

LORD WOOLF

**A VISION OF
THE AIFC COURT**

Edited by Christopher Campbell-Holt

**Dedicated to the 27th Anniversary
of Independence of the
Republic of Kazakhstan**

UDK (Universal Decimal Classification [УДК]) 347.9
LBC (Library-Bibliographic Classification [ББК]) 67.410
W 83

**W 83 Lord Woolf CH A Vision of the AIFC Court / Edited by
Christopher Campbell-Holt. – Nur-Sultan: AIFC Court,
2019. - 266 p.**

This book has been authored by The Rt. Hon. The Lord Woolf CH, the first Chief Justice of the AIFC Court. It follows the successful launch of the AIFC Court in 2018 and marks the significance of its creation as the first common law court in the Republic of Kazakhstan and Eurasia modelled on the principles and procedures of the courts of England and Wales to resolve commercial disputes. The book describes the establishment of the AIFC Court and sets its vision for the future as a leading commercial court that will contribute to the enhancement of the Republic of Kazakhstan as an investment hub for Eurasia.

ISBN 978-601-06-5438-9

UDK (Universal Decimal Classification [УДК]) 347.9
LBC (Library-Bibliographic Classification [ББК]) 67.410

All rights reserved.
© AIFC Court, 2019

CONTENTS

FOREWORDS	i
Nursultan Nazarbayev, the First President and Elbasy of the Republic of Kazakhstan.....	i
The Rt. Hon. The Lord Woolf CH, AIFC Court Chief Justice.....	iii
Dr. Kairat Kelimbetov, AIFC Governor	vii
INTRODUCTION.....	1
PART 1: THE ESTABLISHMENT OF THE AIFC COURT	3
1.1 Establishment (2015-2018).....	3
1.2 Mission	8
1.3 Judges, Registrar and Chief Executive, and Staff	11
1.3.1 Gowns Display at The Royal Courts of Justice, London, UK	23
1.4 Operation	25
1.5 Jurisdiction.....	28
PART 2: THE FUTURE OF THE AIFC COURT	31
2.1 High Standard Dispute Resolution	31
2.2 Perspectives and International Mission	36
SCHEDULES	41
Schedule 1: Table of Statutes	41
Schedule 2: Table of Abbreviations	43
Schedule 3: AIFC Court Regulations 2017	45
Schedule 4: AIFC Court Rules 2018	87

FOREWORD



**NURSULTAN NAZARBAYEV,
THE FIRST PRESIDENT AND
ELBASY OF THE REPUBLIC OF
KAZAKHSTAN :**

“The AIFC is the first English Common Law financial centre in the region. Its Court and International Arbitration Centre will ensure fairness and protection of parties to disputes.”¹

The “Astana” International Financial Centre is a new page in the history of independent Kazakhstan. Its launch is an important step in the gradual and steady development of our economy. Initially, I put forward this idea in 2015 as one of the responses to new global challenges.²

Through gradual and effective implementation of the “100 Concrete Steps” Nation’s Plan to carry out five institutional reforms the kazakhstani model of the AIFC was established and adopted the practices of leading international financial centres.³

I appointed nine reputable judges from England and Wales as justices of the AIFC Court. They are headed by The Rt. Hon. The Lord Woolf CH, the former Lord Chief Justice of England and Wales. Twenty three international arbitrators were also invited to the arbitration centre.⁴

¹ Speech by First President given at the AIFC opening ceremony, retrieved from https://tengrinews.kz/kazakhstan_news/nazarbaev-uchastvuet-v-otkryitii-mfisa-348328/ on 25 September, 2018.

² Speech by the First President given at the AIFC opening ceremony, retrieved from <https://elorda.info/ru/news/view/nazarbaev-dal-start-birghe-mfca>.

³ Article ‘Participation at the AIFC Opening Ceremony’ dated 5 July 2018, retrieved from <http://www.akorda.kz/ru/events/uchastie-v-ceremonii-otkryitiya-mezhdunarodnogo-finansovogo-centra-astana>.

⁴ Speech by the First President given at the AIFC opening ceremony, retrieved from

The AIFC is to become the financial hub for the Eurasian region. In the long-term, the AIFC shall join the twenty most advanced financial centres in the world.⁵

https://tengrinews.kz/kazakhstan_news/nazarbaev-uchastvuet-v-otkryitii-mftsa-348328/.

⁵ Speech by the First President given at the AIFC opening ceremony, retrieved from https://tengrinews.kz/kazakhstan_news/nazarbaev-uchastvuet-v-otkryitii-mftsa-348328/.

FOREWORD



AIFC COURT CHIEF JUSTICE THE RT. HON. THE LORD WOOLF CH:

“The First President of the Republic of Kazakhstan has shown vision in creating the AIFC. He wants the world to see English common law being applied in his country and not just in its capital city, Nur-Sultan, and to flourish throughout society in the years to come to show how business and justice should be done.”¹

This book contains an account of a remarkable and impressive achievement of the State of the Republic of Kazakhstan. The Elbasy of the Republic of Kazakhstan, Nursultan Nazarbayev, showed great vision in creating the AIFC. His intention to do so was reflected in *The Plan of the Nation “100 Concrete Steps”* which was the next step to implement five institutional reforms which was announced at the XVI Congress of The Nur Otan Party on 11 March 2015 to achieve ‘a modern state for all’. There would be an international financial centre in Nur-Sultan. The international centre was to include a court which would be founded on the principles of English law.

“The central question of the third direction of the Nation’s Plan is the creation of the Astana International Financial Centre with an independent judicial system, a separate jurisdiction based on the principles of English law, with the application of English language and the introduction of the investment residency principle.”²

¹ The Rt. Hon. The Lord Woolf CH, quoted by Frances Gibb, *The Times*, London, 1 February 2018, ‘UK Judges Head New Court in Kazakhstan’.

² Article of the First President of the Republic of Kazakhstan “The Nation’s Plan – The Road to the Kazakhstani Dream”.

The full significance of this initiative has to be seen against the background of the changes that had already taken place in the Republic of Kazakhstan's legal system. This is not a common law system but a civil law system, bearing close relation to the systems to be found in the majority of centres on the mainland of Europe.

The judiciary of the Republic of Kazakhstan had already been the subject of reform. In 2000, a Decree of the First President had been adopted. This separated the Executive from the existing judiciary and transferred the operation of the courts in the Republic of Kazakhstan from the Ministry of Justice to the Committee of Court Administration under the Republic of Kazakhstan Supreme Court. That court was already established in the Supreme Court's magnificent building in Nur-Sultan.

However, the effect of the announcement of the First President at the opening of the Congress to which I referred meant inevitably there was to be a new system of justice to support the AIFC. It would mean that there would be two systems of justice in the Republic of Kazakhstan – its traditional system and a new system supported by the AIFC Court together with the International Arbitration Centre (“the IAC”). Both the new AIFC Court and the IAC will provide important support for the role of the AIFC and should ensure that the AIFC will be a flagbearer for the rule of law. This flag should be a huge support for the commercial activities of the AIFC.

The new AIFC Court which this book describes should be greatly welcomed by all those involved with the AIFC and many others who believe the AIFC Court to be an ideal forum in which to resolve their disputes.

I am the author of this book, but I emphasise that what the book describes is the product of teamwork; I am solely responsible for

any errors in its content and can only plead in mitigation that we all needed to work under extreme pressure of time.

Time has been a constant constraint throughout the program of activity described in the book. I make no complaint about this, because I always knew that the project was regarded as urgent. The size of the project made this inevitable if we were to achieve our objectives. They included creating an entirely new court, applying a different system of law from that operating in the Republic of Kazakhstan and Eurasia, using a different language from that normally used in the Republic of Kazakhstan, and the engagement of a team of English judges who will be working in the AIFC Court.

I would like to thank the whole of the AIFC team and the AIFC Court's team but particularly the Governor of the AIFC, Dr. Kairat Kelimbetov, and Mr. Marat Aitenov, the AIFC Authority's Chief Legal Officer and a First Deputy Chief Executive, for all the support they have given from the beginning of this project.

There are members of the AIFC Court staff who initially worked on the text of this book and bearing in mind the languages involved, they did a commendable job. The AIFC Court's staff have also played a considerable part in the development of the AIFC Court and the IAC Registry. I am indebted to them for the contribution they have made.

Above all, I am indebted to Mr. Christopher Campbell-Holt, the Registrar and Chief Executive of the AIFC Court and the IAC, who has masterminded everything that has happened since we began this project and which it would not be in anything like the shape it is now without his extraordinary efforts. Although he has now settled in Nur-Sultan with his wife and is very happy here, it was courageous of him to transfer to another country to ensure the success of the project.

I should also mention Mrs. Maggie Stevenson, my very loyal Personal Assistant, who has also been involved in the project from the outset and for whose assistance I am greatly indebted.

Everyone involved has been inspired by the nature of the project to give their greatest possible support to it. They have done this because it is so important.



Initially, my responsibilities included the establishment of the IAC, but it was obviously preferable for it to have its own leader. Ms. Barbara Dohmann QC was appointed to take charge of this and she has also worked prodigiously to achieve the successful launch of the IAC.

Finally, I would like to acknowledge the warmth with which the project has been received by all those with whom Mr. Campbell-Holt and I have had dealings in Nur-Sultan. Here, mention is to be made of the generous assistance that we have received from the Chairman of the Republic of Kazakhstan Supreme Court, its judges, and staff.

FOREWORD



THE AIFC GOVERNOR DR. KAIRAT KELIMBETOV:

“The AIFC dispute resolution system is a cornerstone serving the needs of business to deliver efficient justice.”

Over the past years the Republic of Kazakhstan has engaged in numerous reforms aimed at diversification of the national economy and encouragement of foreign direct investments. A key driving role in constant institutional improvement and implementation of the “National Strategy – 2050” adopted by The First President of the Republic of Kazakhstan, is played by *The Plan of The Nation “100 Concrete Steps”*. To date, one of the prominent achievements became the official launch of the AIFC aimed at reinforcing the growth of the economy, developing financial and ancillary services, and attracting regional and international investment.

The primary objective of the AIFC is to establish a leading international financial centre³ aimed at development of capital markets, asset management, private banking, Islamic finance and financial technologies. One of the main areas for development of these key directions is the dispute resolution system of the AIFC. Benchmarked against standards of leading international financial centres, the AIFC Court and the IAC provide a trustworthy, transparent and fair forum for resolving cases efficiently. The

³ The Constitutional Statute ‘On the AIFC’ 2015, Article 2(1).

AIFC Court meets the expectations of the international business community by ensuring predictability of legal protection in a timely manner.

The key features of a credible court are its rules, judicial bench, administration, facilities, and enforcement. The AIFC Court operates and adjudicates in accordance with the AIFC Court Regulations 2017 and AIFC Court Rules 2018 which are based on common law principles and best international practice. The AIFC Court judicial bench have nine highly reputable and professional English judges, specialising in key areas of commercial and civil common law. Among them is the AIFC Court Chief Justice, The Rt. Hon. The Lord Woolf CH, a leading figure in common law jurisprudence and judicial procedure.

The AIFC Court has a final appeal level and a fast track procedure for small claims. Decisions of the AIFC Court are enforceable on the same terms and conditions as decisions of the Republic of Kazakhstan's national courts. Enforcement internationally will happen in accordance with international treaties ratified by the Republic of Kazakhstan.

The AIFC creates new opportunities to conduct business in a transparent and business-friendly environment and we welcome investors to capitalise upon this opportunity in the AIFC.

INTRODUCTION

On 5 December 2017, eight judges from England and Wales were appointed by Decree of the First President of the Republic of Kazakhstan as judges of the AIFC Court. In addition, I was appointed Chief Justice of the AIFC Court. The judges and I are very privileged to serve the Republic of Kazakhstan to further the rule of law. This moment of history should not be forgotten and I have written this book to explain the remarkable events that have resulted in the establishment of the AIFC Court.

In the book I have paid particular attention to the benefits the AIFC Court will confer, not just for the AIFC and its business community, but also to the Republic of Kazakhstan and the Eurasia region as a whole. Through the consideration of the objectives and mission of the AIFC Court, a light should be directed on its operation.

In support of the vision of the AIFC Court I consider the developments in the Republic of Kazakhstan as a whole and the key features of the AIFC Court, its judicial bench, structure, rules, and functions.

This book adopts a chronological approach. It is divided into two Parts. In Part 1, I consider the establishment of the AIFC Court following the Head of State's initiative in 2015 to its official launch in 2018. In Part 2, I draw attention to the future of the AIFC Court's international mission.

The book includes the AIFC Court Regulations 2017 and the AIFC Court Rules 2018 which are at the core of the way in which a common law commercial court functions. These Regulations and Rules are based on the latest developments of English civil procedure and reflect the best judicial practice of similar common law courts at the world's leading international financial centres.

This book is the first in a series of books the AIFC Court and IAC will publish in the coming years. They will include a collection of lectures delivered by the AIFC Court judges to the Republic of Kazakhstan domestic court judges, lawyers, and students at conferences and universities in the Republic of Kazakhstan.

PART 1: THE ESTABLISHMENT OF THE AIFC COURT

1.1 Establishment (2015-2018)

The establishment of the AIFC Court involved many steps. Initially the actions were those of the First President of the Republic of Kazakhstan, Nursultan Nazarbayev. This was followed by:

- (1) On 11 March 2015, at the XVI Congress of The Nur Otan Party, the First President of the Republic of Kazakhstan presented a Program of five institutional reforms which included: 1) upgrading state apparatus; 2) respecting the rule of law; 3) industrialization and economic growth; 4) strengthening Kazakh identity; and 5) enhancing the transparency and accountability of the state.⁴ As part of the second and third reforms, the First President outlined the need to establish in Nur-Sultan the AIFC, based on English law principles as well as an independent legal and judicial system.

The Program also took into account the practices of other existing successful international financial centres. The main features were the use of the English language, the principles of the courts of England and Wales, and the standards of other international financial centres (for example, the Dubai International Financial Centre, which was formed in 2004).

The best practices adopted by international financial centres demonstrate that they can be components of a favorable investment climate. They create a legal framework with which participants are familiar; they create the impression

⁴ Nursultan Nazarbayev, 'The Modern State for All: Five Institutional Reforms', XVI Nur Otan Party Congress, Nur-Sultan, 11 March 2015.

that a court will protect participants' interests and secure legitimate demands through transparent and effective judicial and extrajudicial processes. They contribute to London, New York, Hong Kong, Singapore, and Dubai, being the world's preferred centres for resolving commercial disputes. They demonstrate the importance of principles of objectivity, impartiality, and justice, prevailing. The establishment of the AIFC Court with its own jurisdiction, operating in accord with the same principles should, in time, result in the AIFC Court joining their number.

To achieve collaboration and support for the AIFC, including its Court and IAC, visits were made to the Dubai International Financial Centre by delegations from the Republic of Kazakhstan's Supreme Court, Government, and the National Bank.

- (2) On 20 May 2015, the main provisions of the Program and the Decree⁵ were incorporated into *The Nation's Plan "100 Concrete Steps"* for the implementation of five institutional reforms. This included the adoption of Steps 70-72 of the 100 Steps, the introduction of the English language as the official language of the Financial Centre, and its Court.
- (3) On 7 December 2015, the Constitutional Statute 'On the AIFC' 2015 was adopted, which defined the goals, objectives and principles of AIFC activities, the principles for regulating the activities of AIFC participants, the strategic directions of AIFC development, and defined the AIFC bodies and their powers. The Constitutional Statute 'On the AIFC' 2015 established a special legal framework on AIFC territory, based on the principles, norms, and precedents of the law of England and Wales and the standards of leading

⁵ Decree of the First President of Kazakhstan on the Astana International Financial Centre No 23 as of 19 May 2015.

world financial centres, preferential tax, currency and visa regimes, as well as preferential treatment of foreign labour by AIFC bodies and participants.

- (4) On 24 December 2015, under President Order, Dr. Kelimbetov was appointed AIFC Governor.
- (5) On 25 December 2015, in order to support the activities of the AIFC bodies and participants, the National Bank, by the Decision of the Sole Founder, established a legal entity called JSC AIFC Authority. Pursuant to the Decree, the National Bank transferred all shares of the company to the Republic of Kazakhstan Ministry of Finance for trust management.
- (6) On 31 December 2015, to implement the Constitutional Statute 'On the AIFC' 2015, the First Presidential Decree 'On Approval of the AIFC Management Council Regulations and AIFC Management Council Composition', as well as the First Presidential Decree 'On Defining the Territories of the AIFC', were adopted.
- (7) The Nur Otan party election program approved by Resolution No. 001 dated 29 January 2016 of XVII Nur Otan Party Congress, as well as the First President's Speech "*Nation's Plan - the Way to the Kazakhstani Dream*", strongly emphasized the importance of establishing and operating the AIFC Bodies and the AIFC in Nur-Sultan, with an independent judicial system, its own jurisdiction based on the principles of English Law, and using the English language.
- (8) On 26 May 2016, the first meeting of the AIFC Management Council was held, at which the structure of the AIFC Strategy and AFSA Statute were approved.

- (9) At the 29th Plenary Meeting of the Foreign Investors Council chaired by the First President, the AIFC was the central topic of discussion. The First President highlighted the role and challenges set for the financial operations of the Republic of Kazakhstan and the unprecedented conditions created for AIFC participants. The First President asked investors to pay special attention to the establishment of an independent AIFC Court to guarantee transparency, fairness and protection of the rights of investors and business. He added that international judges who had earned trust and are credible⁶ would be appointed to the AIFC Court.
- (10) Given the need to introduce English legal procedure, a search was conducted on modern prominent figures in commercial judicial procedure in England and Wales. No doubt, thanks to my report on access to justice, which underpinned the significant reforms of English civil procedure that I introduced, and my other professional experience as the Lord Chief Justice of England and Wales and as President of the Qatar Financial Centre Court, representatives of the AIFC Authority approached me for assistance in establishing the AIFC Court and the IAC.

A few months later in 2017, I made my first visit to the Republic of Kazakhstan, where I met among others, the then Prime Minister of the Republic of Kazakhstan, the General Prosecutor, the Chairman of the Supreme Court, and the Minister of Justice. Their commitment and dedication played a key role in my decision to agree to assist in establishing the AIFC Court and the IAC. The tasks were daunting, and the timescale was tight.

⁶ *The Official Website of the First President of the Republic of Kazakhstan*, Nur-Sultan, 27 May 2016, ‘Participation in the 29th Plenary Session of the Foreign Investors Council’.

The constitutional reforms which were made on the initiative of the First President and supported by the AIFC Governor ensured the new AIFC Court was established in accord with the legal requirements of the country within the time proposed.

Working closely with Mr. Christopher Campbell-Holt, who later became the AIFC Court's Registrar and Chief Executive, the project was divided into three phases: first there was development of the concept of the AIFC Court. Then it was necessary to select the best candidates to be judges of the AIFC Court, based upon their achievements as judges in England and Wales. The third stage was the appointment of the judges by the First President. Each of the judges, including myself, took the oath, in my case before the First President, in the following historic terms which highlight the heavy responsibilities of the judges:

“... to solemnly, sincerely, and truly declare and affirm to well and truly serve the Republic of Kazakhstan ... and to do right to all manner of people after the Constitution of the Republic of Kazakhstan and Acting Law of the AIFC, without fear or favour, affection or ill will.” (6 December 2017)

The Dispute Resolution Authority of the Dubai International Financial Centre also assisted with the project. Combining their experience with that of Mr. Campbell-Holt and myself enabled us to devise an effective model for the Republic of Kazakhstan.

1.2 Mission

The mission of the AIFC Court is to become the leading court for the resolution of commercial disputes in the AIFC and the Eurasia region, together with the IAC, to achieve a one-stop shop for dispute resolution. It will promote and make the Republic of Kazakhstan and the AIFC preferred destinations for doing business.

The AIFC Court will complement the jurisdiction of the Republic of Kazakhstan domestic courts with their civil law system.

The fact that parties with no connection to the AIFC can opt into its jurisdiction is another attractive feature of the AIFC Court. It will enable parties, irrespective of their geographic location by way of agreement in their contracts or separate agreements to give exclusive jurisdiction to the AIFC Court.

There is increasingly a recognition of the value of the rule of law as a contributor to economic cooperation and prosperity. This encourages policy makers to improve national law. In the light of the extremely competitive business market in Nur-Sultan, the building of a sound, clear and transparent legal framework for the conduct of business will be a positive approach for the Republic of Kazakhstan. In this regard, the AIFC Court is well prepared to meet the business community's expectations.

Having an English-speaking common law court as well as the existing civil law jurisdiction of the Republic of Kazakhstan domestic courts will build confidence in investors. This will appeal to capital markets. Investors will be provided with the legal certainty and a judicial system with which they are familiar. This is a judicial system required to meet the problems in relation to complex and high-level investment ventures. This should prove to be an extremely attractive element to encourage the concentration

of domestic and international capital to the AIFC and attract long-term investment in the country. In turn, this will contribute to securing the success of the AIFC. The result will encourage the creation of an efficient international commercial legal system. It is a vital element for establishing and maintaining the credibility of any international financial centre, as demonstrated by the experience of other similar initiatives abroad.

As we know, the language of the AIFC Court, in accordance with the Constitutional Statute 'On the AIFC' 2015, is English. It is staffed by international judges who are skilled in resolving disputes involving commercial issues. It will be critical to its success that the AIFC Court judges not only have the necessary common law experience and skill, but also have a reputation for the highest integrity and independence. They must also be able to manage cases and trials and possess common sense. Today they must also be able to recognise the importance of proportionality and how to keep control of costs using the best technology available, so avoiding the curse of much commercial litigation, being drowned by documents. Their reputation has to be sufficient to satisfy those who deal with the AIFC Court that they have all of these qualities.

It will be the task of the judges to uphold the same judicial standards and legal principles that have been applied and developed over a great many years by the commercial courts and the High Court of England and Wales. Those courts already have a world-wide reputation for integrity and excellence. It is used by the commercial world, irrespective of the nationalities involved, to regularly resolve their disputes. It does this in respect of many more international cases than any other international court. This provides an excellent precedent for what we want the AIFC Court to achieve. The judges appointed to the AIFC Court are well aware of the practices of the courts of England and Wales. They will be able to promote the same standards in the AIFC Court.

Global companies seeking to conduct business internationally look for those places which recognise and apply the rule of law. They do so because they know that in their business from time to time, disputes are likely to arise, and they may well require the assistance of a court to resolve them. When this happens, they want to be able to have the protection that the rule of law provides.

Although London is and has been the preferred choice for the trial of this type of litigation the position can change. For example, Russia in 2016 introduced arbitration reforms which could make Russia a more acceptable choice for arbitration than it is now. Whether this happens, time will tell. If it does, this will be an indication that the parties are prepared to choose alternatives to London which could also benefit the AIFC Court and the IAC. But only if what is available meets the highest standards. There needs to be excellent judges supported by staff and technology with appropriate premises. None of this comes cheap and litigants should understand that even if everything I mention is available, the process is still going to be expensive in every way; in the time involved, resources and emotional demands.

1.3 Judges, Registrar and Chief Executive, and Staff

The process for selecting judges of the AIFC Court was agreed between myself and the AIFC Governor. I would recommend candidates to him and if he approved of those candidates they would be recommended to the First President, who would hopefully make the appointment. This was the most challenging and important task in establishing the AIFC Court because they had to be judges of the highest calibre as they are the key to ensuring the quality of justice in the AIFC Court. The quality of justice of the AIFC Court will have a direct bearing on its success. The litigants will not resort to a court willingly unless they have confidence in the judiciary. Accordingly, this excellent quality would undoubtedly be expected by the First President.

There are three qualities which are especially relevant. The first is that the judges should be familiar with English law and English judicial practice. This is implicit in what the AIFC Court is seeking to achieve. Secondly, they should have the required judicial experience. Here the distinction is to be drawn between the different jurisdictions of the AIFC Court. The AIFC Court has two levels at first instance: The Small Claims Court ('the SCC'), dealing with claims of limited value and the main Court ('the CFI'), which is a court with unlimited jurisdiction in relation to value and complexity. In addition, there is the final appeal level.

The judges appointed all possess the required experience and are of the highest calibre. They have undoubted integrity, independence, and impartiality, and the ability to deal with disputes in a timely and thorough manner. They are courteous and attentive to the needs of litigants.

