

ONLINE ISSN 1464-3863

STATUTE LAW REVIEW

Volume 44 Number 3 2023
<https://academic.oup.com/slr>

PUBLISHED BY THE OXFORD UNIVERSITY PRESS
IN ASSOCIATION WITH THE STATUTE LAW SOCIETY

OXFORD
UNIVERSITY PRESS

Editorial Board

Editors-in-Chief:

Dr Constantin Stefanou
Professor Helen Xanthaki

Editorial Board

Professor Gavin Drewry
The Hon. Mr Justice Garnham
The Hon. Lord Pentland
Professor Thomas Glyn Watkin KC
Sarah Nason
Philip Davies CB
Douglas Hall
Jane Reed

Disclosure in civil proceedings in the UK and Kazakhstan: Comparative analysis

Aizhan Satayeva*

ABSTRACT

The relevance of the chosen problem is conditioned by the need to develop theoretical ideas about the institution of disclosure of documents in the civil procedural legislation of the Republic of Kazakhstan, considering the experience of the UK, which will emphasize the potential of this measure to improve procedural discipline and ensure legal certainty in making court decisions and increase the level of legal culture in Kazakhstan, which may affect the effectiveness of this procedure or this institution in practice. The purpose of this study was to characterize the institute of disclosure of documents in civil proceedings using methods of comparative legal analysis of English contract law and the current legislation of the Republic of Kazakhstan. The methodological basis of the study consists of dialectical method, comparative legal analysis, analysis and synthesis, formal and logical, formal and legal, classification and grouping, and questionnaire methods. There is an urgent need to develop theoretical ideas about the disclosure of documents in the Republic of Kazakhstan, especially in light of the introduction of new elements of disclosure such as pre-trial protocol in the civil process.

INTRODUCTION

In the Republic of Kazakhstan, there is a pressing need to modernize civil procedure legislation, especially in light of global trends that blend continental and Anglo-Saxon legal elements. Historically, Kazakhstan has endeavored to incorporate principles of Anglo-Saxon law, as seen in its 1998 legislation on joint-stock companies. However, these efforts met challenges, resulting in the replacement of the law in 2003. The trajectory of legal modernization in Kazakhstan reveals an intriguing pattern of intertwining indigenous and foreign legal principles. The Republic, while seeking to streamline its laws with international best practices, treads a delicate path between preserving its legal traditions and adapting to the demands of a globalized world.

The challenge emerges when Kazakhstan attempts to transplant Anglo-Saxon legal principles, which are rooted in a distinct historical, cultural, and societal milieu. One must

* PhD, Higher School of Law, M. Narikbayev KAZGUU University, 010000, 8 Korgalgyn Str., Astana, Republic of Kazakhstan

note that law is not merely a collection of rules and regulations; it's deeply embedded within the socio-cultural fabric of a society. Therefore, the wholesale transplantation of legal principles, without due customization, can lead to systemic incongruities, as seen with the short-lived Law of the Republic of Kazakhstan No. 282¹. The law regulating joint-stock companies was ineffective and did not comply with the legal system of Kazakhstan, which led to its cancellation in 2003 and replacement with the new Law of the Republic of Kazakhstan No. 415 "On Joint Stock Companies"².

The collaboration between Kazakhstan and English law has undeniable merits. The International Financial Centre "Astana"³ stands as a testament to the potential synergies between the two legal systems. It serves as a nexus where East meets West, enabling global financial players to operate under familiar legal principles while also acquainting them with Kazakhstan's legal landscape.

The main narrative lies in the strategic assimilation of English law principles. It's not about mere replication but about adaptation. Drawing from English law, especially its robust mechanisms like the institution of document disclosure, can enhance transparency, predictability, and efficiency in Kazakhstan's legal proceedings. The introduction of such measures in the Civil Procedure Code exemplifies this progressive mindset⁴. But the stark differences in implementation between Kazakhstan and the UK signify that Kazakhstan isn't merely copying, but is interpreting and aligning these principles to its unique context. The problem of disclosure of documents in civil proceedings has been considered only by some researchers in the Republic of Kazakhstan. Thus, S. Akimbekova and M. Bekturganov⁵ considered theoretical and practical issues of documents and proof in civil proceedings. However, the issue of disclosure of documents remained outside the subject of the study. Previously, the pre-trial protocol in the UK civil procedure and its relationship with the disclosure of documents were investigated by the authors of this study. It was noted that the model of the UK pre-trial protocol can be successfully implemented in the civil process of the Republic of Kazakhstan⁶.

In the academic arena, the discourse on this topic is gaining momentum. While some researchers have started exploring the nuances of document disclosure and related practices, others approach it with skepticism. The critical views of A.N. Shaikenov and V.Zh. Shaikenov⁷ or the cautious optimism of A. Kenzhabayeva⁸ reflect the diverse perspectives within the Kazakh academic community. According to the researcher, a significant step in improving the legislation is to amend the CPC RK concerning the preparation of a pre-trial protocol. M. Kulbaeva⁹ analysed the features of disclosure of

¹ Law of the Republic of Kazakhstan No. 282 "On Joint Stock Companies". (1998). https://adilet.zan.kz/rus/docs/Z980000282_

² Law of the Republic of Kazakhstan No. 415 "On Joint Stock Companies". (2003). http://ukrexport.gov.ua/ukr/zakon_kr_perebu/kaz/3634.html

³ Law of the Republic of Kazakhstan No. 438-V "On Joint Stock Companies". (2015). https://online.zakon.kz/Document/?doc_id=39635390

⁴ Civil Procedure Code of the Republic of Kazakhstan No. 377-V LRK. (2015). <https://adilet.zan.kz/rus/docs/K1500000377>

⁵ See S Akimbekova, M Bekturganov, 'International Council under the Supreme Court of the Republic of Kazakhstan and its role in civil proceedings' [2020] *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan* 4, 66-72.

⁶ See A Sataeva, 'Pre-trial protocol in civil proceedings in England and Kazakhstan: A comparative analysis' [2022] *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan* 4, 268-275.

⁷ See A N Shaikenov, V Zh Shaikenov, 'Conscientiousness and competitiveness in civil proceedings' [2023].

⁸ See A Kenzhabayeva, 'Improving the civil process in Kazakhstan' [2022].

