

Civil Law Solutions to Disputes Arising from the Performance of China-Kazakhstan Cross-Border Commercial Contracts under the "Belt and Road" Initiative—Taking the Differences in the Application of Force Majeure Clauses as the Entry Point

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Abstract: The "Belt and Road" Initiative has promoted the continuous deepening of cross-border commercial cooperation between China and Kazakhstan. Disputes over contract performance caused by differences in the application of force majeure clauses have become a prominent issue restricting the development of bilateral economic and trade relations. Starting from the legal basis of China-Kazakhstan cross-border commercial contracts and force majeure clauses, this paper analyzes the typical manifestations and deep-seated causes of disputes. Combining the legal practices of the two countries and the needs of regional cooperation, it constructs a civil law solution path from four dimensions: legislative coordination, judicial collaboration, contractual autonomy, and regional synergy. The study holds that through the accurate connection of legal rules, the efficient linkage of judicial mechanisms, the refined stipulation of contract clauses, and the institutional support of the "Belt and Road" cooperation framework, conflicts in the application of laws can be effectively resolved, providing stable civil law guarantees for China-Kazakhstan cross-border commercial transactions.

Keywords: "Belt and Road"; China-Kazakhstan Cross-Border Commercial Contracts; Force Majeure; Civil Law Solution Path; Legal Coordination

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Introduction

As important partners in the "Belt and Road" Initiative, China and Kazakhstan have continuously expanded the scale and depth of their bilateral economic and trade exchanges, and cross-border commercial contracts have become the core legal carrier for maintaining cooperative relations ^[1]. Against the backdrop of adjustments in the global economic structure and frequent occurrence of sudden risk events, force majeure, as a key factor affecting contract performance, the standardization of its clause application is directly related to transaction security and cooperative trust. China and Kazakhstan belong to different legal systems, and there are significant differences in the regulatory settings and judicial determination standards of force majeure in their civil laws. This leads to frequent disputes over the application of such clauses in practice, which not only increases the transaction costs of enterprises but also poses challenges to the sustainability of bilateral economic and trade cooperation. Based on this, by focusing on the legal practices of the two countries, exploring civil law solutions to disputes caused by differences in the application of force majeure clauses is of great practical value for improving the China-Kazakhstan cross-border commercial dispute resolution mechanism and consolidating the legal foundation for "Belt and Road" economic and trade cooperation. This paper conducts a systematic study on this core issue, covering legal basis, dispute analysis, and path construction, providing theoretical and practical references for resolving the risks in the performance of China-Kazakhstan cross-border commercial contracts.

1 Legal Basis of China-Kazakhstan Cross-Border Commercial Contracts and Force Majeure Clauses

1.1 Rules on the Application of Law to China-Kazakhstan Cross-Border Commercial Contracts

The application of law to China-Kazakhstan cross-border commercial contracts must comply with the core principles of private international law. Both countries have established the dominant position of the principle of party autonomy and the principle of the closest connection in their legislation, but there are detailed differences in specific application rules [2]. China's *Law on the Application of Law to Foreign-Related Civil Relations* clearly stipulates that parties may agree on the law applicable to the contract; if no such agreement is made, the applicable law shall be determined in accordance with the principle of the closest connection. In practice, the place of contract performance, the domicile of the party performing the characteristic obligation, etc., are often used as connecting factors. Kazakhstan's private international law rules also recognize the priority of party autonomy, but its laws impose more specific restrictions on party autonomy. For example, the law chosen by the parties must not violate Kazakhstan's public order, and in specific commercial fields such as energy and mineral development contracts, the application of national law is mandatory.

1.2 Legal Connotation and Institutional Function of Force Majeure Clauses

The legal connotation of force majeure clauses is essentially the legal definition of objective events that are unforeseeable, unavoidable, and insurmountable during the performance of a contract. Its core value lies in constructing a reasonable risk allocation mechanism. From the perspective of institutional function, force majeure clauses provide parties with stable behavioral expectations by clarifying the legal consequences after the occurrence of specific events, preventing the contractual relationship from falling into disorder due to sudden risks. Specifically, such clauses not only grant the party affected by force majeure the right to be exempted from part or all of the performance obligations but also set up collateral obligations such as notification and loss mitigation to ensure the balance of rights and obligations between the two parties. In cross-border commercial transactions, the institutional function of force majeure clauses is further extended, becoming an important legal tool to deal with transnational risks. Its application is directly related to the realization of the contract purpose and the protection of the legitimate rights and interests of the parties, and it is a key institutional design for maintaining the order of cross-border commercial transactions.

