CHALLENGES OF IMPLEMENTING ANGLO-SAXON CORPORATE DISPUTE RESOLUTION NORMS IN THE REPUBLIC OF KAZAKHSTAN'S LEGAL FRAMEWORK

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Abstract

The objective of this research is to identify challenges associated with adapting the regulatory mechanisms employed in common law jurisdictions for resolving corporate disputes to the specific legal framework of Kazakhstan. The methodological foundation of this study rests on technical, legal, and comparative legal approaches to analyze the fundamental principles underpinning legislative regulations in the realm of corporate (business) legal relations. This paper examines the practices employed in common law, civil law, and mixed legal systems for regulating relevant legal matters. Additionally, it explores the experience of non-common law countries in adopting elements of case law systems that are not native to their legal traditions. Against the backdrop of the ongoing convergence of legal systems, elements of case law are increasingly being integrated into the mechanisms of corporate dispute resolution in countries with civil and mixed legal systems (France and the United Arab Emirates (UAE)). In Kazakhstan, this process meets obstacles caused by the lack of a clear definition of corporate law. The application of common law procedures and elements in Kazakhstan remains a relatively niche phenomenon, primarily confined to the operations of the Astana International Financial Centre (AIFC) court.

Keywords: Arbitration, Common Law, Continental Law, Corporate Dispute, Corporate Law, Court

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1. INTRODUCTION

In Kazakhstan, the legal approach to business and corporate governance has evolved significantly since the country gained independence and embarked on the path of building a modern economy. Kazakhstan has formed and currently maintains a comprehensive legal system that governs the establishment and

operation of corporations as a distinct organizational and legal type of juridical person (Karagusov, 2020a). In the context of Kazakhstan's integration into the global economic landscape, there is a need to harmonize national corporate legislation with international standards. The imperfections in the legal framework governing corporate legal relationships, arising from disparities inherent in diverse legal systems, coupled with challenges in implementing international best practices, as well as a shortage of skilled professionals, often give rise to conflicts that escalate into litigation. The accumulation of these issues exacerbates the investment climate and hampers business development. However, a transparent and predictable dispute resolution mechanism can alleviate many of these challenges. Such a mechanism, in turn, fosters confidence in the legal system, promoting entrepreneurial activity and contributing to economic growth (Baibosynova et al., 2022).

There are still lingering issues regarding the practice of corporate dispute resolution in the legal framework of Kazakhstan (The Republic of Kazakhstan) (Aissautov, 2021; Kapatsina et al., 2023). The issue of consistent implementation of legal provisions in the context of corporate disputes continues to be of paramount importance. However, there is a complete lack of a legislative definition for terms such as 'conglomerate' and 'corporation'. The current situation creates obstacles for the improvement of the investment attractiveness of the Republic of Kazakhstan, complicating the procedures for resolving disputes and appealing decisions of government bodies. In light of the establishment of the Astana International Financial Centre (AIFC) in 2018 (AIFC, n.d.), the issues surrounding the improvement of corporate legislation in Kazakhstan have gained particular significance. The AIFC is a dedicated economic zone in the capital city, aimed at fostering financial services and attracting foreign investments. The AIFC serves as a hub for conducting business activities in sectors such as finance, investment, technology, and innovation, among others (Kenzhaliyev, 2024; Yeung et al., 2020).

The increasing significance of the AIFC for the national economy has been consistently underscored at the highest levels of Kazakhstan's political discourse. In his remarks on the investment appeal of Kazakhstan, President Kassym-Jomart Tokayev emphasized the role of the AIFC court as an independent judicial entity established within the AIFC framework to adjudicate disputes between participants in the center and conflicts related to investments and financial transactions. The AIFC court operates under the principles of common law and diverges from the traditional legal system of Kazakhstan. This distinctive approach positions the AIFC as a unique component of the country's legal infrastructure. The President noted the relevance of independent courts and highlighted the importance of implementing the best international law practices to resolve commercial disputes ("The head of state took part in the swearing-in ceremony of the chief justice of the Astana International Financial Centre court", 2024). The AIFC court's activities play a crucial role in enhancing confidence in the legal framework of Kazakhstan. Nevertheless, the process of resolving disputes within its jurisdiction has revealed critical issues related to the compatibility between the country's legislation and the legal mechanisms of Anglo-Saxon (common) law. Subsequently, it has become evident that these challenges are exacerbated by the absence of a comprehensive regulatory framework and the lack of doctrinal development regarding corporate legal relationships in Kazakhstan.

In the context of the issues of relevance of this topic for the construction industry, it should be noted that the issue of applicable law in the engineering and construction sector has always occupied a special niche, given the transnational nature of large construction projects, when contractors and customers belong to different jurisdictions. International contracts are often used in Kazakhstan, especially in large infrastructure projects (oil and gas, roads, energy). Most of these contracts are based on Anglo-Saxon legal principles and include alternative dispute resolution (ADR) methods — such as arbitration, mediation, and adjudication. The Kazakh legal system is continental, and its institutional and procedural norms are not always compatible with such dispute resolution mechanisms. In general, the engineering and construction industry is widely recognized to be in dire need of predictability and enforceability of decisions, especially in the presence of foreign investment. In this sense, the introduction of Anglo-Saxon norms (or their elements) into continental-law states' corporate and arbitration regulation can increase investor confidence and the effectiveness of dispute resolution in construction projects.

The purpose of this research is to delineate the challenges associated with adapting the regulatory frameworks employed in common law jurisdictions for resolving corporate conflicts within the legal landscape of Kazakhstan. In pursuit of this goal, the study aims to conduct a comprehensive analysis and discern the fundamental distinctions between legal systems, which significantly impact the regulation of corporate disputes. The paper also explores the specific characteristics of case law application within Kazakhstan's judiciary for corporate dispute resolution.

In this regard, the main research question of this article is formulated as follows:

RQ1: What conceptual, institutional, and law enforcement obstacles arise when implementing the norms of Anglo-Saxon corporate law into the Kazakh legal system, and how do they affect the effectiveness of corporate dispute resolution?

The growing importance of this research topic stems from the fact that the transition to a hybrid model of corporate regulation requires a deeper understanding not only of the differences between legal families but also of the actual ability of national institutions to understand case law, mechanisms of fiduciary duties, shareholder remedies, derivative actions, and the specifics of corporate litigation inherent to common law. Unlike existing studies, which primarily examine the AIFC in the context of the investment climate, this article focuses specifically on the implementation of Anglo-Saxon corporate law and analyzes its compatibility with the normative and codified nature of Kazakhstani law. The study's novelty lies in identifying systemic barriers to legal convergence, analyzing the consequences of jurisdictional

dualism (state courts and the AIFC court), and suggestions for adapting Kazakhstani legislation. The latter allows for a new approach to the approximation of legal mechanisms.

The structure of the paper is as follows. Section 1 examines the theoretical foundations of legal convergence and the historical background of the interaction between the Anglo-Saxon and Romano-Germanic legal systems. Section 2 analyzes the formalization of the concept of corporate dispute in the law of the Republic of Kazakhstan. Section 3 is devoted to the study of the existing regulatory framework of the Republic of Kazakhstan and the practice of the AIFC, as well as the identification of emerging conflicts. Section 4 offers a critical analysis of the obstacles to the integration of common law into corporate regulation in Kazakhstan. Section 4 examines the experience of implementing common law norms and practices in countries with continental and mixed law systems. Section 5 formulates conclusions and recommendations for improving national legislation.

2. LITERATURE REVIEW

Contemporary studies on corporate dispute resolution from a comparative legal standpoint encompass a wide range of topics. These include the comparative analysis of mediation as a means of resolving corporate and tax conflicts in some European countries (Golovashevych et al., 2024), the boundaries of jurisdiction in intellectual property-related corporate disputes (Gongol & Zahradníková, 2019), and the application of case law principles in resolving trade disputes using the experience of the European Union (EU) (Taborda & Sousa, 2023). Some research papers delve into the strategies employed by multinational corporations to maintain compliance with regulations and avoid litigation (Latilo et al., 2024). Additionally, researchers actively explore the causes of disputes, the factors that influence the resolution process, and the efficacy of ADR mechanisms for specific industrial sectors (Illankoon et al., 2022). In Kazakhstan, the primary focus of corporate dispute research revolves around several pivotal aspects pertaining to the efficacy of corporate conflict resolution, the protection of shareholders' rights, and the assimilation of international practices (Karagusov, 2020b). The establishment of the AIFC and the ongoing reforms to improve corporate governance have significantly stimulated research in this area. As a result, this development has led to a renewed interest in exploring the effectiveness of corporate governance mechanisms in Kazakhstan (Karagusov et al., 2016; Yeung et al., 2018). In recent years, the establishment of the AIFC and the reforms aimed at enhancing corporate governance in Kazakhstan have provided a substantial impetus for research (Karagusov et al., 2016; Yeung et al., 2018). The current state of mechanisms for preventing and resolving corporate disputes is a subject of extensive research in Kazakhstan, particularly in the context of legal practice in both the Republic of Kazakhstan itself and the EU (Aissautov, 2021). Relevant studies focus on enhancing the legal framework for establishing foreign-invested companies and the regulatory framework governing corporate contracts within the national law (Karagusov, 2015). Additionally, there is a growing interest in exploring corporate governance strategies (Baibosynova et al., 2022). However, there is a lack of a comprehensive comparative analysis that would encompass the legal convergence and harmonization of legislation and legal practices from various legal systems.