In England and Wales, statutory requirements for judges are demanding and vary depending on the level of the court to which a judge is to be appointed.

Before their appointment, England and Wales judges normally have substantial experience, both as advocates and as part-time recorders. That experience was subsequently built upon by their period sitting as judges in England and Wales. This is a most important qualification of the judges of England and Wales and helps to explain why they are admired internationally.

For many centuries trust in English and Welsh justice has been built upon its independence, fairness, and impartiality, which its judges have delivered. The cornerstone of English and Welsh justice is now in Nur-Sultan and is dependent upon the quality of its judges.

In Nur-Sultan a candidate to become Chief Justice of the AIFC Court or one of the other categories of senior judges of the AIFC Court must be not less than forty years of age at the time of appointment. At the time of appointment, they must have significant knowledge of the common law and experience as a lawyer or judge in a common law system; be of good character; and able to speak and write fluently in the English language.⁷ A candidate for the SCC must be not less than thirty years of age at the time of appointment; possess significant common law knowledge and experience as a qualified lawyer or judge in a common law system; be of good character; and be able to fluently speak and write in the English language.⁸ In addition, it is preferable to have experience of commercial and financial litigation. There are no restrictions on residency and alternative employment.

Naturally because they were to apply English and Welsh law, the candidates we primarily considered had been members of the English and Welsh judiciary and were eminent in their field. In addition, a consideration at the time of selection was their capability to adjudicate commercial disputes which generally are complex and require specialised knowledge. As a result, the judicial bench comprises distinguished English and Welsh

⁷ The AIFC Court Regulations 2017, Article 12(6).

⁸ The AIFC Court Regulations 2017, Article 12(7).

judges famous for their reputation of incorruptibility, experience, and impartiality. The judges appointed all meet this standard, as is apparent from their descriptions, to which I now refer. However, in time to come, the judges will increasingly come from the Republic of Kazakhstan.

In addition to myself as Chief Justice of the AIFC Court, the AIFC Court judges are:



The Rt. Hon. The Lord Faulks QC

Justice Lord Faulks QC was called to the Bar (Middle Temple) in 1973 and was appointed a Queen's Counsel in 1996. He was created a life peer member of the UK House of Lords in 2000 and was appointed Minister of State at the UK Ministry of Justice between 2013 and 2016. He was appointed a Recorder in 2000 and

a Bencher of Middle Temple in 2002.

His specialist expertise includes commercial law, arbitration, and professional negligence law. He was Chairman of the Professional Negligence Bar Association between 2002 and 2004 and was appointed Special Advisor to the UK Government Department for Constitutional Affairs on compensation culture between 2005 and 2006. He is a member of the Chartered Institute of Arbitrators. He is an Honorary Fellow at Jesus College, Oxford University. He was educated at Jesus College, Oxford University, where he graduated with an MA.



The Rt. Hon. Sir Jack Beatson FBA

Justice Sir Jack Beatson was called to the Bar of England and Wales (Inner Temple) in 1973 and was appointed a Queen's Counsel in 1998. He was appointed as a Judge of the High Court of England and Wales in 2003 and was appointed as a Lord Justice of Appeal in the Court of Appeal of England and Wales in 2013.

He was the Law Commissioner for England and Wales from 1989 until 1994 and worked on law reform in specialist areas including contract and commercial law, civil evidence, damages and financial services. He taught Law at Oxford University from 1973 until 1994 and he was the Rouse Ball Professor of English Law at Cambridge University from 1994 until 2003.

He is an Honorary Fellow at Oxford and Cambridge universities and the author of leading commercial law books, including Anson's Law of Contract (27th-30th eds.) and Good Faith and Fault in Contract Law (1995). He was educated at Brasenose College, Oxford University, where he read Jurisprudence and graduated with a BA in 1970, a BCL in 1972, an MA in 1973, and he received a DCL in 2000.



The Rt. Hon. Sir Rupert Jackson

Justice Sir Rupert Jackson was called to the Bar of England and Wales (Middle Temple) in 1972 and appointed a Queen's Counsel in 1987. He was appointed as a Judge in the Queen's Bench Division of the High Court of England and Wales in 1999. He was the Judge in Charge of the Technology and Construction Court between 2004 and 2007. He was appointed as a Lord Justice of Appeal in the Court of Appeal of England and Wales in 2008.

He conducted a civil litigation costs review in England and Wales from 2009 to promote access to justice at proportionate cost. His Final Report was published in 2010 and most of his recommendations were implemented in 2013. He was co-author and general editor of Jackson and Powell on Professional Negligence from 1982 to 1999. Since then he has been consultant editor. He was an editor of the White Book (on civil procedure in England and Wales) from 2000 and he was Editor-in-Chief from 2011 until 2017. He was educated at Jesus College, Cambridge University, where he read Classics and Law and graduated in 1971.



The Rt. Hon. Sir Stephen Richards

Justice Sir Stephen Richards was called to the Bar of England and Wales (Gray's Inn) in 1975. He was appointed as a High Court Judge in England and Wales in 1997. He was the Presiding Judge for Wales between 2000 and 2003. He was appointed as a Lord Justice of Appeal in the Court of Appeal of England and Wales in 2005. He was Deputy Head of Civil Justice between 2013 and 2015.

Before he became a judge, he was the First Junior Treasury Counsel between 1992 and 1997, a distinguished legal appointment known as the ‘Treasury Devil’. He was the Standing Counsel to the Director General of Fair Trading (the UK competition authority at that time) between 1987 and 1991. He has specialist expertise in competition law and regulatory law. He is an Honorary Fellow of St. John’s College, Oxford University. He was educated at St. John’s College, Oxford University, where he read Literae Humaniores (Classics) and graduated in 1972, and he read Jurisprudence and graduated with a BA in 1974 and an MA in 1977.



The Rt. Hon. Sir Robin Jacob

Justice Sir Robin Jacob was called to the Bar of England and Wales (Gray’s Inn) in 1965 and was appointed a Queen’s Counsel in 1981. He was appointed as a High Court Judge in England and Wales in 1993, and he was a Supervising Chancery Judge. He was appointed a Lord Justice of Appeal in the Court of Appeal of England and

Wales in 2003 and retired from that appointment in 2011 but continued to sit in the Court of Appeal occasionally until 2016.

He has specialist expertise in intellectual property law and commercial law. He was admitted to the Intellectual Property Hall of Fame in 2006. He is currently the Hugh Laddie Professor of Intellectual Property Law and Director of the Institute of Brand and Innovation Law at University College London. He has extensive experience of mediation and arbitration. He was educated at Trinity College, Cambridge University, where he read Natural Sciences and graduated in 1963. He also read the LLB in Law at the London School of Economics and graduated in 1967, having simultaneously read for the English Bar.



Mr. Andrew Spink QC

Justice Andrew Spink QC was called to the Bar of England and Wales (Middle Temple) in 1985 and appointed a Queen's Counsel in 2003. He is joint Head of Chambers and leads the Commercial Law team at Outer Temple Chambers, a barristers' chambers in London. He was appointed a Deputy High Court Judge in England and Wales in 2008 and sits regularly in this capacity in the Queen's Bench Division and Chancery Division of that Court. He has also sat for many years as a Civil Recorder in the courts of the Western Circuit in England. His specialist expertise includes complex commercial civil disputes, commercial trusts, banking, financial services and pensions law, regulatory law, and non-contentious strategic advisory work in all of these fields. He has extensive experience of mediation and arbitration. He was educated at Queens' College, Cambridge University, where he graduated with a BA in Natural Sciences and Law in 1984 and received an MA in 1985.

AIFC Small Claims Court Judges



Mr. Thomas Montagu-Smith QC

Justice Thomas Montagu-Smith QC was called to the Bar of England and Wales (Lincoln's Inn) in 2001 and was appointed a Queen's Counsel in 2017. He practices as a barrister from 24 Old Buildings, Lincoln's Inn, London. He practices in London and internationally including in the British Virgin Islands and Dubai, having appeared in many of the leading cases at the Dubai International Financial Centre Courts. He has specialist expertise in international commercial law, arbitration, commercial fraud, insurance and reinsurance, construction, and professional negligence. He was the principle draftsman of the Rules of the AIFC Court.

He was educated at Lincoln College, Oxford University, where he read Politics, Philosophy, and Economics and graduated in 1999. He read for the Postgraduate Diploma in Law at the College of Law in 2000 and read for the Bar Vocational Course at the College of Law in 2001.



Ms. Patricia Edwards

Justice Patricia Edwards was called to the Bar of England and Wales in 2006. She practices as a barrister from 20 Essex Street, a barristers' chambers in London, and has broad commercial litigation and arbitration experience with emphasis on advising and acting on complex cases with an international dimension. She has specialist expertise on urgent interim relief measures, insurance law, aviation, banking, international trade, private international law, intellectual property, sports and competition law. She has

considerable experience of complex scientific and financial evidence and foreign laws. She was appointed to Tiers 1 and 2 of the Lloyd's Arbitration Scheme Arbitrators Panel.

She was educated at University College London, where she read for an LLB in Law and graduated in 2005, and at Brasenose College, Oxford University, where she read for a BCL and graduated in 2007.

The Registrar and Chief Executive of the AIFC Court



Mr. Christopher Campbell-Holt

Mr. Campbell-Holt plays a pivotal role as the Registrar and Chief Executive of both the AIFC Court and the IAC. He supports myself, the judges, and the Chairman of the IAC. He is the recipient of proceedings as they are presented. He has the responsibility of ensuring their progress, subject to the directions of the judges, or in arbitration, the arbitrators. He is given power to make the necessary orders to achieve good management of the proceedings of both bodies. He is responsible for the AIFC Court and the IAC staff and relies on their efficiency and competence. He is also responsible for the premises containing the AIFC Court and the IAC.

He has many years of legal experience gained while living and working in the UK, US, Middle East, and Eurasia. He was the Registrar at a commercial common law court in Qatar under my presidency. He has worked at international law firms in the UK and Middle East and has established many international law institutions including the Centre for Ethics and Law at University College London. He has lectured at various universities and has published widely. He was educated at University College London, where he graduated with an LLB in Law in 2003. He is admitted as a member of the Bar of New York State and is a CEDR accredited mediator.

In 2018, he was awarded the title of Honorary Professor at KAZGUU university, a leading law school in Kazakhstan, for his contribution to the establishment of the AIFC Court and IAC, the AIFC common law, and legal education.

The Staff of the AIFC Court

The staff of the AIFC Court are lead by the Registrar and Chief Executive and are critical to the success of the project. The staff at present support both the AIFC Court and IAC. In due course the IAC is likely to have its own staff.



Mr. Almat Igenbayev
Assistant Registrar

Mr. Igenbayev supports the Registrar with all aspects of case administration and case management. He is a law graduate from Al Farabi Kazakh National University, and has an LLM from University College London, UK. Before joining the AIFC Court, he worked at the Supreme Court of the Republic of Kazakhstan and at the Senate of the Parliament of the Republic of Kazakhstan.



Ms. Aisha Manapova
Assistant Registrar

Ms. Manapova also supports the Registrar with all aspects of case administration and case management. She has an LLB from Queen Mary University of London and an LPC with Distinction from the University of Law in London, UK. Before joining the AIFC Court, she worked as a Senior Legal Consultant at Deloitte TCF LLP in Almaty in the Republic of Kazakhstan.



Mrs. Elvira Yausheva
Head of Communications

Mrs. Yausheva is responsible for public relations, communications, brand management, and corporate events at the AIFC Court. She graduated from the L.N. Gumilyov Eurasian National University with an MA in International Relations. She has a Diploma in Public Relations from the UK Chartered Institute of Public Relations. Before joining the AIFC Court she worked for seven years at the British Embassy in Nur-Sultan as Head of Communications and Strategic Communications and Political Adviser.



Ms. Gulnaz Tukhtamova
Head of Business

Ms. Tukhtamova provides the AIFC Court with day to day operations management including the development of business systems and the management and delivery of projects. She has an MBA degree in Financial Analysis provided by the National Bank of the Republic of Kazakhstan. Before joining the AIFC Court she worked at the Expat Centre of the AIFC Authority, the Treasury Department of the National Bank of the Republic of Kazakhstan and JSC “Astana-Finance”.



Mrs. Aigul Kazbekova
Corporate Services Manager

Mrs. Kazbekova assists the Registrar with administrative support and coordination. She also leads the AIFC Court Internship Program. She has an MSc in Economics from the University of International Business, in the Republic of Kazakhstan. She previously worked at the National Investment Corporation, the Prime-Minister's Chancery, and Sberbank.



Ms. Meruyert Zhushassarova
Business Officer

Ms. Zhushassarova provides general administrative assistance. She graduated from Astana University with a BA in International Relations. She previously worked at the British Embassy in Nur-Sultan, Republic of Kazakhstan.

1.3.1 Gowns Display at The Royal Courts of Justice, London, UK



On 20 March 2018, I had the honour of presenting my AIFC Court gown to the Royal Courts of Justice in London, UK. It was the gown I wore at the Affirmation Ceremony before the First President in 2017.⁹ This gown is still being displayed in London. This is a representation that the AIFC Court is committed to provide the same calibre of justice as provided in England and Wales. It is an enduring indication of the commitment of the judges who wear the robes to promote the rule of law in the Republic of Kazakhstan and the Eurasia region.

⁹ The affirmation ceremony by the AIFC Court Chief Justice in the presence of the First President of the Republic of Kazakhstan took place in Nur-Sultan on 6 December 2017 after the AIFC Court Judges were appointed by Decree of the First President of the Republic of Kazakhstan #196.

At the ceremony at which the gown was first displayed, the Ambassador of the Republic of Kazakhstan to the UK, H.E. Erlan Idrissoy, reiterated this commitment.

The ceremony was also an indication of the close relationship between the two judiciaries. The continued attendance of Kazakhstan judges to legal training courses in London confirms this relationship.

1.4 Operation

Structure of the AIFC Court

The AIFC Court is an independent legal body. In accordance with the Constitutional Statute ‘On the AIFC’ 2015,¹⁰ the AIFC Court consists of the Court of First Instance (‘the CFI’) and a Court of Appeal (‘the CA’). Their task is to achieve the expeditious and efficient resolution of litigation. At first instance there is the SCC¹¹ and CFI.



The SCC has a special fast track procedure to hear and determine claims where:¹²

- the amount of the claim or the value of the subject matter of the claim does not normally exceed USD 150,000;
- the amount of the claim or the value of the subject matter of the claim does not normally exceed USD 300,000 and all parties to the claim elect in writing that it be heard by the SCC;
- the claim relates to the employment or former employment of a party and all parties elect in writing that it be heard by the SCC; and
- such other claims as may be ordered or directed by the Chief Justice to be heard by the SCC from time to time.

¹⁰ The Constitutional Statute ‘On the AIFC’ 2015, Article 13(3).

¹¹ For claims not exceeding USD 150,000.

¹² The AIFC Court Rules 2018, R.28.2.

The SCC is designed to provide an expedited review and a platform for lower value and employment cases as well as cases emanating from business conducted between small and medium enterprises ('SME'). SME owners typically have very limited time and resources to dedicate to long-term issues. With limited understanding of the legal context of owning and operating businesses, they tend to rely on systems they can easily understand such as amicable dispute resolution.

The SCC provides access to justice in an efficient manner and helps to reduce the incidence of lengthy and costly litigation. Appeals of SCC decisions will be heard at the CFI. No further appeals of SCC decisions are allowed. The CA will not be applicable to the SCC.

SCC hearings will be held in a private, informal setting or at a distance, making use of the latest technology leading to faster, less costly and more amicable resolution of disputes. In the SCC parties before trial may request the SCC to fix a time and a place for a consultation. The purpose of consultations is to resolve disputes by agreement of the parties.¹³ If a claim is settled at a consultation, the written record of a settlement is referred to an SCC judge who issues a consent order, recording the terms of settlement.¹⁴ If the claim is not settled at the consultation, the SCC may either fix a date for further consultation or make arrangements for the hearing of the claim.¹⁵

The SCC model has been proven elsewhere to assist efficient dispute resolution, protecting business relationships.

If the CFI serves as an appeal instance for the SCC, then the CA will do same for the CFI. However, unlike in the civil procedure

¹³ The AIFC Court Rules 2018, R.28.15.

¹⁴ The AIFC Court Rules 2018, R.28.22.

¹⁵ The AIFC Court Rules 2018, R.28.23.

of the Republic of Kazakhstan,¹⁶ an appeal may be brought to the CA only upon the permission of the AIFC Court as set out in the AIFC Court Rules.¹⁷ Permission to appeal may be given where the CFI for the SCC or the CA for the CFI considers that the appeal would have a real prospect of success; or where there is a compelling reason why the appeal should be heard.¹⁸ The CA will allow an appeal from a decision of the CFI where the decision of the CFI was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the CFI.¹⁹

The appellant may file the appellant's notice within such period directed by the CFI or where the CFI makes no such direction, within 21 days after the date of decision.²⁰ Should the time for appeal expire, the appellant may file an appellant's notice accompanied with the application for an extension of time and a statement of the reason for the delay and the steps taken prior to the application being made.²¹

An order giving permission to appeal may limit the issues to be heard and may be made subject to conditions.²² Every appeal is limited to a review of the decision of the CFI unless the CA considers that in the circumstances of an individual appeal it would be in the interest of justice to hold a re-hearing or any other Rule or enactment requires a re-hearing.²³ A party may not rely on a matter not contained in his appeal notice unless the CA gives permission.²⁴

¹⁶ In accordance with the Civil Procedure Code of the Republic of Kazakhstan dated 31 October 2015 # 377-V, Article 240, a court's decision enters into force after the expiration of the period for appeal, unless the decision is expressly stated to enter into force immediately.

¹⁷ The AIFC Court Regulations 2017, Article 26(11).

¹⁸ The AIFC Court Rules 2018, R.29.6.

¹⁹ The AIFC Court Rules 2018, R.29.7.

²⁰ The AIFC Court Rules 2018, R.29.10.

²¹ The AIFC Court Rules 2018, R.29.12.

²² The AIFC Court Rules 2018, R.29.21.

²³ The AIFC Court Rules 2018, R.29.44.

²⁴ The AIFC Court Rules 2018, R.29.45.

1.5 Jurisdiction

The AIFC Court has exclusive jurisdiction to hear and adjudicate:²⁵

- (a) any disputes arising between the AIFC's Participants, Bodies, and/or their foreign employees;
- (b) any disputes relating to operations carried out in the AIFC and regulated by the law of the AIFC; and
- (c) any disputes transferred to the AIFC Court by agreement of the parties.²⁶

Additionally, the AIFC Court has exclusive jurisdiction in relation to interpretation of AIFC Acts.²⁷ The AIFC Court does not have jurisdiction over criminal and administrative matters²⁸ which are considered by the domestic courts of the Republic of Kazakhstan in accordance with the national legislation of the Republic of Kazakhstan.

The CFI serves as the final instance for claims against the decision of an AIFC Body,²⁹ Organisation, or Participant,³⁰ where the

²⁵ The Constitutional Statute 'On the AIFC' 2015, Article 13(4).

²⁶ Parties may agree to the jurisdiction of the AIFC Court by including an appropriate clause in a contract or concluding a separate written agreement to resolve disputes at the AIFC Court.

²⁷ The Constitutional Statute 'On the AIFC' 2015, Article 13(10).

²⁸ Under the legislation of Kazakhstan, administrative, as opposed to criminal, liability is imposed for commission of certain prescribed acts and omissions that pose a less significant danger to the public than crimes. In accordance with the Code of the Republic of Kazakhstan on Administrative Offences dated 5 July 2014 № 235-V, Article 25, an administrative offence is an illegal, guilty (intentional or careless) act or omission committed by an individual or a legal entity, for which the Code of the Republic of Kazakhstan on Administrative Offences prescribes imposition of administrative liability in the form of fines, license withdrawal, and so-called administrative arrests.

²⁹ In accordance with the Constitutional Statute 'On the AIFC' 2015, Article 9, there are six AIFC Bodies, including the AIFC Management Council; the Governor of the AIFC; the AIFC Authority, the Astana Financial Services Authority, the AIFC Court and the IAC.

³⁰ AIFC Participants are legal entities registered and/or recognised by the AIFC in accordance with the Acting Law of the AIFC.

claim relates to a question of law; an allegation of a miscarriage of justice; an issue of procedural fairness; or a matter provided for in or under the Acting Law of the AIFC.³¹

In the exercise of its appellate jurisdiction, the AIFC Court may affirm, reverse or vary the decision appealed; set aside the decision appealed in whole or in part; make any other order it considers appropriate; remit proceedings to the AIFC Body from which the appeal was brought, subject to any directions the AIFC Court considers appropriate; or make any order or direction that is in the interests of justice.³²

The AIFC Court has jurisdiction in relation to any matter in respect of which jurisdiction is conferred on it by the Constitutional Statute 'On the AIFC' 2015 or the AIFC Court Regulations 2017, including with regards to the AIFC Court's authority to perform functions to facilitate effective arbitration.³³

Any issue as to whether a dispute falls within the jurisdiction of the AIFC Court is determined by the AIFC Court (SCC, CFI) whose decision shall be final.³⁴

The AIFC Court shall consider the express accord of the parties to a case that the AIFC Court shall have jurisdiction and if the AIFC Court considers it desirable or appropriate, it may decline jurisdiction or may refer any proceedings to another court within the Republic of Kazakhstan.³⁵

³¹ The AIFC Court Regulations 2017, Article 26(5).

³² The AIFC Court Regulations 2017, Article 26(6).

³³ The AIFC Court Regulations 2017, Article 26(8).

³⁴ The AIFC Court Regulations 2017, Article 26(9).

³⁵ The AIFC Court Regulations 2017, Article 26(10).

PART 2: THE FUTURE OF THE AIFC COURT

2.1 High Standard Dispute Resolution

In Part 1, I discussed the advantages the AIFC Court provides for business users by ensuring predictability and transparency for resolving commercial and civil cases efficiently. In Part 2, I will elaborate on the way in which the AIFC Court will assist in resolving a dispute and on its future.

The principal factors parties may consider when choosing a court are:³⁶

- **judicial expertise** - understanding, familiarity and experience with the nature of dispute and industry, all of which can save time and costs for parties;
- **time efficiency** - speedy dispute resolution decreases litigation costs;
- **fairness** - fair, transparent and impartial process of dispute resolution;
- **litigation costs** - lawyers' fees, travel, translation and other costs;
- **finality** - if a judgment/award is still open to appeal, this can increase the time and costs required in order to obtain a final resolution of the dispute;
- **enforcement** - a lengthy enforcement process can prolong uncertainty and engender additional costs; and
- **familiarity** - familiar procedural rules or processes allow parties to better prepare and present their cases effectively.

³⁶ Eva Lein, Robert McCorquodale, Lawrence McNamara, Hayk Kupelyants, José del Rio, 'Factors Influencing International Litigants' Decisions to Bring Commercial Claims to the London Based Courts', 2015, UK Ministry of Justice Analytical Series.

In this respect, the judges of the AIFC Court have considerable experience in resolving complex commercial and civil disputes; a judicial bench which specialises in the main areas of business such as finance, construction, trade, insurance, IP, energy, subsoil, and contracts.

The SCC provides a fast-track procedure for lower value cases with only one appeal available to the CFI.

The AIFC Court decisions are enforced in the Republic of Kazakhstan in the same way as decisions of Republic of Kazakhstan domestic courts and internationally; the AIFC Court Rules are based on the principles of English procedure and are familiar to international lawyers.

Another consideration is the governing law clause of a contract which can specify the applicable system of law for interpretation of the agreement and its effect. The governing law clause can be complemented by a dispute resolution clause, which will prescribe the method by which disputes between the parties will be resolved, and the applicable procedural rules. Failure to include clear provisions on governing law, jurisdiction, and dispute resolution, can lead to lengthy and costly disputes over which a court should determine a dispute arising out of a contract and what substantive law is to be applied to determine the parties' rights and obligations under the contract.

In this respect, parties may consider choosing the Acting Law of the AIFC as the governing law of the contract and to use the AIFC Court to consider the dispute.

The AIFC law is based on English law principles and standards of leading international financial centres. It offers the following advantages:

- certainty and ability to foresee how a dispute arising out of a contract is likely to be resolved;

- the foundation of the AIFC law is English common law which is renowned for its reputation in international commerce providing fairness and certainty; and
- natural capacity of the AIFC Court judges to apply and interpret the AIFC law.

