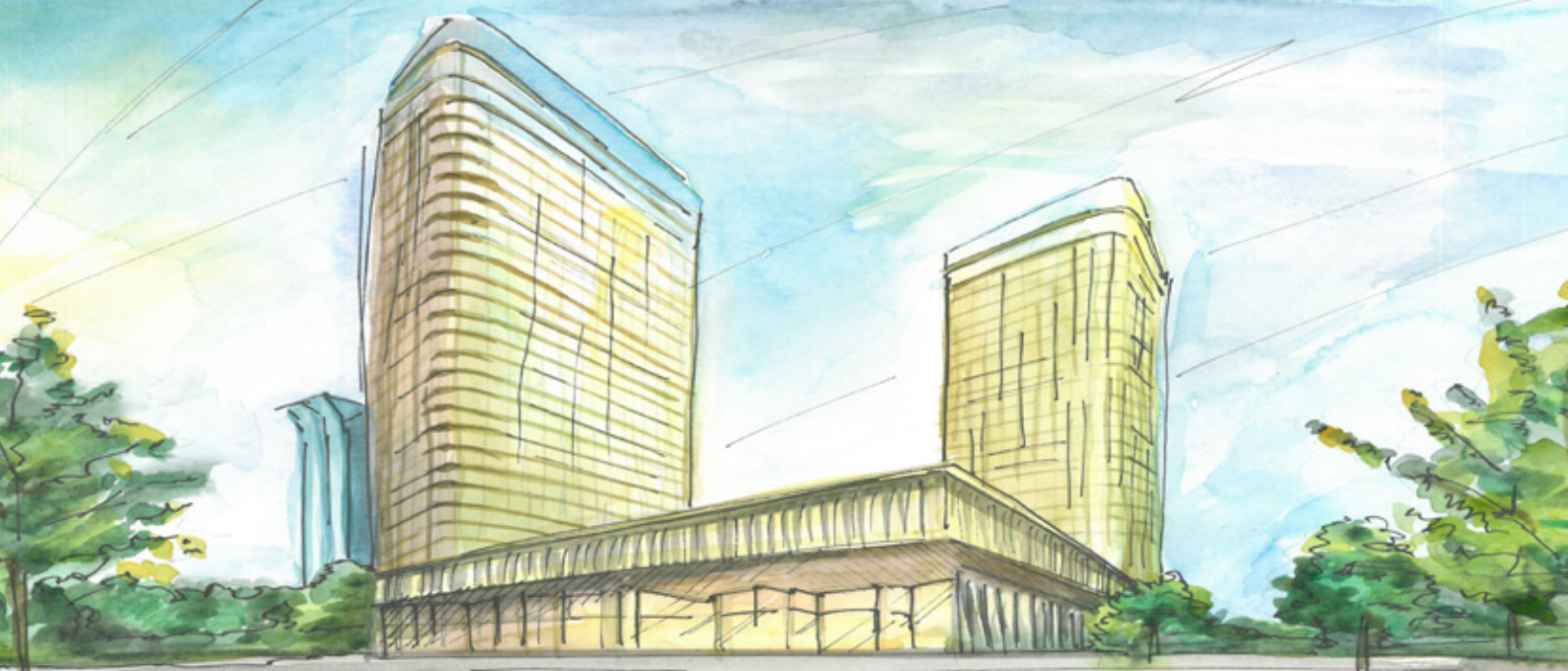
- FIDIC book selection for various construction projects: infrastructure, commercial facilities, industrial, energy, linear structures (gas pipelines, heating pipelines and etc), residential complexes, multifunctional and complex projects;
- Preparation of tender documentation for construction projects: for international donors using various professional forms, including FIDIC (EBRD, ADB, etc.); for Samruk-Kazyna projects; for private projects funded by other financial institutions;
- Consulting on individual issues of application of FIDIC: Legal examination of concluded construction contracts and design based on FIDIC proforma, including turnkey construction; Preparation of claims, additional agreements and other legal documentation on projects implemented based on FIDIC proforma; Study and elaboration of individual situations/issues;
- FIDIC Red Book (including MDB), Yellow Book, Orange Book, Silver Book, Golden Book, White Book adaptation to fit the legislation and a specific project;
- Disputes on FIDIC based contracts, legal support: Litigation in local courts; International and local arbitration; Involvement of qualified international experts (civil engineers, solicitors or barristers, narrow specialists in the construction sector) to solve a particular problem; Work with the Dispute Adjudication Board as a consultant or a member of the DAB;
- Educational training (in Russian or English languages) on construction and application of FIDIC terms in CIS countries: corporate training (1-3 days, online and offline), scheduled training.