Despite the fact that comparative law and the processes of legal convergence between the Romano-Germanic and Anglo-Saxon legal systems have been studied in considerable detail, the academic literature has offered virtually no analysis of the specific challenges of implementing common law corporate dispute resolution norms in the normative and codified legal environment of the Republic of Kazakhstan. Existing studies either consider the AIFC solely as a tool for attracting investment or focus on the specific features of its court. However, there are no studies that link the structural differences between the two legal families to the practical obstacles to resolving corporate disputes in a dual-jurisdictional environment. Given this gap, current work proceeds from the premise that the main difficulties in applying Anglo-Saxon corporate dispute resolution norms in Kazakhstan are not due to individual normative inconsistencies, but to a systemic discrepancy between the precedent-based model for the formation of corporate obligations and the normative nature of law enforcement in the domestic legal system. This discrepancy manifests itself in the weak integration of fiduciary duties, derivative claims, shareholder remedies, and other key common law institutions, which reduces the effectiveness of the protection of corporate rights in national jurisdiction.

3. MATERIALS AND METHODS

This research is grounded in an analysis of Kazakhstan's domestic and international legal acts pertaining to corporate dispute resolution, as well as case law. The international legal framework for this study is presented by the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, which have been ratified by numerous independent states, including Kazakhstan. Furthermore, the paper draws upon case studies from the *International Arbitration Review* published by Queen Mary University of London (QMUL) in 2018 and data from the Global Financial Centres Index (GFCI).

The methodological foundation of this research is based on the formal legal approach, which serves as a tool for analyzing the legal frameworks of countries such as the United Kingdom (UK), the United States, the United Arab Emirates (UAE), the Netherlands, Switzerland, Germany, and France. Within this framework, the study aims to conduct a comprehensive analysis of the regulatory standards and mechanisms within the realm of corporate law embedded in the pertinent legal statutes of these countries (including the UK Companies Act 2006, UK Public General Acts, Arbitration Act 1996, German Stock Corporation Act (*Aktiengesetz*), and Commercial Code of France). A comparative analysis of different legal frameworks

is necessary to delve deeper into the legal details of corporate dispute resolution.

In terms of Kazakhstani regulation, attention is paid to the analysis of the current legislative framework of the Republic of Kazakhstan, which covers corporate relations, including the resolution of corporate disputes. The study examines the provisions of the Civil Procedure Code (CPC), the Corporate Governance Code, and the constitutional law of the country. The research also analyzes the law enforcement practices of corporate dispute resolution in Kazakhstan. The examination includes diverse cases of corporate conflicts, the intricacies of their settlement, and the judgments rendered by the courts. To this end, the judicial database of the autonomous court of the AIFC was utilized, which operates according to the principles of the Anglo-Saxon legal system. Being devoted to the issues of convergence of law, this work refers to the corresponding branch of legal comparative studies. Structurally, the article consists of several blocks (sections). The first block is devoted to the explanation of the historical and legal context of the convergence of the law of the Republic of Kazakhstan and the law of foreign countries of the Anglo-Saxon system, as well as an overview of trends in the development of corporate legislation in the Republic of Kazakhstan. The second block considers the key aspects of the formalization of the concept of a corporate dispute in the law of the UK. The third block covers the issues of resolution of corporate disputes in the Republic of Kazakhstan and the jurisdiction of the court of AIFC (ways of implementing elements of Anglo-Saxon law in Kazakhstan law, AIFC practices), the International Arbitration Centre (IAC). The fourth block is devoted to a critical look at the applicability of Anglo-Saxon law in the Republic of Kazakhstan from the point of view of the theory of state and law. The fifth block considers the experience of implementing the norms and practices of common law in countries of continental and mixed law, including the overview of precedents. At the final stage, issues of the applicability of foreign practices to the Kazakh legal system were considered.

The analytical cut timeframe covers the period from 2017 to 2024, which corresponds to the active development of the AIFC regulatory framework and the formation of its judicial practice. This timeframe was chosen because many key AIFC documents entered into force in 2017, including the 2017 AIFC Acts "On contracts" and "On implied terms in contracts and unfair terms". The analysis of legislation and judicial practice was conducted based on current versions of legislative acts of the Republic of Kazakhstan, and AIFC acts published on official resources as of the end of 2024, which ensures that the study's findings are aligned with the current regulatory environment and confirms the legitimacy of the legal sources used.

4. RESULTS AND DISCUSSION

4.1. Implementation of common law practices and mechanisms in Kazakhstan as an element of global legal convergence

Inevitable and rapid globalization has initiated a process of harmonizing legal systems across nations due to transnationalization. This process has permeated all aspects of societal life. The world is increasingly interconnected, and the process of blurring socio-cultural, economic, and legal borders is underway. The roots of the contemporary globalization phenomenon can be traced back to the 12th and 13th centuries, when the development of capitalist market relations in Europe and the explosive growth of European commerce coincided (Herlihy, 1971). During this period, two distinct but well-established legal systems emerged in Europe: the Romano-Germanic (continental) system and the Anglo-Saxon system. Each of these legal traditions has formed its own approach to resolving disputes, including those arising in the corporate realm.

The Romano-Germanic legal system[1], also known as continental or civil law, is one of the most extensive legal systems in the world. It originated from Roman law and has been further developed in European nations, particularly in Germany and France. This legal tradition encompasses a wide range of countries in Europe and beyond, including virtually all post-Soviet states, Brazil, and Japan, among others (Boshno, 2018). Within this legal framework, there exist comprehensive and structured codes that encompass a wide range of legal domains, including civil, criminal, commercial, and administrative law (Veresha, 2016). Illustrative examples include the French Civil Code (the Napoleonic Code) and the German Civil Code (BGB). The hallmark of the Romano-Germanic legal tradition is the process of normative generalization, which is accomplished through the enactment of codified regulatory acts. These codifications constitute a logically coherent regulatory framework. Consequently, in the context of the continental legal paradigm, law is predominantly conceptualized as a body of legal provisions.

In the context of the Anglo-Saxon legal tradition, the UK and the United States are undoubtedly prominent examples. The Anglo-Saxon system is now the most prevalent in the contemporary world, accounting for a third of the global population residing in Anglo-Saxon nations. This situation can be attributed to Britain's extensive colonial history (Iseni & Mikeli, 2023). The Anglo-Saxon legal tradition, also referred to as the common law system, stands out for its distinctive source. Unlike the continental system, which relies heavily on codified statutes, the common law primarily rests on case law and legal practice. This emphasis on the latter allows for a more flexible and less abstract interpretation of legal rules, giving rise to a distinctive casuistic quality in the law. Nonetheless, in the Anglo-Saxon legal system, there is no distinction between private and public law, which is a fundamental aspect of the continental legal system.

The exponential expansion of trade transactions and foreign investment initiatives, particularly those involving participants from Anglo-Saxon nations, has inexorably initiated a reciprocal integration of certain principles of common law into the framework of continental legal systems. Kazakhstan, along with other countries such as the Russian Federation and the members of the Commonwealth of Independent States (CIS), has

[1] In the legal systems of post-Soviet states, the term 'legal family' is primarily employed, rooted in the framework of R. David's classification system (David & Brierley, 1978).

made efforts to incorporate elements of Anglo-Saxon law into its domestic legal system. Simultaneously, these endeavors were occasional, and persistent divergences in national legal frameworks prevented such initiatives from fully materializing. Efforts to incorporate elements of Anglo-Saxon legal systems into Kazakhstan primarily stemmed from the country's aspiration to establish internationally recognized legal standards, particularly in the domains of commerce and investment. Nevertheless, these transformations have consistently occurred within limited parameters, without significantly impacting the fundamental underpinnings of the national legal framework.

One of the earliest attempts to implement elements of the Anglo-Saxon legal system in the Kazakhstani law was the adoption of the Law "On joint-stock companies" in 1998. However, this law could not fully operate due to the inability of the legal, institutional, and economic environment at the time to address many practical issues. The primary challenges were the low level of corporate culture, a lack of experience and appropriate law enforcement practices, inadequate protection for minority shareholders' rights, insufficient transparency in corporate governance, poor control mechanisms, and a shortage of qualified personnel. Additionally, minority shareholders faced difficulties accessing information and defending their interests in court. Managers and board members often lacked a clear understanding of their duties and responsibilities to the company and its shareholders, leading to instances of abuse and violation (Bashirov, 2009). The judiciary did not always possess the expertise to adjudicate corporate disputes, and the law enforcement framework regarding the liability of directors and protection of shareholder rights was only beginning to emerge. Moreover, the institutions derived from the common law and codified in this legislation, such as the 'public joint-stock company' and the 'private joint-stock company', failed to take root. Five years after its enactment, this statute became obsolete. In 2003, an updated Law "On joint-stock companies" was adopted, which was entirely based on the tenets of the continental law system. The law remains in effect to this day.