The parties may also choose foreign laws as the governing law of a contract and may still pursue litigation under that contract at the AIFC Court.

The AIFC Court Regulations and Rules encourage parties whenever it is appropriate to resolve their disputes through arbitration or mediation or any other method of alternative dispute resolution. Failure to do so in good faith may be considered by the AIFC Court when determining orders for costs.³⁷

While a governing law clause may determine which substantive law applies under a contract, a dispute resolution clause may govern dispute resolution mechanism and procedural matters. The procedures in the AIFC Court are determined by the AIFC Court Rules 2018.

Benchmarked against the English Civil Procedure Rules and the DIFC Court Rules, the AIFC Court Rules 2018 are significantly reduced in number compared to the rules of the DIFC Court and the courts of England and Wales.

In my final report ‘Access to Justice’,³⁸ published in 1996, I identified a number of principles which a common law civil justice system should meet in order to ensure access to justice. These principles now apply to the AIFC Court. They provide that the justice system should:

- (a) be just in the results it delivers;
- (b) be fair in the way it treats litigants;

³⁷ The AIFC Court Regulations 2017, Article 25.

³⁸ The Rt. Hon. the Lord Woolf of Barnes, Master of the Rolls, ‘Access to Justice - Final Report’, July 1996.

- (c) offer appropriate procedures at reasonable cost;
- (d) deal with cases with reasonable speed;
- (e) be understandable to those who use it;
- (f) be responsive to the needs of those who use it;
- (g) provide as much certainty as the nature of the particular case allows; and
- (h) be effective, adequately resourced and organised.

The AIFC Court Rules 2018 provide application of principles including:

- (a) the encouragement of the parties to settle their dispute by adopting alternatives to litigation where this is possible. For instance, in the SCC, parties before trial may request a consultation, for the purpose of resolving a dispute by agreement;³⁹
- (b) litigation is more co-operative. For instance, upon application of the party, the AIFC Court may make an order for production of documents before proceedings have started;⁴⁰
- (c) procedures are not complex;⁴¹
- (d) the timescale of litigation is fixed and certain. All cases will progress to trial in accordance with a timetable set and monitored by the AIFC Court;⁴²

³⁹ The AIFC Court Rules 2018, R.28.17.

⁴⁰ The AIFC Court Rules 2018, R.17.28.

⁴¹ The overriding objective of the AIFC Court (See the AIFC Court Regulations 2017, Article 8, and see the AIFC Court Rules 2018, Rule 1.6), is to ensure that cases are dealt with expeditiously and effectively by using no more resources than necessary. To pursue this objective, the AIFC Court, in accordance with the AIFC Court Rules 2018, Rule 1.8, may waive any procedural requirement.

⁴² In accordance with the AIFC Court Rules 2018, Rule 16.18, the claimant shall prepare and seek the agreement of all other parties to a draft trial timetable and shall file a copy of a draft trial timetable at least two days before the date fixed for the Pre-Trial Review. Any differences of view with any other party as to the timetable shall be clearly identified.

- (e) litigation is less costly, predictable and proportionate to the value and complexity of individual cases;⁴³
- (f) parties of limited financial means will be able to conduct litigation on a more equal footing. Litigants who are not represented by a lawyer will be able to get more help from advice services and from the AIFC Court;
- (g) the structure of the AIFC Court and the deployment of its judges is designed to meet the needs of litigants. Less complex and small claims are adjudicated by the SCC. Heavier claims are considered by experienced and specialised judges of the CFI.⁴⁴ This ensures work is dealt with effectively; and
- (h) the AIFC Court is responsive to the needs of litigants.⁴⁵

Further considerations of common law civil courts that may be relevant to the AIFC Court include:

Standard of proof. In a common law civil and commercial court parties shall prove their case on the balance of probabilities.⁴⁶ For such a court to be satisfied that an event occurred, it shall find on the evidence presented before it that the occurrence of the event was more likely than not.

⁴³ In accordance with the AIFC Court Rules 2018, Rule 1.6(4), the overriding objective of the AIFC Court is to deal with cases in ways which are proportionate to a) the amount of money involved; b) the importance of the case; c) the complexity of the issues, and d) the financial position of each party. In this regard, the AIFC Court issued the 'Practice Direction No. 1: AIFC Court Fees', fixing fees depending on the claim value and complexity.

⁴⁴ The AIFC Court judges have considerable experience and expertise in dealing with commercial and civil disputes in the areas such as construction, sub-soil, commercial fraud, insurance and reinsurance, professional negligence, commercial trusts, banking, financial services, competition law, regulatory law, IP, and contract law.

⁴⁵ The AIFC Court Registry regularly engages with the Republic of Kazakhstan legal and business communities through initiatives such as the AIFC Court Users' Committee.

⁴⁶ See, for example, *Miller v Minister of Pensions* [1947] 2 All ER 372.

However, very occasionally, such a court may not be able to make findings of fact and may conclude that none of the versions of events presented satisfy the balance of probabilities. In this case, the court may determine a disputed issue of fact by resort to a burden of proof.⁴⁷ While these thoughts are worth highlighting now, it remains to be seen how the AIFC Court will determine such matters.

Third party funding. Parties should not underestimate third party funding which is increasingly used internationally and may also feature in litigation at the AIFC Court. A third party who has no prior connection to the litigation may agree to finance all or part of the legal costs of the litigation in return for a fee payable from the proceeds recovered.

Interim remedies. The AIFC Court Rules 2018 provide a wide range of interim measures which are not available to the Republic of Kazakhstan domestic courts under the domestic civil procedure code.

2.2 Perspectives and International Mission

The AIFC Court became fully operational from 1 January 2018. It has a clear vision of its objectives, perspectives, and mission. It has set its main goal to become the leading court for the resolution of civil and commercial disputes in the AIFC and the Eurasia region.

Much work has already been done to develop its international relations, and further implementation of innovation and the dissemination of knowledge and experience will continue in the future.

⁴⁷ See, for example, *Verlander v Devon Waste Management and another* [2007] EWCA Civ 835.

This is supported in particular by the quality of its judges, who are known internationally for their impartiality, experience, excellence, and fairness, and the quality of administration the AIFC Court will deliver. Justice will be not only be done, but will also be seen to be done.⁴⁸

Another feature of the AIFC Court is the development of its modern case management system known as “e-Justice”. This will ensure expeditious and effective dispute resolution. Automation of case management will reduce paperwork, allow parties to submit claims on-line and participate in hearings remotely, avoid delay in communications, enable case progression to be monitored, and ultimately cut costs.

As at any leading commercial court, the AIFC Court will continue to monitor developments in other countries and will ensure it continues to be in the forefront of litigation development. Alternative dispute resolution will also be a priority.

As a part of this process, the AIFC Court will continue to establish and maintain cooperation with other judicial authorities, courts, and organisations. The AIFC Court has already signed memoranda of understanding with the Republic of Kazakhstan Supreme Court, Ministry of Justice, General Prosecutor Office, and the Republican Chamber of Private Enforcement Officers with the aim to implement joint initiatives to promote the rule of law and efficient enforcement of AIFC Court decisions. This work has been supplemented by numerous lectures the judges of the AIFC Court have given on topical dispute resolution issues in the Republic of Kazakhstan.

The AIFC Court is actively cooperating with leading national universities such as KAZGUU and KIMEP. An example of this was the AIFC Court and IAC Moot competition in 2018 among young future lawyers with participation of the following

⁴⁸ See *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256.

AIFC Court judges: The Rt. Hon. Sir Robin Jacob, The Rt. Hon. Sir Stephen Richards, and a visiting judge to the AIFC Court, The Rt. Hon. The Lord Mance, a former Deputy Elbasy of the UK Supreme Court.⁴⁹ An AIFC Court Users' Committee was established in 2018 to assist the AIFC Court to respond to user needs. Close relations with the Kazakh Bar Association and other bar associations have been developed.

The AIFC Court also participates on the Standing International Forum of Commercial Courts ('SIFoCC') group including at international events in London in 2017 and in New York in 2018. SIFoCC provides the AIFC Court a unique opportunity to strengthen its international relations in addition to continuing to promote its services in the Republic of Kazakhstan, throughout the Eurasia region, and globally. The AIFC Court will also take advantage of the Republic of Kazakhstan's involvement in the One Belt One Road ('OBOR') initiative.

The distinctive features of the AIFC Court are in many ways new to the Republic of Kazakhstan and Eurasia and it is therefore of great importance that there is a program of education promoting the nature of its work. The AIFC Court delivered its first education program in 2018 and will continue to expand that program in future years as provided in the AIFC Court Regulations 2017. It will also consider potential cooperation with other legal education providers.

The AIFC Court will also continue to work with the IAC to promote alternative dispute resolution and it will encourage pro bono work to increase access to justice to parties whom might otherwise not have the resources that are necessary to pursue appropriate dispute resolution.

⁴⁹ On 17 October 2018 the AIFC Court and IAC held the first common law moot competition among Kazakh law students. The competition involved a common law problem requiring analysis and oral presentation of legal arguments.

A New Court Building

The holding of EXPO 2017 meant that excellent new buildings are available and the AIFC has been allocated one of them for the AIFC Court and the IAC. The new building will substantially enhance the attractiveness of the AIFC Court and the IAC.

The AIFC Court fully appreciates the contribution that its building can make. But while appreciative of the benefits it will provide, it also fully appreciates that however attractive the building, it is less important than the quality of justice the AIFC Court provides. What is hoped will be achieved for the AIFC Court is not only excellent facilities but justice as excellent as can be found in any other jurisdiction. In this way, the AIFC Court will achieve its goal and complete its international mission of delivering fair justice and promoting in the Republic of Kazakhstan and the Eurasia region the rule of law.

Harry Woolf
The Rt. Hon. The Lord Woolf, CH
1 June 2019

SCHEDULE 1:

TABLE OF STATUTES

STATUTES, LAWS, REGULATIONS	DATE OF ENACTMENT
Constitution of the Republic of Kazakhstan 1995	30 August 1995
Constitutional Statute 'On the Justice System and the Status of Judges of the Republic of Kazakhstan' 2000	25 December 2000
Decree of the First President of the Republic of Kazakhstan 'On the AIFC' 2015	19 May 2015
Resolution of the Government of the Republic of Kazakhstan № 393 'On Approval of the Joint Action Plan of the Government and the National Bank of the Republic of Kazakhstan on the Establishment and Development of the AIFC for the Long Term' 2015	30 May 2015
Constitutional Statute 'On the AIFC' 2015	7 December 2015
AIFC Court Regulations 2017	5 December 2017
AIFC Court Rules 2018	1 January 2018

SCHEDULE 2:

TABLE OF ABBREVIATIONS

ABBREVIATION	MEANING
AIFC	Astana International Financial Centre
IAC	International Arbitration Centre
SCC	Small Claims Court
CFI	Court of First Instance
CA	Court of Appeal
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court
SME	Small and Medium Enterprise
NB RK	National Bank of the Republic of Kazakhstan

SCHEDULE 3:

AIFC COURT REGULATIONS 2017

CONTENTS

PART 1: GENERAL	49
1 Name	49
2 Legislative authority	49
3 Application of these Regulations.....	49
4 Date of enactment.....	49
5 Commencement.....	49
6 Interpretation	49
7 The objective of these Regulations	49
8 Scope and overriding objective.....	50
PART 2: CONSTITUTION OF THE COURT	51
9 The Court	51
10 Judges of the Court	51
11 Independence and impartiality of the Court and the Judges of the Court	51
12 Appointment of Judges of the Court.....	52
13 Temporary appointment of Judges of the Court.....	55
14 Removal of Judges of the Court.....	56
15 Resignation of Judges of the Court	58

16. Remuneration of Judges of the Court 58

17 Appointment of Enforcement Judge of the Court 58

**PART 3: MANAGEMENT OF THE COURT
AND THE REGISTRY OF THE COURT..... 58**

18 Administration of the Court 58

19 Court budget and financial reporting 60

20 Seal of the Court 61

**21 Establishment and functions of the Registry and
Registrar of the Court..... 62**

22 Immunity 65

**23 Signature of documents; contacting and filing
documents with the Court Registry 66**

24 Access to Court records 66

PART 4: ALTERNATIVE DISPUTE RESOLUTION..... 67

25 Alternative dispute resolution..... 67

PART 5: JURISDICTION OF THE COURT..... 67

26 Jurisdiction of the Court 67

PART 6: POWERS OF THE COURT 70

27 Powers of the Court 70

PART 7: COMPOSITION OF THE COURT	73
28 Composition of the Court	73
PART 8: APPLICABLE LAW IN THE COURT	74
29 Applicable law in the Court.....	74
PART 9: PRACTICE AND PROCEDURE.....	74
30 Court Rules and Practice Directions.....	74
31 Language	75
32 Proceedings to be held in public.....	75
33 Change of venue.....	76
34 Judgments and Orders	76
35 Decisions of the Court which are not unanimous	77
36 Limitation on proceedings	77
37 Interest on Judgment	77
38 Recovery of monies.....	78
39 Issue of Judgments, Orders and Directions	78
40 Enforcement.....	78
41 Technical defects.....	78
42 Costs and security of costs.....	79
43 Affirmations.....	79

44	Affirmed Court documents	79
45	Publication of documents.....	80
PART 10: EVIDENCE	80	
46	Application of evidence	80
47	Oral, video, telephone, and affidavit evidence	80
48	Publication of evidence	81
PART 11: MISCELLANEOUS	81	
49	Miscellaneous.....	81
SCHEDULE	83	

PART 1: GENERAL

1 Name

This Resolution of the AIFC Management Council «On the AIFC Court» also known as «The AIFC Court Regulations 2017».

2 Legislative authority

These Regulations are adopted by the Resolution of the Council under Article 13(5) of the Constitutional Statute to make Regulations for the Court.

3 Application of these Regulations

These Regulations apply in the jurisdiction of the AIFC.

4 Date of enactment

These Regulations are enacted on the day they are approved by the Council.

5 Commencement

These Regulations commence on the day they are approved by the Council.

6 Interpretation

The Schedule contains definitions of terms referred to in these Regulations.

7 The objective of these Regulations

The objective of these Regulations is to determine the matters related to the activities of the Court, including the Court's constitution and composition, appointment and removal of judges, management, budget and reporting, jurisdiction and powers, and practice and procedure.

8 Scope and overriding objective

- (1) These Regulations apply to all proceedings before the Court.
- (2) The overriding objective of the Court and its Judges is to deal with cases justly.
- (3) Dealing with cases justly includes, so far as practicable:
 - (a) ensuring that the system of justice is accessible and fair;
 - (b) ensuring the parties are on an equal footing;
 - (c) ensuring that litigation takes place expeditiously and effectively, using no more resources than is necessary;
 - (d) dealing with cases in ways that are proportionate to the amount of money involved, the importance of the case, the complexity of the issues, facts and arguments, and the financial position of each party; and
 - (e) making appropriate use of information technology.
- (4) It is the duty of the Court and its Judges when they exercise their functions and powers to act in accordance with the overriding objective.
- (5) It is the duty of the parties to any case before the Court to assist the Court and its Judges to determine that case in accordance with the overriding objective.

PART 2: CONSTITUTION OF THE COURT

9 The Court

The Court is established as an independent legal entity in the AIFC territory pursuant to the AIFC Constitutional Statute. It consists of two tiers: 1. a Court of First Instance, which includes a specialist division to be known as the Small Claims Court; and 2. a Court of Appeal. Each Court is to be known as the Court.

10 Judges of the Court

- (1) The judicial functions of the Court shall be exercised by the Chief Justice of the Court and its Judges, and by the Registrar to the extent directed by the Chief Justice of the Court.
- (2) The Chief Justice of the Court is to be styled “Chief Justice of the Court”. The Judges of the Court are to be styled “Justice”.
- (3) The number of Judges of the Court shall be sufficient to deal expeditiously with the cases pending before the Court.
- (4) There shall be at least 4 Judges appointed and eligible to sit in the Court of First Instance and Court of Appeal, in addition to the Chief Justice of the Court.
- (5) There shall be at least 3 Judges appointed and eligible to sit in the Small Claims Court.

11 Independence and impartiality of the Court and the Judges of the Court

- (1) When performing their judicial functions, the Chief Justice of the Court and Judges shall have complete

independence and shall act independently and impartially.

- (2) Neither the Government of the Republic of Kazakhstan, the AIFC Authority, or any other person or entity, shall interfere with the judicial duties or decisions of the Chief Justice of the Court or Judges.

12 Appointment of Judges of the Court

- (1) The Chief Justice of the Court and Judges shall be appointed by the First President of the Republic of Kazakhstan upon the proposal of the Governor.
- (2) The proposal of the Governor to the First President of the Republic of Kazakhstan for the appointment of the Chief Justice of the Court and Judges shall be made in consultation with the Chief Justice of the Court except in the following circumstances:
 - (a) the appointment of the first Chief Justice of the Court and Judges; and
 - (b) if a Chief Justice of the Court is removed from judicial office by a decision of the First President of the Republic of Kazakhstan in accordance with these Regulations, a new Chief Justice of the Court shall be appointed by the First President of the Republic of Kazakhstan upon the proposal of the Governor and the proposal of the Governor shall be made in consultation with a majority of the total number of surviving Judges of the Court.
- (3) The Chief Justice of the Court and Judges shall each be appointed for a term of 5 years. The appointments

may be renewed but the term may not extend beyond the Chief Justice of the Court's or a Judge's eightieth birthday save in exceptional circumstances.

- (4) The first Chief Justice of the Court is exempted from the requirements that:
 - (a) a Chief Justice of the Court or a Judge shall be appointed for a term of 5 years; and
 - (b) may not serve a term beyond his eightieth birthday.
- (5) If the Chief Justice of the Court or a Judge reaches eighty years of age or the period of appointment ends, he may continue in office for so long as may be necessary to deliver judgment, or to perform any other actions as may be necessary in relation to any proceedings that were commenced before the Chief Justice of the Court or Judge became eighty years of age, or in the case of exceptional circumstances, before the conclusion of his appointment.
- (6) A person is qualified to be appointed as the Chief Justice of the Court or a Judge of the Court of First Instance and Court of Appeal if:
 - (a) the person is not less than forty years of age at the time of appointment;
 - (b) the person has significant knowledge of the Common Law and experience as a lawyer or judge in a Common Law system;
 - (c) the person is of good character; and
 - (d) the person can fluently speak and write in the

English language.

- (7) A person is qualified to be appointed as a Judge of the Small Claims Court if:
 - (a) the person is not less than thirty years of age at the time of appointment;
 - (b) the person has significant Common Law knowledge and experience as a qualified lawyer or judge in a Common Law system;
 - (c) the person is of good character; and
 - (d) the person can fluently speak and write in the English language.
- (8) The Chief Justice of the Court and Judges are not required to be citizens of the Republic Kazakhstan or resident in the Republic of Kazakhstan and may undertake additional employment if that employment does not conflict with their duties at the Court.
- (9) A Judge of the Court may hold judicial office in another court established in any jurisdiction, state, or territory, other than the AIFC, without being required to relinquish the office of Judge of the Court.
- (10) The Chief Justice of the Court and Judges shall not have or appear to have any economic, financial, or other commercial interest that conflicts with the interests of those involved in any litigation in which he is engaged as a Judge, without having disclosed the interests to the parties and withdrawing from any further involvement in the litigation, except in so far as the parties to the litigation agree otherwise.

- (11) The Chief Justice of the Court and Judges shall take a judicial affirmation as soon as may be possible after accepting office.
- (12) In the case of a person appointed to the office of Chief Justice of the Court, the required judicial affirmation is to be taken in the presence of the First President of the Republic of Kazakhstan or his designate.
- (13) In the case of a person appointed as a Judge, the required judicial affirmation is to be taken in the presence of the Chief Justice of the Court or a Judge of the Court nominated by him for this purpose.
- (14) The required judicial affirmation shall be defined in AIFC Court Rules.

13 Temporary appointment of Judges of the Court

- (1) If it appears to the Chief Justice of the Court, after consulting the Governor, that it is expedient as a temporary measure to make an appointment of a Judge to facilitate the disposal of business in the Court, he may appoint a person qualified for appointment as a Judge of the Court to be a temporary Judge of the Court during such period or on such occasions as the Chief Justice of the Court may, after consulting the Governor, deem fit.
- (2) A person appointed under this Article is to hold and vacate office as a temporary Judge of the Court in accordance with the terms of the person's appointment, which are to be such as the Chief Justice of the Court, with the agreement of the Governor, may determine.
- (3) Every person while acting under this Article shall be treated for all purposes as, and accordingly may perform any of the functions of, a Judge of the Court in which he is acting.

14 Removal of Judges of the Court

- (1) The Chief Justice of the Court or a Judge may be suspended or removed from judicial office by a decision of the First President of the Republic of Kazakhstan upon the proposal of the Governor, if during the term of office:
 - (a) he becomes incapable through ill-health of effectively performing the duties of his judicial office;
 - (b) he is convicted of a criminal offence punishable with imprisonment; or
 - (c) he has committed misconduct that makes him unfit to continue in office.
- (2) If a situation referred to in this Article occurs involving the Chief Justice of the Court, the Registrar will, as soon as practical, notify the Governor of the relevant circumstances and provide the name of a Judge who consents to temporarily perform the functions of the Chief Justice of the Court as the Acting Chief Justice of the Court, and that Judge shall perform those functions until either the Chief Justice of the Court can perform his functions or he is replaced by a decision of the First President of the Republic of Kazakhstan in accordance with the provisions of these Regulations.
- (3) If a situation referred to in this Article arises involving a Judge, the Chief Justice of the Court shall indicate to the Governor the action he proposes to take. The Chief Justice of the Court may in this situation, if he so chooses, indicate to the Governor his written proposal addressed to the First President of the Republic of

Kazakhstan to remove the Judge from office, and the Governor shall communicate that written proposal to the First President of the Republic of Kazakhstan.

- (4) The Chief Justice of the Court shall establish a prescribed procedure under these Regulations to require the investigation and determination of allegations by any person of misconduct by the Chief Justice of the Court or a Judge. The prescribed procedure may include provision as to any of the following:
- (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
 - (b) steps to be taken by a complainant before a complaint is to be investigated;
 - (c) the conduct of an investigation, including steps to be taken by the Chief Justice of the Court or Judge under investigation or by a complainant or other person;
 - (d) time limits for taking any step and procedures for extending time limits;
 - (e) persons by whom an investigation or part of an investigation is to be conducted;
 - (f) matters to be determined under investigation by the Chief Justice of the Court, a Judge of the Court, or any other person;
 - (g) requirements as to records of investigations;
 - (h) requirements as to confidentiality of communications of proceedings; and
 - (i) requirements as to the publication of information or its provision to any person.

15 Resignation of Judges of the Court

The Chief Justice of the Court or a Judge may at any time resign from the Court by providing to the Governor at least one month's notice in writing addressed to the First President of the Republic of Kazakhstan, which the Governor shall communicate to the First President of the Republic of Kazakhstan, and repaying the proportion of his retainer for the year during which his resignation takes place less the amount to which he would have been entitled if he had not been paid for working or time spent travelling.

16 Remuneration of Judges of the Court

- (1) The remuneration of the Chief Justice of the Court and Judges shall be determined by the Governor.
- (2) The remuneration of the Chief Justice of the Court or Judges shall not be reduced while they are in office at the Court.

17 Appointment of Enforcement Judge of the Court

The Chief Justice of the Court shall appoint the Registrar or one or more of the Judges as enforcement judges with the power to issue execution orders.

PART 3: MANAGEMENT OF THE COURT AND THE REGISTRY OF THE COURT

18 Administration of the Court

- (1) The Chief Justice of the Court is the Head of the judiciary of the Court.
- (2) Responsibilities of the Chief Justice of the Court include:

- (a) representing the views of the judiciary to the Governor;
- (b) the maintenance and appropriate arrangements for the welfare, training and guidance of the judiciary, the Registrar, deputy Registrars, officials and staff of the Court;
- (c) the maintenance of appropriate arrangements for the deployment of the judiciary;
- (d) preparing and approving strategies, policies and objectives of the Court, preparing reports on the implementation of these strategies, policies and objectives, and presenting the same to the Governor;
- (e) publishing Practice Directions prescribing the fees payable to the Court in connection to the performance of its functions or the provision of its facilities or the exercise of its powers; and the management of third party funding of proceedings in the Court;
- (f) the day to day management of the Court, its activities, the Registrar, deputy Registrars, officials and staff of the Court;
- (g) recommending to the Governor the appointment and removal of the Registrar, deputy Registrars, officials and staff of the Court, for the Governor to approve the appointment and removal, the terms and conditions of appointment and removal, and remuneration; and
- (h) all other responsibilities provided in these Regulations, including with regards to budget and reporting.