1.3 Regulatory Differences of Force Majeure Clauses in Chinese and Kazakh Civil Laws

The regulatory settings of force majeure clauses in Chinese and Kazakh civil laws are based on their respective legal traditions and practical needs, forming multi-dimensional differences. In terms of constituent elements, China's Civil Code requires force majeure to meet three conditions simultaneously: unforeseeable, unavoidable, and insurmountable. In judicial practice, the judgment of "unforeseeability" is usually based on the reasonable duty of care of a general commercial subject; Kazakhstan's Civil Code, on this basis, takes "the non-imputability of the event" as an independent constituent element, emphasizing that the party has no subjective fault for the occurrence of the event. In terms of the scope of exemption, Chinese law stipulates that force majeure can exempt from liability for breach of contract, but there is no clear provision on the sharing of losses after contract termination, which depends on the agreement of the parties or judicial discretion; Kazakhstan's Civil Code clearly distinguishes between direct losses and indirect losses, and only recognizes the exemption of direct losses. The exemption of indirect losses requires strict burden of proof [3]. In terms of notification obligations, China's Civil Code requires the party to promptly notify the other party and provide proof; failure to perform the notification obligation shall bear the expanded losses; Kazakh law stipulates more specific requirements on the time limit and form of notification. Failure to perform the notification obligation in accordance with the statutory form may result in the loss of the right to exemption. These regulatory differences directly lead to inconsistent application standards of force majeure clauses in China-Kazakhstan cross-border commercial contracts, becoming the root cause of disputes.

2 Analysis of Cross-Border Commercial Contract Disputes Caused by Differences in the Application of Force Majeure Clauses between China and Kazakhstan

2.1 Typical Manifestations of Disputes

Disputes over China-Kazakhstan cross-border commercial contracts caused by differences in the application of force majeure clauses show diverse characteristics in practice. In terms of the determination of contract performance obstacles, disputes often arise over whether events such as policy changes and epidemic prevention and control measures constitute force majeure. For example, in an energy project in Kazakhstan, a Chinese enterprise claimed exemption from liability due to force majeure on the grounds that the local government suddenly adjusted the energy exploitation policy, while the Kazakh enterprise, in accordance with the requirement of "non-imputability" in its national law, argued that the Chinese enterprise had not fully proved the direct causal relationship between the policy adjustment and the contract performance obstacle and refused to grant exemption. In terms of loss sharing, disputes mainly focus on the scope of compensation for indirect losses. Chinese enterprises usually claim to include the loss of expected profits in the scope of exemption, while Kazakh enterprises only recognize the exemption of direct losses in accordance with their national law, making it difficult for the two parties to reach an agreement on loss accounting. In terms of the performance of notification obligations, due to the different requirements of China and Kazakhstan on the time limit and supporting materials of notification, there often occurs a situation where one party refuses to grant exemption on the grounds that the other party has not performed the notification obligation in accordance with the statutory form. For example, a Chinese enterprise sent a force majeure notice via email, while the Kazakh enterprise claimed that a written notarized form should be used and denied the legal effect of the notice.

2.2 Deep-Seated Causes of Disputes

The occurrence of disputes stems from complex factors at multiple levels, such as legal norms, judicial practice, and transaction practice. At the level of legal norms, China and Kazakhstan belong to different legal systems. China's civil law is influenced by the civil law system and practical innovation, and its provisions on force majeure are relatively principled, giving judicial organs a large degree of discretion; Kazakhstan's civil law pays more attention to the specificity and rigor of legal norms, and makes detailed provisions on the constituent elements and procedural requirements of force majeure. This difference in legislative models directly leads to conflicts in the application standards of clauses. At the level of judicial practice, there are differences in the interpretation paths of force majeure clauses between Chinese and Kazakh courts. Chinese courts tend to make substantive judgments based on the contract purpose and the principle of fairness, while Kazakh courts pay more attention to the literal interpretation of legal provisions and the review of formal elements. Different judicial logics lead to different judgments in similar cases. At the level of transaction practice, some China-Kazakhstan cross-border commercial contracts have overly general provisions on force majeure clauses, failing to fully consider the legal differences between the two countries. They only simply list force majeure events and do not clarify key contents such as notification procedures and loss sharing, resulting in the lack of effective contractual basis after disputes occur, which further increases the difficulty of dispute resolution ^[4].