⁹ M Kulbaeva, 'Some issues of documents and documents in the criminal process of the Republic of Kazakhstan' [2011] *Law and Order in Modern Society* 2, 274-278.

documents in criminal proceedings. The author notes that, as an equal participant in the trial, the defender, nevertheless, faces limitations in the adversarial procedure of proof that exists at the stage of preliminary investigation. M. Suleimanov's¹⁰ cautionary stance is particularly noteworthy, emphasizing the potential pitfalls of unbridled assimilation.

The task ahead for Kazakhstan is monumental. It requires a balance between global integration and preserving national identity. While the allure of English law and its proven mechanisms is evident, Kazakhstan needs a holistic approach to reform. This entails not just adopting foreign legal constructs but also investing in comprehensive legal education, training, and awareness campaigns to ensure that these reforms are understood, embraced, and effectively implemented by all stakeholders. The journey of legal reform in Kazakhstan is not just about laws and statutes; it's about molding a future where the Republic stands tall in the global legal arena, drawing from the best of both worlds, yet uniquely its own.

The purpose of this study is to characterise the institute of disclosure of documents in civil proceedings in the aspect of comparative legal analysis of English contract law and the current legislation of the Republic of Kazakhstan.

Kazakhstan, as a rapidly developing nation, is constantly in the limelight for its significant natural resources, strategic location, and aspirations to become a central hub in various sectors, especially finance and trade. Consequently, the nation seeks a robust legal system that not only ensures domestic stability but also instills confidence in international stakeholders. While the convergence of Kazakhstan's legal system with international standards, particularly those of the Anglo-Saxon lineage, presents myriad possibilities, it's a journey that demands meticulous planning, widespread consultation, and a vision that looks far into the future. As Kazakhstan embarks on this ambitious path, its success will not just redefine its own legal landscape but also offer a blueprint for other nations seeking a similar trajectory.

MATERIALS AND METHODS

The object of the study is the social and legal relations arising from the exercise of the right to disclose documents in civil proceedings in Kazakhstan and the UK. The subject of the study is the theoretical aspects of the development and implementation of the institute of disclosure of documents in the civil process of Kazakhstan and the UK. Various methods were used in the course of the study, which allowed consider in detail the problems of disclosure of documents in civil proceedings in Kazakhstan and the UK. Methodological approaches to the problem of disclosure of documents in civil proceedings in the UK and Kazakhstan are analysed. The goals, objectives, and methods of research are also defined, and the main hypothesis is formed. After that, the sources of information and data reflecting the current state of the regulatory framework that regulates the institution of disclosure of documents in civil proceedings in the UK and Kazakhstan were selected. A base for the disclosure of documents in the civil proceedings of Great Britain and Kazakhstan was established with the help of synthesis and analysis. With the help of formal and logical, and formal and legal methods, key conclusions were formed, as well as proposals for improving the legal regulation of the institute of disclosure of documents in Kazakhstan. Classification and grouping methods were used in the analysis of the main rules in force in the field of disclosure of documents in civil proceedings. With the help of concretisation and generalisation techniques, the main

¹⁰ M Suleimanov, 'English law and the legal system of Kazakhstan' [2015] *Herald of the Institute of Legislation of the Republic of Kazakhstan* 4, 169-181.

problems and gaps in ensuring the disclosure of documents in the civil process of Kazakhstan were identified.

To create this study, the results of a survey of lawyers associated with the representation in civil cases in the Republic of Kazakhstan were used. This data relates to the disclosure of documents. To obtain information about representation in civil cases in the courts of the Republic of Kazakhstan, a sociological survey was conducted aimed at persons related to this area. The survey concerned the procedure for disclosure of documents and pre-trial protocol, and was conducted electronically via Google Forms. The total number of survey participants was 102 at the time of the study. Respondents were asked 11 questions that helped to understand the attitude of practicing lawyers of Kazakhstan to the institute of disclosure of documents, namely:

1. Are you aware of the disclosure of documents as an institution of Anglo-Saxon law?
2. Did you know that the disclosure of documents in English law is an activity at the stage of pre-trial preparation for the exchange and presentation of all documents between the parties?
3. Have there been cases in your practice when you or your opponent presented documents at the main trial (MT) stage and the case was postponed for this reason?
4. In your opinion, is the introduction of disclosure of documents in its current form at the preparation stage in accordance with CPC RK standards?
5. What is the disclosure of documents in the current CPC RK for you personally?
6. What do you think is a pre-trial protocol?
7. Since the introduction of the disclosure of documents, have you received all the documents presented by the opponent with the help of the pre-trial protocol before the start of the court session?
8. In the process, which position do you adhere to more?
9. What is the meaning of holding meetings remotely to disclose all documents in the preparatory phase?
10. Are you aware of the existence of a procedure for the disclosure of documents in the procedural rules of the AIFC Court?
11. How do you feel about the perception of the experience of England or the USA in the civil process of the Republic of Kazakhstan?

The results obtained allowed the authors to draw conclusions about the quality of the implementation of the procedure for the disclosure of documents in the civil process of the Republic of Kazakhstan.

RESULTS

Procedural science has traditionally distinguished elements of the structure of forensic documents, among which the disclosure of documents occupies a special place. Disclosure of documents is a process of familiarisation with their availability and content in accordance with established legislation. The existence of norms consolidating the need for disclosure of documents is a positive phenomenon. Various procedural actions can be used as methods of disclosure of documents, such as the exchange of pleadings, the provision of documents, and the interview of the judge with the parties in the process of preparing the case for trial. According to the Legal Dictionary¹¹, the definition of “disclosure” is the transfer of relevant documents and information by one party to the

¹¹ The legal dictionary. (2005). <https://www.claims.co.uk/dictionary#filter=.d>

other so that both parties have access to all information about the arguments of the other party.

The institution of disclosure of documents is a key element of civil proceedings, originated in English law and successfully applied in US practice. It aims to ensure full and accurate disclosure of all facts relevant to the resolution of disputes between the parties. However, due to differences in legal systems, the use of this institution in the civil procedure of other countries, including the Republic of Kazakhstan, requires additional study and adaptation. Thus, to the question in “Are you aware of the disclosure of documents as an institution of Anglo-Saxon law” in a survey conducted by 102 active lawyers of the Republic of Kazakhstan, 29 answered that they first heard about the disclosure of documents only after its introduction into CPC RK in December 2021 (Figure 1).