Relevant experience:

- Legal support of one of the contracts based on the **FIDIC Red Book International Transit Corridor Western Europe - Western China**, worth more than 70 million US dollars for Impresa Spa;
- Participation in the consortium together with the engineering company WSP on the project **Toll Roads in Kazakhstan for the European Bank for Reconstruction and Development** (FIDIC Golden Book);
- **Abu Dhabi Plaza Astana project**. FIDIC related issues construction for suppliers and contractor; pre-trial and claims under construction of residential property within the framework of state program;
- **Legal expertise of the contract for the construction** of part of the project **Balkhash Power Plant**, prepared on the basis of various FIDIC books (including EPC) representing the **Siemens company**;
- We have provided comments to the potential **contractor from India on sea port Aktau reconstruction** under FIDIC Yellow Book (contract expertise and adaptation, etc.);
- Construction of a **multifunctional complex in the Republic of Belarus for an oil and gas international holding**;
- The ore beneficiation **plant project “Construction of an ore beneficiation plant with a production capacity of 4 million tons of ore per year at the Shalkiya deposit”** in the Kyzylorda region.

Preparation of a set of contracts and tender documentation, including the Red Book of FIDIC. The documentation was prepared first under the financing of the **European Bank for Reconstruction and Development**, then **redeveloped under Samruk-Kazyna’s financing**;

- We executed **training program on construction issues, including FIDIC contracts** for companies: Beineu - Shymkent gas pipeline, Tansu Works, Sister, Cumbre Construction, University of Central Asia (Kyrgyzstan), Temirzhol Zhondeu, Gazprom PJSC, Imstalcon JSC, BI group and others.



Property Management

The complexity of local laws and the roman-german approach to the law system, in general, especially for foreign asset management companies, are often obstacles to the successful application of western practices and case studies. The problem is that there are just a small number of cases implemented in practice and that the frequently changing rules of law require constant monitoring and adjustment of particular schemes.

Legal services:

- Subscription legal support of management companies/ projects
- Selection of the form and structuring of transactions, methods of object/project management (work with developers, managers of shopping malls, office buildings and multifunctional facilities);
- Legal support of real estate developers and owners;
- Rental of commercial real estate;
- Trust management;
- Development of contracts and agreements in the field of real estate management (rental of Class A, B and C offices, rental of shopping centres and premises in them, solving issues in management features);
- Updating of already concluded contracts (recommended at least once a year);
- Due diligence;
- Claim work;
- Pre-trial settlement of disputes;
- Support of legal disputes both in courts in Kazakhstan and in arbitration outside Kazakhstan;
- Preparation of legal opinions on certain issues.

Relevant experience:

- Due diligence on the **acquisition of the international airport** in the Republic of Kazakhstan (the study of judicial prospects, risk assessment, and recommendations on the project implementation);
- Preparation and comprehensive legal support in addressing the **management of the complex of residential buildings (with the cost over 200 million USD)** in the city of Almaty for the management company;
- **Shared property structuring and registering** (condominium in Kazakhstan) for a residential complex **Esentai Park**, later changes in the structure, registration of changes, explanation of management options for the Bank of the owner of these assets;
- **Shahnaz business center in Astana Due Diligence** (Marden is a new name), as a **property complex with all acting tenants and lease agreements**, in order to enter the investment transaction with one of the firm's clients;
- **Jones Lang LaSalle legal support, engaged in the management of Talan Towers in Astana**, checking the current contracts for the maintenance of various equipment, supply of equipment, repair work in the building, etc. All this in compliance with the corporate standards of the client;
- **Study of the issue and advising the developer of the residential complex on the merger of two land plots into one local condominium structure** (shared property approach), registration and management of such property under certain conditions (prohibition of construction on the second site);
- **Participation in legal support for local developers in respect of hotel chains as Marriott International (Marriott and Ritz Carlton brands), Hilton Hotels, Starwood Hotels & Resorts** in the market of the Republic of Kazakhstan. Work with a package of agreements specified networks, adaptation of license agreements to Kazakhstan, structuring relationships with property owners and etc
- Representing the interests of a vital owner of an elite class residential complex in Almaty – **preparation and registration of an easement** between several owners of adjacent land plots and other real estate objects.
- Representation of the interests of one of the owners of office buildings - **preparation of a draft contract, participation in the discussion and registration of an easement between several owners of adjacent land plots and other real estate objects** (common access roads, roads, communications, etc.).
- Advising an **international hotel chain** (with a central office in the USA) on managing a hotel complex in Kazakhstan, rental programs, trademarks, condominium and management features of multifunctional buildings, etc.