The recent legal developments in the realm of corporate legislation within the Republic of Kazakhstan reflect a series of initiatives aimed at fostering a more conducive and resilient business environment. These efforts are geared towards attracting foreign investment, while simultaneously ensuring transparency and safeguarding the interests of all parties involved in corporate interactions. The reforms that accompany these initiatives are in line with Kazakhstan's broader strategic plans for its economic development and the modernization of its legal framework in the context of global economic challenges. This process is also part of the country's endeavor to establish itself as a 'listening state' (a state that is capable of open cooperation and partnership) ("President of Kazakhstan Kassym-Jomart Tokayev's state of the nation address", 2019). Against this backdrop, foreign investors continue to be consistently drawn to the straightforwardness of regulatory frameworks and the presence of instruments designed to protect their rights and interests. The proximity of the legal apparatus of the host country to that of the investor's jurisdiction assumes significant importance for the investor. On the other hand, there is a discernible trend towards an escalation in the frequency of corporate disputes and conflicts, accompanied by the emergence of novel risk factors contributing to their occurrence (Aissautov, 2021). Therefore, relatively recently, in 2015, amendments were introduced into the CPC of the Republic of Kazakhstan regarding the settlement of corporate disputes. These changes were part of a broader reform focused on modernizing the civil and corporate legal framework in Kazakhstan. The ultimate goal was to enhance the business environment and foster the development of a market economy. The rationale behind the revision of the existing code was driven by the necessity to ensure uniform interpretation of legal provisions, maintain consistency in the language used in court rulings pertaining to corporate matters, and improve the standard of justice in this domain.

In the Republic of Kazakhstan, the law enforcement practice related to corporate disputes has yet to be fully developed, with questions regarding the application of procedural law continuing to arise. The very concept of a 'corporate dispute' is a relatively new addition to national legislation. Despite the dynamic evolution of market and corporate legal relationships within the country, the previous version of the CPC did not explicitly define a corporate dispute. To address this shortcoming, the revised version of the CPC places significant emphasis on delineating the specific characteristics of corporate conflicts. This is evident in Article 27, which outlines the jurisdiction of economic courts in civil cases. According to Article 27 of the CPC, corporate disputes are disputes, which involve a commercial organization, an association (union) of commercial organizations, an association (union) of commercial organizations and/or private entrepreneurs, a non-profit organization, which is defined as a self-governed organization by the laws of the Republic of Kazakhstan, and/or its shareholders (participants, members) including former ones. Corporate disputes may pertain to a wide range of matters, including the creation, reorganization, and liquidation of a juridical person; ownership of shares in joint stock companies; shares in the charter capital of economic partnerships. Besides, these are the issues connected with demands for compensation for losses inflicted on a juridical person by actions (or omissions) of officials, founders, shareholders, participants, and other persons; recognition of transactions as invalid and/or the application of consequences of invalidity of such transactions and other (Adilet, 2015).

Despite the codification of relevant criteria in legislation, there still exist areas of ambiguity regarding the classification of specific claims regarding corporate disputes. From the perspective of a literal interpretation of Article 27 of the CPC, it is unclear whether individuals who intended to become shareholders in a company but failed to complete the process by entering into a cooperation or intent agreement without signing the constituent agreement and registering the entity can be considered parties to a corporate dispute. Another example concerns whether corporate disputes involve the violation of spousal interests in transactions involving shares in property or businesses. In such cases, the parties of the dispute

may fail to meet the requirements for the participants of corporate disputes, as outlined in Article 27 of the CPC.

4.2. Some aspects of the formalization of the concept of a corporate dispute in the law of the United Kingdom

Historically, corporate relations in the modern world are based on British (English) law — the law of the UK, which dates back to the late Middle Ages. Having gone through a long evolutionary path, it set the standard for legal regulation in most modern countries. Today, English corporate law is considered one of the most developed and is used in international transactions. At the same time, it is worth noting that in England, the term 'corporate dispute' does not have a universally accepted definition enshrined in a single regulatory document. Rather, the interpretation of this concept is shaped through a diverse range of legal statutes, case law, and corporate legal practices. Below is an exemplification of some of them:

1. The Companies Act, which is the fundamental law governing the operations of businesses (juridical persons) within the UK, applies throughout the entire country. The Act establishes general guidelines for corporate governance, delineating the rights and responsibilities of directors, shareholders, and other stakeholders. Within the confines of this statute, corporate conflicts may arise, including disputes between shareholders and board members, conflicts regarding the duties and rights of directors, and similar situations. This legal document categorizes companies into different types, such as companies with limited and unlimited liability, private companies, public companies, and community interest companies. In accordance with Section 7 of the Companies Act, a company is formed under this Act by one or more persons — subscribing their names to a memorandum of association, and complying with the requirements of this Act as to registration. A company may not be so formed for an unlawful purpose (Companies Act 2006, 2006).

2. Case law holds significant importance in the Anglo-Saxon legal tradition. The interpretation and resolution of corporate disputes in English law are heavily influenced by the decisions rendered by courts that have previously adjudicated similar cases. The process of identifying relevant cases for corporate disputes can be facilitated through electronic platforms, such as the British and Irish Legal Information Institute (BAILII) (n.d.). This platform provides a means to find a specific case by filtering the available data by the nature of the case, certain words, and the date when the case was reviewed. Furthermore, BAILII offers an advanced interface for filtering cases based on their jurisdiction. Table 1 presents an overview of the judicial systems in the constituent countries of the UK: England and Wales, Scotland, and Northern Ireland.

Table 1. Judicial systems in the constituent countries

United Kingdom	*England and Wales*	*Scotland*	*Northern Ireland*
Courts: House of Lords, Supreme Court, Privy Council	**Courts:** House of Lords, Supreme Court, Privy Council, Court of Appeal (Civil Division), Court of Appeal (Criminal Division)	**Courts**: House of Lords, Supreme Court, Privy Council, Scottish Court of Session, Scottish High Court of Justiciary, Scottish Sheriff Court, Scottish Information Commissioner, Scottish Sheriff Appeal Court (Criminal Division), Scottish Sheriff Appeal Court (Civil Division)	**Courts**: House of Lords, Supreme Court, Privy Council, Court of Appeal in Northern Ireland, High Court of Northern Ireland
Tribunals: Asylum and Immigration Tribunal, Immigration and Asylum (AIT/IAC) Unreported Judgments, Upper Tribunal (Administrative Appeals Chamber), Upper Tribunal (Tax and Chancery Chamber), Upper Tribunal (Immigration and Asylum Chamber), Upper Tribunal (Lands Chamber), First Tier Tribunal (General Regulatory Chamber), First Tier Tribunal (Tax Chamber), First Tier Tribunal (Property Chamber), Competition Appeals Tribunal, Employment Appeal Tribunal, Employment Tribunal, Financial Services and Markets Tribunals, Information Tribunal including the National Security Appeals Panel, Nominet UK Dispute Resolution Service	**High court**: Administrative Court, Admiralty Division, Chancery Division, Commercial Court, Exchequer Court, Family Division, King's Bench Division, Mercantile Court, Patents Court, Queen's Bench Division, Senior Court Costs Office, Technology and Construction Court		**Tribunals**: UK Tribunals, Fair Employment Tribunal Northern Ireland, Industrial Tribunals Northern Ireland, Northern Ireland - Social Security and Child Support Commissioners

3. Arbitration and mediation, alternative methods of settling corporate disputes outside of court, are also prevalent in England. These mechanisms are governed by relevant legislation, such as the Arbitration Act of 1996. The general principles of the Arbitration Act are as follows:

"*The provisions of this Part are founded on the following principles, and shall be construed accordingly:*

(a) The object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;

(b) The parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;

(c) *In matters governed by this Part, the court should not intervene except as provided by this Part*" (Arbitration Act 1996, 1996, Part 1, Section 1). A corporate dispute in the UK is understood as a conflict or divergence of opinion that arises both within a company and between different corporate entities, encompassing controversies between founders, shareholders, board members, companies, and other stakeholders. The precise meaning of this term may fluctuate depending on the particular context and legal precedents in case law.

4.3. The resolution of the corporate disputes in the Republic of Kazakhstan and the jurisdiction of the court of the Astana International Financial Centre

In the context of the above issues, it should be noted that the influence of British (English) law on corporate regulation in Kazakhstan is increasingly

noticeable, especially in recent years. Kazakhstan actively attracts foreign investment, and British law has traditionally been the standard for international investors. English law is often used in contracts with foreign companies, as it is more predictable and developed in the area of investor protection. The issue of territorial jurisdiction of corporate disputes is also related to this factor. As a general rule, issues of resolving the jurisdiction of such disputes remain the prerogative of the national legislation of the Republic of Kazakhstan. According to Part 1 of Article 27 of the CPC, corporate disputes in the Republic of Kazakhstan are adjudicated by specialized interdistrict economic courts[2]. Such courts are situated in the regional capital of each territorial unit (oblast), of which there are 17, as well as in Astana, Almaty, and Shymkent. The process of applying to a specialized interdistrict economic court in the context of corporate dispute resolution is conducted both through traditional means of paper-based documentation and through electronic document management systems. Among corporate legal professionals, the latter approach is more prevalent, as electronic court proceedings offer significant time savings for the parties involved. Following the COVID-19 pandemic, online resolution of corporate disputes has become particularly widespread.