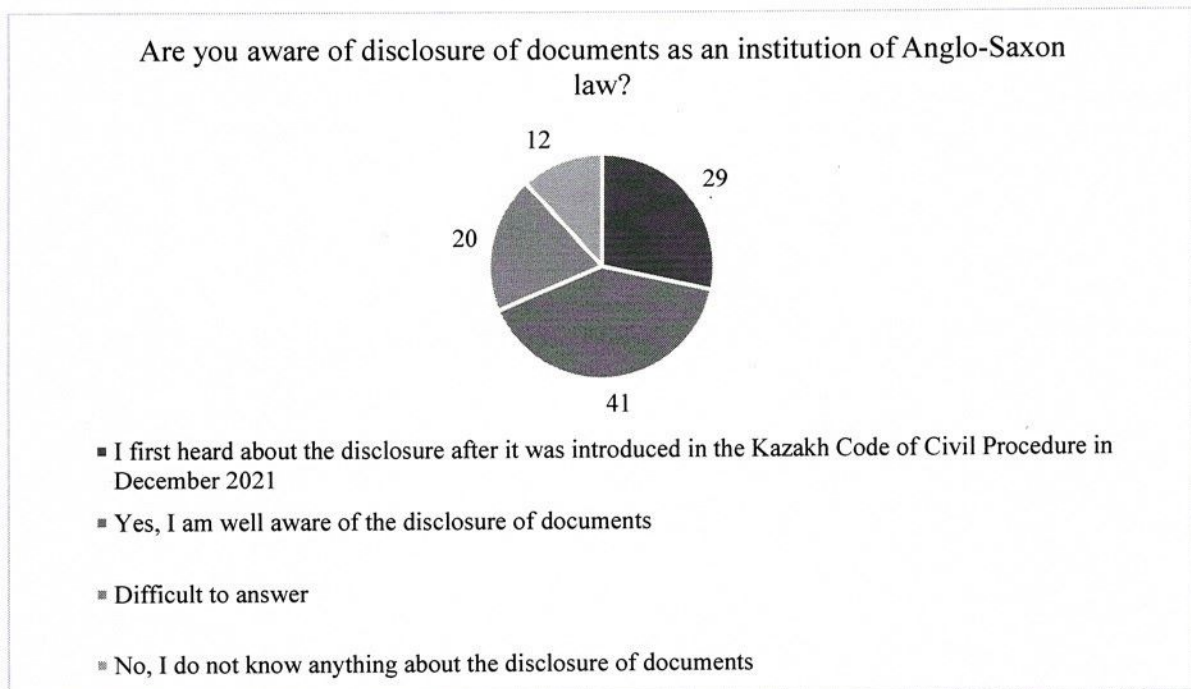


Figure 1. Respondents' answers to the question about the recognition of the disclosure of documents under English law

This requires further research and comparative analysis of the legal systems of different countries, and the analysis of the opinions of practitioners and researchers in the field of law. The main purpose of this institution is to guarantee an exhaustive clarification of the facts in a civil case for the parties before the start of the trial to ensure the principle of adversarial and equality of the parties. It should be noted that the disclosure of documents is also reflected in the Principles of transnational civil justice ALI/UNIDROIT¹² of the American Institute of Law and the International Institute for the Unification of Private Law, which emphasises the effectiveness of this procedure and indicates the universality of the mechanism applicable both in countries using the common law system and in countries using the continental system of law.

¹² Principles of transnational civil justice ALI/UNIDROIT. (2006). <https://www.unidroit.org/instruments/civil-procedure/ali-unidroit-principles>

Disclosure of documents to the other party is one of the methods of presenting documents in English evidentiary law, which complements the presentation of documents to the court. Since the 18th century, the institute of disclosure of documents has been operating in the English judicial process¹³. It involves the implementation of measures to disclose documents before the initiation of a case or during its consideration. In English law, pre-trial and judicial disclosure of documents are distinguished. Pre-trial disclosure of documents is usually performed by the lawyers of the parties in order to provide information to the other party about the availability of materials confirming their claims or objections. This may contribute to making a decision on the possibility of settling the dispute without judicial proceedings by concluding a settlement agreement, recognising the claims of an interested person or refusing to go to court. All actions take place outside the framework of the process, on a voluntary basis and are not regulated by procedural legislation. Judges, as a rule, do not interfere in such activities, except in cases when the owner of the information refuses to disclose the necessary documents¹⁴.

Within the framework of English evidentiary law, judicial disclosure of documents may be standard or special. The obligation to disclose documents is a standard procedure in civil proceedings, which provides for the disclosure of all documents referred to by the parties, including those that may adversely affect the position of the opposing party. However, this obligation is limited only to those pieces of documents that are under the control of the party, that is, those that it had or has the right to own, study or obtain a copy of. If necessary, the opposite party may require the disclosure of this documents. The procedure for standard disclosure of documents is to provide lists of documents that include all relevant documents, regardless of whether the party intends to use them in court. In this context, the respondents selected for the study do not always understand the specifics of activities at the stage of pre-trial preparation for the exchange and presentation of all documents between the parties under English law (Figure 2).