Corporate law

The Artyushenko & Partners law firm provides legal support to foreign construction and development companies interested in developing their business in the Republic of Kazakhstan.

We support transactions in the specialization of real estate and construction. In particular: purchase and sale of real estate/ construction in progress/ projects, including their parts, by floors, by individual objects; purchase and sale, including through M&A (mergers and acquisitions) of various kinds of businesses, for example, business centres with tenants, production complexes with orders, existing retail chains, airports and others.

Legal services:

- Corporate reorganization and restructuring;
- Development and planning of corporate structures;
- Advice on investment and divestment;
- Competitive regulation, market concentration;
- Licensing of construction & assembling works and design (in all categories and
- Advising on licensing issues (identification of the category, and compliance with the qualification requirements, etc.)
- Due diligence;
- Legal support of claim procedures;
- Litigation in courts in Kazakhstan and arbitration outside of Kazakhstan;
- Pre-trial settlement of disputes;
- Legal opinions on specific issues.

Relevant experience:

- Dealing with issues of **economic concentration** for a development company (antimonopoly law);
- Representation of the interests of **Mospromstroy Holding and Safmar group in Kazakhstan** (corporate issues, lease relations, disputes in courts);
- **Consulting the audit consulting big four companies** on the subject of entry into Kazakhstan's market the construction companies from China and Austria;
- Legal support of design group from Portugal, the **Saraiva+Associados in Kazakhstan** on different issues (project documentation development, contractual relationships, corporate issues, debts collection, managing negotiations with complicated client);
- **Resolving the case for one of the electronics manufacturing company from Korea**, which has production factory in Kazakhstan – searching different ways to resolve questions related to disputable real estate (land matters, architectural and town-planning matters);
- At the request of the Chairman, the management Board of one of the largest holdings of real estate owners in Kazakhstan **checking its authority on a number of previously concluded transactions, the probability of prosecution, options for solving current issues;**
- **Legal support of the acquisition of an office building in the center of Almaty (with cost more than \$ 100 million USD) by a foreign investment Fund.** We represented the local owner of the developer. The transaction was structured through the sale of a share of a non-resident company holding a legal entity as the owner of a building in Kazakhstan;
- Due Diligence of the existing **Shahnaz business Center in Astana** (now the Marden Business Center), as a property complex with all lease agreements, to conclude an investment transaction with one of the firm's clients;
- **Obtained first category licenses** for construction and installation works, design and survey for the Russian Design Institute Investproekt (established more than 85 years ago) and the Finnish company Citec Engineering (Ruukki, Whartsila and other projects);
- As a subcontractor of one of the big four companies in Kazakhstan – obtained first category licenses for construction and installation works and design for the **Austrian leader of the energy industry and construction** (more than 60 offices worldwide). Received for the city of Astana;
- Legal support for checking for **compliance with existing licenses of first category for construction and installation works and design**, changing the list of subspecies included in these licenses for one of the world leaders in the construction industry. The check was passed, changes were made to one of the existing licenses, it was possible to avoid cancellation of the license;
- **Legal protection** of the interests of the founder's heirs from a **hostile takeover of the company by third parties** (trading house).