3 Construction of Civil Law Solution Paths for China-Kazakhstan Cross-Border Commercial Contract Disputes under the "Belt and Road" Initiative

3.1 Legislative Level: Promoting the Coordination and Connection of Chinese and Kazakh Legal Rules

Legislative coordination is the fundamental path to resolve differences in the application of force majeure clauses between China and Kazakhstan. Relying on the "Belt and Road" legal cooperation mechanism, China and Kazakhstan can establish a regular civil law exchange platform and conduct special legislative dialogues on force majeure clauses in cross-border commercial contracts, designing refined stipulation templates for force majeure clauses as shown in Table 1. In terms of rule coordination, they can learn from the legislative experience of the *United Nations Convention on Contracts for the International Sale of Goods* (CISG), combine the legal practices of the two countries, and formulate unified application guidelines for force majeure clauses, clarifying the core contents such as the constituent elements of force majeure, notification obligations, and loss sharing, so as to provide clear behavioral norms for the parties. In terms of legal connection, they can promote the addition of special provisions on force majeure clauses in cross-border commercial

contracts in the laws on the application of law to foreign-related civil relations of the two countries, clarify the boundaries of party autonomy and the specific application standards of the principle of the closest connection, and reduce the uncertainty in the application of laws. At the same time, consideration can be given to incorporating unified interpretation rules of force majeure clauses into bilateral investment agreements, taking them as supplementary legal bases for resolving cross-border commercial disputes, and forming a multi-level legal coordination system.

Table 3 Simplified Template for Force Majeure Clauses

Clause Content	Key Stipulations
Scope	Natural disasters, epidemics, government policy adjustments, etc.
Notification	Written (including notarized) notice within 3 working days; supporting materials within 7 days
Loss Sharing	Direct losses: exempted; indirect losses: subject to prior agreement
Contract Handling	Resume performance after event ends; negotiate modification/termination if event lasts over 30 days

3.2 Judicial Level: Strengthening Judicial Collaboration in China-Kazakhstan Cross-Border Commercial Disputes

The strengthening of judicial collaboration can provide efficient procedural guarantees for dispute resolution. China and Kazakhstan can establish a judicial collaboration mechanism for cross-border commercial disputes, and through the signing of judicial assistance agreements, clarify the jurisdiction division standards of courts of the two countries in cases involving force majeure clause disputes, so as to avoid jurisdiction conflicts. In terms of the unification of judicial standards, a China-Kazakhstan cross-border commercial case sharing database can be built, typical force majeure dispute cases can be screened and classified, and unified judicial thinking and legal application rules can be extracted to provide references for courts of the two countries in hearing similar cases. In terms of evidence determination, the notarization and authentication procedures for cross-border evidence can be simplified, and a collaboration mechanism for evidence exchange and adoption can be established to solve the problem of proof difficulties caused by differences in evidence rules between the two countries. In addition, exploration can be made to establish a China-Kazakhstan Joint Commercial Court to centrally hear cross-border commercial disputes involving the application of force majeure clauses. The court shall be composed of judges from both countries to take into account the legal provisions and transaction practices of both sides, improve the fairness and authority of judicial decisions, and enhance the parties' trust in judicial remedies.