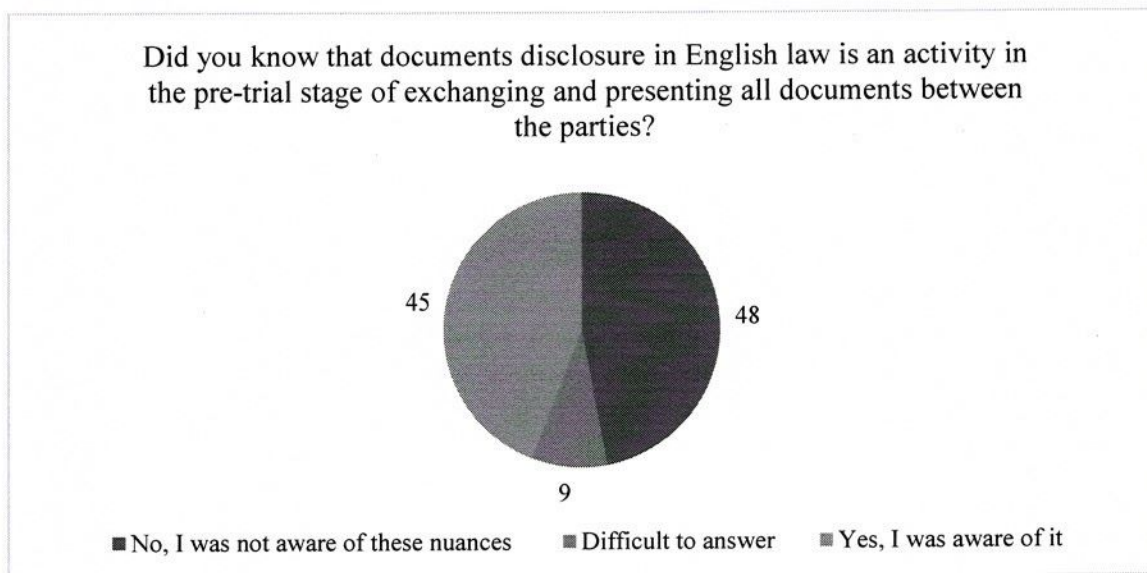


Figure 2. Respondents' answers to the question about understanding the specifics of disclosure of documents under English law

¹³ J H Langbein, 'Historical foundations of the law of documents: A view from the ryder sources' [2003]. f

¹⁴ A. Owusu-Bempah, 'Defence participation through pre-trial disclosure' [2013] *The International Journal of Documents & Proof* 17, 183-201.

According to Disclosure and inspection of documents¹⁵ in the UK, the procedure for standard disclosure of documents in accordance with the norm of clause 31.6 is mandatory. It implies that each party is obliged to disclose all the documents on which it relies, including those confirming its claims, as well as those that may negatively affect the position of the opposite party. If the opposing party demands to disclose documents testifying against the interests of the participant in the dispute, they are also obliged to disclose them. However, the obligation to disclose documents is limited to the documents that is under their control, that is, those that they had or have the right to own, study or obtain a copy of. As part of the standard disclosure of documents procedure, the opposing party is provided with a list of all relevant documents, regardless of whether the dispute participant plans to use them in the judicial process¹⁶.

In the process of adversarial proceedings, preparation begins long before filing a claim and includes a pre-trial stage at which the parties can reach a peaceful settlement of the dispute without going to court. In English law, special attention is paid to this stage. In the UK, there is the main and most significant classification of disclosure of documents, which is based on the time of filing a claim. According to this classification, disclosure of documents can be divided into disclosure before filing a claim (Article 31.16 Disclosure and inspection of documents) and disclosure at the stage of preparation for trial (Article 31.10)¹⁷.

According to English law, disclosure of documents before filing a claim is an important procedure that can help a potential plaintiff determine whether they should file a claim or not. This means that the plaintiff can request from the alleged defendant the presentation of documents that may be relevant to the initiation of the claim, even before the claim is filed in court. This procedure allows the plaintiff to study the circumstances of the case more deeply and make a more informed decision on filing a claim, and can also help to avoid unnecessary costs and reduce the burden on the judicial system. This procedure does not require the initiation of a civil case and can be carried out on the basis of a statement supported by relevant documents, in accordance with paragraph 31.16 of the Rules of Civil Procedure of Great Britain and Wales. Based on the results of the application, the court may issue an order obliging the opposite party to provide the necessary documents¹⁸. According to the requirements of Article 31.10 Disclosure and inspection of documents, the procedure for disclosure of documents in the UK is carried out by compiling and transmitting a list of documents in the appropriate form to another party¹⁹. Unlike the pre-trial protocol, which is aimed at ensuring an effective exchange of information between the potential plaintiff and the defendant, the list of documents includes a statement by the party about the disclosure of documents and is designed to conveniently identify documents. Such a name and form of the list more correspond to the essence of the document itself and the established procedure for disclosure of documents in the Anglo-Saxon system of law.

In the Republic of Kazakhstan, there is no legally established definition of the institute of disclosure of documents and pre-trial protocol, and the relevant theoretical concepts have not been developed. Instead, the procedure for disclosure of documents is an integral part of the presentation of documents, and is regulated by Chapter 7 "Documents

¹⁵ Disclosure and inspection of documents. Ministry of Justice UK. (2017). <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31>

¹⁶ Ibidem

¹⁷ Ibidem

¹⁸ Ibidem

¹⁹ Ibidem

and Proof” of CPC RK. In accordance with Article 73 of the CPC RK, disclosure of documents is carried out by the parties and other participants in the case when filing a claim. The pre-trial protocol formalises the process of disclosure, presentation and exchange of documents, and the subject of disclosure is the documents that the parties plan to refer to in court to substantiate their claims. If it is impossible to present documents at the stage of preparation of the case, then documents may be presented at the stage of the trial, provided that such a need is justified by the persons participating in the case. However, the legislation of the Republic of Kazakhstan does not consolidate the definition of disclosure of documents and pre-trial protocol, which requires the development of appropriate theoretical concepts²⁰. This fact is fully confirmed by the results of the survey of 102 lawyers of the Republic of Kazakhstan (Figure 3).