Litigation and arbitration

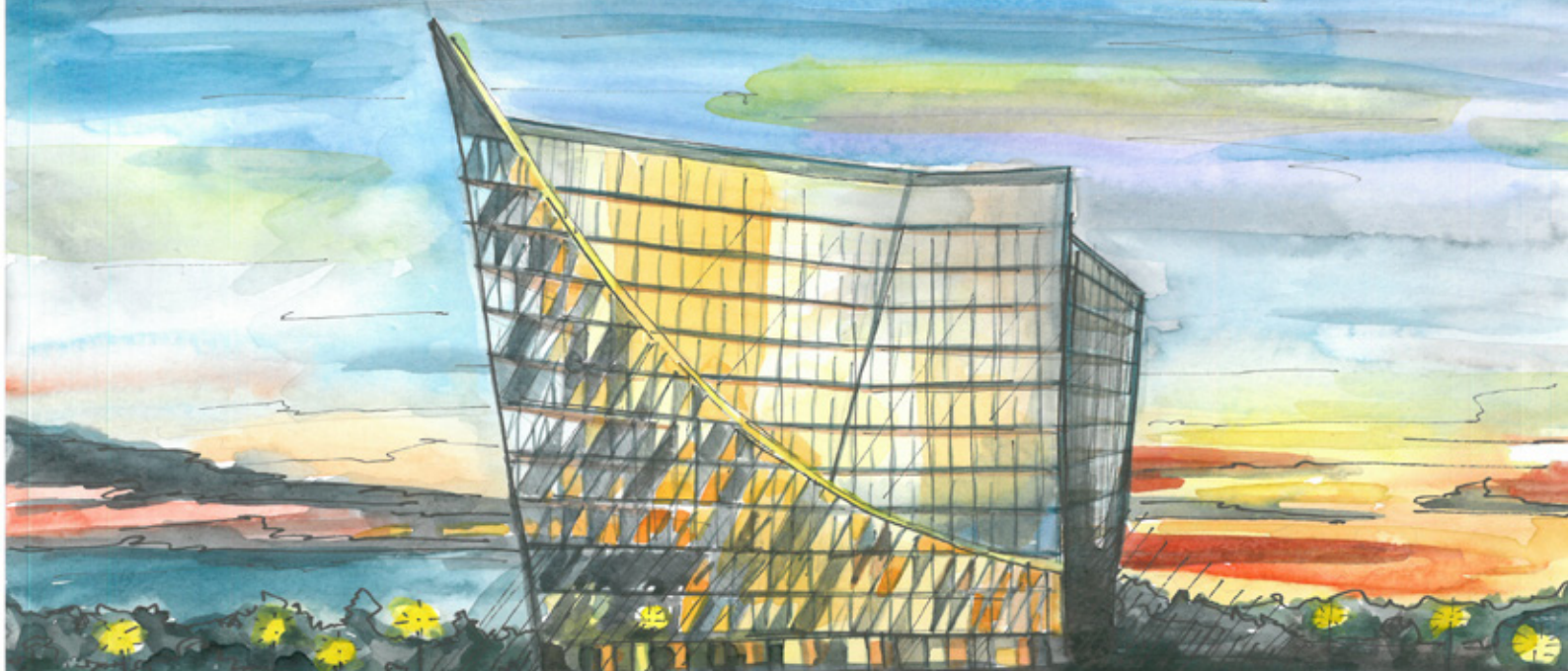
Notably, the sooner our company is involved in the legal proceeding, the more effective we will use all remedies available in Kazakhstan's laws in favor of our client. Timely initiation of the legal proceeding will be your advantage only if you do it with the consultant's help specializing in relevant issues. We have been working in the market of legal support for real estate and corporate matters since 2005.

Legal services:

- Legal support in dispute resolution relating to the construction and/or management of real estate (property);
- Legal assistance in settlement of corporate disputes;
- Pre-trial settlement of disputes
- Claim procedures
- Representation of interests in the state courts of any instance (first instance, appeal, cassation, the Supreme Court of the Republic of Kazakhstan)
- Challenging government actions;
- Legal opinions on specific issues;
- Representing interests in arbitration in Kazakhstan and outside of Kazakhstan;
- Due diligence;
- Representation in arbitration proceedings;
- Provision of our experts as arbitrators in arbitrations (Kazakhstan International Arbitration (KIA), the International Commercial Arbitration Court of the Eurasian Center for Mediation (ICAC), and others);
- Searching/hiring foreign English Law consultants for litigation and arbitration outside of Kazakhstan.