Simultaneously, the judicial proceedings in the Republic of Kazakhstan are conducted by a court that operates based on common law, characteristic of the Anglo-Saxon legal system. This court is the AIFC court. The official website of the AIFC court (https://court.aifc.kz/) states that the court was initiated not only by Kazakhstan, but also by the entire Eurasian region. The AIFC court does not form part of the judicial system in Kazakhstan which is directly stated in the Constitutional Law of the Republic of Kazakhstan dated December 25, 2000 No. 132 "On the judicial system and the status of judges of the Republic of Kazakhstan" (Article 3: "The court of the Astana International Financial Center, which is not part of the judicial system of the Republic of Kazakhstan, has a special status"). The institutional basis of the AIFC court is built on the procedural principles and norms of England and Wales (AIFC, 2024) and the standards of the world's leading financial centers. The effective operation of the court is entrusted, in particular, to its personnel, relying on the experience and professionalism of its judges (Veresha, 2016).

The AIFC court, for the first time in the Central Asia region, has introduced a legal system based on the principles of common law, rather than the continental legal system. This court operates in accordance with the highest international standards in resolving commercial disputes within the AIFC framework. As a result, this court's jurisdiction is limited, and it is not empowered to adjudicate all commercial disputes. The court's authority is confined to exclusively considering disputes arising from the operations of the AIFC and corporate disputes where both parties have voluntarily submitted their case to its jurisdiction.

The judiciary of the Republic of Kazakhstan encompasses civil, criminal, administrative, juvenile, and military matters, all operating under a unified judicial framework, Court Office (https://office.sud.kz/). In turn, the AIFC court stands out with its eJustice system, enabling parties to initiate legal proceedings electronically from any corner of the globe, eliminating the need for physical presence within the court premises. In instances where personal attendance is deemed unnecessary or impractical by the judge, video sessions are conducted. The court's efficient case management system ensures swift and cost-effective resolution, ensuring that cases are handled with the utmost expediency and precision. The decisions rendered by the court are backed by a robust enforcement mechanism within the territory of Kazakhstan, guaranteeing their implementation. The AIFC court has gained recognition among global investors as the court of choice for resolving international commercial disputes in the Eurasian region. In competition with some of the most prestigious courts worldwide, this institution has been designated as the primary forum for settling legal matters in over 10,000 commercial agreements.

Based on an analysis of the jurisprudence of the AIFC court, it is worth noting a number of typical cases resolved by this body in the field of corporate disputes. The official website of the court provides access to cases dating back to 2019, and the present study encompasses almost all decisions rendered by this court. One such decision is the ruling of the First Instance Court of the AIFC in a corporate dispute case, which was heard on January 15, 2024, case number AIFC-C/CFI/2023/0029. In this particular case, General Contractors Group Ltd. filed a claim against BI Construction & Engineering LLP seeking authorization for a restructuring of the companies, including the integration of the LLP into the claimant's structure. Judge Andrew Spink KC granted the claim, sanctioning the reorganization based on Articles 124 and 126 of the 2017 AIFC Regulations on Companies. The judge determined that the shareholders of both entities had consented to the restructuring, and no opposition was raised by any third parties. Furthermore, all necessary legal and procedural prerequisites were fulfilled, including notifying the creditors of both companies. Consequently, the court has ruled in favor of the incorporation of BI Construction & Engineering LLP into General Contractors Group Ltd. pursuant to an agreement dated July 28, 2023[3].

Furthermore, this investigation examined the case at the appellate stage as part of reviewing the decision of the First Instance Court regarding a corporate dispute, namely, the decision of the AIFC Appellate Court issued on January 31st, 2024, in case No. AIFC-C/CA/2023/0040. The applicant was Michael Wilson & Partners Limited, which appealed against the ruling of the First Instance Court in

[2] See: Article 27 of the CPC of the Republic of Kazakhstan: "Specialized inter-district economic courts shall consider and settle civil cases concerning property and non-property disputes, in which participate physical individuals, who carry out individual entrepreneurship activity without foundation of a legal entity, participate legal entities as well as concerning corporate disputes except for cases, which fall to jurisdiction of other court according to law" (Section 1, Paragraph 1); "Specialized inter-district economic courts also consider cases about re-structuring of financial organizations and organizations, which are members of a bank conglomerate in the capacity of parent organization and which are not financial organizations in cases stipulated by the Republic of Kazakhstan laws, cases related to bankruptcy of individual entrepreneurs and legal entities and rehabilitation of legal entities" (Section 1, Paragraph 1, p. 1).

[3] Case No.: AIFC-C/CFI/2023/0029. General Contractors Group Ltd. vs. Bi Construction & Engineering LLP (https://court.aifc.kz/judgments/case-no-29-of-2023/).

the matter of recognition and execution of decisions of the English High Court and the Dutch Court against the defendants, CJSC Kazsubton, Kazphosphate LLP, and Kazphosphate Limited. Having considered the case, the Appellate Court granted the request to extend the appeal period but denied permission to appeal and suspended the proceedings. The court rejected the main arguments put forward by the applicant, finding no grounds to review the decision of the First Instance Court on jurisdiction or on reimbursement of expenses. Judge Stephen Richards rendered a decision that the appeal lacked any reasonable prospect of success, and there were no further grounds for its consideration. Consequently, the appeal was dismissed, albeit with a partial satisfaction in the form of an extension of the timeframe for filing a new appeal[4].

The analysis of judicial decisions on corporate disputes within this court's jurisdiction revealed that the implementation of the Anglo-Saxon legal system is, to a certain extent, advantageous for the parties involved in dispute resolution. This is particularly beneficial for foreign-invested companies. Although, based on the above cases, it is difficult to reliably determine the motives of the parties to use this particular arbitration instrument, it can be assumed that they are associated with greater predictability of decisions, flexibility of law enforcement, the experience of judges, and, as a result, the high degree of business protection peculiar to common law.

It is also worth noting another arbitrary court acting in Kazakhstan — the IAC. The primary distinction between the IAC and the AIFC court lies in the provision of efficient alternative methods for resolving commercial and corporate conflicts. The parties involved may arrive at one of the following arrangements:

1. Administration of the IAC Arbitration. This process is in line with the IAC's Arbitration and Mediation Rules dated 2022. These rules encompass an expedited procedure for implementation, the appointment of emergency arbitrators, and the resolution of disputes arising from investment contracts. According to Paragraph 2.1 of Article 2 of the Arbitration Rules, the primary objective of the Rules is to ensure a just settlement of disputes through an impartial arbitration court, avoiding unnecessary delays and expenses. Article 18 further elucidates the applicable law in such cases, stating: "18.1 The Tribunal shall decide the merits of the dispute on the basis of the law in the arbitration agreement. In the absence of such agreement, the Tribunal shall apply the law that it considers most appropriate with regard to the circumstances of the case and the overriding objective. 18.2 Any designation by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, not to its conflict of laws rules" (AIFC, 2022). The purport of this provision suggests the potential for the application of any legal framework, contingent upon the mutual assent of the parties involved. This section is characterized by its adaptability and permissiveness, which in turn empower the parties to select from a range of legal systems. Simultaneously, the Arbitration Rules incorporate a mediation mechanism at the arbitration phase.

2. The administration of the arbitration process in accordance with the Arbitration Rules established by the UNCITRAL, or with special arbitration rules that have been agreed upon by the parties involved. The UNCITRAL Arbitration Rules constitute a comprehensive set of procedural regulations that can be adopted by the parties to govern their commercial and corporate relations through arbitration proceedings. This document encompasses all aspects of the arbitration process, including the standard arbitration clause, guidelines for selecting arbitrators, and procedures for conducting the arbitration proceedings. According to the information provided on the official website of UNCITRAL, there are currently four distinct versions of the Arbitration Rules. Their specific variation can be employed depending on the nature of the arbitration proceedings in order to adjudicate a broad spectrum of disputes involving investors, commercial enterprises, and even states (United Nations, n.d.).

The IAC and the AIFC court both employ an eJustice system. This system enables parties to file lawsuits remotely online from any location worldwide, eliminating the need for physical presence in the courtroom. Meetings are conducted via video conferencing, unless the arbitrator or mediator deems it necessary or practicable for the parties to attend in person.