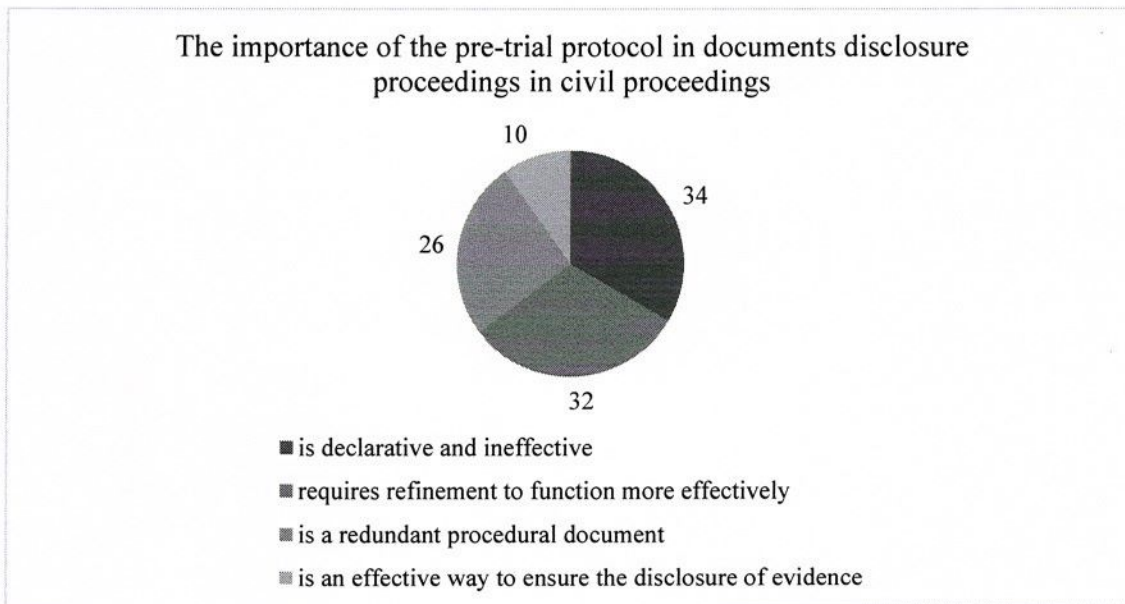


Figure 3. Respondents’ answers to the question about the role of the pre-trial protocol in the procedure of disclosure of documents

In the context of this rule, Article 73 of CPC RK, some problematic aspects can be noted, such as the content, subject matter, object of disclosure, lack of responsibility for non-compliance with the disclosure rule and the limits of disclosure. It is noted that CPC RK does not contain a legally consolidated requirement to fix the disclosed documents in the form of a pre-trial protocol. Unlike in the Disclosure and inspection of documents²¹ of the UK, the term “pre-trial protocol” in Kazakhstan is not used to formalise the list of disclosed documents and the peaceful settlement of the dispute. At the same time, there is a lack of a system in the legal regulation of the disclosure of documents and uncertainty regarding the document by which the disclosed documents should be drawn up. In addition, the preparation of the pre-trial protocol increases the preparation time by 5 working days, which raises some doubts about its effectiveness and the need for this procedure²².

When analysing the status of the pre-trial protocol in CPC RK, it is worth noting that its place in the structure of procedural documents is not defined. Chapter 26 of CPC RK,

²⁰ Ibidem, 2.

²¹ Ibidem, 15

²² Ibidem, 2

which is called “Protocols”, contains rules governing only the minutes of a court session or procedural action, and the pre-trial protocol is not regulated by the rules of this chapter. Therefore, the pre-trial protocol is not a kind of civil procedure protocols and is not included in their number. In addition, according to Article 21 of CPC RK, the pre-trial protocol does not relate to judicial acts and cannot be an act of law enforcement in civil proceedings. CPC RK norms also do not contain requirements for the form of the pre-trial protocol, the procedure for its registration, and the person responsible for its preparation. In practice, a single template of the pre-trial protocol is used, which includes information about the place and date, about the plaintiff, the defendant, the subject of the claim, and a list of disclosed and submitted documents and possible options for resolving the dispute.

In the context of CPC RK, norms there are no measures of responsibility for violation of the norm on disclosure of documents. For example, in the English system of law, a party who violated the requirements for disclosure of documents may be required to reimburse part of the court costs for unfair performance of duties or will not have the right to refer to undisclosed documents. A similar situation in the Kazakh legal system would be possible if liability for violation of the disclosure rule were provided. It seems that this problem could have been prevented if more thorough work had been carried out to implement the documents disclosure procedure in CPC RK. The study results show that the pre-trial protocol, taken out from the context of common law, is an integral part of the procedure for the disclosure of documents and has nothing to do with the list of disclosed documents. It is a guide to action related to the procedure of pre-trial disclosure that is absent in the Kazakh legislation. Currently, it is necessary to pay attention to this problem and develop liability measures for violations of the rule on disclosure of documents in order to ensure a more effective and fair resolution of disputes in civil proceedings.

The proposed measure to solve the problem of insufficient procedural discipline of the parties when disclosing documents is to use a document called “list of disclosed documents in a civil case” instead of a pre-trial protocol. Each party in the civil process must prepare a document containing a list of disclosed documents and attach appropriate copies to it. The document must be submitted at the preliminary meeting and approved by the court ruling at the stage of preparation for the trial. The parties and other persons involved in the case are responsible for compiling a list and disclosing documents. To increase procedural discipline, a person who does not comply with the requirements for disclosure of documents must bear part of the court costs, regardless of the outcome of the case. Nevertheless, the establishment of a complete ban on the use of undisclosed documents at the stage of the main trial in Kazakhstan may be premature, given the mental characteristics and the level of development of legal culture. Unlike criminal proceedings, the legislation of Great Britain and Wales does not require the use of special ways of obtaining/extracting electronic documents in civil proceedings (including family and commercial), if they are obtained from publicly accessible websites on the Internet.

According to Practice direction 31B²³ (paragraph 28), if copies of disclosed documents are provided in a format other than the standard one, then some metadata may be lost. The party requesting additional metadata or judicial copies of images of disclosed documents (for example, for authentication) must justify the necessity and expediency of the request. Unless otherwise agreed, electronic copies of disclosed documents must be provided in their own format so that metadata associated with the date of creation of each document is preserved (paragraph 33). The party must also provide all searchable

²³ Practice direction 31B – Disclosure of electronic documents. (2020). https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31/pd_part31

versions of electronic documents that have been subjected to OCR processing (text recognition using a computer), together with the originals (paragraph 34).

If the parties cannot reach an agreement on the disclosure of electronic documents and the probability of reaching an agreement is low, the court may give written instructions on the disclosure of information or appoint a separate hearing on this issue. In accordance with Practical Guide 31.3, a party has the right to get acquainted with any document disclosed to it, except in three cases. The first case is when the party disclosing the document has the right to refrain from checking it due to a recognised type of legal professional privilege or privilege without prejudice. In this case, the party must indicate in the disclosure list those documents in respect of which it claims the right or obligation to withhold the inspection. The second case is when the document is no longer under the control of the party that disclosed it. In this case, the party should include a description of these documents in its disclosure list and clarify what happened to them. The third case is when a party believes that the verification of certain documents is disproportionate to the problems in the disclosure of documents that may adversely affect its case or the case of the other party, or that support the case of the other party. In this case, the party must indicate in the disclosure statement that verification of these documents is impractical²⁴.