- (3) The Chief Justice of the Court and Governor shall agree the provision of operational support to be provided to the Court by the AIFC Authority where such provision is not provided in these Regulations.

19 Court budget and financial reporting

- (1) The Court shall have its own budget formed from the funds of the Republican budget in the form of a targeted transfer in accordance with the budget legislation of the Republic of Kazakhstan. The target transfer received by the Court from the budget of the AIFC Authority shall be used for the purposes of maintaining and financing the activities of the Court.
- (2) For each financial year the Chief Justice of the Court shall submit for approval to the AIFC Authority estimates of the income and expenditure required by the Court. Such estimates shall include figures relating to levels of remuneration and entitlement to expenses of the Chief Justice of the Court, Judges, Registrar, deputy Registrars, officials, staff and agents of the Court.
- (3) The AIFC Authority shall be responsible for processing all payments and procurements of the Court, and opening, operating and managing bank accounts of the Court. The AIFC Authority shall also provide any financial reports required by the budget legislation of the Republic of Kazakhstan.
- (4) The Chief Justice of the Court shall make all reasonable efforts to spend the funds received by the AIFC Authority for the Court budget in the performance of the functions of the Court.

- (5) The Chief Justice of the Court shall keep accounting records which are sufficient to show and explain any transactions that are reasonably accurate and sufficient to disclose at any time the Court's income and expenditure and assets and liabilities and financial position.
- (6) As soon as reasonably practicable after the end of each financial year the Chief Justice of the Court, in consultation with the Governor, shall prepare and review the Court's accounts for the previous year. Those accounts shall be in the form which accords with internationally accepted accounting principles. They shall be audited by independent auditors, being a firm of chartered accountants with an office in the AIFC or Republic of Kazakhstan.
- (7) The Chief Justice of the Court shall as soon as reasonably practicable after the end of each financial year send to the Governor and Council an annual report with a copy of its audited accounts and a report of its activities for the previous year. The annual report shall give a true and fair view of the state of the operations, cash flows and financial activities of the Court as at the end of the relevant financial year.

20 Seal of the Court

- (1) The Court shall have a seal, the design of which shall be determined by the Chief Justice of the Court. The seal shall be kept at the Registry in the custody of the Registrar of the Court.
- (2) The Registrar shall have in his custody a stamp the design of which shall, as nearly as practicable, be the same as the design of the seal of the Court.

- (3) A document or a copy of a document marked with a stamp referred to in this Article is as valid and effectual as if it had been sealed with the seal of the Court.
- (4) The seal of the Court shall be placed on Court documents by hand or electronically.

21 Establishment and functions of the Registry and Registrar of the Court

- (1) The Chief Justice of the Court shall establish a Registry.
- (2) The Chief Justice of the Court shall recommend to the Governor a person for appointment as Registrar. The appointment shall normally be for a term of five years that can be renewed. The Registrar shall be the Chief Executive of the Registry. The terms and conditions of the Registrar's appointment and remuneration shall be determined by the Governor in consultation with the Chief Justice of the Court.
- (3) The Registrar:
 - (a) shall report directly to the Chief Justice of the Court;
 - (b) shall be responsible for assisting the Chief Justice of the Court with the day to day management and administration of the Court; and
 - (c) shall be responsible for case management of litigation before the Court; including allocating cases for case management by a nominated Judge to the extent required by the Chief Justice of the Court.
- (4) The Registrar shall have power to do all things

necessary or convenient for the purpose of assisting the Chief Justice of the Court and Judges in the exercise of their powers or duties as imposed on them by or under:

- (a) the AIFC Constitutional Statute;
 - (b) these Regulations; or
 - (c) the AIFC Court Rules.
- (5) The Registrar shall have such other powers and duties as may be conferred upon him by or under:
- (a) the AIFC Constitutional Statute;
 - (b) these Regulations;
 - (c) the AIFC Court Rules; or
 - (d) a delegation or direction from the Chief Justice of the Court.
- (6) In performing his powers and duties the Registrar shall comply with the directions of the Chief Justice of the Court.
- (7) The Chief Justice of the Court shall recommend to the Governor the suspension or removal of the Registrar from office if during the term of office:
- (a) he becomes incapable through ill-health of effectively performing the duties of his judicial office;
 - (b) he is convicted of a criminal offence punishable by imprisonment; or
 - (c) he has committed misconduct that makes him unfit to continue in office.

- (8) The Chief Justice of the Court shall establish a procedure under these Regulations which may be used for the investigation and determination of allegations of misconduct by the Registrar. The procedure may include:
- (a) the circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
 - (b) the steps to be taken by a complainant before a complaint is to be investigated;
 - (c) the conduct of an investigation, including steps to be taken by the Registrar under investigation or by a complainant or other person;
 - (d) the time limits for taking any step and procedures for extending time limits;
 - (e) the persons by whom an investigation or part of an investigation is to be conducted;
 - (f) the matters to be determined under investigation by the Chief Justice of the Court, a Judge of the Court, or any other person;
 - (g) the requirements as to records of investigations;
 - (h) the requirements as to confidentiality of communications of proceedings; and
 - (i) the requirements as to the publication of information or its provision to any person.
- (9) When the Chief Justice of the Court considers it desirable to enable the Court to perform its duties, he may recommend to the Governor the appointment

of deputy Registrars and Court officers to whom the Registrar may delegate any of his responsibilities. Deputy Registrars and Court officers shall report directly to the Registrar and shall be appointed and removed from office on such terms as are determined by the Governor in consultation with the Chief Justice of the Court.

- (10) The Registrar, deputy Registrars, and Court officers shall, as soon as becoming aware, give written notice to the Chief Justice of the Court of all direct or indirect interests or any conflict of interest that may interfere with the exercise of their duties.
- (11) References in these Regulations to the Registrar include deputy Registrars acting under the delegated authority of the Registrar.

22 Immunity

Neither the Court, nor the Chief Justice of the Court, any Judge, Registrar, deputy Registrar, officer, employee or agent of the Court, can be held liable for anything done or omitted to be done in the performance or purported performance of the functions, or in the exercise or purported exercise of any powers, under these Regulations, the AIFC Constitutional Statute, AIFC Regulations, AIFC Court Rules or other AIFC Rules, or Court Practice Directions, except if the act or omission is shown to have been done in bad faith.

23 Signature of documents; contacting and filing documents with the Court Registry

- (1) Where these Regulations, Rules or a Practice Direction require a document to be signed, that requirement shall be satisfied if the signature is electronic.

- (2) Any requirement under these Regulations, AIFC Court Rules, or under other AIFC Regulations or AIFC Rules, that notice should be given to the Court, or that a document should be filed with or sent to the Court, shall be satisfied if the document or notice is filed at the Registry.
- (3) Where a document or notice is to be filed at the Registry, it must be filed by electronic means in accordance with the relevant Practice Direction. No document may be filed unless the relevant fee is paid to the Registry. The contents of documents filed by electronic means must also be provided to the Registry in hard copy if this is required by a relevant Practice Direction.

24 Access to Court records

- (1) A party to proceedings before the Court may obtain from the Court's records a copy of any document filed by a party to the proceedings or any communication between the Court and such a party. The party provided with a copy of any such document may be required to pay an appropriate fee in accordance with the requirements set out in a Practice Direction.
- (2) A person who is not a party to proceedings at the Court may, unless the Court orders otherwise, obtain from the Court's records a copy of a statement of case (but not any documents filed with or attached to the statement of case), and a judgment or order given or made in public (whether or not made at a hearing).
- (3) A person wishing to obtain a copy of a document from the Court's records must pay any fee to the Registry that is prescribed in a Practice Direction.

PART 4: ALTERNATIVE DISPUTE RESOLUTION

25 Alternative dispute resolution

The Court shall encourage the parties to a case, whenever it is appropriate to do so, to resolve their disputes by resorting to arbitration or mediation or any other method of alternative dispute resolution, and may take into account any failure, or any failure to do so in good faith, when determining who shall pay and the quantum of any order for costs.

PART 5: JURISDICTION OF THE COURT

26 Jurisdiction of the Court

- (1) The Court has exclusive jurisdiction, as provided by Article 13 of the AIFC Constitutional Statute, in relation to:
 - (a) any disputes arising between the AIFC's Participants, Bodies, and/or their foreign employees;
 - (b) any disputes relating to operations carried out in the AIFC and regulated by the law of the AIFC;
 - (c) any disputes transferred to the Court by agreement of the parties; and
 - (d) the interpretation of AIFC Acts.
- (2) The reference to "disputes" between the parties mentioned in this Article applies to civil or commercial disputes arising from transactions, contracts, arrangements or incidences.
- (3) The reference to "transferred to the Court by agreement of the parties" in this Article applies to all parties, including

parties not registered in the AIFC, such that all parties may “opt in” to the jurisdiction of the Court by agreeing to give the Court jurisdiction pre or post-dispute.

- (4) The Court does not have jurisdiction in relation to any disputes that are of a criminal or administrative nature.
- (5) The Court of First Instance has jurisdiction to hear and determine an appeal from the decision of an AIFC Body, Organisation, or Participant, as provided for in the AIFC Constitutional Statute, AIFC Regulations, AIFC Court Rules, or other AIFC Rules where the appeal relates to:
 - (a) a question of law;
 - (b) an allegation of a miscarriage of justice;
 - (c) an issue of procedural fairness; or
 - (d) a matter provided for in or under AIFC law.

Decisions of the Court of First Instance referred to in this Article 26(5) are final and shall not be subject to further appeal.

- (6) The Court may in the exercise of its appellate jurisdiction:
 - (a) affirm, reverse or vary the decision appealed;
 - (b) set aside the decision appealed in whole or in part;
 - (c) make any other order it considers appropriate;
 - (d) remit proceedings to the AIFC Body from which the appeal was brought, subject to any directions the Court considers appropriate; or

- (e) make any order or direction that is in the interests of justice.
- (7) The Small Claims Court shall have a special fast track procedure for claims below a specified value and Small Claims Court jurisdiction shall be defined in the AIFC Court Rules. Appeals of decisions of the Small Claims Court may be brought to the Court of First Instance, subject to the permission of the Court as set out in the AIFC Court Rules. No appeal lies to the Court of Appeal from any judgment given of the Court of First Instance on an appeal from the Small Claims Court.
- (8) The Court shall have jurisdiction in relation to any matter in respect of which jurisdiction is conferred on it by the AIFC Constitutional Statute or AIFC Regulations, including with regards to the Court's authority to perform functions to facilitate effective arbitration.
- (9) Any issue as to whether a dispute falls within the jurisdiction of the Court shall be determined by the Court whose decision shall be final.
- (10) The Court shall consider the express accord of the parties to a case that the Court shall have jurisdiction and if the Court considers it desirable or appropriate, it may decline jurisdiction or may refer any proceedings to another Court within the Republic of Kazakhstan.
- (11) No appeal may be brought to the Court of Appeal without the permission of the Court as set out in the AIFC Court Rules.
- (12) The Court of Appeal may determine the interpretation of any provision of the AIFC Law referred to it for this purpose by:

- (a) the Court of First Instance concerning any matter before it;
 - (b) any of the AIFC Bodies; or
 - (c) any of the AIFC Participants with leave of the Court of Appeal.
- (13) No appeal shall lie from a decision of the Court of Appeal under this Article.

PART 6: POWERS OF THE COURT

27 Powers of the Court

- (1) The Court has the power to take all steps that are required or expedient for the proper determination of a case.
- (2) The Court may:
 - (a) make orders in matters over which it has jurisdiction to make any orders it considers appropriate, including in relation to the management of cases, interim orders, and enforcement;
 - (b) require the parties to cases to take steps with a view to attempting to settle their dispute by means of mediation or any other alternative dispute resolution process;
 - (c) admit evidence, both as to matters of fact and as to matters of expert opinion, on such terms and in such form as it considers appropriate;
 - (d) receive evidence on affirmation;

- (e) require a person to attend before it to give evidence or to produce any item, record or document or material in electronic or other form in his possession or control, and order the payment of a penalty on a person who fails to comply with an order made in this Article; though no party will be required to produce any item, record, document or material that is privileged;
 - (f) where the entitlement to privilege is disputed, determine whether or not the item, record, document or material in question is privileged and may, if it considers it desirable, examine it for that purpose;
 - (g) stay any decision, order or proceeding;
 - (h) join any party to an action or proceeding;
 - (i) suspend the operation of an injunction or other order;
 - (j) make contempt orders, on application or on its own motion, in the interests of justice, impose fines, or refer the matter to the criminal courts of the Republic of Kazakhstan; and
 - (k) make orders as to the costs of proceedings, including assessing any costs on a summary basis.
- (3) The Court may grant all such relief and make all such orders as may be appropriate and just, in accordance with the overriding objective of the Court as set out in these Regulations.

- (4) Without prejudice to the generality of this Article, the Court has the power to grant or order the following remedies on an interim or final basis:
 - (a) an order for a party to pay a sum of money;
 - (b) damages, including damages in lieu of an injunction;
 - (c) injunctions, including mandatory injunctions;
 - (d) specific performance;
 - (e) declaratory relief;
 - (f) restitution;
 - (g) disgorgement of profits;
 - (h) an account;
 - (i) an order for the payment of interest;
 - (j) an order that one party pay the costs of another; and
 - (k) an order for security of costs.
- (5) Orders of the Court shall have the same effect as if they were judgments of the Court.
- (6) The Court may waive any procedural requirements if it is satisfied that it is in accordance with the overriding objective to do so.

PART 7: COMPOSITION OF THE COURT

28 Composition of the Court

- (1) All Judges of the Court, but not the Judges of the Small Claims Court, are eligible to sit in the Court of First Instance or Court of Appeal.
- (2) Proceedings before the Court of First Instance shall be heard and determined by a single Judge, except when justified by the nature of the case and when there is a sufficient number of Judges available, by up to three or more Judges.
- (3) Proceedings before the Court of Appeal shall be heard and determined by at least 3 Judges, who will include the Chief Justice of the Court if this is practical or unless his sitting would not be in the interests of justice.
- (4) Other than at a trial or on the hearing of an appeal, a single Judge shall be able to give directions and leave to appeal.
- (5) A Judge may not hear and determine an appeal in the Court of Appeal if he heard the matter in the Court of First Instance.
- (6) The composition of the Court for the hearing of a case, an appeal, or permission to appeal, shall be determined by the Registrar in consultation with and subject to any direction of the Chief Justice of the Court.

PART 8: APPLICABLE LAW IN THE COURT

29 Applicable law in the Court

- (1) The law to be applied by the Court is as set out in Article 4 and Article 13(6) of the AIFC Constitutional Statute. Accordingly, in exercising its powers and functions, the Court shall apply:
 - (a) the AIFC Constitutional Statute, AIFC Regulations including the AIFC Court Regulations, and AIFC Court Rules;
 - (b) such law as is agreed by the parties, although it will not do so if such law is inconsistent with the public order or public policy of the Republic of Kazakhstan; or
 - (c) such law as appears to the Court to be the most appropriate in the facts and circumstances of the dispute.
- (2) The Court, as provided by Article 13(6) of the AIFC Constitutional Statute, in determining a matter or proceeding, shall be guided by decisions of the Court and decisions made in other Common Law jurisdictions.

PART 9: PRACTICE AND PROCEDURE

30 Court Rules and Practice Directions

- (1) AIFC Court Rules and Practice Directions may provide for the practice and procedure to be followed in the Court. They may be made, amended, repealed, or revoked, by the Chief Justice of the Court only, except that he may nominate a Judge of the Court to exercise his functions under this Article.

- (2) AIFC Court Rules may provide for any matter of practice or procedure to be made and/or governed by Practice Directions.
- (3) The Registrar shall publish AIFC Court Rules and Practice Directions made under this Article.
- (4) AIFC Court Rules and Practice Directions shall come into force on such day as the Chief Justice of the Court or his nominee directs.

31 Language

- (1) English is the authoritative language of these Regulations.
- (2) All proceedings before the Court shall be conducted in the English language.
- (3) All documents for use in the Court shall be in or translated into the English language.
- (4) When a document to be used in the Court is a translation into the English language of a document, the original of which is in another language, and a dispute arises as to the meaning of the language in the original document, the Court may determine its true meaning having taken such expert advice as it deems fit. The Court's interpretation shall be determinative of the meaning.

32 Proceedings to be held in public

- (1) All hearings, including trials, shall be held in public, except that the Court may direct that a hearing, or any part of it, be held in private if:
 - (a) publicity would defeat the object of the hearing;

- (b) it involves matters raising national security;
 - (c) it involves confidential information, including information relating to personal financial matters, and publicity would damage that confidentiality;
 - (d) a private hearing is necessary to protect the interests of a party or witness;
 - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
 - (f) it involves uncontentious matters arising in the administration of trusts; or
 - (g) the Court considers this to be necessary in the interests of justice.
- (2) The Court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness, or in the interests of justice.

33 Change of venue

The Court may direct that proceedings or any part thereof may be conducted or continued at any place in the world on such conditions the Court may impose.

34 Judgments and Orders

After a proceeding has been heard by one or more Judges, it shall not be necessary for the Judge or Judges to be present in the Court to deliver their judgments; judgments shall be reduced to writing and shall be made public.

35. Decisions of the Court which are not unanimous

Where hearings take place before more than a single Judge, and the Judges differ in their opinions as to what should be the outcome of the hearing, the decision of the majority shall be binding but each Judge shall have the right to express his opinion as to what the outcome of the hearing should be.

36 Limitation on proceedings

Subject to any other AIFC Regulation, a proceeding cannot be commenced more than 6 years after the date of the events that gave rise to the proceedings.

37 Interest on Judgment

- (1) Any judgment of the Court for a sum of money may carry interest from the date the judgment is entered, subject to the order of the Court.
- (2) Any judgment of the Court in proceedings for the recovery of a debt or for damages may carry interest on any sum of money that forms all or any part of the debt or damages in respect of which judgment is given for all or any part of the period between the date when the cause of action arose and:
 - (a) in the case of any sum paid before judgment, the date of payment; and
 - (b) in the case of any sum for which judgment is given, the date of judgment;subject to the order of the Court.
- (3) Any interest payable under subsections (1) and (2) is payable at such rate as is fixed by the AIFC Court Rules or at such lower rate as the Court determines is just in the circumstances.

38 Recovery of monies

Where the Court has ordered the payment of damages, interest, costs, or made any other order involving the payment of financial amounts, the amount may be recovered as a debt due and payable.

39 Issue of Judgments, Orders and Directions

All judgments, orders and directions issued from the Court shall be under seal of the Court and signed by a Judge or the Registrar or an officer acting with the authority of the Registrar.

40 Enforcement

- (1) Judgments, orders and directions of the Court, and arbitration awards ratified by the Court, may be enforced within the AIFC in accordance with any execution order issued by the Court.
- (2) Judgments, orders and directions of the Court, and awards issued in arbitrations seated in the AIFC which have been ratified by the Court, may be enforced in the AIFC and the Republic of Kazakhstan in accordance with the AIFC Constitutional Statute.
- (3) The Court may issue rules or practice directions for the further enforcement of other judgments and arbitration awards.

41 Technical defects

- (1) No proceedings in the Court are invalidated by a technical defect or an irregularity, unless the Court orders otherwise.
- (2) The Court may, subject to such conditions it considers appropriate, make an order declaring that a proceeding is not invalid by reason of a defect or irregularity.

42 Costs and security of costs

- (1) The Court may award costs in any proceedings before it, including proceedings for want of jurisdiction.
- (2) Parties to proceedings before the Court are required to pay costs and court fees as set out in the AIFC Court Rules.
- (3) Except as provided in any other AIFC Regulation, the award of costs is at the discretion of the Court and may be waived in the interests of justice.
- (4) Costs may be awarded as appropriate by a Judge or the Registrar in accordance with the AIFC Court Rules.
- (5) The Court may require a party to provide security for costs on terms and conditions it deems appropriate.

43 Affirmations

- (1) Affirmations may be required for the purposes of Court proceedings.
- (2) The Registrar, or a person authorised by the Registrar, shall administer all affirmations for the purposes of the Court.

44 Affirmed Court documents

Written evidence to be used in a proceeding in the Court may be affirmed before a Judge or the Registrar, a qualified lawyer, any person authorised to administer an affirmation in the Republic of Kazakhstan, or any other person authorised to administer an affirmation in the jurisdiction in which the written evidence is affirmed.

45 Publication of documents

An obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the AIFC Law, include publishing or causing to be published in printed or electronic form.

PART 10: EVIDENCE

46 Application of evidence

The rules of evidence to be applied in the Court shall be the rules prescribed in the AIFC Court Rules, or the rules the Court considers appropriate to be applied in the circumstances.

47 Oral, video, telephone, and affidavit evidence

- (1) Evidence in any proceeding at the Court may be given orally, by written statement or affidavit, or as otherwise directed or allowed by the Court.
- (2) The Court may in any proceeding direct or allow evidence to be given by video link, telephone, electronic device, or other appropriate means.
- (3) If evidence is given other than on affirmation, the Court shall give such evidence the weight it deems appropriate in the circumstances.
- (4) The Court of Appeal may consider the evidence given in the proceedings which gave rise to the appeal, and draw any inferences from the evidence and receive further evidence in such manner as it considers appropriate in the circumstances.

48 Publication of evidence

The Court may at any time during or after the hearing of a proceeding, make an order forbidding or restricting the publication of evidence if it deems this is necessary in the interests of justice.

PART 11: MISCELLANEOUS

49 Miscellaneous

- (1) The Court may, by approval of the Chief Justice of the Court:
 - (a) establish a Court Users Committee to liaise between the Court and its users or potential users of the Court. For this purpose, the Chief Justice of the Court may establish any additional committees he deems desirable;
 - (b) establish a lawyer's registration scheme and code of conduct to facilitate the highest standards of conduct in Court proceedings;
 - (c) promote the Court as a hub for the settlement of disputes in the AIFC and internationally;
 - (d) host conferences, seminars, lectures, and other events relating to the Court, litigation, the training of lawyers and judges, and alternative dispute resolution;
 - (e) publish books, journals, articles, and papers on Courts, litigation, legal issues of interest to the AIFC, the training of lawyers and judges, and alternative dispute resolution;

- (f) provide Common Law courses and accreditation for lawyers and judges; and
- (g) enter into cooperation agreements with any other court either in or outside the Republic of Kazakhstan, or other bodies including those involved in enforcement or training.

SCHEDULE
INTERPRETATION

1 Defined terms

(1) In these Regulations:

AIFC Constitutional Statute, means the Constitutional Statute on the Astana International Financial Centre 2015.

AIFC Court, means the Court established in Nur-Sultan and having jurisdiction to adjudicate on certain disputes as indicated in Article 13 of the Constitutional Statute on the Astana International Financial Centre 2015.

AIFC Law, means the AIFC law as defined in Article 4 of the AIFC Constitutional Statute 2015.

AIFC Acts, means an official written document adopted by an AIFC Body relating to the relationships between AIFC Participants, AIFC Bodies, their employees, AIFC Participants and AIFC Bodies, AIFC Participants and their employees or employees of AIFC Bodies, AIFC Bodies and their employees or employees of AIFC Participants, as defined in Article 1 of the AIFC Constitutional Statute 2015.

Calendar year, means a year of the Gregorian calendar.

Chief Justice of the Court, means Chief Justice of the AIFC Court.

Council, means the AIFC Management Council.

Court, means the AIFC Court and the Court includes a reference to every part of that Court to include the Small Claims Court, Court of First Instance, and Court of Appeal.

Day, means a business day, being a normal working day in the AIFC.

Financial year, means 1 January until 31 December of each year.

Governor, means the Governor of the AIFC.

Judge, means a Judge of the Court and includes the Chief Justice of the Court and anyone who is performing judicial functions on behalf of the Court.