The awards issued by the IAC and the judgments of the AIFC court are legally binding in the Republic of Kazakhstan. The relevant executive bodies are responsible for taking all necessary measures to enforce these decisions within their respective jurisdictions. Moreover, these judgments are subject to international recognition and enforcement in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Pursuant to Paragraph 1 of Article 2 of the Convention, each Contracting State recognizes a written agreement between parties that obligates them to submit all disputes arising or potentially arising between them in relation to a specific contractual or legal relationship to arbitration (New York Convention, 1958). The Republic of Kazakhstan acceded to this Convention in 1995 (The decree of the president of the Republic of Kazakhstan No. 2485 "On the accession of the Republic of Kazakhstan to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958", 1995).

4.4. On the issue of criticism of the applicability of Anglo-Saxon law in the Republic of Kazakhstan from the point of view of the theory of state and law

As noted earlier, the analysis of court decisions on the resolution of corporate disputes within the AIFC showed that the use of legal proceedings based on common law rather than continental law is, to some extent, convenient for the parties when resolving a dispute. This is especially welcomed among companies with a foreign element. This is not surprising in terms of the comprehensibility of such an approach for lawyers from common law

[4] Case No.: AIFC-C/CA/2023/0040. Michael Wilson & Partners Limited and (1) CJSC Kazsubton, (2) Kazphosphate LLP, (3) Kazphosphate Limited. (https://iac.aifc.kz/judgments/case-no-40-of-2023-michael-wilson-partners-limited-v-1-cjsc-kazsubton-2-kazphosphate-llp-3-kazphosphate-limited/).

countries, as well as lawyers actively representing the interests of the parties in international commercial arbitrations — they do not have to delve into the specifics of Kazakhstani civil and commercial law.

Nonetheless, there exists a sizable contingent of civil lawyers in Kazakhstan who harbor deep reservations, if not outright criticism, about the operations of the AIFC court and the IAC. The discourse on the implementation of Anglo-Saxon legal standards persists to this day. F. S. Karagusov, a pioneer in the development of modern corporate law in Kazakhstan, argues that the activities of these institutions contribute to the emergence of parallel jurisdictions within the country — a development that is deemed untenable. In his article, Karagusov (2016) states that it should be noted that the coexistence of two distinct legal systems within a single jurisdiction is not considered a normative phenomenon in accordance with universally recognized principles of contemporary international and domestic public law. Karagusov primarily expresses his skepticism and reservations regarding the implementation of British legal norms in the legal system of Kazakhstan. However, the author acknowledges that there are advantages to adopting legal institutions from other legal systems, particularly if this approach contributes to the country's prosperity, enhances the well-being of its citizens, and fosters international cooperation. Furthermore, in the context of interstate integration, such as within the framework of the Eurasian Economic Union, the unification of legal systems may even prove beneficial. On the other hand, Karagusov emphasizes that any adoption of foreign legal practices must be subjected to a comprehensive analysis, considering potential political, economic, social, and cultural implications. Accordingly, this article does not outright dismiss the idea of adoption but rather advocates for a cautious and well-balanced approach.

A similar view on the incorporation of Anglo-Saxon law into the national law of Kazakhstan was expressed by Suleimenov (2015). In this paper, the author contends that English law fundamentally clashes with the continental legal system. The article by Suleimenov delves into the intricacies of the relationship between English law and Kazakhstan's legal frameworks, with a particular focus on examining the feasibility of incorporating elements of English legal principles into Kazakh law. The article highlights instances of failed attempts to implement Anglo-Saxon legal institutions in Kazakhstan and explores the potential consequences of such modifications on the country's legal landscape. Nevertheless, the author acknowledges the potential benefits and applicability of certain aspects of English law, particularly in the realm of corporate legal relations. Among the positive aspects, Suleimenov highlights the feasibility of implementing Anglo-Saxon legal principles in domains such as contractual law and corporate governance, provided that a meticulous and tailored approach is adopted. The author posits that it is within these specific areas that valuable insights can be gained, which can prove advantageous for the development of jurisprudence in Kazakhstan. Suleimenov distinguishes several facets of implementation, suggesting ways to proceed without compromising the tenets of Kazakh law. He proposes, for instance, incorporating provisions on corporations and corporate relationships into the Civil Code, imposing personal liability on founders and executives, establishing a system of post-implementation monitoring, and abolishing mandatory membership in self-regulating organizations. In essence, the author suggests a cautious approach to incorporating English law, emphasizing the need for a comprehensive examination of each legal provision before its incorporation into the national legal framework (Suleimenov, 2015).

In general, the rapprochement of Kazakh law with Anglo-Saxon law within the framework of legal convergence gives rise to a number of problems caused by differences in structure, principles, and law enforcement practice. First of all, it is necessary to note the conceptual differences between legal systems concerning the sources of law and the role of the court in lawmaking. In the Romano-Germanic system, on which the law of Kazakhstan is based, the main sources of law are the legal regulations (codes, regulations, or literally — law). In the Anglo-Saxon system, the basis is judicial precedents, which are formed in the course of judicial practice. Kazakhstani judges do not have broad freedom in creating legal norms, unlike judges in the common law system. In continental law, judges mainly apply the law, rather than create it. In common law, on the contrary, judges develop the law through precedents, which can cause a conflict with traditional Kazakh judicial practice (Krausenboeck, 2017). Based on the general analysis of the state of law-making practice in the Republic of Kazakhstan, it can be noted that at this stage, the judicial system is not quite ready to perceive precedent as a source of law. In Kazakhstan, the judicial system is focused on working with laws, bylaws, and instructions, and not with flexible legal doctrines. This is due to the history and evolution of the judicial power in the Republic of Kazakhstan, the model of which was implemented from the law of the USSR, based on the principles of legal positivism (Antonov, 2021; Bakirova, 2022). In this context, the introduction of judicial precedents into the judicial system of the Republic of Kazakhstan may lead to legal uncertainty, since there is no stable methodology for their application.

Another issue that is less frequently addressed in Kazakhstani sources is the difficulty of adapting corporate and investment law. For example, trusts adopted in English law have no analogues in the traditional Kazakh system, which requires serious changes in legislation. The application of English law in the AIFC creates a duality of the legal system, since the AIFC operates under common law, and the rest of the country operates under continental law.

The issue of legal culture and legal consciousness is closely related to the above-mentioned aspects: Kazakhstan has a tradition of written law and normativism, while in the Anglo-Saxon system, law is flexible and develops through practice. Within the framework of the current legal system, businesses, government institutions, and citizens are accustomed to relying on laws and instructions, rather than precedent decisions. And if the issue of revising the current foundations of continental law in favor of precedent is raised in Kazakhstan, it is quite obvious that the 'unpredictability' of court decisions within the framework of common law may cause mistrust of such reforms. This point of view is widely shared by Kazakhstani legal experts. From an applied point

of view, one of the most difficult problems remains the problem of harmonization of legislation. It should be understood that attempts to introduce elements of common law will inevitably cause conflicts with existing norms and legal acts, not to mention the fact that Kazakhstani theorists and rule-makers will have to reconsider the very concept of 'legal norm', 'source of law', and other basic concepts.

However, as one can understand, the problems are not limited to this, since the issue of revising the methodologies of legal education and training of personnel will inevitably arise. In the current conditions, Kazakhstani lawyers and judges are trained and practice within the framework of the continental system paradigm, and the principles of Anglo-Saxon law require a different methodology of analysis, logic, and work with legal norms. Thus, it will be necessary to change educational standards in order to prepare specialists capable of working in the conditions of legal convergence.

Against this background, it should be noted that, although the process of convergence of Kazakhstani law with the common law is inevitable, especially in the field of international investment and corporate law, when trying to accelerate this process, it will encounter systemic barriers. This, as one can understand, is the need to adapt judicial practice, changes in legal education, harmonization of legislation, and, ultimately, a change in legal culture. Without taking these factors into account, convergence may not lead to an improvement in the legal system, but to legal uncertainty and conflicts of norms.

4.5. Experience of implementing the norms and practices of common law in countries of continental and mixed law

4.5.1. Implementation of common law elements in countries with mixed legal systems (based on the case of the Dubai International Financial Centre court)

When discussing which countries outside the Anglo-Saxon legal system have incorporated English law into their legal frameworks, it is crucial to examine the case of the UAE. The UAE provides parties to commercial disputes with a choice between two distinct court systems operating under different legal regimes: onshore courts and offshore courts.

Onshore courts are part of the domestic legal system, while offshore courts are governed by the common law framework. Both types of courts offer parties different types of procedures and processes. Until recently, proceedings were conducted exclusively in Arabic. Now, English serves as an additional language. Onshore courts in each emirate are bound by both federal and local legislation, which may differ from one emirate to another. In contrast, offshore courts operate under the common law and are independent from the local judiciary. The latter category includes the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), both of which are governed by legislation based on English and Welsh law.