Equality of arms in court proceedings usually requires the state to disclose all the documents that it intends to use against the accused during the trial, as well as, at least in criminal proceedings, any other information that may be useful to the accused for his defence. If, in the course of any court proceedings, some such materials may be lawfully concealed from the accused for reasons of national security, this may be limited only when the state demonstrates that disclosure of information is likely to cause identifiable damage to specific valid national security interests. This restriction should be necessary and proportionate to protect this interest, and non-disclosure should not prejudice the essence of the right to a fair trial. Restrictions on the disclosure of information should also always be balanced by procedures applied by judicial authorities and subject to full and effective judicial review by an independent court or tribunal²⁵.

Relevant information may be refused only if measures are demonstrated to ensure proportionality and respect for the right to a fair trial, and the ability of the accused to be aware of the case and respond to it. At the same time, it is necessary to choose the least intrusive tool to achieve the desired result. If the public interest in disclosing documents or ensuring fairness exceeds the possible harm from disclosure, then the documents should be published, even if it may cause harm. In the case of "A and Others v. United Kingdom", the European Court of Human Rights has concluded that the procedural rights of four persons detained under the non-functioning regime of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) have been violated. The decision to detain them was based on secret documents, and these individuals did not have the opportunity to effectively challenge their guilt. In this regard, the national courts have ruled that if the government wishes to deprive a person of freedom, sufficient information on the reasons for national security must be provided so that the interested parties can effectively protect their interests. This requires a disclosure procedure, which is now used in bail procedures

²⁴ J Speed; L Lanzkron, (2020). Rules of documents (including cross-border documents) in civil proceedings Q&A: UK (England and Wales). [https://uk.practicallaw.thomsonreuters.com/w-016-5244?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-016-5244?transitionType=Default&contextData=(sc.Default)&firstPage=true)

²⁵ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Report to the General Assembly on right to a fair trial, UN Doc A/63/223. (2008). <https://www.ohchr.org/en/special-procedures/sr-terrorism>

when the government tries to detain a person or when national courts have concluded that a certain condition of bail is equivalent to imprisonment²⁶.

Judicial disclosure of information is an important component of any judicial system, including in Kazakhstan. The Code is the main model for decision-making, and for individual judges, commissions on the conduct of judges and lawyers – for guidance in assessing the ethics of judicial conduct. This makes it the most likely source to promote changes in judicial ethics in disclosure and disqualification. Firstly, CPC RK needs broader disclosure provisions so that the parties to the trial believe that the integrity of the judicial system and individual judges is self-evident. Secondly, as challenges to judicial conduct become increasingly based on a residual norm of the “appearance of impartiality” type, CPC RK should include guidance on the application of this general principle.

The introduction of innovative technical means into civil proceedings in Kazakhstan is accompanied by some difficulties in terms of their legal certainty, security, and preservation of basic guarantees. The same situation is taking place in other Central Asian countries, where most states aim to support this process in various spheres of society, including the judiciary. These countries are conducting programmes to create a “smart court” or “electronic court” in order to increase the efficiency of the judicial process through the introduction of digital technologies. It is worth noting that such processes will preserve natural resources by reducing the use of paper media, reducing the need for a personal presence in court, which will reduce transport emissions into the environment, as well as save electricity and other resources.

Judicial proceedings are a universal and basic way to protect rights and legitimate interests in society, despite the increased popularity of alternative dispute resolution methods. However, over the years, legal proceedings have lost their appeal due to the long terms of consideration of cases, complex procedures and high costs, which made this process ineffective. Due to the integration of modern technical means into the judicial process, significant changes have taken place: procedural deadlines and costs have been significantly reduced, and the process has become more transparent. This has a positive effect on the entire judicial system, since judges can now concentrate on their main duties, and digital technologies perform most of the actions related to document management. With the help of electronic platforms, judges can quickly get acquainted with the decisions made in similar cases, which contributes to the uniformity of judicial practice. Artificial intelligence technologies can also help to make a sample of a court decision based on the available data in the case.

The development of electronic justice and the digitalisation of legal proceedings can contribute to the normalisation of procedures for the introduction of a special mode of operation of the court during a war, emergency or other special period. This result is achieved due to the following factors:

- ensuring the protection of the procedural rights and legitimate interests of persons in active combat zones;
- development of electronic court proceedings in accordance with international best practices, including synchronisation of the national electronic court system with the European Electronic Justice Portal, the possibility of online dispute resolution, as well as the introduction of all modules of the Unified Judicial Information and Telecommunications System;

²⁶ European Court of Human Rights Decision in “A and Others v. United Kingdom” (application No. 3455/05). (2009). <http://surl.li/gpguu>

- ensuring protection against the risks of disclosure of limited or socially important information by occupation administrations and ensuring the security of information on electronic and tangible media;
- using “big data” analysis technologies to obtain recommendations for making the right decision on a particular case. It is important to define a single format of open data sets on the administration of justice that would meet the needs of market participants and provide a more transparent and open system;
- using of artificial intelligence for the consideration of minor cases, simultaneous translation of trials, analysis of legal positions and interaction with representatives of civil society. Before the introduction of such technologies, it is necessary to carefully study the issues of legislative regulation and ensuring the security of information on electronic and tangible media;
- ensuring unhindered legal proceedings, including the use of blockchain jurisdiction and expanding the possibilities of remote legal proceedings.

The use of blockchain technology in the judicial system can significantly improve the work of courts and improve the quality of trials. It can help create a unified cross-border approach to the use of discretionary categories, for example, to provide electronic documents certified using blockchain technology or through an electronic documents collection platform. Blockchain technology is applicable in various aspects, including polls, debates, and closing words. The use of online courts allows judges and parties to access court proceedings from anywhere in the world and interact with each other, make decisions at a convenient time for them. The judges consider the documents provided by the parties through the appropriate autonomous platform of the trial, including brief messages, faxes, e-mail, instant messaging accounts or other electronic means, taking into account the reliability of such documents and carefully analysing their origin and storage. These measures can reduce the time and costs of reviewing cases, increase the availability of justice, and improve the efficiency of the judicial system.