Organisation, means an Organisation of the AIFC.

Participant, means a Participant of the AIFC.

Person, means any natural person, body corporate or body incorporate, including a company, partnership, unincorporated association, government or state.

Proceedings, means any pre-action correspondence between a party's legal or other representatives and another party, or a party's legal or other representatives and another party's legal or other representatives; all correspondence between any or all of the parties once a claim form has been issued; all court forms, pleadings, statements, including but not limited to witness statements and disclosure statements, expert reports and requests for further information; all applications to the Court, whether made on paper or orally; all hearings before any Judge or other officer of the Court, including cross-examination of witnesses;

all judgments, directions or orders handed down by the Court.

- (2) In these Regulations, references to:
 - (a) the masculine includes the feminine or the neuter;
 - (b) the singular includes the plural, and vice versa; and
 - (c) a provision of the AIFC Constitutional Statute, an AIFC Regulation, or AIFC Rules, includes a reference to the provision as amended or re-enacted from time to time.
- (3) The headings in these Regulations shall not affect the interpretation of these Regulations.

SCHEDULE 4:

THE AIFC COURT RULES 2018

PART 1 The Overriding Objective.....	89
PART 2 Interpretation, Court Documents and Forms.....	91
PART 3 Case Management Powers of the Court.....	94
PART 4 Commencing a Claim.....	97
PART 5 Service of Documents.....	101
PART 6 Making Applications	109
PART 7 Responding to a claim	114
PART 8 Disputing jurisdiction.....	117
PART 9 Default Judgment	119
PART 10 Admissions.....	125
PART 11 Statements of Case and Further Information	127
PART 12 Parties	138
PART 13 Counterclaims and other Related Claims	149
PART 14 Immediate Judgment	155
PART 15 Interim Remedies	157
PART 16 Case Progression	169
PART 17 Production of Documents	172
PART 18 Evidence	182
PART 19 Experts	195

PART 20 Offers to Settle and Payments into Court	199
PART 21 Discontinuing a Claim.....	200
PART 22 Hearings	203
PART 23 Abridged Procedure for Claims	205
PART 24 Judgments and Orders.....	211
PART 25 Change of Legal Representative	214
PART 26 Costs.....	215
PART 28 The Small Claims Court	234
PART 29 Appeals.....	242
PART 30 Enforcement	252

PART 1 THE OVERRIDING OBJECTIVE

Citation and Commencement

- 1.1 These Rules may be cited as the AIFC Court Rules and may be abbreviated to “ACR”.
- 1.2 These Rules are made by the Chief Justice of the Court and shall come into force on 1 January 2018.

Application

- 1.3 These Rules apply to all proceedings in—
 - (1) the Court of First Instance (including the specialist division known as the Small Claims Court); and
 - (2) the Court of Appeal,which are collectively referred to in these Rules as “the Court.”
- 1.4 The Court is established by Article 13 of the Constitutional Statute of the Republic of Kazakhstan “*On the Astana International Financial Centre*” no. 438-V 3PK dated 7 December 2015 (as amended) (“the Constitutional Statute”) and Regulation 9 of the AIFC Court Regulations 2017.
- 1.5 Practice Directions may modify or disapply any provision of these Rules.

The Overriding Objective

- 1.6 These Rules have the overriding objective of enabling the Court to deal with cases justly. Dealing with a case justly includes, so far as is practicable:
 - (1) ensuring that the system of justice is accessible and fair;

- (2) ensuring that the parties are on an equal footing;
- (3) ensuring that the case is dealt with expeditiously and effectively, using no more resources than are necessary;
- (4) dealing with the case in ways which are proportionate—
 - (a) to the amount of money involved;
 - (b) to the importance of the case;
 - (c) to the complexity of the issues; and
 - (d) to the financial position of each party; and
- (5) making appropriate use of information technology.

Application by the Courts of the Overriding Objective

- 1.7 The Court shall seek to give effect to the overriding objective when it—
- (1) exercises any power, including any powers given to it by the Rules; or
 - (2) interprets any Rule or Practice Direction.
- 1.8 The Court may waive any procedural requirement if it is satisfied that it is in accordance with the overriding objective to do so.

Duty of the parties

- 1.9 The parties shall help the Court to further the overriding objective.

PART 2 INTERPRETATION, COURT DOCUMENTS AND FORMS

Authentic text and language of proceedings

- 2.1 The English text is the authoritative text of these Rules.
- 2.2 All proceedings before the Court shall be conducted in the English language.
- 2.3 All documents for use in the Court shall be in the English language or be provided with translations into the English language.
- 2.4 When a document to be used in the Court is a translation into the English language of a document, the original of which is in another language, and a dispute arises as to the meaning of the language in the original document, the Court may determine its true meaning having taken such expert advice as it deems fit. The Court's interpretation shall be determinative of the meaning.

Rules of interpretation

- 2.5 In these Rules, a reference to:
 - (1) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association or state;
 - (2) the masculine gender includes the feminine and neuter genders whenever they should so apply;
 - (3) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in these Rules, include publishing or causing to be published in printed or electronic form.

2.6 The headings in these Rules shall not affect their interpretation.

Time

2.7 All dates shall be ascertained in accordance with the Gregorian calendar.

2.8 Where a period specified by a Rule, Practice Direction, Judgment or Order —

(1) is 5 days or less; and

(2) includes a day which is not a business day in the AIFC

that day does not count.

2.9 Where the specified period is 6 days or more, both business days in the AIFC and days that are not business days in the AIFC shall be counted.

2.10 When the period specified—

(1) by these Rules; or

(2) by any judgment or Court order or direction,

for doing any act at the Registry ends on a day on which the Registry is closed, that act shall be in time if done on the next day on which the Registry is open.

Dates for compliance to be calendar dates and to include time of day

2.11 Where the Court gives a judgment, order or direction which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable be expressed as a calendar date.

- 2.12 Where a party is required by a Rule, Practice Direction, Judgment or Order to do any act on or before a particular date, the act shall be done by 4pm Alma Ata time (UTC + 6) on that date.

Meaning of ‘month’ in judgments, etc.

- 2.13 Where ‘month’ occurs in any judgment, order, direction or other document, it means a calendar month.

Variation of time limits

- 2.14 The Court may extend or shorten any time limit set by any Rule or Practice Direction. An extension may be granted after the time limit has expired.
- 2.15 Unless these Rules provide otherwise or the Court orders otherwise, the time specified by a Rule or Practice Direction or by the Court for a person to do any act may be varied by the written agreement of the parties.

Court documents

- 2.16 The Court may place the Court’s seal on a document by hand or electronically.
- 2.17 A document purporting to bear the Court’s seal shall be admissible in evidence without further proof.

Signature of documents

- 2.18 Where these Rules require a document to be signed, that requirement shall be satisfied if the signature is placed on the document by hand, electronically or by any other mechanical means.
- 2.19 Documents drafted by a legal representative should bear the legal representative’s signature, and if they are drafted

by a legal representative as a member or employee of a firm they should be signed in the name of the firm.

Filing documents

- 2.20 All documents to be filed with the Court shall be filed by electronic means in accordance with the relevant Practice Direction.
- 2.21 Unless the Court orders otherwise, no document may be filed unless the relevant fee is paid to the Registry.
- 2.22 The contents of documents filed by electronic means shall also be provided to the Registry in hard copy if this is required by a relevant Rule or Practice Direction.

Forms

- 2.23 The Chief Justice may by Practice Direction prescribe the forms to be used in proceedings before the Court.

PART 3 CASE MANAGEMENT POWERS OF THE COURT

The Court's general powers of case management

- 3.1 The Court has the power to take all steps that are required or expedient for the proper determination of a case.
- 3.2 When the Court makes an order, it may:
- (1) make it subject to conditions, including a condition to pay a sum of money into Court; and
 - (2) specify the consequence of failure to comply with the order or a condition.
- 3.3 Where a party pays money into Court following an order

under Rule 3.2 the money shall be security for any sum payable by that party to any other party in the proceedings.

- 3.4 Where there has been an error of procedure such as a failure to comply with a Rule or Practice Direction:
- (1) the error does not invalidate any step taken in the proceedings unless the Court so orders; and
 - (2) the Court may make an order to remedy the error.

Court’s power to make orders of its own initiative

- 3.5 Except where a Rule, Practice Direction or some other legislation provides otherwise, the Court may exercise its powers on an application or of its own initiative.
- 3.6 Where the Court proposes to make an order of its own initiative:
- (1) it may give any person likely to be affected by the order an opportunity to make representations; and
 - (2) where it does so it shall specify the time by and the manner in which the representations shall be made.
- 3.7 The Court may make an order of its own initiative, without giving the parties an opportunity to make representations.
- 3.8 Where the Court has made an order without giving a party the right to make representations —
- (1) a party who has not had an opportunity to make representations and who is affected by the order may apply to have it set aside, varied or stayed; and
 - (2) the order shall contain a statement of the right to make such an application.

- 3.9 An application under Rule 3.8(1) shall be made:
- (1) within such period as may be specified by the Court; or
 - (2) if the Court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.

Power to strike out a Statement of Case

- 3.10 The Court may strike out all or any part of a Statement of Case if it appears to the Court:
- (1) that the Statement of Case discloses no reasonable grounds for bringing or defending the claim;
 - (2) that the Statement of Case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
 - (3) that there has been a failure to comply with a Rule, Practice Direction or Court order.

- 3.11 When the Court strikes out a Statement of Case it may make any consequential order it considers appropriate.

Sanctions have effect unless defaulting party obtains relief

- 3.12 Where a party has failed to comply with a Rule, Practice Direction or Court order, any sanction for failure to comply imposed by the Rule, Practice Direction or Court order has effect unless the party in default applies for and obtains relief from the sanction.
- 3.13 Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

PART 4 COMMENCING A CLAIM

SECTION I – GENERAL RULES FOR COMMENCING CLAIMS

How to start proceedings

- 4.1 Proceedings are started when the Court issues a Claim Form at the request of the Claimant.
- 4.2 The Court issues a Claim Form by:
- (1) sealing the Claim Form;
 - (2) allotting and inscribing on the Claim Form a unique claim number; and
 - (3) dating the Claim Form with the date on which the Claim Form is sealed.
- 4.3 If a Claimant wishes his claim to proceed under Part 23 (the ‘Abridged Procedure’), or if the claim is required by a Rule or a Practice Direction to proceed under the Abridged Procedure, the Abridged Procedure Claim Form shall be used.
- 4.4 The Claimant shall specify on the Claim Form:
- (1) In the case of an individual, the address at which the Claimant resides;
 - (2) In the case of a company, partnership or other body:
 - (a) an address in the Republic of Kazakhstan at which the Claimant carries on business; or
 - (b) where no such address exists, the Claimant’s registered address; or

- (c) where neither such address exists, an address in any other country at which the Claimant carries on business.

4.5 Where possible, the Claimant shall state an email address for service on the Claim Form. Where the Claimant is represented by a legal representative and the legal representative has signed the Claim Form, the address shall be the legal representative's business email address; otherwise the address for service that is given should be the Claimant's email address.

Date of start of proceedings

- 4.6 Where the Claim Form was received in the Registry on a date earlier than the date on which it is issued by the Court, the claim is 'brought' for the purposes of limitation on that earlier date.
- 4.7 The date on which the Claim Form was received by the Registry will be recorded on the Claim Form.

Right to use one Claim Form to start two or more claims

4.8 A Claimant shall use a single Claim Form to start all claims which can be conveniently disposed of in the same proceedings.

Service of Claim Form

- 4.9 After a Claim Form has been issued, it shall be served on the Defendant by the Claimant:
- (1) within 4 months after the date of issue where the Claim Form is to be served within the Republic of Kazakhstan; and

- (2) within 6 months after the date of issue where the Claim Form is to be served out of the Republic of Kazakhstan.

Extension of time for serving a Claim Form

4.10 The Claimant may apply for an order extending the period within which the Claim Form may be served.

4.11 The general rule is that an application to extend the time for service shall be made:

- (1) within the period for serving the Claim Form specified by Rule 4.9; or
- (2) where an order has been made extending the period within which the Claim Form may be served, within the period for service specified by that order.

4.12 If the Claimant applies for an order to extend the time for service of the Claim Form after the end of the periods specified by Rule 4.11 the Court may make such an order if:

- (1) the Court has been unable to serve the Claim Form; or
- (2) the Claimant has taken all reasonable steps to serve the Claim Form but has been unable to do so; and
- (3) in either case, the Claimant has acted promptly in making the application.

4.13 An application for an order extending the time for service shall be made in accordance with Part 6 and supported by evidence stating:

- (1) all the circumstances relied on,
- (2) the date of issue of the claim,

- (3) the expiry date of any Rule 4.10 extension, and
- (4) a full explanation as to why the claim has not been served.

4.14 The application may be made without notice.

Application by Defendant for service of Claim Form

4.15 Where a Claim Form has been issued against a Defendant, but has not yet been served on him, the Defendant may serve a notice on the Claimant requiring him to serve the Claim Form or discontinue the claim within a period specified in the notice.

4.16 The period specified in a notice served under Rule 4.15 shall be at least 14 days after service of the notice.

4.17 If the Claimant fails to comply with the notice, the Court may, on the application of the Defendant:

- (1) dismiss the claim; or
- (2) make any other order it thinks just.

Statement of truth

4.18 The Claim Form and, where they are not included in the Claim Form, the Particulars of Claim, shall be verified by a Statement of Truth.

Particulars of Claim

4.19 Except where a claim proceeds in accordance with the Abridged Procedure, a Claimant shall provide Particulars of Claim to the Defendant(s) and to the Court in accordance with Part 11, Section I.

4.20 If Particulars of Claim are not contained in or served with the Claim Form:

- (1) the Claim Form shall state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, Particulars of Claim will follow;
 - (2) the Claimant shall serve Particulars of Claim within 28 days of the filing of an acknowledgment of service which indicates an intention to defend.
- 4.21 Where the Claimant serves Particulars of Claim separately from the Claim Form in accordance with Rule 4.20(2) he shall, within 7 days of service on the Defendant, file a copy of the Particulars of Claim together with a certificate of service.
- 4.22 All Claim Forms shall state:
- (1) the law which the Claimant maintains governs the dispute; and
 - (2) the provision of the law which the Claimant maintains gives rise to the jurisdiction of the Court in respect of their claim.

PART 5 SERVICE OF DOCUMENTS

SECTION I – GENERAL RULES OF SERVICE

- 5.1 The Rules in this Section of this Part apply to the service of documents except where:
- (1) the terms of a treaty require service of a document by a particular method;
 - (2) any other enactment, a Rule in another Part, or a Practice Direction makes a different provision; or
 - (3) the Court orders otherwise.
- 5.2 Nothing in these Rules or in any Court order shall

authorise or require any person to do anything which is contrary to the law of the place where a document is to be served.

Methods of service

- 5.3 A document may be served by any method which brings the document and its contents to the attention of the party being served.
- 5.4 Where the party being served is not an individual, the method of service shall bring the document and its contents to the attention of a person holding a senior position within the party. Each of the following persons is a person holding a senior position:
- (1) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation, and
 - (2) in respect of a party which is not a registered company, in addition to those persons set out in sub-paragraph (1), the chairman, Elbasy, or similar officer of the party;
 - (3) in respect of a partnership, a partner or a person who, at the time of service, has the control or management of the partnership business at its principal place of business.
- 5.5 Where a document is to be served by any means of electronic communication, the party seeking to serve the document should first seek to clarify with the party who is to be served whether there are any limitations to the recipient's ability to receive service by such means including the maximum size of attachments that may be received.

- 5.6 A company may also be served by the following methods:
- (1) service by leaving a document at or mailing it to the registered office of a company, pursuant to the AIFC Companies Regulations;
 - (2) service upon a Recognised Company by a person appointed to accept service on the behalf of that Company pursuant to the AIFC Companies Regulations.

Who is to serve

- 5.7 The party on whose behalf a document is to be served shall serve a document which it has issued or prepared except where:
- (1) a Rule or Practice Direction provides that the Court shall serve the document in question; or
 - (2) the Court orders otherwise.
- 5.8 Where the Court is to serve a document, the Court may use any method of service it deems appropriate.

Address for service

- 5.9 Where a party has given an email address for service, any document served on that party should be sent to that email address.
- 5.10 A party or his legal representative who changes his address for service shall give notice in writing of the change as soon as it has taken place to the Court and every other party.

Service of documents on children

- 5.11 If any document would otherwise be served on a child, it shall instead be served:

- (1) where an email address for service has been provided on behalf of the child, by sending the document to that email address;
 - (2) in any other case, by sending the document to:
 - (d) one of the child's parents or guardians; or
 - (e) if there is no parent or guardian, the person with whom the child resides or in whose care the child is.
- 5.12 The Court may make an order permitting a document to be served on the child, or on some person other than the person specified in Rule 5.11.
- 5.13 An application for an order under Rule 5.12 may be made without notice.
- 5.14 The Court may order that, although a document has been served on someone other than the person specified in Rule 5.11, the document is to be treated as if it had been properly served.

Considered date of service

- 5.15 A document which is served in accordance with these Rules or any relevant Practice Direction shall be considered to be served:
- (1) if it is delivered before 4pm Alma Ata time (UTC + 6) on a business day in the AIFC, on the day on which it is delivered;
 - (2) in any other case, on the business day after it is delivered.

Translation of Claim Form

- 5.16 Where the Claim Form is to be served in the Republic of Kazakhstan outside the AIFC, it shall be accompanied by a Kazakh or Russian translation of the Claim Form, unless the Court orders otherwise.
- 5.17 Where the Claim Form is to be served outside the Republic of Kazakhstan in a place in which English is not an official language, it shall be accompanied by a translation of the Claim Form into an official language of that place, unless the Court orders otherwise.
- 5.18 Every translation to be served under Rule 5.16 or 5.17 shall be accompanied by a statement by the person making it that it is a correct translation, and the statement shall include:
- (1) the name of the person making the translation; and
 - (2) his address.

Service by a particular method

- 5.19 The Court may make an order requiring any document to be served by a particular method.
- 5.20 The Court may direct that steps be taken to publish any document or take any other step which the Court considers reasonably necessary to bring the document and its contents to the attention of a party or any other person.

Power of Court to dispense with service

- 5.21 The Court may dispense with service of a document.
- 5.22 An application for an order to dispense with service may be made without notice.

Certificate of service

- 5.23 Where a Rule, Practice Direction or Court order requires a certificate of service, the certificate shall:
- (1) state the method of service used;
 - (2) exhibit any receipt for such service;
 - (3) set out the grounds on which the party serving considers that such method was sufficient to bring the document and its contents to the attention of the party being served;
 - (4) state the time and date of delivery; and
 - (5) set out any other information directed by the Court.

Notification of outcome of service by Court

- 5.24 Where—
- (1) a document is required to be served by the Court; and
 - (2) such service is unsuccessful,
- the Court shall send notification of this to the party who requested service.

Certificate of service relating to the Claim Form

- 5.25 Where a Claim Form is served by the Court, the Court shall send the Claimant a notice which will include the date when the Claim Form is considered to be served under Rule 5.15.
- 5.26 Where the Claim Form is served by the Claimant:
- (1) he shall file a certificate of service not later than 7

days after the date for the filing by the Defendant of the acknowledgment of service, unless by that date the acknowledgment of service has been filed; and

- (2) he may not obtain judgment in default under Part 9 unless he has filed the certificate of service.

Undertaking to be responsible for expenses of the Court

5.27 Any request for service through the Court shall contain an undertaking by the person making the request:

- (1) to be responsible for all expenses incurred by the Court or any foreign judicial authority; and
- (2) to pay those expenses to the Court or foreign judicial authority on being informed of the amount.

Proof of service

5.28 Where:

- (1) a hearing is fixed when the claim is issued; and
- (2) the Defendant does not appear at the hearing;

the Court may direct that the Claimant may take no further steps against that Defendant until the Claimant has filed a certificate of service.

SECTION II – SERVICE OF PROCESS OF OTHER COURTS

5.29 This Section of this Part applies to the service in the AIFC of any court process in connection with civil or commercial proceedings in another court.

5.30 Nothing in this Section of this Part shall deprive any person of any right they may have to effect such service themselves.

Request for service

- 5.31 The Court will serve process where the Registrar receives:
- (1) a written request for service from a consular or other authority;
 - (2) a translation of that request into English;
 - (3) the process to be served; and
 - (4) unless the other court certifies that the person to be served understands the language of the process, a translation of it into English.

Method of service

- 5.32 The Registrar may arrange for service of the process by any method he considers to be appropriate.

After service

- 5.33 The Registrar will send the following documents to the person who requested service:
- (1) a certificate stating:
 - (a) when and how the process was served or the reason why it has not been served; and
 - (b) where appropriate, an amount certified to be the costs of serving or attempting to serve the process; and
 - (2) a copy of the process.

PART 6 MAKING APPLICATIONS

- 6.1 When a party makes an application to the Court:
- (1) before a claim is brought in accordance with Part

4, he shall issue and serve an Abridged Procedure Claim Form under Part 23 of the Rules, unless the Court orders otherwise;

- (2) after a claim is brought in accordance with Part 4, he shall file and serve an application notice subject to the rules of this Part.

6.2 In this Part:

- (1) ‘application notice’ means a document in which the applicant states his intention to seek a Court order; and
- (2) ‘respondent’ means:
 - (a) the person against whom the order is sought; and
 - (b) such other person as the Court may direct.

SECTION I – FILING AND SERVICE OF NOTICE OF AN APPLICATION

Application notice to be filed

- 6.3 The general rule is that an applicant shall file an application notice.
- 6.4 An applicant may make an application without filing an application notice if:
 - (1) this is permitted by a Rule or Practice Direction; or
 - (2) the Court dispenses with the requirement for an application notice.

Notice of an application

- 6.5 The general rule is that a copy of the application notice shall be served by the applicant on each respondent.

- 6.6 An application may be made without serving a copy of the application notice if this is permitted by:
- (1) a Rule;
 - (2) a Practice Direction; or
 - (3) a Court order.

Applications without service of application notice

- 6.7 The Court's permission is required for an application to be made without serving an application notice. The Court's permission will be granted:
- (1) where there is exceptional urgency;
 - (2) where the overriding objective is best furthered by doing so;
 - (3) by consent of all parties;
 - (4) where a Rule or Practice Direction permits; or
 - (5) where there are good reasons for making the application without notice, for example, because notice would or might defeat the object of the application.

Expedited applications

- 6.8 The Court will expedite the hearing of an application on notice in cases of sufficient urgency and importance.
- 6.9 Where a party wishes to make an expedited application a request should be made to the Registrar. Such request should be made on notice to all other parties, unless the Court orders otherwise.

Time when an application is made

- 6.10 Where an application is required to be made within a specified time, it is so made if the application notice is received by the Court within that time.

What an application notice shall include

- 6.11 An application notice shall state:
- (1) what order the applicant is seeking; and
 - (2) briefly, why the applicant is seeking the order.

Service of a copy of an application notice

- 6.12 Unless Rule 6.6 applies a copy of the application notice:
- (1) shall be served as soon as practicable after it is filed; and
 - (2) except where another time limit is specified in these Rules or the Court orders otherwise, shall in any event be served at least 3 days before the Court is to deal with the application.
- 6.13 When a copy of an application notice is served it shall be accompanied by:
- (1) a copy of any written evidence in support; and
 - (2) a draft of the order which the applicant seeks.

SECTION II – EVIDENCE IN SUPPORT OF APPLICATIONS

Filing and service of evidence

- 6.14 Subject to any directions the Court may make as to the service of evidence:
- (1) evidence in support of any application shall be filed and served with the application notice;
 - (2) any evidence in answer which has not already been served shall be served within 14 days thereafter;
 - (3) any evidence in reply shall be served within 7 days thereafter.
- 6.15 It is not necessary for written evidence:
- (1) to be filed if it has already been filed; or
 - (2) to be served on a party on whom it has already been served.
- 6.16 Evidence in support of an application may be set out in either:
- (1) a witness statement; or
 - (2) a statement of case provided that it is verified by a statement of truth; or
 - (3) the application notice provided that it is verified by a statement of truth;
- unless the Court, Regulations, a Rule or a Practice Direction requires evidence by affidavit.
- 6.17 The evidence shall set out the facts on which the applicant relies, including all material facts of which the Court should be made aware.
- 6.18 Where an application is made without notice to the respondent, the evidence shall also set out:

- (1) why notice was not given; and
- (2) details of any possible defences that may be available to the respondent in response to the application.