Relevant experience:

- **Participation in an oil and gas dispute** related to the construction of facilities in Kazakhstan by a foreign contractor. The amount of the dispute is more than \$250 million USD. **Arbitration at Stockholm Chambers of Commerce, the rules of UNCITRAL;**
- Providing an expert legal opinion on a corporate dispute in arbitration in Stockholm in favor of Kazakhstani citizen. The issue was related to the **shareholders' agreement in respect of the based in Kazakhstan legal entity. The amount of the dispute \$20 million USD;**
- Providing expert legal opinion on the construction contract (FIDIC) in arbitration in London (LCIA). The case was related to the acceptance of the results of the work, quality and other issues based on the Kazakh legislation;
- **Advising Arabian construction company on an EPC contracts (FIDIC) project in Kazakhstan** worth more than us \$1 billion USD, as part of a possible arbitration in Abu Dhabi (the amount of the dispute is about us \$ 200 million USD);
- Representing the **Impresa s.p.a. construction company engaged in road construction**, in the proceeding against the contractor who precluded the **enforcement of the bank guarantee** for the total amount of over **\$2.5 million;**
- **Claim settlement and litigation** against the contractor Enka Insaat (Turkey). The claim amounts were about **\$30 million;**
- Providing expert commentary while settlement of dispute in **construction of pilot uranium production by leaching procedure** on the part of **Inkai field;**
- General contractor (large Kazakhstani holding company) **debts collection** under the contracts in favor of subcontracting construction companies in Kazakhstan;
- Representing the interests of a contractor from Kazakhstan in **local arbitration** (Kazakhstan International Arbitration, KMA) on an **EPC contract** (construction of a plant for the production of fuels and lubricants in Almaty, with a capacity of 100 thousand tons per year). The counterparty is the structure of the **LUKOIL Group**. The amount of the dispute is **\$ 4 million;**
- A statement of a maritime claim favoring a Russian company for **debt collection**. The ship was in the Seaport of Aktau;
- Legal advice on the construction contract **termination under the FIDIC Red Book** with minimal losses. Using our recommendations, actions to **block the execution of the bank guarantee** and documents, the Principal has handled the refusal and withdraw from the contract **without penalties and significant losses;**
- Representing the interests of a state-owned company against a **Chinese construction company** together with a large international law firm. The **dispute was about an oil and gas project**. We worked with leading law firms to resolve the dispute peacefully, which the International Chamber of Commerce (ICC) considered in Paris;
- Our client was faced with the **termination of the contract** for the construction of **several residential buildings** by the Customer. After several meetings with the Customer, we **helped the Principal with argumentation, development of documents, consideration of claims and various other issues**. As a result, the **Principal managed to avoid arbitration;**
- Legal support of an international construction company in a **dispute in Abu Dhabi Commercial Conciliation & Arbitration Centre on a subcontractor's claim** (Turkish construction Company). We worked together with the London office of a large international law firm. The amount of the dispute is more than \$9 million.



Subscription legal support

We will accompany the construction of a separate object or the entire project. Use the experience of our entire team on an ongoing basis. We work with such issues every day. The service will be convenient both for construction customers and for various kinds of performers - contractors, subcontractors, installation organizations, suppliers, designers and engineering companies.