To date, the UAE has successfully established a free economic zone with its own jurisdiction, the DIFC, which is among the top 10 financial centers globally, according to the GFCI. The DIFC includes 17 out of the top 20 banks worldwide, more than 200 asset management and consulting companies, and approximately 60 major funds. The DIFC court, the only English-speaking common law court in the region, is situated within the DIFC territory. The court provides a unique and independent legal framework, offering a favorable environment for investors and contributing to the economic growth of the UAE. Therefore, the DIFC has been exempted from the jurisdiction of the Emirate of Dubai and the UAE as a whole. The DIFC courts are independent from the UAE courts and have jurisdiction over civil and commercial disputes that arise under the DIFC regulations. This has made it possible to establish an autonomous and Sharia-independent legal jurisdiction of the DIFC within the federal state. In general, the DIFC operates under its own legal and regulatory system, based on common law principles, which gives it a unique position in the region. The laws and regulations that govern the activities of the DIFC are established by the DIFC authority, which is the governing body for the financial free zone. This allows companies to conduct their operations in accordance with international standards and best practices, while adhering to the regulations of the DIFC and the UAE.

This investigation includes the analysis of the data on the operations of the DIFC court, which is available on its official website. The first-instance DIFC court comprises two autonomous bodies: the Small Claims Tribunal and the Court of First Instance. The Small Claims Tribunal, established in 2007, is characterized by a specific limitation on the value of claims, which must not exceed 500,000 UAE dirhams. The Court of First Instance comprises four divisions: Civil and Commercial Division, Technology and Construction Division, Arbitration Division, and Digital Economy Court Division. Alongside the Court of First Instance, there exists the Court of Appeal that exclusively reviews decisions and judgments rendered by the former. However, it was impossible to access specific cases on the official website of the DIFC court, as the system requires authentication through a personal account as either a lawyer or party to the case (DIFC Courts, n.d.).

In 2020, the DIFC court established the Arbitration Division, entrusted with the responsibility of adjudicating an ever-increasing number of arbitration cases. Due to its extensive national, regional, and global expansion, the DIFC courts have equipped their specialized Arbitration Division with the capacity to leverage their existing expertise in legal enforcement, thereby facilitating the recognition and implementation of arbitral judgments. To further support the operations of the Arbitration Division, the DIFC courts also launched an Arbitration Working Group in the same year.

However, the functioning of the DIFC faces certain challenges, including jurisdictional conflicts with local UAE courts, caused, as in Kazakhstan, by the duality of the judicial system in matters of corporate disputes (Piermattei, 2024). There are two parallel judicial systems in the UAE — the civil system (based on Sharia and civil law), the regular UAE courts, and the Anglo-Saxon system — the DIFC court. This gives rise to jurisdictional conflicts, especially when determining which court should hear a particular case. In addition, local Dubai courts do not always recognise DIFC decisions. A review of studies suggests that sometimes situations arise where both judicial systems hear the same case but

arrive at different decisions. For example, the DIFC may recognise an international arbitration award, but the Dubai Courts may overturn it on Sharia grounds (Mahmood & Carmona, 2017). There remains a problem with disputes over the enforcement of decisions, as DIFC decisions are to be enforced through the Dubai courts. However, as practice shows, Dubai courts sometimes refuse to enforce DIFC decisions if they contradict Islamic legal principles or local legislation. This creates legal uncertainty for businesses that rely on the predictability of DIFC court decisions. The problems include the high cost of litigation, limited access for local companies, and limited recognition of DIFC decisions in other emirates. The DIFC court was originally created for international corporations, not local businesses. Local companies in Dubai and the UAE rarely turn to the DIFC, preferring the traditional UAE courts, where litigation is easier, and costs are lower (Al-Tawil et al., 2018). Despite these challenges, DIFC continues to develop as an international dispute resolution centre, but its effectiveness depends on further convergence with the UAE judicial system.

4.5.2. Implementation of common law elements in civil law countries

Within the framework of the subject of this study, it is important to refer to the experience of other jurisdictions. Several European continental-law countries have incorporated some elements of the Anglo-Saxon legal system into their corporate regulations. The corporate law of the Netherlands is a comprehensive body of statutes, primarily codified in Book 2 of the Civil Code of the Netherlands. These regulations govern the operations of juridical persons. Juridical persons in the Netherlands can be categorized into two types: *naamloze vennootschap* (N.V.), which are public limited companies, and *besloten vennootschap* (B.V.), which are private limited companies. N.V. companies allow their shares to be freely traded on securities markets. B.V. companies operate as closed joint stock corporations, with shares typically restricted to a limited circle of shareholders. Both types of companies are governed by the corporate law of the Netherlands and have substantial differences in terms of governance. Schuit (2002) explores how the regulations and directives issued by the European Community can lead to the development of a unified legal framework across all member states. This process can be seen as analogous to the efforts at harmonization in the Anglo-Saxon legal systems (Groton & Haapio, 2007; Schuit, 2002). A form of legal unification within the EU occurs when national laws are aligned through directives and treaties, resulting in a shared legal foundation. This concept bears some resemblance to certain aspects of the common law system.

The legal framework of the Kingdom of the Netherlands has successfully integrated the norms of common law into its national legal system, preserving them while also incorporating the transnational ius positivum, the Law Merchant, and public and private international law. The influence of common law manifests itself through the prominent role of constitutional conventions and judicial precedents in shaping Dutch law, as well as through the use of relatively straightforward legal techniques. One example of this interaction between the legal traditions of common law and continental law is the Civil Code of 1992 (Schreurs, 2024).

With regard to corporate disputes in the Netherlands, the Dutch parliament has recently introduced sweeping changes to the framework governing the resolution of corporate disputes between shareholders in this jurisdiction. The current system in place in the Netherlands is flawed and underutilized by the parties involved. Shareholder disputes are predominantly resolved through expensive circumventive measures, such as the so-called request procedure to the Enterprise Chamber. Under the newly introduced system for resolving corporate disputes, the Enterprise Chamber becomes the sole competent court for adjudicating disputes between shareholders. The relevant criteria are currently undergoing refinement and expansion. The process of settling corporate disputes is anticipated to be less formal, allowing the Enterprise Chamber to resolve relevant disputes. Consequently, the objective of this new system is to expedite the settlement of all claims and conflicts among parties (Maak, n.d.). Thus, the Anglo-Saxon legal system impacts the corporate law of the Netherlands, particularly in terms of resolving corporate conflicts. In the Netherlands, corporations, particularly those listed on global exchanges, frequently incorporate Anglo-Saxon principles, such as the establishment of review boards, a division of responsibilities and authorities between the chairman of the board and the chief executive officer, as well as aspects of the Anglo-Saxon approach to safeguarding shareholders' rights.

On January 1st, 2023, Switzerland implemented amendments to its corporate law, granting Swiss companies the authority to incorporate a legally binding arbitration clause into their articles of incorporation for resolving corporate disputes. Such clauses shall be binding on the company's general assembly, board of directors, and auditors, unless otherwise specified in the contract. In such instances, corporate disputes shall be exclusively resolved through arbitration, leaving the matter within the private domain. This development was preceded by the publication of a model statutory arbitration clause and additional regulations for corporate law disputes by the Swiss Arbitration Centre in 2022 (Raess, 2024). The term 'corporate dispute' is defined in this context within Swiss legal frameworks. According to Article 697n of the Swiss Code of Obligations, corporate disputes are all matters related to the existence of the company, encompassing a broader scope of legal actions governed by corporate law. Illustrative examples of corporate disputes include:

– Claims against members of the governing bodies (Art. 752 et seq. of the Swiss Code of Obligations);

– Disputes over the return of illegally obtained benefits (Art. 678 of the Swiss Code of Obligations);

– Challenging the decision of the general meeting of shareholders (Art. 706 et seq.).

The above disputes concern legal proceedings related to corporations, governance, and obligations within a company (Spoorenberg & Catzeflis, 2023). In particular, Swiss multinational corporations are adopting practices aimed at enhancing transparency and accountability to their shareholders, a trend that is characteristic of Anglo-Saxon jurisdictions. According to a survey conducted by QMUL, Switzerland stands out as a highly preferred

destination for arbitration proceedings. This appeal stems from a combination of factors, including its reputation for political neutrality, a well-developed legal framework, and the presence of highly qualified arbitration professionals (Smutny & Gallagher, 2018).

Germany places a particular emphasis on the prompt and equitable resolution of corporate conflicts. The legal framework governing corporate disputes in Germany encompasses regulations such as *Aktiengesetz* (Law on Joint Stock Companies), *GmbH-Gesetz* (Law on Limited Liability Companies), and *Handelsgesetzbuch* (Commercial Code). These statutes establish corporate governance protocols and safeguard the rights of shareholders and other stakeholders within corporate entities. Corporate disputes are typically addressed through legal proceedings. Nonetheless, ADR mechanisms such as mediation and arbitration are also widely employed in Germany, providing companies with avenues to bypass protracted and expensive litigation processes. In Germany, there are several major categories of corporate conflicts:

– Conflicts between shareholders, such as disagreements over the distribution of dividends, voting rights, or challenges to shareholder resolutions;

– Disputes among directors or company managers regarding the strategic direction of the business.

– Disagreements related to mergers and acquisitions, where parties may contest the terms of a transaction or breach its conditions (Bekmirzaeva, 2023).