Reforming the legal system in Kazakhstan is crucial for several reasons. First, it makes the nation more attractive for foreign investments by offering a business-friendly environment. Second, it aligns the country with global legal standards, facilitating international collaborations. Third, modern laws safeguard the evolving rights and aspirations of its citizens, especially the youth. Lastly, by updating its laws, Kazakhstan strengthens its democracy, ensuring transparency and public participation while navigating its unique geopolitical position.

DISCUSSION

The idea of introducing the “disclosure” procedure into the civil procedure of the Republic of Kazakhstan is relevant and promising, however, the problem of high-quality and consistent implementation of this procedure remains open. Despite the fact that considerable attention is paid to the problem of disclosure of documents in the scientific literature, the theoretical aspects of disclosure of documents in the civil proceedings of Kazakhstan and the UK remain rather neglected.

Z. Morchadze²⁷ described the procedure for disclosure of documents under English law and noted that the institute of disclosure of documents has great potential, but its rules only allow the parties concerned to act, and often without even notifying the court. The

²⁷ See Z Morchadze, ‘Perpetuating documents in civil law proceedings’ [2022] *European Scientific Journal* 18(5), 109-116.

court enters into the case only if the parties cannot come to an agreement on any issues. S. Sime²⁸ notes the negative consequences of the mechanical transfer of this procedure under UK law, which consist in the deformation of values and the development of distorted ideas about democratic institutions, which can lead to the disillusionment of the population in these institutions and even to their rejection.

S. Rab and S. Court²⁹ emphasise that in the UK legislation, courts are given the opportunity to reduce the amount of information disclosure in order to achieve the main goal – fair consideration of cases with commensurate costs (CPR 31.5). As a result, the court may issue any disclosure order it deems appropriate. According to A. Allen-Franks³⁰, disclosure of documents in UK civil proceedings should be seen as a manifestation of the broader principle of fair use of documents. If the documents were presented illegally, the court may exclude it or refuse to consider it, even if it is permissible. Disclosure of information presents complex practical trade-offs, such as the form and means of exclusions from disclosure, which are necessary to satisfy competing interests³¹.

A. Higgins³² stated that in large cases, the main duty to disclose information under UK law should lie with the party that requires disclosure. Then it is the responsibility of this party to review the opponent's files for the availability of relevant documents. The disclosing party must have additional rights to protect privileged and private information, including guarantees against the use and further disclosure of such information. This model will contribute to efficiency, as it gives a decision on how much a party should invest in disclosing information directly into the hands of the party that requires it. In accordance with the basic idea of the concept of "disclosure" under English law, the parties must inform in advance about all relevant documents, including those that may negatively affect their case or support the position of the other party. The "cards on the table" approach is aimed at ensuring better preparation and disclosure of the case, preventing ambush strategies and ensuring fairness in justice³³.

However, there is disagreement over whether the English disclosure rules provide the right balance. Some researchers express concern that disclosure of information may be too burdensome in large cases and lead to limited access to justice for some parties in the process³⁴. Allowing the parties to assess the strength or weakness of their positions earlier during the proceedings is an important means of dispute resolution. In the UK, this was recognised as an important factor, because if a party does not know in advance about the arguments and documents of its opponent, then it cannot really assess its chances of

²⁸ See S Sime, *A practical approach to civil procedure* (Oxford: Oxford University Press, 2019).

²⁹ See S Rab; S Court, (2022). *Legal Systems in the UK (England and Wales): Overview*. [https://uk.practicallaw.thomsonreuters.com/5-636-2498?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-636-2498?transitionType=Default&contextData=(sc.Default)&firstPage=true)

³⁰ See A Allen-Franks, 'Discretion to exclude improperly obtained documents in civil proceedings in England and Wales' [2022] *Legal Studies* 43(1), 66-85.

³¹ D K Brown, (2018). *Documents disclosure and discovery in common law jurisdictions*. https://www.researchgate.net/publication/324597855_Documents_Disclosure_and_Discovery_in_Common_Law_Jurisdictions

³² See A Higgins, 'Open door disclosure in civil litigation' [2012] *The International Journal of Documents & Proof* 16, 298-322.

³³ C Rhee; A Uzelac, (2015). *Documents in contemporary civil procedure: Fundamental issues in a comparative perspective*. https://www.academia.edu/34460904/Documents_in_Contemporary_Civil_Procedure_Fundamental_Issues_in_a_Comparative_Perspective

³⁴ See G Kazhashvili, 'Role of the perpetuation of documents and claim security in litigation' [2013] *Procedure Law* 31, 65-74.

success. In this case, settlement negotiations at the early stages of the trial will not be effective.

In the modern world, access to information in general and to documents, in particular, is becoming increasingly important. The complexity of judicial processes in the Republic of Kazakhstan is increasing, and access to information is becoming necessary for the effective preparation and conduct of the case. This is especially true in cases where an economically strong party has more resources and information than a weaker party (for example, a consumer or a victim). Therefore, procedures aimed at disclosing documents and ensuring access to information in Kazakhstan can help achieve a more equal position for the parties in the judicial process.

One of the topical topics that attract the attention of researchers is artificial intelligence in law enforcement, including its use in the civil process of the Republic of Kazakhstan. S. Alzou'bi et al.³⁵ draw attention to the fact that computers can collect and analyse a large amount of data in an accessible format. Research shows that computer science technologies such as geographic information systems, clustering and link analysis, as well as sophisticated intelligent analytical tools, can be used to profile crimes or offenders and compare and predict crimes. At the same time, it is necessary to consider the possibility of abuse of such technologies by criminals. Blockchain technology also attracts the attention of researchers. D. Patel et al.³⁶ draw attention to the fact that through the use of smart contracts, blockchain technology can establish a framework for activities that threaten public safety and ensure the transfer of information to law enforcement agencies to prevent it.