SECTION III – HEARINGS AND ORDERS

Hearing of applications

- 6.19 The general rule is that the Court will fix an oral hearing to deal with any application.
- 6.20 Applications (other than applications in arbitration claims under Part 27) will be heard in public in accordance with Article 32 of the Court Regulations, save where otherwise ordered by the Court.

Applications may be dealt with without a hearing

- 6.21 The Court may deal with an application without a hearing if the parties agree or if the Court does not consider that a hearing would be desirable.

Power of the Court to proceed in the absence of a party

- 6.22 Where the applicant or any respondent fails to attend the hearing of an application, the Court may proceed in his absence.
- 6.23 Where:
- (1) the applicant or any respondent fails to attend the hearing of an application; and
 - (2) the Court makes an order at the hearing;
- the Court may, on application or of its own initiative, re-hear the application.

Service of application where application made without notice

- 6.24 Where the Court has disposed of an application which it permitted to be made without notice, unless the Court orders otherwise:
- (1) a copy of the application notice and any evidence in support shall be served with the order on any party or other person against whom the order was made or sought; and
 - (2) the order shall contain a statement of the right to make an application to set aside or vary the order under Rule 6.25.
- 6.25 A person who was not served with a copy of the application notice before an order was made under Rule 6.24, may apply to have the order set aside or varied.
- 6.26 An application under Rule 6.25 shall be made within 7 days after the date on which the order was served on the person making the application.

PART 7 RESPONDING TO A CLAIM

- 7.1 Save where a Rule or Practice Direction provides otherwise, a Defendant shall file an acknowledgment of service and serve a copy on every other party.
- 7.2 In addition to filing and serving an acknowledgment of service, the Defendant may also:
- (1) file and serve an admission in accordance with Part 10;
 - (2) file and serve a Defence in accordance with Part 11;
or

- (3) file and serve both an admission and a defence if he admits only part of a claim.

7.3 A Defendant who wishes to acknowledge service of a claim shall do so electronically through the Court e-filing system.

The period for filing an acknowledgment of service

7.4 The period for filing an acknowledgment of service is:

- (1) Where a Claim Form has been served within the Republic of Kazakhstan, 14 days after service of the Claim Form;
- (2) Where a Claim Form has been served out of the Republic of Kazakhstan, 28 days after the service of the Claim Form.

Consequence of not filing an acknowledgment of service

7.5 If a Defendant fails to file an acknowledgment of service within the period specified in Rule 7.4 the Claimant may obtain default judgment if Part 9 allows it.

Contents of acknowledgment of service

7.6 An acknowledgment of service shall:

- (1) be signed by the Defendant or his legal representative;
- (2) in the case of an individual, state the address at which the Defendant resides;
- (3) in the case of a Defendant which is not an individual, state:
 - (a) an address in Kazakhstan at which the Defendant carries on business; or

- (b) where no such address exists, the Defendant's registered address; or
 - (c) where no such address exists, an address in any other country at which the Defendant carries on business;
 - (4) include the Defendant's address for service; and
 - (5) expressly agree or disagree with the Claimant's assertions on the Claim Form provided under Rule 4.22 (applicable law and basis for jurisdiction).
- 7.7 Where the Defendant is represented by a legal representative and the legal representative has signed the acknowledgment of service form, the address for service shall be the legal representative's business email address; otherwise the address for service that is given should be the Defendant's email address, if possible.

General

- 7.8 The Defendant's name should be set out on the acknowledgment of service.
- 7.9 Where the Defendant's name has been incorrectly set out in the Claim Form, it should be correctly set out on the acknowledgment of service followed by the words 'described as' and the incorrect name.
- 7.10 If two or more Defendants to a claim acknowledge service of a claim through the same legal representative at the same time, only one acknowledgment of service need be used.
- 7.11 An acknowledgment of service may be amended or withdrawn only with the permission of the Court. The application shall be made in accordance with Part 6 and supported by evidence.

PART 8 DISPUTING JURISDICTION

- 8.1 A Defendant who wishes to:
- (1) dispute the Court's jurisdiction to try the claim; or
 - (2) argue that the Court should not exercise its jurisdiction;
may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
- 8.2 A Defendant who wishes to make such an application shall first file an acknowledgment of service in accordance with Part 7 indicating that he intends to dispute jurisdiction.
- 8.3 A Defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the Court's jurisdiction.
- 8.4 An application under this Part shall:
- (1) be made within 14 days after filing an acknowledgment of service; and
 - (2) be supported by evidence.
- 8.5 If the Defendant files an acknowledgment of service and does not make an application disputing the Court's jurisdiction within the period specified in Rule 8.4:
- (1) he is to be treated as having accepted that the Court has jurisdiction to try the claim; and
 - (2) if his acknowledgment of service indicates an intention to dispute jurisdiction, he will be treated as if he has not filed an acknowledgment of service for the purposes of any application for judgment in default under Part 9.

- 8.6 If the Defendant files an acknowledgment of service indicating an intention to dispute the Court's jurisdiction, the Claimant need not serve Particulars of Claim before the hearing of the application, unless the Court orders otherwise.
- 8.7 If a Defendant makes an application under this Part, he shall file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file a Defence, or in the case of an Abridged Procedure claim, file any other written evidence, unless the Court orders otherwise.
- 8.8 An order containing a declaration that the Court has no jurisdiction or will not exercise its jurisdiction may also make further provision including:
- (1) setting aside the Claim Form;
 - (2) setting aside service of the Claim Form;
 - (3) discharging any order made before the claim was commenced or before the Claim Form was served;
or
 - (4) staying the proceedings.
- 8.9 If on an application under this Part the Court does not make a declaration that it has no jurisdiction or will not exercise its jurisdiction, the Court shall give directions as to the filing and service of statements of case or, in an Abridged Procedure claim under Part 23, evidence.

PART 9 DEFAULT JUDGMENT

Meaning of 'Default judgment'

- 9.1 In these Rules, 'default judgment' means judgment

without trial where a Defendant —

- (1) has failed to file an acknowledgment of service; or
- (2) has failed to file a Defence.

9.2 For the purposes of this Part, a Defence includes any document purporting to be a Defence.

SECTION I – OBTAINING DEFAULT JUDGMENT

Claims in which default judgment may not be obtained

9.3 A Claimant may not obtain a default judgment —

- (1) where he uses the Abridged Procedure set out in Part 23; or
- (2) in any other case where a Rule or Practice Direction provides that the Claimant may not obtain default judgment.

Conditions to be satisfied

9.4 The Claimant may obtain judgment in default of an acknowledgment of service if —

- (1) the Defendant has not filed an acknowledgment of service or a Defence to the claim (or any part of the claim); and
- (2) the relevant time for doing so has expired.

9.5 Judgment in default of Defence may be obtained —

- (1) where an acknowledgement of service has been filed but a Defence has not been filed;
- (2) in a counterclaim made under Rule 13.7, where a Defence has not been filed,

and, in either case, the relevant time limit for doing so has expired.

- 9.6 The Claimant may not obtain a default judgment:
- (1) if the Defendant has applied:
 - (a) to have the Claimant's Statement of Case struck out under Rule 3.10; or
 - (b) for immediate judgment under Part 14;
and, in either case, that application has not been disposed of;
 - (2) if the Defendant has satisfied the whole claim (including any claim for costs) on which the Claimant is seeking judgment;
 - (3) if the Claimant is seeking judgment on a claim for money and the Defendant has filed or served on the Claimant an admission of liability to pay all of the money claimed under Rule 10.5 together with a request for time to pay;
 - (4) unless either he has filed a certificate of service under Rule 5.26 or the Defendant has filed an acknowledgment of service.

Procedure for obtaining default judgment

- 9.7 A Claimant may obtain default judgment by making an application in accordance with Part 6. An application for default judgment may be made without notice and may be decided without a hearing.

Nature of judgment in certain cases

- 9.8 Where the claim is for a specified sum of money, the Claimant may specify in an application filed under Rule 9.7—

- (1) the date by which the whole of the judgment debt is to be paid; or
- (2) the times and rate at which it is to be paid by instalments.

9.9 Except where Rule 9.11 applies, a default judgment on a claim for a specified amount of money will be judgment for the amount of the claim (less any payments made) and costs—

- (1) to be paid by the date or at the rate specified in the application for default judgment; or
- (2) if none is specified, immediately.

9.10 Where the claim is for an unspecified amount of money a default judgment will be for an amount to be decided by the Court and costs.

9.11 Where the claim is for delivery of goods and the Claim Form gives the Defendant the alternative of paying their value, a default judgment will be judgment requiring the Defendant to—

- (1) deliver the goods or (if he does not do so) pay the value of the goods as decided by the Court (less any payments made); and
- (2) pay costs.

Interest

9.12 A default judgment on a claim for a specified amount of money may include the amount of interest claimed to the date of judgment if—

- (1) the Claim Form includes the details required by these Rules;

- (2) where interest is claimed under any Regulations of the Centre and the rate is no higher than any rate of interest fixed by these Rules or any Practice Direction under Article 37(3) of the AIFC Court Regulations 2017 payable on judgment debts at the date when the Claim Form was issued; and
- (3) the Claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the Claim Form to the date of the request for judgment.

9.13 In any case where Rule 9.12 does not apply, judgment will be for an amount of interest to be decided by the Court.

Procedure for deciding an amount or value

9.14 Where default judgment is given on a claim for a sum of money expressed in a currency other than US Dollars, the judgment should be for the amount of that currency with the addition of 'or the US Dollar equivalent at the time of payment'.

Claim against more than one Defendant

9.15 Where a Claimant applies for a default judgment against one of two or more Defendants —

- (1) if the claim can be dealt with separately from the claim against the other Defendants
 - (a) the Court may enter a default judgment against that Defendant; and
 - (b) the Claimant may continue the proceedings against the other Defendants;

- (2) if the claim cannot be dealt with separately from the claim against the other Defendants
 - (a) the Court will not enter default judgment against that Defendant; and
 - (b) the Court shall deal with the application at the same time as it disposes of the claim against the other Defendants.

9.16 A Claimant may not enforce against one of two or more Defendants any judgment obtained under this Part for delivery of goods unless—

- (1) he has obtained a judgment for delivery (whether or not obtained under this Part) against all the Defendants to the claim; or
- (2) the Court gives permission.

Claims served outside the Republic of Kazakhstan

9.17 Where the Defendant was served with the claim outside the Republic of Kazakhstan and the Defendant has not acknowledged service, the evidence in support of an application for default judgment shall establish that:

- (1) the claim is one that the Court has and should exercise jurisdiction to hear and decide; and
- (2) the claim has been properly served.

SECTION II – SETTING ASIDE OR VARYING DEFAULT JUDGMENT

Cases where the Court shall set aside default judgment

9.18 The Court shall set aside a judgment entered under

Section I of this Part if judgment was wrongly entered because—

- (1) in the case of a judgment in default of an acknowledgment of service, any of the conditions in Rules 9.4 and 9.6 was not satisfied;
- (2) in the case of a judgment in default of a Defence, any of the conditions in Rules 9.5 and 9.6 was not satisfied; or
- (3) the whole of the claim was satisfied before judgment was entered.

Cases where the Court may set aside or vary default judgment

9.19 In any other case, the Court may, on such conditions as it sees fit, set aside or vary a judgment entered under Section I of this Part if:

- (1) the Defendant has a real prospect of successfully defending the claim; or
- (2) it appears to the Court that there is some other good reason why:
 - (a) the judgment should be set aside or varied; or
 - (b) the Defendant should be allowed to defend the claim.

9.20 In considering whether to set aside or vary a judgment entered under Section I of this Part, the matters to which the Court shall have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

PART 10 ADMISSIONS

- 10.1 A party may at any time admit the truth of the whole or any part of another party's case by giving notice in writing (such as in a Statement of Case or by letter).
- 10.2 The permission of the Court is required to amend or withdraw an admission made in accordance with Rule 10.1.
- 10.3 Where a party makes an admission under Rule 10.1 (admission by notice in writing), any other party may apply for judgment on the admission.
- 10.4 Judgment entered under Rule 10.3 shall be such as it appears to the Court that the applicant is entitled to on the admission.
- 10.5 Where the remedy sought by the Claimant is payment of an amount of money, the Defendant may admit liability to pay the whole or part of the sum claimed.
- 10.6 Where the Defendant admits part of a claim for payment of an amount of money, the claimant may apply for judgment on the admission in accordance with Rule 10.3.
- 10.7 Where the defendant makes an admission of liability to pay the whole of a claim for a sum of money:
 - (1) where the amount of the claim is specified, the claimant shall be entitled to apply for judgment for the whole of the claim (less any payment made) and costs;
 - (2) where the amount of the claim is unspecified, the claimant shall be entitled to apply for judgment for an amount to be decided by the Court and costs.

Request for time to pay

- 10.8 A Defendant who makes an admission under Rules 10.5 to 10.7 may make a request for time to pay.
- 10.9 A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.
- 10.10 The Defendant's request for time to pay shall be served and filed with his admission.
- 10.11 If the Defendant is requesting time to pay he should provide as fully as possible a statement of his means.
- 10.12 The Defendant's request for time to pay will be considered at the same time as any application by the Claimant under Rule 10.3.

PART 11 STATEMENTS OF CASE AND FURTHER INFORMATION

SECTION I – STATEMENTS OF CASE

- 11.1 In these Rules, 'Statement of Case' means:
- (1) a Claim Form, Particulars of Claim, Defence, Additional Claim Notice, or Reply; and
 - (2) any other formal written further information given in relation to a Statement of Case, whether given voluntarily or by court order.

Exceptions to this Section of this Part

- 11.2 This Section of this Part does not apply where the Claimant uses the Abridged Procedure set out in Part 23.

- 11.3 The Court may at any time before or after the issue of the Claim Form order a claim to proceed without the filing or service of statements of case.

General Rules about Statements of Case

- 11.4 Statements of Case shall:
- (1) set out a concise statement of the facts on which the party relies;
 - (2) specify any remedy which the party seeks; and
 - (3) be set out in separate consecutively numbered paragraphs.
- 11.5 A Statement of Case shall be signed by the individual person(s) who drafted it or bear the name of the lawyer by whom it was settled.

Contents of Claim Form

- 11.6 The Claim Form shall include:
- (1) the matters required by Rule 11.4;
 - (2) where the Claimant's claim is for a specified sum, a statement of the interest accrued on that sum;
 - (3) the matters required by Rule 4.22 (governing law and basis of jurisdiction); and
 - (4) such other matters as may be set out in a Practice Direction.
- 11.7 If the Particulars of Claim are not contained in, or are not served with the Claim Form, the Claimant shall state on the Claim Form that the Particulars of Claim will follow if an acknowledgement of service is filed which indicates an intention to defend the claim.

- 11.8 If the Claimant is claiming in a representative capacity, the Claim Form shall state what that capacity is.
- 11.9 If the Defendant is sued in a representative capacity, the Claim Form shall state what that capacity is.

Contents of the Particulars of Claim

- 11.10 Particulars of Claim shall include:
- (1) the matters required by Rule 11.4; and
 - (2) such other matters as may be set out in a Practice Direction.

Defence

- 11.11 A Defendant who wishes to defend all or part of a claim shall file a defence.

Consequence of not filing a defence

- 11.12 If a Defendant fails to file a defence, the Claimant may obtain default judgment if Part 9 allows it.

Form of defence

- 11.13 A party shall file a defence by submitting it electronically using the Court's e-filing system.
- 11.14 A defence shall be verified by a statement of truth.

Contents of Defence

- 11.15 In his Defence, the Defendant shall state:
- (1) which of the allegations in the Particulars of Claim he denies;
 - (2) which allegations he is unable to admit or deny, but which he requires the Claimant to prove; and

(3) which allegations he admits.

11.16 Where the Defendant denies an allegation:

- (1) he shall state his reasons for doing so; and
- (2) if he intends to put forward a different version of events from that given by the Claimant, he shall state his own version.

11.17 A Defendant who:

- (1) fails to deal with an allegation; but
- (2) has set out in his Defence the nature of his case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

11.18 Where the claim includes a money claim, a Defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.

11.19 Subject to Rules 11.17 and 11.18, a Defendant who fails to deal with an allegation shall be taken to admit that allegation.

11.20 If the Defendant is defending in a representative capacity, he shall state what that capacity is.

11.21 The Defendant shall give details of the expiry of any relevant limitation period relied on.

Defence of set-off

11.22 Where a Defendant:

- (1) contends he is entitled to money from the Claimant; and
- (2) relies on this as a Defence to the whole or part of the claim,

the contention may be included in the Defence and set off against the claim, whether or not it is also a counterclaim.

The period for filing a defence

- 11.23 The general rule is that the period for filing a defence is 28 days after service of the particulars of claim.
- 11.24 The general rule is subject to the following rules:
- (1) Rule 8.7 (which provides that, where the Defendant makes an application disputing the Court's jurisdiction, he need not file a defence before the hearing); and
 - (2) Rule 14.4 (which provides that, if the Claimant applies for immediate judgment before the Defendant has filed a defence, the Defendant need not file a defence before the immediate judgment hearing).

Agreement extending the period for filing a defence

- 11.25 The Defendant and the Claimant may agree that the period for filing a defence specified in Rules 11.23 and 11.24 shall be extended by up to 28 days.
- 11.26 Where the Defendant and the Claimant agree to extend the period for filing a defence, the Defendant shall notify the Court in writing.

Service of copy of defence

11.27 A copy of the defence shall be served on every other party as soon as reasonably practicable after it is filed.

Claim stayed if it is not defended or admitted

11.28 Where:

- (1) at least 6 months have expired since the end of the period for filing a defence specified in Rules 11.23 and 11.24;
- (2) no Defendant has served or filed an admission or filed a defence or counterclaim; and
- (3) the Claimant has not applied for judgment under Part 9 (default judgment), or Part 14 (immediate judgment);

the claim shall be stayed, unless the Court orders otherwise.

11.29 Where a claim is stayed under Rule 11.28, any party may apply for the stay to be lifted.

11.30 Any application made under Rule 11.29 should be made in accordance with Part 6 and should give the reason for the applicant's delay in proceeding with or responding to the claim.

Reply to the Defence

11.31 If a Claimant files a reply to the defence, he shall:

- (1) file his reply within 21 days after service of the defence; and
- (2) serve it on all other parties at the same time.

11.32 Where a Claimant serves a reply and a defence to

counterclaim, the reply and defence to counterclaim should normally form one document, with the defence to counterclaim following on from the reply.

11.33 A Claimant who does not file a reply to the Defence shall not be taken to admit the matters raised in the Defence.

11.34 A Claimant who:

- (1) files a reply to a Defence; but
- (2) fails to deal with a matter raised in the Defence,
shall be taken to require that matter to be proved.

No Statement of Case after a Reply to be filed without Court's permission

11.35 A party may not file or serve any Statement of Case after a reply without the permission of the Court.

SECTION II – AMENDMENTS TO STATEMENTS OF CASE

11.36 A party may amend his Statement of Case at any time before it has been served on any other party.

11.37 Where the Court's permission is not required, the amended Statement of Case shall be filed with the Court and served on every party to the proceedings.

11.38 If his Statement of Case has been served, a party may amend it only:

- (1) with the written consent of all the other parties; or
- (2) with the permission of the Court.

11.39 If a Statement of Case has been served, an application

to amend it by removing, adding or substituting a party shall be made in accordance with Part 12.

Power of Court to disallow amendments made without permission

- 11.40 If a party has amended his Statement of Case where permission of the Court was not required, the Court may disallow the amendment.
- 11.41 A party may apply to the Court for an order under Rule 11.40 within 14 days of service of a copy of the amended Statement of Case on him.

Amendments to Statements of Case with the permission of the court

- 11.42 Where the Court gives permission for a party to amend his Statement of Case, it may give directions as to:
- (1) amendments to be made to any other Statement of Case; and
 - (2) service of any amended Statement of Case.
- 11.43 The power of the Court to give permission to amend a Statement of Case is subject to:
- (1) Rules 11.44 to 11.47 (amendments of Statement of Case after the end of a relevant limitation period);
 - (2) Rules 12.3 to 12.6 (change of parties — general); and
 - (3) Rules 12.15 to 12.17 (special provisions about adding or substituting parties after the end of a relevant limitation period).

Amendments to Statements of Case after the end of a relevant limitation period

11.44 Rules 11.45 to 11.47 apply where:

- (1) a party applies to amend his Statement of Case in one of the ways mentioned in Section II of this Part; and
- (2) a period of limitation has expired under any AIFC Regulations under which such an amendment is allowed.

11.45 The Court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.

11.46 The Court may allow an amendment to correct a mistake as to the name of a party where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question.

11.47 The Court may allow an amendment to alter the capacity in which a party claims.

Applications to amend where the permission of the Court is required

11.48 When making an application to amend a Statement of Case, the applicant should file with the Court:

- (1) the application notice;
- (2) a copy of the Statement of Case with the proposed amendments; and
- (3) any evidence submitted in support of the application.

- 11.49 Where permission to amend has been given, the applicant should within 14 days of the date of the order, or within such other period as the Court may direct, file with the Court the amended Statement of Case.
- 11.50 A copy of the order and the amended Statement of Case should be served on every party to the proceedings, unless the Court orders otherwise.

SECTION III – REQUESTS FOR FURTHER INFORMATION

Obtaining further information

- 11.51 The Court may at any time order a party to file and serve a document:
- (1) clarifying any matter which is in dispute in the proceedings; or
 - (2) giving additional information in relation to any such matter;
- whether or not the matter is contained or referred to in a statement of case.
- 11.52 Rule 11.51 is subject to any rule of law to the contrary.

Restriction on the use of further information

- 11.53 The Court may direct that information provided by a party to another party (whether given voluntarily or following an order made under Rule 11.51) shall not be used for any purpose except for that of the proceedings in which it is given.

Preliminary request for further information or clarification

- 11.54 Before making an application to the Court for an order under Rule 11.51, the party seeking clarification or information should first serve on the party from whom it is sought a written request for that clarification or information (“a Request”), stating a date by which the response to the Request should be served. The date shall allow the party providing clarification or further information a reasonable time to respond.
- 11.55 A Request shall be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet.

Responding to a request

- 11.56 A response to a Request shall be in writing, dated and signed by the party providing clarification or further information or his legal representative.
- 11.57 The party providing clarification or further information shall when he serves his response on the party seeking it serve on every other party and file with the Court a copy of the Request and of his response.

Statements of truth

- 11.58 A response to a Request shall be verified by a statement of truth.

General matters

- 11.59 If the party providing clarification or further information objects to complying with the Request or part of it or is unable to do so at all or within the time stated in the

Request:

- (1) he shall inform the party seeking clarification or information promptly and in any event within that time; and
- (2) he may do so in a letter or in a separate document (a formal response), but in either case he shall give reasons and, where relevant, give a date by which he expects to be able to comply.

11.60 There is no need for a party providing clarification or further information to apply to the Court if he objects to a Request or is unable to comply with it at all or within the stated time. He need only comply with Rule 11.59.

11.61 Where the party from whom clarification or information is sought has made no response to a Request served on him:

- (1) the party seeking the clarification or information need not serve the application notice on that party, and the Court may deal with the application without a hearing;
- (2) sub-paragraph (1) above only applies if at least 14 days have passed since the Request was served and the time stated in it for a response has expired.

11.62 Unless Rule 11.61 applies the application notice shall be served on the second party and on all other parties to the claim.

11.63 An order made under Rule 11.51 shall be served on all parties to the claim

PART 12 PARTIES

Parties — General

- 12.1 Any number of claimants or defendants may be joined as parties to a claim.
- 12.2 Parties may be removed, added or substituted in existing proceedings either on the Court's own initiative or on the application of either an existing party or a person who wishes to become a party.

SECTION I – ADDITION AND SUBSTITUTION OF PARTIES

Change of parties — General

- 12.3 Rules 12.4 to 12.5 apply where a party is to be added or substituted except where the case falls within Rules 12.15 to 12.17 (special provisions about changing parties after the end of a relevant limitation period).
- 12.4 The Court's permission is required to remove, add or substitute a party, unless the claim form has not been served.
- 12.5 The Court may order a person to be added, removed or substituted as a party if it is desirable to do so.
- 12.6 Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy shall be parties unless the Court orders otherwise.