At the same time, German corporate law distinguishes between such definitions as 'corporate dispute' and 'corporate conflict'. According to John Burton, a dispute is a short-term disagreement that can lead to the disputing parties coming to some kind of mutual solution. Conflict, on the contrary, is a long-term phenomenon and has deep-rooted problems that are considered 'non-negotiable' (Shonholtz, 2003).

Despite Germany's adherence to the civil legal traditions inherent in the continental legal system, certain aspects of its corporate law can be traced back to the Anglo-Saxon legal framework. One notable example is the introduction of two-tier board structures in companies during the 1990s. The primary source of information regarding the implementation of a two-tier governance system in Germany is the German corporate legal framework, specifically *Aktiengesetz*, which governs the administrative structure of companies. This law precisely formalized the two-tier system, comprising *Aufsichtsrat* (Supervisory Board) and *Vorstand* (Management Board), regulating the operations of joint-stock companies in Germany (Norton Rose Fulbright, 2016). This governance structure has gained prominence in German enterprises and bolstered the corporate governance framework.

In France, the merchant (commercial) code, known as the Code de Commerce de France, governs corporate relations and the process of resolving corporate disputes. This code often mandates a compulsory procedure for exploring the possibility of conciliation between the parties involved. For example, according to Article L. 145-35 (Section 6 governing rental issues), disputes arising in the context of the implementation of Article L. 145-34 are adjudicated by a departmental conciliation committee, which comprises an equal number of representatives from both lessors and lessees, along with a panel of experts in the field. The panel should endeavor to reconcile the parties and render a judgment. Article L. 145-34 governs the grounds for corporate disputes between commercial tenants (World Intellectual Property Organization [WIPO], 2025). The corporate law reform in France is part of a broader effort to establish new economic and legal frameworks, with the government effectively serving as a guardian of this sector in pursuit of the nation's economic well-being. France has also incorporated elements of the Anglo-Saxon legal system into its corporate regulations, particularly in terms of capital market regulation and corporate governance. This entails the practice of independent audits and transparency measures that are characteristic of Anglo-Saxon jurisdictions. The Code de Commerce de France employs the term 'audit' more than four hundred times. The above review makes it possible to categorize the fundamental regulatory mechanisms governing corporate disputes by country in Table 2.

Table 2. Key regulatory mechanisms governing corporate disputes

Country	*Legal system*	*Legislation governing corporate disputes*	*Implementation elements*
The UAE	Islamic legal system. The main source of legislation is Sharia	1. Federal Decree-Law No. 32 of 2021 on Commercial Companies 2. Competition Law 3. Law on the Rules and Certificates of Origin 4. Arbitration Law	Arbitration, mediation, negotiations, legal proceedings, and the DIFC independent court
The Netherlands	Continental	1. The Dutch Code of Civil Procedure 2. Law on arbitration: *Arbitragewet*	Arbitration, eCourt (online arbitration)
Switzerland	Continental	1. The Swiss Civil Code 2. The Swiss Code of Obligations 3. Swiss Private International Law Act (PILA) 4. Swiss Rules of Arbitration 5. Supplemental Swiss Rules for Corporate Law Disputes 6. Swiss Rules for Commercial Mediation	Arbitration
Germany	Continental	1. The CPC of Germany *2. Aktiengesetz* *3. Handelsgesetzbuch* 4. Commercial Arbitration Law 5. Model Law on Arbitration	Arbitration
France	Continental	1. The Civil Code of France 2. Code de Commerce de France 3. Rules for Mediation	Arbitration, mediation
Kazakhstan	Continental	1. The Civil Code of Kazakhstan 2. The CPC of Kazakhstan 3. The Commercial Code of Kazakhstan	Arbitration, mediation

4.6. Deliberations on the compatibility of foreign legal practices with Kazakhstan's legislation

The examples of the above-mentioned countries serve as a strong argument in favor of explaining why the common law is widely used for dispute resolution, especially in the field of corporate disputes, international business, and investment. This is due to a number of factors based on legal theory and practice. The factors that make Anglo-Saxon law effective for dispute resolution are flexibility and adaptability, independence and competence of the courts, which guarantee a high degree of protection of property rights and investments. In the works of modern legal theorists related to continental law countries, one can note a tendency indicating increasing support for judicial precedent as a source of law. Herewith, such views are noted in the works of scholars from different regions of the world (da Silva & Sales, 2022; Koval et al., 2024; Lewis, 2021; Mialovytska & Zlatina, 2021). The main arguments put forward are that the precedent system allows judges to make fairer decisions, tailored to the specific circumstances of the case (Perry, 2023; Valvoda et al., 2021).

Judges in common law countries are not limited by the narrow framework of codes and can develop the law based on practice, which makes the system more dynamic. The fundamental principle of common law is precedent (stare decisis), meaning that courts are obliged to follow previously issued decisions on similar cases. This provides predictability and stability to judicial practice, since the parties to a dispute can analyze past decisions in advance and predict the possible outcome of the case. Unlike the Romano-Germanic system, where legislation often changes and is subject to interpretation, precedents form a stable judicial doctrine.

The issue of professional training and the competence of the judiciary cannot be overlooked. In countries with Anglo-Saxon law, judges have a high degree of independence. Judges are strictly selected for appointment and cannot be easily replaced, which eliminates the influence of politics and corruption (Touchton & Tyburski, 2022). In addition, judges tend to have specialization in certain areas of law (such as corporate or maritime law), which makes their decisions more professional.

In developing the discussion about the advantages and disadvantages of case law in corporate legal relations, it is important to take into account the arguments about the emphasis on the adversarial nature of the process, which some scholars rightly point out as an advantage. In the Anglo-Saxon system, the principle of the adversarial system (adversarial process) applies when the court does not simply apply the law, but considers the arguments of the parties, which gives more opportunities to protect their interests (Guerra et al., 2022; Striletska & Habrelian, 2024). Unlike the inquisitorial process (peculiar to the Romano-Germanic system), the judge is not an active investigator but only evaluates the evidence and arguments presented. However, for objective reasons, this approach has not only supporters, but also opponents who argue that judges should nevertheless play a more significant role in the study of documentary and material evidence within their competence.

Other arguments in support of common law include a clearer distinction between the judiciary and the legislature in common law countries. In common law countries, the courts are independent of the executive, which minimizes the risk of political pressure on judicial decisions. Unlike some continental law countries, where the courts are often de facto subordinate to administrative structures, in the Anglo-Saxon system, the judiciary is completely independent (Ivaniv, 2024).

As a result of all the above, the image of the common law system, formed over many years, is that of a system that guarantees a high degree of protection of property rights and investments. Therefore, English law is actively used in international commercial contracts, as it better protects the rights of investors. Companies and entrepreneurs often prefer to resolve disputes in London or New York because the courts in these jurisdictions guarantee a fair trial. The decisions of English courts are widely recognized in other countries, which facilitates their execution (Bouwers, 2023).

When considering the advantages of case law from the point of view of legal theories, it is necessary to primarily turn to the theory of legal realism, the theory of justice and equity, and the theory of legal evolution by F. A. Hayek (Holmes, 2009). According to the theory of legal realism (developed in the United States and the UK), law is not only a set of formal norms, but also a tool for achieving justice in specific cases. Within the framework of this theory, judges in the common law system are guided not so much by formal norms as by precedents and common sense in order to make a fair decision (Angelosanto, 2023). Looking at the issue from the point of view of the second theory mentioned, it should be noted that English law includes a system of equity, which allows judges to take into account the moral and ethical aspects of the case (Germain, 2023). Unlike the strictly formalized continental law, equity allows for more room for an individual approach to disputes.

When speaking about the third theory, it is necessary to turn to the thought of the Austrian economist and legal scholar F. A. Hayek, who argued that common law develops in an evolutionary way, based on judicial practice, and not through centralized legislation. This makes it more adaptive to changes in society and reduces the risk of imposing erroneous norms from above (Hamowy, 2003). Thus, among the main arguments in support of case law in corporate legal relations are flexibility and adaptability, stability and predictability of court decisions, and the independence of the courts, guaranteeing a fair trial. The above factors make English law widely applicable in international transactions and investment disputes. For these reasons, the Anglo-Saxon system is traditionally considered one of the most advanced for resolving complex disputes, especially in the field of business, investment, and international law.

These and other elements of common law pertaining to the regulation of corporate conflicts are, to a varying degree, reflected in the legal systems of countries with a continental legal tradition, often seamlessly integrated into codified legislation. However, this integration remains a challenge for Kazakhstan. At present, there is

a lack of clarity regarding the essence of corporate relationships that are subject to legal regulation within Kazakhstan's legal community, academic circles, business environment, and legislative bodies. Moreover, there is no universally accepted definition or content for the concept of corporate law as a distinct branch of law. This ambiguity contributes to the current imperfections in the corporate legislation of Kazakhstan, creating significant obstacles to its enhancement and modernization.