3.3 Contractual Autonomy Level: Guiding Parties to Improve the Stipulation of Force Majeure Clauses

Contractual autonomy is the front-end link in preventing and resolving disputes. Guiding parties to improve the stipulation of force majeure clauses can reduce the occurrence of disputes from the source. Relevant departments of China and Kazakhstan can jointly issue model texts of cross-border commercial contracts, design refined stipulation templates for force majeure clauses, clarify the specific scope of force majeure, include common events such as policy changes and epidemic prevention and control in the list, and adopt a "list + general description" approach to retain a certain degree of flexibility. In terms of procedural stipulations, the specific requirements for the time limit, method of notification, and supporting materials shall be clarified. For example, it shall be stipulated that a written form shall be adopted with supporting documents issued by a notary public to avoid disputes caused by procedural defects. In terms of loss sharing, parties shall be guided to pre-agree on the division standards of direct losses and indirect losses and the scope of exemption, and clarify the methods of contract termination, modification, and loss compensation after the occurrence of force majeure, so as to ensure that there is a clear contractual basis after disputes occur. At the same time, it is recommended that parties conduct legal due diligence before signing a contract, fully understand the legal provisions on force majeure in the other party's country, and design clauses in a personalized manner according to the transaction characteristics to improve the enforceability of the clauses.

3.4 Regional Cooperation Level: Relying on the Synergistic Guarantee of the "Belt and Road" Mechanism

The "Belt and Road" regional cooperation mechanism provides an important platform support for the resolution of China-Kazakhstan cross-border commercial disputes. The China-Central Asia Summit and other multilateral cooperation mechanisms can be fully utilized to incorporate the coordination of force majeure clauses in China-Kazakhstan cross-border commercial contracts into the regional cooperation agenda and promote the establishment of unified regional standards for commercial dispute resolution. In terms of dispute resolution mechanisms, relying on the "Belt and Road" International Commercial Dispute Resolution Center, legal experts and commercial arbitrators from China and Kazakhstan can be invited to form a professional team to provide parties with diversified dispute resolution services such as mediation and arbitration, giving play to the efficient and flexible advantages of alternative dispute resolution mechanisms. In terms of legal talent training, through joint legal training, academic seminars, and other activities, the understanding and application capabilities of Chinese and Kazakh legal practitioners on the force majeure legal systems of each other's countries can be improved, providing professional talent guarantees for dispute resolution.

4 Conclusion

The essence of disputes over the performance of China-Kazakhstan cross-border commercial contracts is the contradiction between differences in the application of laws and the needs of transaction practice. As the core entry point of disputes, the standardization of the application of force majeure clauses directly affects the stability of bilateral economic and trade cooperation. Under the background of the "Belt and Road" Initiative, resolving such disputes requires the construction of a multi-level civil law solution path. Legislative coordination provides a rule basis for dispute resolution, reducing conflicts in application through the connection and unification of legal rules; judicial collaboration provides procedural guarantees for dispute resolution, improving the efficiency and fairness of dispute resolution; contractual autonomy prevents disputes from the source, clarifying the rights and obligations of parties through refined clause stipulations; regional cooperation provides mechanism support for dispute resolution, realizing synergistic guarantees relying on the "Belt and Road" platform. These four paths are interconnected and organically unified, jointly forming a civil law guarantee system for resolving China-Kazakhstan cross-border commercial contract disputes. In the future, China and Kazakhstan should further deepen cooperation and exchanges in the field of civil law, continuously improve the specific implementation mechanisms of the solution paths, and constantly enhance the professional level of cross-border commercial dispute resolution, so as to lay a solid legal foundation for the sustained and healthy development of bilateral economic and trade cooperation and provide referable practical experience for the resolution of "Belt and Road" cross-border commercial disputes.

References

- [1] Yang, X. Y. (2020). Issues of Jurisdiction over Cross-Border E-Commerce Sales Contracts under the B2C Model [Master's Thesis]. East China University of Political Science and Law.
- [2] Ding, L. Z. (2020). Research on the Development of China-Kazakhstan Cross-Border Tourism Cooperation Zones under the "Belt and Road" Initiative. **Shanxi Agricultural Economy**, (06), 37-38.
- [3] Zhang, B., & Zhong, J. Q. (2017). Research on China-Kazakhstan Cross-Border Economic Cooperation under the "Belt and Road" Initiative — Taking Horgos Port as an Example. **Journal of Boundary and Ocean Studies**, 2(04), 91-100. DOI: CNKI:SUN:BJYH.0.2017-04-007.
- [4] Zhu, H. J. (2014). Research on the Problems and Countermeasures of RMB Settlement in China-Kazakhstan Cross-Border Trade [Master's Thesis]. Xinjiang University of Finance and Economics.