Procedure for adding and substituting parties

- 12.7 An order for the removal, addition or substitution of a party shall be served on:

- (1) all parties to the proceedings; and
- (2) any other person affected by the order.

12.8 When the Court makes an order for the removal, addition or substitution of a party, it may give consequential directions about:

- (1) serving statements of case and any other relevant documents on any new party; and
- (2) the management of the proceedings.

Addition or substitution of claimant

12.9 Nobody may be added or substituted as a claimant unless:

- (1) he has given his consent in writing; and
- (2) that consent has been filed with the Court.

12.10 If any person would otherwise be joined as a claimant but does not agree to be a claimant, he shall be made a defendant, unless the Court orders otherwise.

12.11 Any application to add or to substitute a new party to the proceedings as a claimant shall be accompanied by the signed, written consent of the new claimant.

Addition or substitution of defendant

12.12 A new defendant does not become a party to the proceedings until the amended claim form has been served on him, unless the Court orders otherwise.

Transfer of interest or liability

12.13 Where the interest or liability of an existing party has passed to some other person, an application may be made to the Court to add or substitute that person.

12.14 The application shall be supported by evidence showing the stage the proceedings have reached and what change has occurred to cause the transfer of interest or liability.

Special provisions about adding or substituting parties after the end of a relevant limitation period

12.15 Rules 12.16 to 12.17 apply to a change of parties after the end of the relevant period of limitation period applicable a claim.

12.16 The Court may add or substitute a party if:

- (1) the relevant limitation period was current when the proceedings were started; and
- (2) the addition or substitution is necessary.

12.17 The addition or substitution of a party is necessary if the Court is satisfied that:

- (1) the new party is to be substituted for a party who was named in the claim form in mistake for the new party; or
- (2) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
- (3) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party.

SECTION II – REPRESENTATIVE PARTIES

Representative parties with same interest

12.18 Where more than one person has the same interest in a claim:

- (1) the claim may be begun; or
 - (2) the Court may order that the claim be continued;
by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.
- 12.19 The Court may direct that a person may not act as a representative.
- 12.20 Unless the Court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule:
- (1) is binding on all persons represented in the claim; but
 - (2) may only be enforced by or against a person who is not a party to the claim with the permission of the Court.
- 12.21 This rule does not apply to a claim to which Rules 12.23 to 12.28 apply.

Representation of interested persons who cannot be ascertained

- 12.22 Rules 12.23 to 12.28 apply to claims about:
- (1) the estate of a deceased person
 - (2) property subject to a trust; or
 - (3) the meaning of a document, including legislation.
- 12.23 The Court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented:

- (1) are minors or unborn;
- (2) cannot be found;
- (3) cannot easily be ascertained; or
- (4) are a class of persons who have the same interest in a claim and;
 - (a) one or more members of that class are within sub-paragraphs (1), (2) or (3); or
 - (b) to appoint a representative would further the overriding objective.

12.24 An application for an order under Rule 12.23:

- (1) may be made by:
 - (a) any person who seeks to be appointed under the order; or
 - (b) any party to the claim; and
- (2) may be made at any time before or after the claim has started.

12.25 An application notice for an order under Rule 12.23 shall be served on:

- (1) all parties to the claim, if the claim has started;
- (2) the person sought to be appointed, if that person is not the applicant or a party to the claim; and
- (3) any other person as directed by the Court.

12.26 The Court's approval is required to settle a claim in which a party is acting as a representative under Rules 12.23 to 12.28.

- 12.27 The Court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- 12.28 Unless the Court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under Rules 12.23 to 12.28:
- (1) is binding on all persons represented in the claim; but
 - (2) may only be enforced by or against a person who is not a party to the claim with the permission of the Court.

Representation of beneficiaries by trustees

- 12.29 A claim may be brought by or against trustees or persons representing the estate of a deceased person in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate (the ‘beneficiaries’).
- 12.30 Any judgment or order given or made in the claim is binding on the beneficiaries unless the Court orders otherwise in the same or other proceedings.

Death

- 12.31 Where a person who had an interest in a claim has died and that person has no person appointed by a competent authority to represent his estate the Court may order:
- (1) the claim to proceed in the absence of a person representing the estate of the deceased; or
 - (2) a person to be appointed to represent the estate of the deceased.

12.32 Where a defendant against whom a claim could have been brought has died and:

- (1) a person or persons have been appointed by a competent authority to represent the estate of the deceased, the claim shall be brought against that person or those persons;
- (2) no person or persons have been appointed by a competent authority to represent the estate of the deceased:
 - (a) the claim shall be brought against 'the estate of' the deceased; and
 - (b) the claimant shall apply to the Court for an order appointing a person to represent the estate of the deceased in the claim.

12.33 A claim shall be treated as having been brought against 'the estate of' the deceased in accordance with Rule 12.32(2)(a) where:

- (1) the claim is brought against the 'personal representatives' of the deceased but no appointment by a competent authority of those representatives has been made; or
- (2) the person against whom the claim was brought was dead when the claim was started.

12.34 Before making an order under Rule 12.31 or 12.32(2)(b), the Court may direct notice of the application to be given to any other person with an interest in the claim.

12.35 Where an order has been made under Rule 12.31 or 12.32(2)(b) any judgment or order made or given in the claim is binding on the estate of the deceased.

Power to make judgments binding on non-parties

- 12.36 The Court may at any time direct that notice of the claim or any judgment or order given in the claim be served on any person who is not a party but who is or may be affected by it.
- 12.37 An application for an order under Rule 12.36:
- (1) may be made without notice; and
 - (2) shall be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.
- 12.38 Unless the Court orders otherwise a notice of a claim or of a judgment or order under Rule 12.36 will be issued by the Court and shall be accompanied by a form by which the person who is not a party may acknowledge service.
- 12.39 A notice of a judgment or order shall also be accompanied by a copy of the judgment or order.
- 12.40 A notice of a claim shall also be accompanied by:
- (1) a copy of the claim form, and
 - (2) such other statements of case, witness statements or affidavits as the Court may direct.
- 12.41 Any person served with a notice of a judgment or order under Rule 12.36:
- (1) shall be bound by the judgment or order as if he had been a party to the claim; but
 - (2) may, provided he acknowledges service in accordance with Rule 7.6:

- (a) apply to the Court to set aside or vary the judgment or order; or
- (b) take part in any proceedings relating to the judgment or order.

Derivative claims

- 12.42 Rules 12.43 to 12.46 apply where a company or other incorporated body is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company or body for it to be given that remedy (a 'derivative claim').
- 12.43 The company or body for whose benefit a remedy is sought shall be a defendant to the claim.
- 12.44 After the claim form has been issued the claimant shall apply to the Court for permission to continue the claim and may not take any other step in the proceedings except:
- (1) as provided by Rule 12.45; or
 - (2) where the Court gives permission.
- 12.45 The:
- (1) claim form;
 - (2) application notice; and
 - (3) written evidence in support of the application;
- shall be served on the defendant within the period within which the claim form shall be served and, in any event, at least 14 days before the Court is to deal with the application.
- 12.46 The Court may order the company or body to indemnify the claimant against any liability in respect of costs incurred in the claim.

SECTION III – GROUP LITIGATION

Group Litigation Orders (GLOs)

- 12.47 The Court may make a Group Litigation Order ('GLO') where there are or are likely to be a number of claims giving rise to common or related issues of fact or law (the 'GLO issues').
- 12.48 A GLO shall:
- (1) contain directions about the establishment of a register (the 'group register') on which the claims managed under the GLO will be entered; and
 - (2) specify the GLO issues which will identify the claims to be managed as a group under the GLO.
- 12.49 A party to a claim entered on the group register may apply to the Court for the claim to be removed from the register.
- 12.50 Where a judgment or order is given or made in a claim on the group register in relation to one or more GLO issues:
- (1) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the Court orders otherwise; and
 - (2) the Court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.
- 12.51 Unless Rule 12.52 applies, any party who is adversely affected by a judgment or order which is binding on him may seek permission to appeal the order.

- 12.52 A party to a claim which was entered on the group register after a judgment or order which is binding on him was given or made may not:
- (1) apply for the judgment or order to be set aside, varied or stayed; or
 - (2) appeal the judgment or order;
but may apply to the Court for an order that the judgment or order is not binding on him.
- 12.53 Unless the Court orders otherwise, production of any document relating to the GLO issues by a party to a claim on the group register is production of that document to all parties to claims:
- (1) on the group register; and
 - (2) which are subsequently entered on the group register.

PART 13 COUNTERCLAIMS AND OTHER RELATED CLAIMS

- 13.1 This Part applies to:
- (1) a counterclaim by a defendant against the claimant or against the claimant and some other person;
 - (2) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
 - (3) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).

13.2 In these Rules:

- (1) ‘additional claim’ means any claim other than the claim by the claimant against the defendant; and
- (2) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

Application of these Rules to additional claims

13.3 An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.

13.4 Rules 4.9 to 4.14 (time within which a claim form may be served) do not apply to additional claims.

13.5 Part 9 (default judgment) applies to a counterclaim but not to other additional claims.

13.6 Part 10 (admissions) applies to a counterclaim, but only Rules 10.1 to 10.4 apply to other additional claims.

Defendant’s counterclaim against the claimant

13.7 A defendant may make a counterclaim against a claimant:

- (1) by filing particulars of the counterclaim;
- (2) without the Court’s permission if he files it with his defence;
- (3) at any other time with the Court’s permission.

13.8 Part 7 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

Additional claim against a person other than the claimant

- 13.9 A defendant who wishes to make an additional claim against a person who is not already a party shall apply to the Court for an order that that person be added as an additional party.
- 13.10 An application for an order under Rule 13.9 may be made without notice unless the Court directs otherwise.
- 13.11 Where the Court makes an order under Rule 13.9, it will give directions as to the management of the case.

Defendant's additional claim for contribution or indemnity from another party

- 13.12 A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by:
- (1) filing a notice containing a statement of the nature and grounds of his additional claim; and
 - (2) serving the notice on that party.
- 13.13 A defendant may file and serve a notice under Rule 13.12:
- (1) without the Court's permission, if he files and serves it:
 - (a) with his defence; or
 - (b) if his additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files his defence; or
 - (2) at any other time with the Court's permission.

Procedure for making any other additional claim

13.14 Rules 13.15 to 13.20 apply to any additional claim except:

- (1) a counterclaim only against an existing party; and
- (2) a claim for contribution or indemnity made in accordance with Rule 13.12.

13.15 An additional claim is made when the Court issues the appropriate claim form.

13.16 A defendant may make an additional claim:

- (1) without the Court's permission if the additional claim is issued before or at the same time as he files his defence; and
- (2) at any other time with the Court's permission.

13.17 Particulars of an additional claim shall be contained in or served with the additional claim form.

13.18 An application for permission to make an additional claim may be made without notice, unless the Court directs otherwise.

13.19 Where an application is made for permission to make an additional claim, the application notice should be filed together with a copy of the proposed additional claim.

13.20 An application for permission to make an additional claim shall be supported by evidence stating:

- (1) the stage which the proceedings have reached;
- (2) the nature of the additional claim to be made or details of the question or issue which needs to be decided;

- (3) a summary of the facts on which the additional claim is based; and
- (4) the name and address of any proposed additional party.

Service of claim form

13.21 Where an additional claim may be made without the Court's permission, any claim form shall:

- (1) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;
- (2) in the case of any other additional claim, be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the Court.

13.22 Rule 13.21 does not apply to a claim for contribution or indemnity made in accordance with Rule 13.12.

13.23 Where an additional claim form is served on a person who is not already a party it shall be accompanied by a copy of:

- (1) every statement of case which has already been served in the proceedings; and
- (2) such other documents as the Court may direct.

13.24 A copy of the additional claim form shall be served on every existing party.

13.25 Where the Court gives permission to make an additional

claim, it will at the same time give directions as to its service.

Statement of truth

13.26 The contents of an additional claim should be verified by a statement of truth.

Effect of service of an additional claim

13.27 A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.

13.28 When an additional claim is served on an existing party for the purpose of requiring the Court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the additional claim.

Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice

13.29 Rules 13.30 to 13.32 apply if:

- (1) the additional claim is not:
 - (a) a counterclaim; or
 - (b) a claim by a defendant for contribution or indemnity against another defendant under Rule 13.12; and
- (2) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.

13.30 Where this Rule applies, the party against whom the

additional claim is made is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim.

13.31 Where this Rule applies, subject to Rule 13.32, the additional claimant may obtain default judgment in

respect of the additional claim by making an application under Rule 9.7.

13.32 The Court may at any time set aside or vary a judgment entered under Rule 13.31 in accordance with Section II of Rule 9.

PART 14 IMMEDIATE JUDGMENT

Grounds for immediate judgment

14.1 The Court may give immediate judgment in any type of proceedings against a claimant or defendant on the whole of a claim, part of a claim or on a particular issue if:

(1) it considers that:

(a) that claimant has no real prospect of succeeding on the claim or issue; or

(b) that defendant has no real prospect of successfully defending the claim or issue; and

(2) there is no other compelling reason why the case or issue should be disposed of at a trial.

14.2 An application for immediate judgment under Rule 14.1 may be based on:

- (1) a point of law (including a question of construction of a document);
- (2) the evidence which can reasonably be expected to be available at trial or the lack of it; or
- (3) a combination of subparagraphs (1) and (2).

Procedure

- 14.3 A claimant may not apply for immediate judgment until the defendant against whom the application is made has filed:
- (1) an acknowledgement of service; or
 - (2) a defence;
unless
 - (a) the Court gives permission; or
 - (b) a Practice Direction provides otherwise.
- 14.4 If a claimant applies for immediate judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.
- 14.5 An application for immediate judgment shall be made under Part 6 and the application notice shall include a statement that it is an application for immediate judgment made under Part 14.

Setting aside order for immediate judgment

- 14.6 If an order for immediate judgment is made against a

respondent who does not appear at the hearing of the application, the respondent may apply for the order to be set aside or varied.

- 14.7 On the hearing of an application under Rule 14.6, the Court may make such order as it thinks just.

PART 15 INTERIM REMEDIES

- 15.1 The Court may grant such interim remedies as are necessary in the interests of justice, including:

- (1) an interim injunction;
- (2) an interim declaration;
- (3) an order:
 - (a) for the detention, custody, inspection or preservation of relevant property;
 - (b) for the taking of a sample of relevant property;
 - (c) for the carrying out of an experiment on or with relevant property;
 - (d) for the sale of relevant property which it is desirable to sell quickly; and
 - (e) for the payment of income from relevant property until a claim is decided;
- (4) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (3);

- (5) an order providing for the delivery up of any goods to the claimant or to a person appointed by the Court for the purpose on such terms and conditions as may be specified in the order;
- (6) an order (referred to as a ‘freezing order’) restraining a party from removing assets from Kazakhstan or from dealing with assets wherever they may be located;
- (7) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;
- (8) an order (referred to as a ‘search order’) requiring a party to admit another party to premises for the purpose of preserving evidence;
- (9) an order for production of documents or inspection of property before a claim has been made;
- (10) an order for production of documents or inspection of property against a non-party;
- (11) an order (referred to as an order for interim payment) under Section II of this Part for payment by a defendant on account of any damages, debt or other sum (except costs) which the Court may hold the defendant liable to pay;
- (12) an order for a specified fund to be paid into Court or otherwise secured, where there is a dispute over a party’s right to the fund;
- (13) an order permitting a party seeking to recover personal property to pay money into Court pending

the outcome of the proceedings and directing that, if he does so, the property shall be given up to him;

(14) an order directing a party to prepare and file accounts relating to the dispute;

(15) an order directing any account to be taken or inquiry to be made by the Court;

(16) an order appointing a receiver or receiver and manager, having such powers as the Court may see fit, of the property or any of the property of any body corporate;

(17) where the person against whom the order is to be made is a natural person:

(a) an order appointing a receiver or trustee, having such powers as the Court may see fit, of the property or any of the property of that person;

(b) an order requiring that person to deliver up to the Court his passport and such other documents as the Court sees fit; or

(c) an order prohibiting that person from leaving the Republic of Kazakhstan without the consent of the Court; and

(18) any other remedy provided by any other legislation.

15.2 In Rules 15.1(3) and 15.1(7), relevant property means property (including land) which is the subject of a claim or as to which any question may arise on a claim.

15.3 The Court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

SECTION I INTERIM REMEDIES — GENERAL

Making an application for an interim remedy

- 15.4 Subject to any Rule, Practice Direction or legislation which provides otherwise, an order for an interim remedy may be made at any time.
- 15.5 Unless the Court otherwise orders, a defendant may not apply for any of the orders listed in Rule 15.1 before he has filed either an acknowledgment of service or a defence.

Evidence

- 15.6 Applications for search orders and freezing orders shall be supported by affidavit evidence.

Application for an interim remedy where there is no related claim

- 15.7 Subject to any Rule, Practice Direction or Court Order, where a party wishes to apply for an interim remedy but:
- (1) the remedy is sought in relation to proceedings which are taking place, or will take place, outside the AIFC; or
 - (2) the application is made for an order for production of documents or inspection of property before a claim is made;
- the party shall issue an Abridged Procedure Claim.

Orders for injunctions

- 15.8 Any order for an injunction, unless the Court orders otherwise, shall contain:
- (1) (save where the applicant is the AFSA or the Registrar

of Companies) an undertaking by the applicant to the Court to pay any damages which the respondent sustains which the Court considers the applicant should pay. Where the applicant for an interim remedy is not able to show sufficient assets within the Republic of Kazakhstan to provide substance to the undertakings given he may be required to reinforce his undertakings by providing security;

- (2) if made without notice to any other party, an undertaking by the applicant to the Court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable;
- (3) if made without notice to any other party, a return date for a further hearing at which the other party can be present;
- (4) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day; and
- (5) if made before issue of a claim form:
 - (a) an undertaking to issue a claim form and pay the appropriate fee on the same or next working day; or
 - (b) directions for the commencement of the claim.

Interim injunction to cease if claim is stayed

15.9 If:

- (1) the Court has granted an interim injunction other than a freezing order; and
- (2) the claim is stayed other than by agreement between

the parties;

the interim injunction shall be set aside unless the Court orders that it should continue to have effect even though the claim is stayed.

Interim injunction to cease after 14 days if claim struck out

15.10 If:

- (1) the Court has granted an interim injunction; and
- (2) the claim is struck out under these Rules;

the interim injunction shall cease to have effect 14 days after the date that the claim is struck out unless Rule 15.11 applies or the Court orders otherwise.

15.11 If the claimant applies to reinstate the claim before the interim injunction ceases to have effect under Rule 15.10, the injunction shall continue until the hearing of the application unless the Court orders otherwise.

Injunctions against third parties

15.12 Rule 15.13 applies to orders which will affect a person other than the applicant or respondent, who:

- (1) did not attend the hearing at which the order was made; and
- (2) is served with the order.

15.13 Where such a person served with the order requests:

- (1) a copy of any materials read by the Judge, including

material prepared after the hearing at the direction of the Judge or in compliance with the order; or

- (2) a note of the hearing;

the applicant, or his legal representative, shall comply promptly with the request, unless the Court orders otherwise.

Inspection of property before commencement or against a non-party

15.14 Where a person makes an application under Rules 15.1(9) or 15.1(10):

- (1) the evidence in support of such an application shall show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property:
- (a) is or may become the subject matter of such proceedings; or
 - (b) is relevant to the issues that will arise in relation to such proceedings; and
- (2) he shall serve a copy of the application notice and a copy of the evidence in support on:
- (a) the person against whom the order is sought; and
 - (b) in relation to an application under Rule 15.1(10), every other party to the proceedings.

SECTION II – INTERIM PAYMENTS

Interim payments — General procedure

15.15 The claimant may not apply for an order for an interim

payment before the end of the period for filing an acknowledgment of service applicable to the defendant against whom the application is made.

15.16 The claimant may make more than one application for an order for an interim payment.

15.17 The Court may order an interim payment in one sum or in instalments.

Interim payments — conditions to be satisfied and matters to be taken into account

15.18 The Court may make an order for an interim payment where any of the following conditions are satisfied:

- (1) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
- (2) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;
- (3) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment whether or not that defendant is the only defendant or one of a number of defendants to the claim; or
- (4) in a claim in which there are two or more defendants and the order is sought against any one or more of those defendants, the following conditions are satisfied:
 - (a) the Court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a

substantial amount of money (other than costs) against at least one of the defendants (but the Court cannot determine which); and

(b) all the defendants are either:

(i) a defendant that is insured in respect of the claim;

(ii) a defendant that is a Centre Body.

15.19 The Court shall not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

Powers of Court where it has made an order for interim payment

15.20 Where a defendant has been ordered to make or has made an interim payment (whether voluntarily or under an order), the Court may make an order to adjust the interim payment.

15.21 The Court may in particular:

(1) order all or part of the interim payment to be repaid;

(2) vary or discharge the order for the interim payment;

(3) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.

15.22 The Court may make an order under Rule 15.21(3) if:

(1) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution, indemnity or other remedy; and

- (2) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the Court could make an order for interim payment under Rule 15.18.

15.23 The Court may make an order under Rule 15.20 without an application by any party if it makes the order when it disposes of the claim or any part of it.

15.24 Where:

- (1) a defendant has made an interim payment; and
- (2) the amount of the payment is more than his total liability under the final judgment or order;

the Court may award him interest on the overpaid amount from the date when he made the interim payment.

Restriction on disclosure of an interim payment

15.25 The fact that a defendant has made an interim payment, whether voluntarily or by Court order, shall not be disclosed to the trial Judge until all questions of liability and the amount of money to be awarded have been decided unless the defendant agrees or the Court orders otherwise.

SECTION III – SECURITY FOR COSTS

15.26 A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.

15.27 An order for security for costs may not be made against the AFSA or the Registrar of Companies in proceedings initiated by the AFSA or the Registrar of Companies under Regulations.

15.28 Where the Court makes an order for security for costs, it will:

- (1) determine the amount of security; and
- (2) direct:
 - (a) the manner in which; and
 - (b) the time within which;

the security shall be given.

Conditions to be satisfied

15.29 The Court may make an order for security for costs under Rule 15.28 if it is satisfied, having regard to all the circumstances of the case that it is just to make such an order; and

- (1) one or more of the conditions in Rule 15.30 applies; or
- (2) legislation permits the Court to require security for costs.

15.30 The conditions are:

- (1) the claimant is resident outside the Republic of Kazakhstan;
- (2) the claimant is a company or other legal person and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
- (3) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;

- (4) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
- (5) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 12, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
- (6) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

Security for costs other than from the claimant

15.31 The defendant may seek an order against someone other than the claimant, and the Court may make an order for security for costs against that person if:

- (1) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
- (2) one or more of the conditions in Rule 15.32 applies.

15.32 The conditions are that the person:

- (1) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him; or
- (2) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and

is a person against whom a costs order may be made.

Security for costs of an appeal

- 15.33 The Court may order security for costs of an appeal against:
- (1) an appellant;
 - (2) a respondent who also appeals;
- on the same grounds as it may order security for costs against a claimant under this Part.
- 15.34 The Court may also make an order under Rule 15.33 where the appellant, or the respondent who also appeals, is a company or other legal person and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

PART 16 CASE PROGRESSION

Case Management Conferences

- 16.1 The parties shall attempt to agree appropriate directions for the management of the case to trial as soon as possible after service of any defence and in any event before any Case Management Conference.
- 16.2 Where the parties are able to agree such directions they should file the agreed directions with the Court as soon as reasonably practicable after they have reached agreement.
- 16.3 The Court may fix a Case Management Conference at any time on its own initiative.
- 16.4 A party may apply in writing for a Case Management Conference at any time.
- 16.5 A Case Management Conference may not be postponed or adjourned without an order of the Court.

- 16.6 An application to postpone the Case Management Conference will be dealt with without a hearing unless the Court considers it appropriate to direct an oral hearing.
- 16.7 The Court may issue directions without convening a Case Management Conference in an appropriate case.
- 16.8 The Court may vary case management directions by Order of its own motion or on the application of a party.
- 16.9 The Court will fix trial dates as soon as practicable.
- 16.10 The parties may not agree the variation of any case management direction if its variation would make it necessary to vary the trial date.
- 16.11 The Court may upon the application of any party or by its own initiative, direct that proceedings in any division of the Court be transferred to any other division.