A. Cholil³⁷ and J.W. Burchill³⁸ highlight the problem of protecting confidentiality in court proceedings, especially in cases where parties from different countries with different legislations participate in the process. The researchers note that existing data protection mechanisms, such as the global data protection agreement, do not always work effectively and do not consider the specifics of each specific situation. Therefore, they propose to use blockchain technologies and data encryption to ensure the reliable and secure transfer of confidential information between the parties and judicial authorities³⁹. However, the protection of confidentiality and fairness in the judicial process of the UK and Kazakhstan is a dilemma that requires finding a balance between the interests of the parties and public goals. Therefore, it is necessary to develop effective procedural tools that provide sufficient access to information and protection of confidentiality, without restricting access to justice for some parties in the process. Some companies do not comply with all disclosure rules, which is a serious problem in both the UK and Kazakhstan. The responsibility for setting strategic guidelines and overseeing the business affairs of companies lies with their directors, who are also required to ensure that the companies under their management comply with regulatory disclosure

³⁵ See S Alzou'bi; H Alshibly; M Al-Ma'aitah, 'Artificial Intelligence in law enforcement, a review' [2014] *International Journal of Advanced Information Technology* 4(4), 1-9.

³⁶ D Patel D; H Sanghvi; N Kumar Jadav; R Gupta; S Tanwar; B Cristian Florea; D Taralunga; A Altameem; Altameem, T., Sharma, R. 2022. BlockCrime: Blockchain and deep learning-based collaborative intelligence framework to detect malicious activities for public safety. *Mathematics*, 10(17), 3195.

³⁷ A Cholil, 'E-court and e-Litigation: The new face of civil court practices in Indonesia' [2020] *International Journal of Advanced Science and Technology* 29(02), 2206-2213.

³⁸ J W Burchill, 'Alibi documents: Responsibility for disclosure and investigation' [2021] *Manitoba Law Journal* 41(3), 99-126.

³⁹ *Ibidem*, 37

requirements. In this regard, increased disclosure of information is becoming increasingly necessary in some areas⁴⁰.

In addition, there is a dilemma related to the extent to which the rights of access to information established in the substantive law of Great Britain and Kazakhstan compensate for the shortcomings in the system of documents provided for by procedural law. Currently, the issue of the relationship between the legislation regulating the protection of personal data and the right of access to databases containing personal data, on the one hand, and the right to information before and during civil proceedings, on the other, is of particular importance. The achievement of digital transparency in Kazakhstan directly depends on the level of economic development of the country. The reform of the judicial system requires significant financial costs, so this process takes place at different speeds and with different results in different countries. The adoption of legislative acts in this area is not enough if they are not funded and implemented in practice⁴¹.

Modern technological changes have led to the need for the UK and Kazakhstan to move to a new level of interaction with society in a digital format, thereby ensuring independent justice. The introduction of the latest digital technologies allows not only to guarantee the observance of the fundamental rights and freedoms of citizens, but also makes the judicial system more efficient and accessible. The use of such technologies also contributes to ensuring the expediency of applying the norms of substantive and procedural law. However, it is necessary to consider the applicability or inapplicability of certain principles, norms, and provisions of English law for Kazakh society when improving the civil legislation of the Republic of Kazakhstan in modern realities, including the conditions for the implementation of English law in the national legal system.

The use of new technologies such as artificial intelligence and blockchain in the civil process of Kazakhstan can bring many advantages in improving the institution of disclosure of documents. They are able to ensure the unification of legal practice, simplified access to information and the rapid use of external production. Electronic procedures and communication are becoming key factors for effective enforcement, as they allow the digital approach to be maintained by default. It is important to use user-oriented applications, tools and systems that provide usability and user empowerment. However, when using such technologies, it is important to consider legal and ethical aspects and ensure their legality, transparency, and effectiveness. It is also necessary to consider data protection and ensure the period of application of such technologies. Programmes developed with these principles in mind can be successfully used to ensure legal certainty and smooth interaction in the national and international context. In general, the use of new technologies in the legal field can bring many advantages and significantly improve international cooperation.

CONCLUSIONS

The findings from the study indicate that in the UK, document disclosure serves as a robust tool with well-defined legal parameters, promoting time and cost-efficiency for involved parties while aligning with contemporary demands. Yet, even as the concept of pre-trial disclosure in civil proceedings resonates with present-day requisites, its practical execution is accompanied by uncertainties. The essence of disclosure frameworks embodies endeavors to harmonize the concurrent objectives of judicial

⁴⁰ Ibidem, 38

⁴¹ A M Dembo, 'Corporate governance disclosure: The documents from Nigeria' [2018] *Indian-Pacific Journal of Accounting and Finance* 2(4), 16-25.

accuracy, fairness, and procedural expediency. While jurisdictions across both common law and civil law domains acknowledge that comprehensive pre-trial disclosure bolsters just and precise judicial outcomes, it's notable that such disclosure doesn't universally ensure verdict accuracy. Factors such as the trajectory of cases through the justice system and the ethical integrity of legal professionals in upholding confidentiality significantly influence disclosure's efficacy.

Kazakhstan, in its pursuit of enhancing civil legislation, acknowledges the imperative of theoretical inquiries and sculpting a legal scaffold for governing private law dynamics. Nevertheless, there's a salient need for circumspection, given the distinct disparities between the Romano-Germanic and Anglo-Saxon legal traditions. Transplanting English jurisprudence without due consideration can inadvertently destabilize Kazakhstan's legal fabric. Recognizing the unique historical, sociocultural, and judicial nuances of both nations is paramount. The ultimate objective behind adopting document disclosure, i.e., assimilating the pinnacle of foreign legal expertise to ensure procedural parity and competitiveness, could be undermined by an uncalibrated or superficial integration of this institution into Kazakhstan's legal procedures. For a harmonious assimilation of the document disclosure institution, drawing inspiration from the Anglo-Saxon legal system, it's vital that Kazakhstan undertakes comprehensive research and methodical refinement of its legislative processes. The imperative to overhaul Kazakhstan's legal structure arises from multiple dimensions. Firstly, it positions the country as an enticing destination for overseas investments, laying the foundation for a conducive business ecosystem. Secondly, synchronizing with international legal benchmarks augments the potential for global partnerships. Thirdly, contemporary legislation encapsulates the changing rights and ambitions of its populace, particularly the younger generation. Conclusively, a revamp in legal provisions underscores Kazakhstan's democratic resilience, championing clarity and civic engagement as it maneuvers its distinct geopolitical stance.