In the context of deliberations on these matters, a number of Kazakh scholars rightly highlight the endeavors to implement mechanisms for the introduction of a corporate governance code (Baibosynova et al., 2022; Jangarashev, 2022). The Corporate Governance Code of the Republic of Kazakhstan was developed in strict accordance with the national laws, taking into consideration the G20/Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance as well as Kazakh and global corporate governance practices. The primary objective of this Code is to serve as a valuable tool for enhancing corporate governance within Kazakhstan's business entities, fostering the long-term sustainability of national businesses, the national economy, and society as a whole. The Code aims to ensure transparency in governance by establishing mechanisms for interaction between the management of the company, its board of directors, shareholders, and other stakeholders, as outlined in the Code. The Code, which was endorsed by the decision of the Presidium of the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken" in 2021, does not contain provisions for resolving corporate disputes.

The Corporate Governance Code serves as the national standard for corporate governance in Kazakhstan, applicable to all companies (organizations) operating in the form of joint-stock companies and limited liability partnerships. The Code permits accession thereto by resolution of a general meeting of the shareholders/members of a company. In this instance, the Code becomes legally binding upon the company that adheres to it, save for instances where it is not feasible to comply with specific provisions. Under such circumstances, the company is obliged to provide a formal explanation of the reasons to its shareholders, stakeholders, and other relevant parties (The Corporate Governance Code of the Republic of Kazakhstan, 2021). In simple terms, this code is binding only for those entities that have voluntarily chosen to be bound by it. Consequently, the standards enshrined therein are not binding on companies in Kazakhstan.

To conclude, it is worth noting that Kazakhstan has made repeated attempts to incorporate the principles of the Anglo-Saxon legal system into its legal framework, including with regard to corporate litigation. The question of whether these efforts can be deemed successful remains unanswered. Civil law scholars continue to debate the process of integrating one legal system into another.

In earlier works, efforts to incorporate elements of Anglo-Saxon legal systems into the legal frameworks of post-Soviet nations were often met with profound skepticism and resistance, often being perceived as 'disconnected from reality' (Varga, 2010). However, over time, a degree of this skepticism has diminished. According to some Kazakh legal experts, there are certain aspects of common law that can be implemented without compromising the fundamental principles of the nation's legal system. These include, but are not limited to, the dissolution of state-owned enterprises, the incorporation of corporate law norms into the Civil Code, and the introduction of provisions on personal liability for debts incurred by the founders and directors of companies (Suleimenov, 2015).

Simultaneously, addressing the question of why the elements of common law pertaining to corporate disputes have not been codified in Kazakhstan, several arguments can be put forth. Firstly, Kazakhstan has historically been aligned with the Romano-Germanic legal system, characterized by detailed statutes and regulations, with judges serving as enforcers of the law rather than its interpreters, akin to common law jurisdictions. Transitioning to a system in which judicial decisions set precedents necessitates a radical shift in legal mindset and practice. Secondly, the principles of common law encompass flexibility, contractual freedom, and the significance of judicial precedent. In the context of the Republic of Kazakhstan, where the judiciary is still evolving within the confines of market-oriented principles, implementing these principles requires robust institutional support to mitigate the risks associated with instability and potential abuse. Thirdly, certain aspects or components of common law frequently collide with the pre-existing legal framework of the country. Therefore, there is a need to amend numerous regulations and standards. Furthermore, the sustainable integration of common law principles demands experts who are well-versed in the Anglo-Saxon system. The shortage of such professionals in Kazakhstan necessitates extensive training for judges, attorneys, and legal practitioners to adapt to the new system, which entails substantial time and resources. Consequently, elements of common law continue to be a niche phenomenon primarily confined to the AIFC and have not yet permeated the broader legal system of Kazakhstan.

At the same time, the political vector of Kazakhstan in terms of expanding the country's investment attractiveness and adapting some regulatory mechanisms to the needs of international trade cooperation indicates that, in recent years, Kazakhstan has sought to increasingly integrate into the international legal system, especially in the areas of investment and finance. However, the shortage of lawyers familiar with the principles of common law remains a significant problem. This is especially critical for the work of the AIFC, which uses the norms of British law. To overcome this deficit, Kazakhstan needs to take comprehensive measures in the areas of education, professional development, and reform of the legal system. Such measures should include the introduction of courses on common law in law schools and support for legal research on common law. An important step remains the development of professional competencies of lawyers, which requires the preparation of specialized training and certification, in particular, the development of advanced training courses for lawyers in corporate law, arbitration, and judicial practice according to

common law standards. This can be facilitated by internship programs in international law firms, internships in English courts, arbitration centers, and regulatory bodies, as well as by attracting foreign arbitration judges to conduct master classes and lectures. In the case of a sustainable commitment to the chosen vector, the government should pay attention to the importance of comprehensive institutional reforms related, first of all, to the integration of Anglo-Saxon legal principles. Such reforms should cover the development of the role of the AIFC — expansion of competence and its legal school, consolidation of the norms of Anglo-Saxon law in certain industries (for example, in the field of venture financing, intellectual property, mergers and acquisitions). A separate niche should be occupied by the development of arbitration and mediation with the popularization of ADR according to the Anglo-Saxon model. Thus, in the future, Kazakhstan can become the center of legal services under English law in the region, providing consultations to businesses from the CIS and Asia. Training lawyers with a deep knowledge of common law will help attract more investors from abroad and strengthen the country's position as a legal center in Central Asia.

5. CONCLUSION

The core objective of this paper is to critically evaluate the current state of legal affairs in Kazakhstan, as well as to explore the viability of incorporating legal institutions and instruments from foreign legal systems into its legal framework. If implementing certain aspects of common law, particularly those pertaining to corporate dispute resolution, can foster the development of Kazakhstan's legal system, enhance the business environment, and uphold principles of fairness and integrity, it seems reasonable to consider this matter at the legislative level.

The analysis of foreign practices has revealed the ongoing process of convergence in legal systems. The components of common law governing corporate disputes have successfully been integrated into the legal frameworks of civil law systems, often seamlessly permeating the structure of codified legislation. However, this integration process presents challenges for Kazakhstan. Currently, there is a lack of clarity regarding the fundamental nature of corporate relationships that are subject to legal regulation within the legal community, academic circles, business environment, and legislative bodies. Furthermore, there exists no universally accepted definition or content for the concept of corporate law as an autonomous branch in the legal doctrine of Kazakhstan. The implementation of common law procedures and elements in the country continues to be a niche phenomenon, primarily confined to the operations of the Court of the AIFC. Based on the analysis of judicial decisions addressing corporate disputes within this court's jurisdiction, the adoption of the Anglo-Saxon legal system seems to be advantageous for parties seeking resolution of their disputes. This approach is particularly appealing to foreign-invested companies.

The question of harmonizing legal instruments employed in various legal frameworks continues to be a matter of national legal strategy. However, the case of the AIFC court suggests that this convergence is gradually taking shape and is indeed necessary. In summary, several crucial areas for legislative enhancement (or legal interventions) could foster this process.

Firstly, there is a need to consolidate the conceptual framework of the terms 'corporate dispute' and 'corporate conflict' within civil legislation. It is proposed to categorize corporate disputes within the legal system of the Republic of Kazakhstan into investment disputes, those involving a foreign component, and disputes involving state participation. It is also crucial to explore the feasibility of incorporating provisions regarding arbitration clauses into contracts involving foreign parties, as well as establishing a streamlined procedure for the swift enforcement of arbitration awards. With regard to the personnel aspect of this matter, currently, only qualifications such as pleader, mediator, arbitrator, company secretary, and compliance officer are legally recognized. Therefore, it is necessary to establish a reserve or a pool of qualified arbitrators and to formalize the concept of a 'corporate lawyer'. Moreover, in the context of the AIFC court's operations, it is essential to integrate the court's database of rulings with the electronic archive of decisions from national courts and to develop a specialized (accelerated) process for implementing the rulings of the AIFC court.

Convergence with Anglo-Saxon law is a strategically important step for Kazakhstan. There is reason to believe that it contributes to the protection of investors' interests, the development of arbitration, and the strengthening of national law. However, this process requires a flexible approach, implying the need to improve new hybrid mechanisms (the use of Anglo-Saxon norms in certain sectors, for example, in financial law), the training of lawyers and judges in specialized areas, and the minimization of legal conflicts (through a clear delineation of the powers of the courts).

In conclusion, it is important to reiterate that the authors do not advocate actively for the implementation of English legal standards in the national law. Rather, this article merely proposes the integration of some elements from the Anglo-Saxon legal system into Kazakhstan's legal framework. Specifically, legal concepts such as conglomerate, implied terms, exclusion/exemption clause, limitation clause, indemnity clause, and consideration can be employed. Within the realm of jurisprudence, there are three types of legal norms: functional, non-functional, and obsolete. Typically, non-functional and obsolete legal norms undergo either elimination or transformation. Corporate law and corporate disputes necessitate continuous regulation to adapt to evolving business practices, as new modes of transaction settlement emerge, accompanied by novel conditions and circumstances beyond the scope of existing legislation. The limitations of the research approach are related to the lack of generalized judicial practice both in the Republic of Kazakhstan and in other jurisdictions considered, as well as the lack of information on judicial practice in arbitration cases in the public domain.

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