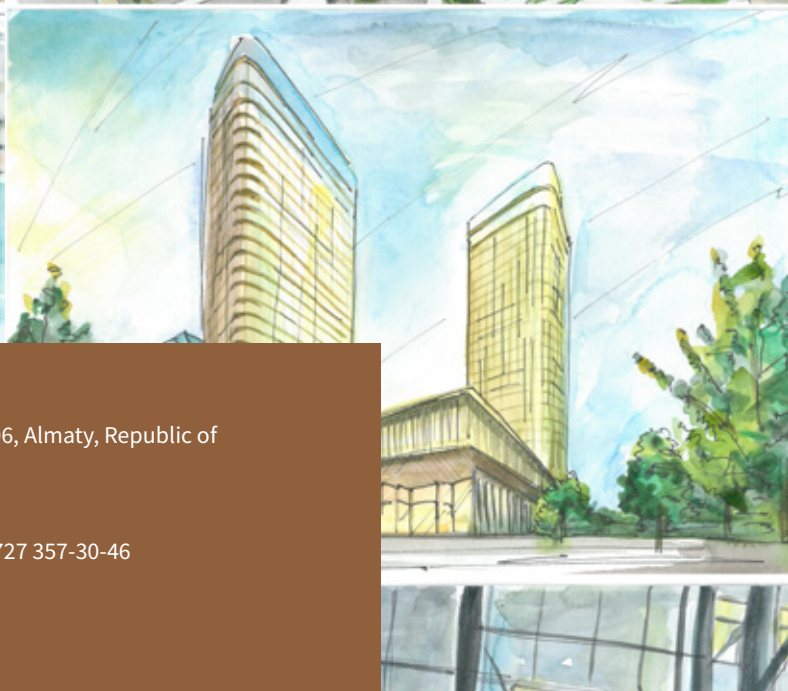
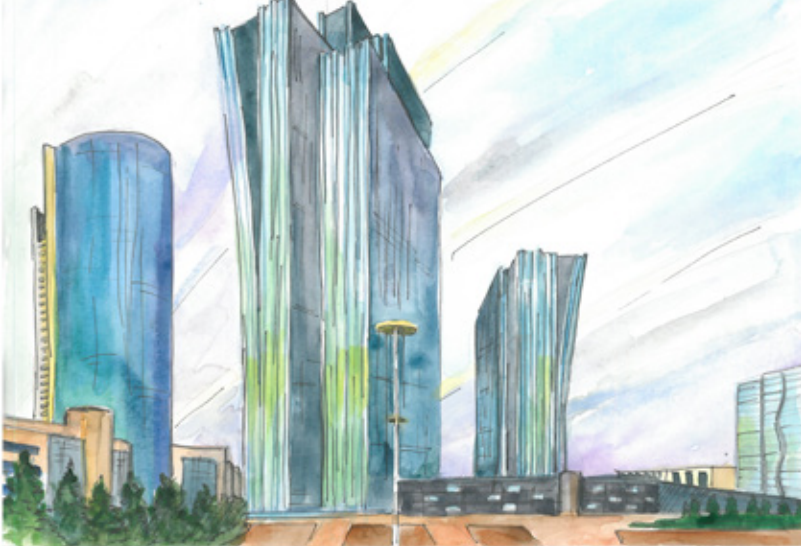
We understand that you already have an in-house lawyer within your team. And we do not offer to replace him or her. Subscription legal support is a harmonious reinforcement not only of your in-house lawyer but also of your entire team as a whole.

Legal services:

- We act as a contract manager (full or partial control and support of contract issues on the project);
- Independent verification and examination of legal and construction documentation on the project (in whole, or separately on request);
- Consulting and finding solutions to controversial/complex/ non-standard situations in construction;
- Control/ legal examination of correspondence on a construction project (current, claim, pre-trial);
- Building/ control/ revision of the document management system on a construction project (correspondence, contracts, other documentation);
- Conducting full or partial legal control over the implementation of a construction project on behalf of the Board of directors, management or founders of the company;
- Submission of an independent legal assessment of hypotheses/proposals on controversial/complex/non-standard issues in construction (second opinion);
- Other, at your discretion.

Relevant experience:

- Legal support for the **construction of the BIOHIM plant** in North Kazakhstan;
- Legal support of the **plant for the production of building materials** in Astana;
- Legal support of **projects in Almaty** - Esentai Park (Tower, Mall, Residences), Almaty Financial Centre, reconstruction of Medeu and Shymkent;
- Legal support for the **reconstruction of buildings** of some higher educational institutions in Almaty;
- Conducting **pre-trial correspondence** on the projects as mentioned above;
- Provision of an **independent legal opinion on the commissioning of the first stage of the Makinskaya Poultry Farm project**;
- Legal support in the **construction of a wind farm** in the centre of Kazakhstan;
- Legal support of the company **managing the Talan Towers building complex** in Nur-Sultan;
- Providing expert legal support to the **Leroy Merlin chain of stores in Kazakhstan** on various construction issues.



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