Requirements for a Case Management Conference

- 16.12 Not less than 7 days before a Case Management Conference, each party shall file and serve:
 - (1) a completed Case Management Information Form;
 - (2) a draft order setting out their proposed case management directions; and
 - (3) an application notice for any order which that party intends to seek at the Case Management Conference, other than directions referred to in the Case Management Information Form.
- 16.13 Unless the Court orders otherwise, the claimant, in consultation with the other parties, shall produce:

- (1) an agreed Case Memorandum (see Rule 16.13);
- (2) an agreed list of issues (see Rule 16.14(3)); and
- (3) an agreed Case Management Bundle (see Rules 16.15 to 16.16);

and provide copies of the Case Management Bundle for the Court and the other parties at least 7 days before the first Case Management Conference or any earlier hearing at which the Court may give case management directions.

Case Memorandum

16.14 The Case Memorandum shall contain:

- (1) a short and uncontroversial description of what the case is about;
- (2) a short and uncontroversial summary of the material procedural history of the case;
- (3) a list of the important issues of fact and law in the case
- (4) a list of the common ground between the parties (or any of them, specifying which);
- (5) a statement of any case management directions that have been agreed between the parties.

Case Management Bundle

16.15 The Case Management Bundle shall contain the documents listed below (where the documents have been created by the relevant time):

- (1) the claim form;

- (2) all statements of case (excluding schedules);
- (3) the Case Memorandum and list of issues;
- (4) the Case Management Information Forms and the parties' proposed directions;
- (5) the principal orders in the case; and
- (6) any agreement in writing made by the parties about the production of documents.

16.16 The Case Management Bundle shall not include a copy of any order for an interim payment.

Pre-Trial Review and trial timetable

16.17 The Court will order a Pre-Trial Review in any case in which it considers it appropriate to do so.

16.18 The claimant shall prepare and seek the agreement of all other parties to a draft trial timetable and shall file a copy of a draft trial timetable at least two days before the date fixed for the Pre-Trial Review. Any differences of view with any other party as to the timetable shall be clearly identified.

PART 17 PRODUCTION OF DOCUMENTS

Meaning of document

17.1 In this Part:

- (1) 'document' means anything in which information of any description is recorded; and
- (2) 'copy', in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

Inspection of documents referred to in statements of case, etc.

- 17.2 A party may request inspection of a document mentioned in any other party's:
- (1) statement of case;
 - (2) witness statement;
 - (3) witness summary;
 - (4) expert report; or
 - (5) affidavit.
- 17.3 An application for an order requiring a party to produce a document referred to in Rule 17.2 should be made in accordance with Part 6. Before issuing an application, a party should request inspection of the documents in writing, and inspection should be provided by agreement unless the request is unreasonable.

Production of documents

- 17.4 Within the time ordered by the Court, each party shall submit to the other parties:
- (1) all documents on which it relies, including public documents and those in the public domain, except for any documents that have already been submitted by another party; and
 - (2) the documents which he is required to produce by any Regulations, Rule or Practice Direction.
- 17.5 A party need not produce more than one copy of a document. A copy of a document shall conform fully to the original.
- 17.6 The Court may order that the original of any document shall be presented for inspection.

17.7 A copy of a document that contains a modification, obliteration or other marking or feature shall be treated as a separate document. Where a party has been ordered to produce a document, he should not redact the document without the agreement of the other parties or the permission of the Court.

Request to produce

17.8 Within the time ordered by the Court, any party may submit to the other party a Request to Produce.

17.9 A Request to Produce shall contain:

- (1) a description of a requested document sufficient to identify it; or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist;
- (2) a description of how the documents or category of documents requested are relevant and material to the outcome of the case; and
- (3) a statement of the reason why that party believes the documents requested to be in the possession, custody or control of the other party and either:
 - (a) a statement that the documents requested are not in the possession, custody or control of the requesting party, or
 - (b) a statement of the reasons why it would be unreasonably burdensome for the requesting party to produce such documents.

Production of documents as to which no objection is made

- 17.10 Within the time ordered by the Court, the party to whom the Request to Produce is addressed shall:
- (1) carry out a reasonable search for the documents in his possession, custody or control as to which no objection is made;
 - (2) produce to the other parties all such requested documents which have been identified by such search as to which no objection is made;
 - (3) provide to the other parties information about his document retention policy and the nature of the searches which have been undertaken; and
 - (4) state that, to the best of his knowledge, he has produced copies of all documents in his possession, custody and control which have been requested and to which no objection is raised. Such statement should be supported by a statement of truth.

Objection to Request to Produce

- 17.11 If the party to whom the Request to Produce is addressed has objections to the production of some or all of the documents requested or has grounds on which such documents should be redacted, he shall state them in writing within the time ordered by the Court.

Grounds for excluding documents from production

- 17.12 The Court may, at the request of a party or on its own initiative, exclude from production any document.
- 17.13 A person who wishes to claim that he has a right or a duty to withhold production of a document, or part of a document, shall state in writing—

- (1) that he has such a right or duty; and
- (2) the grounds on which he claims that right or duty.

17.14 A party may apply to the Court to decide whether a claim made under Rule 17.13 should be upheld.

Public interest objection

17.15 A person may apply, without notice, for an order permitting him to withhold production of a document on the ground that production would damage the public interest.

17.16 Unless the Court orders otherwise, an order of the Court under Rule 17.15—

- (1) shall not be served on any other person; and
- (2) shall not be open to inspection by any person.

17.17 For the purpose of deciding an application under Rule 17.14 (duty to withhold production) or Rule 17.15 (public interest objection) the Court may:

- (1) require the person seeking to withhold production of a document to produce that document to the Court; and
- (2) invite any person, whether or not a party, to make representations.

17.18 An application under Rules 17.14 or 17.15:

- (1) should be made within the time ordered by the Court for objecting to the production of documents; and
- (2) shall be supported by evidence.

17.19 This Part does not affect any rule of law which permits or requires a document to be withheld from production on the ground that its production would damage the public interest.

Document Production Order

17.20 The Court may order the party to whom a Request to Produce is addressed to produce to the other parties those requested documents in its possession, custody or control (a “Document Production Order”).

17.21 Where a requesting party considers:

- (1) that a responding party’s objection to production is not justified; or
- (2) that the responding party has failed to carry out a reasonable search for documents which have been requested or has otherwise failed, without objection, to produce such documents which are within his possession, custody or control,

the requesting party may apply to the Court for a Document Production Order.

17.22 A Document Production Order will direct that a party shall do one or more of the following things:

- (1) produce documents or classes of documents specified in the order;
- (2) carry out a search to the extent stated in the order;
- (3) produce any documents located as a result of that search;

- (4) identify documents or classes of documents which were, but are no longer, in the party's possession, custody and control and explain, to the best of the party's knowledge and belief, what has happened to them.

17.23 Compliance with a Document Production Order shall be verified by a Document Production Statement.

17.24 A Document Production Statement is a statement made by a party:

- (1) setting out the extent of the search that has been made to locate documents which he is required to produce;
- (2) certifying that he understands the duty to search for and produce documents; and
- (3) certifying that to the best of his knowledge he has carried out that duty.

17.25 Where the party making the Document Production Statement is a company, firm, association or other organisation, the statement shall also:

- (1) identify the person making the statement; and
- (2) explain why he is considered an appropriate person to make the statement.

Continuing obligation

17.26 Where a party subsequently comes into possession of documents falling within the scope of a Request to Produce or a Document Production Order, the party shall notify the requesting party of that fact and either produce the document or object to its production in accordance with this Part.

17.27 Rule 17.26 shall not apply where the party has previously objected to production on grounds which apply to the new document and such objection has not been challenged by the other parties or has been upheld by the Court.

Production of documents before proceedings start

17.28 An application for production of documents before proceedings have started under these Rules shall be made in accordance with the Abridged Procedure and be supported by evidence.

17.29 The Court may make an order where:

- (1) the respondent is likely to be a party to subsequent proceedings;
- (2) the applicant is also likely to be a party to those proceedings;
- (3) if proceedings had started, the Court would make a Document Production Order directing the production of the documents or classes of documents of which the applicant seeks production; and
- (4) production before proceedings have started is desirable in order to:
 - (a) dispose fairly of the anticipated proceedings;
 - (b) assist the dispute to be resolved without proceedings; or
 - (c) save costs.

17.30 An order under Rule 17.29 shall:

- (1) specify the documents or the classes of documents which the respondent shall produce; and

- (2) require him, when producing the documents, to specify any of those documents:
 - (a) which are no longer in his control; or
 - (b) in respect of which he claims a right or duty to withhold production.

17.31 Such an order may:

- (1) require the respondent to indicate what has happened to any documents which are no longer in his control; and
- (2) specify the time and place for production.

Orders for production of documents against a person not a party

17.32 An application for production of documents by a person who is not a party to the proceedings shall be supported by evidence.

17.33 The Court may make an order under this rule where:

- (1) the documents of which production is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
- (2) production is necessary in order to dispose fairly of the claim or to save costs.

17.34 An order under Rule 17.33 shall:

- (1) specify the documents or the classes of documents which the respondent shall produce; and
- (2) require the respondent, when producing the documents, to specify any of the documents which the Court has ordered should be produced:

- (a) which are no longer in his control; or
- (b) in respect of which he claims a right or duty to withhold production.

Rules not to limit other powers of the Court to order production of documents

17.35 Rules 17.28 to 17.34 do not limit any other power which the Court may have to order:

- (1) production of documents before proceedings have started; and
- (2) production of documents against a person who is not a party to proceedings.

Request to produce documents by the Court on its own initiative

17.36 The Court may at any time request a party to produce to the Court and to the other parties any documents that it considers to be relevant and material to the outcome of the case.

Consequence of failure to produce documents

17.37 A party may not rely on any document which he fails to produce unless the Court gives permission.

17.38 If a party fails without satisfactory explanation to produce any document requested in a Request to Produce to which he has not objected in due time or fails to produce any document ordered to be produced by the Court, the Court may infer that such document would be adverse to the interests of that party.

Subsequent use of produced documents

- 17.39 A party to whom a document has been produced may use the document only for the purpose of the proceedings in which it has been produced, except where:
- (1) the document has been read to or by the Court, or referred to, at a hearing which has been held in public;
 - (2) the Court gives permission; or
 - (3) the party who produced the document and the person to whom the document belongs agree.
- 17.40 The Court may make an order restricting or prohibiting the use of a document which has been produced, even where the document has been read to or by the Court, or referred to, at a hearing which has been held in public.
- 17.41 An application for such an order may be made:
- (1) by a party; or
 - (2) by any person to whom the document belongs.

Restriction on use of a privileged document inspection of which has been inadvertently allowed

- 17.42 Where a party inadvertently allows a privileged document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the Court.

PART 18 EVIDENCE

SECTION I – GENERAL

Power of Court to control evidence

18.1 The Court may give directions excluding or limiting evidence that would otherwise be admissible.

Witness Evidence

18.2 Subject to any Rule, Practice Direction, legislation or Order to the contrary, the general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved:

- (1) at trial, by their oral evidence given in public; and
- (2) at any other hearing, by their evidence in writing.

18.3 Evidence at a hearing other than the trial should normally be given by witness statement. A witness statement is a written statement signed by a person which contains the evidence that person would have otherwise submitted orally.

18.4 Statements of case and application notices may also be used as evidence at a hearing other than the trial, provided that their contents have been verified by a statement of truth.

18.5 If a party wishes to rely on a witness statement at trial, the other parties may cross-examine that witness at the hearing of the trial.

18.6 The Court may limit cross-examination.

Evidence by video link or other means

- 18.7 The Court may allow a witness to give evidence through a video link or by other means.

Defects in witness statements and exhibits

- 18.8 Where a witness statement or an exhibit to a witness statement does not comply with this Part in relation to its form, the Court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.

SECTION II – WITNESS STATEMENTS

Preparation and form of witness statements

- 18.9 A witness statement shall include a statement by the intended witness that he believes the facts in it are true.
- 18.10 If a witness is not sufficiently fluent in English to give his evidence in English, the witness statement should be in the witness's own language and a translation provided.

Filing and service of witness statements

- 18.11 The Court will order a party to serve on the other parties any witness statement of the oral evidence on which the party serving the statement intends to rely in relation to any issues of fact to be decided at the trial.

Use at trial of witness statements which have been served

- 18.12 If:
- (1) a party has served a witness statement; and
 - (2) he wishes to rely at trial on the evidence of the witness who made the statement;

he shall call the witness to give oral evidence unless the Court orders otherwise.

- 18.13 Where a witness is called to give oral evidence under Rule 18.12, his witness statement shall stand as his evidence in chief unless the Court orders otherwise.
- 18.14 A witness giving oral evidence at trial may with the permission of the Court:
- (1) amplify his witness statement; and
 - (2) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.
- 18.15 Where a party intends to rely on a witness statement at trial and does not intend to call the maker of the statement to give oral evidence, he shall, at the same time as he serves the statement:
- (1) inform the other parties that the witness will not be called to give oral evidence; and
 - (2) give the reason why the witness will not be called.
- 18.16 Where Rule 18.15 applies, the Court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.
- 18.17 An application for permission to cross-examine under Rule 18.16 shall be made within 14 days after the day on which the applicant was informed that the maker of the statement would not be called to give oral evidence, unless the Court orders otherwise.
- 18.18 If a party who has served a witness statement does not

call the witness to give evidence at trial, any other party may rely on the witness statement as evidence.

18.19 Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement.

Witness summaries

18.20 A party who:

- (1) is required to serve a witness statement for use at trial; but
- (2) is unable to obtain one, may apply, without notice, for permission to serve a witness summary instead.

18.21 A witness summary is a summary of:

- (1) the evidence, if known, which would otherwise be included in a witness statement; or
- (2) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

18.22 Unless the Court orders otherwise, a witness summary shall:

- (1) include the name and address of the intended witness; and
- (2) be served within the period in which a witness statement would have had to be served.

18.23 Where a party serves a witness summary, Rule 18.11 (requirement to serve witness statements for use at trial) and 18.14 (amplifying witness statements) shall apply to the summary.

Consequences of failure to serve witness statement or summary

18.24 If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the Court, then the witness may not be called to give oral evidence unless the Court gives permission.

Order for cross-examination

18.25 Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the Court for permission to cross-examine the person giving the evidence.

18.26 If the Court gives permission under Rule 18.25 but the person in question does not attend as required by the order, his evidence may not be used unless the Court gives permission.

Use of witness statements for other purposes

18.27 A witness statement may be used only for the purpose of the proceedings in which it is served unless:

- (1) the witness gives consent in writing to some other use of it;
- (2) the Court gives permission for some other use; or
- (3) the witness statement has been put in evidence at a hearing held in public.

Availability of witness statements for inspection

18.28 A witness statement which stands as evidence in chief is open to inspection during the course of the trial unless the Court otherwise directs.

- 18.29 Any person may ask for an order that a witness statement is not open to inspection.
- 18.30 The Court will not make a direction under Rule 18.29 unless it is satisfied that a witness statement should not be open to inspection because of:
- (1) the interests of justice;
 - (2) the public interest;
 - (3) the nature of any expert evidence in the statement;
or
 - (4) the nature of any confidential information in the statement.
- 18.31 The Court may exclude from inspection words or passages in the statement.

SECTION III – AFFIDAVIT EVIDENCE

- 18.32 Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the Court or by any Rule, Practice Direction or legislation.
- 18.33 An affidavit shall be in a form and affirmed in a manner which complies with any relevant Practice Direction.

SECTION IV – MISCELLANEOUS RULES ABOUT EVIDENCE

Authenticity of documents

- 18.34 A party shall be deemed to admit the authenticity of a document produced to him under Part 17 (production of documents) unless he serves notice that he wishes the document to be proved at trial.

18.35 A notice to prove a document shall be served:

- (1) by the latest date for serving witness statements; or
- (2) within 7 days of production of the document, whichever is later.

Hearing bundles

18.36 All documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless:

- (1) the Court orders otherwise; or
- (2) a party gives written notice of objection to the admissibility of particular documents.

Notarial acts and instruments

18.37 A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

SECTION V – WITNESS SUMMONS AND DEPOSITIONS

18.38 This Section of this Part provides:

- (1) for the circumstances in which a person may be required to attend Court to give evidence or to produce a document; and
- (2) for a party to obtain evidence before a hearing to be used at the hearing.

Witness summonses

18.39 A witness summons is a document issued by the Court requiring a witness to:

- (1) attend the Court or a tribunal to give evidence; or
- (2) produce documents to the Court or a tribunal.

Issue of a witness summons

- 18.40 A party asking the Court to issue a witness summons should make an application. An application for a witness summons may be made without notice and will normally be determined without a hearing.
- 18.41 The Court may set aside or vary a witness summons.

Time for serving a witness summons

- 18.42 The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the Court or tribunal.
- 18.43 The Court may direct that a witness summons shall be binding even though it will be served less than 7 days before the date on which the witness is required to attend before the Court or tribunal.
- 18.44 A witness summons which is:
- (1) served in accordance with this Rule 18.42 or 18.43; and
 - (2) requires the witness to attend before the Court to give evidence;
- is binding until the conclusion of the hearing at which the attendance of the witness is required.

Who is to serve a witness summons

- 18.45 A witness summons is to be served by the Court unless

the party on whose behalf it is issued indicates in writing, when he applies for the summons, that he wishes to serve it himself.

18.46 Where the Court is to serve the witness summons, the party on whose behalf it is issued shall deposit, in the Court office, the money to be paid or offered to the witness under Rule 18.47.

Right of witness to travelling expenses and compensation for loss of time

18.47 At the time of service of a witness summons the witness shall be offered or paid:

- (1) a sum reasonably sufficient to cover his expenses in travelling to and from the Court; and
- (2) such sum by way of compensation for loss of time as may be specified in any relevant Practice Direction.

Evidence by deposition

18.48 A party may apply for an order for a person to be examined before the hearing takes place.

18.49 A person from whom evidence is to be obtained following an order under Rule 18.48 is referred to as a 'deponent' and the evidence is referred to as a 'deposition'.

18.50 An order under Rule 18.48 shall be for a deponent to be examined on oath before:

- (1) a Judge; or
- (2) such other person as the Court appoints (the 'examiner').

18.51 The order may require the production of any document

which the Court considers is necessary for the purposes of the examination.

- 18.52 The order shall state the date, time and place of the examination.
- 18.53 At the time of service of the order the deponent shall be offered or paid:
- (1) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and
 - (2) such sum by way of compensation for loss of time as may be specified in the relevant Practice Direction.
- 18.54 Where the Court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

Conduct of examination

- 18.55 The examination shall be conducted in accordance with any relevant Practice Direction.

Use of deposition at a hearing

- 18.56 A deposition ordered under Rule 18.48 may be given in evidence at a hearing unless the Court orders otherwise.
- 18.57 A party intending to put in evidence a deposition at a hearing shall serve notice of his intention to do so on every other party at least 21 days before the day fixed for the hearing.
- 18.58 The Court may require a deponent to attend the hearing and give evidence orally.

18.59 Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of Rule 18.28 (availability of witness statements for inspection).

Restrictions on subsequent use of deposition taken for the purpose of any hearing except the trial

18.60 Where the Court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.

18.61 However, it may be used for some other purpose:

- (1) by the party who was examined;
- (2) if the party who was examined agrees; or
- (3) if the Court gives permission.

SECTION VI – EVIDENCE FOR OTHER COURTS

18.62 Where an application is made to the Court for an order for evidence to be obtained in the AIFC and the Court is satisfied:

- (1) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (“the requesting court”); and
- (2) that the evidence to which the application relates is to be obtained for the purposes of proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated;

the Court may make such provision for obtaining

evidence in the AIFC as may appear to the Court to be appropriate for the purpose of giving effect to the request.

18.63 A person who, by virtue of an order under Rule 18.62, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in proceedings before the Court.

Application for order

18.64 An application for an order under Rule 18.62:

(1) shall be:

(a) supported by written evidence which includes or exhibits, in English:

(i) a statement of the issues relevant to the proceedings; and

(ii) a list of questions or the subject matter of questions to be put to the proposed deponent;

(a) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English; and

(2) may be made without notice.

Examination

18.65 The Court may order an examination to be taken before an appropriate person (the ‘examiner’).

18.66 Unless the Court orders otherwise, the examination will be conducted in accordance with Section V of this Part and any relevant Practice Direction.

Dealing with deposition

- 18.67 The examiner shall send the deposition of the witness to the Registrar unless the Court orders otherwise.
- 18.68 The Registrar will:
- (1) give a certificate sealed with the seal of the Court for use out of the AIFC identifying the following documents:
 - (a) the request;
 - (b) the order of the Court for examination; and
 - (c) the deposition of the witness; and
 - (2) send the certificate and the documents referred to in sub-paragraph (1) to the requesting court.

PART 19 EXPERTS

Introductory

- 19.1 A reference to an ‘expert’ in this Part is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.
- 19.2 A reference to a ‘single joint expert’ in this Part is a reference to an expert who has been instructed to prepare a report for the Court on behalf of two or more of the parties (including the claimant) to the proceedings.

Experts — Overriding duty to the Court

- 19.3 It is the duty of an expert to help the Court on the matters within his expertise.
- 19.4 This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

Court's power to restrict expert evidence

- 19.5 Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.
- 19.6 No party may call an expert or put in evidence an expert's report without the Court's permission.
- 19.7 The Court may specify the issues which the expert should address.
- 19.8 When a party applies for permission under Rule 19.6 he shall identify:
- (1) the field in which he wishes to rely on expert evidence;
 - (2) the issues which the expert should address; and
 - (3) where practicable the expert in that field on whose evidence he wishes to rely.
- 19.9 If permission is granted under Rule 19.6 such permission shall be in relation only to the issues specified under Rule 19.7 and to the expert named or the field identified under Rule 19.8.

Orders

- 19.10 Where an order requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert shall serve a copy of the order on the expert instructed by him.

General requirement for expert evidence to be given in a written report

- 19.11 Expert evidence is to be given in a written report unless the Court directs otherwise.

19.12 The report shall:

- (1) State that the expert understands his duty to the Court and has complied and will continue to comply with that duty;
- (2) State the substance of all material instructions, whether written or oral, on the basis of which the report was written and such instructions shall not be privileged against production;
- (3) Be verified by a statement of truth; and
- (4) Comply with any relevant Practice Direction.

Documents referred to in experts' reports

19.13 Unless they have already been provided, copies of any photographs, plans, analyses, measurements, survey reports or other similar documents relied on by an expert witness as well as copies of any unpublished sources shall be provided to all parties at the same time as his report.

Written questions to experts

19.14 A party may put written questions to an expert about his report.

19.15 Written questions under Rule 19.14 shall be proportionate. They shall be put within 28 days of service of the expert's report, unless the Court orders otherwise or the party who instructed the expert agrees.

19.16 An expert's answers to questions put in accordance with Rule 19.14 shall be treated as part of the expert's report.

19.17 Where:

- (1) a party has put a written question to an expert instructed by another party in accordance with Rule 19.14; and
- (2) the expert does not answer that question;
the Court may make one or both of the following orders in relation to the party who instructed the expert:
 - (a) that the party may not rely on the evidence of that expert; or
 - (b) that the party may not recover the fees and expenses of that expert from any other party.

Single joint experts

- 19.18 Where two or more parties wish to submit expert evidence on a particular issue, the Court may direct that the evidence on that issue is to be given by a single joint expert.
- 19.19 Where the parties who wish to submit the evidence (‘the relevant parties’) cannot agree who should be the single joint expert, the Court may select the expert.
- 19.20 Any relevant party may give instructions to a single joint expert.
- 19.21 When a party gives instructions to the expert that party shall, at the same time, send a copy to the other relevant parties.
- 19.22 Unless the Court otherwise directs, the relevant parties are jointly and severally liable for the payment of the single joint expert’s fees and expenses.

Discussions between experts

19.23 The Court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to –

- (1) identify and discuss the expert issues in the proceedings; and
- (2) where possible, reach an agreed opinion on those issues.

19.24 The Court may specify the issues which the experts shall discuss.

19.25 The Court may direct that following a discussion between the experts they shall prepare a statement for the court setting out those issues on which –

- (1) they agree; and
- (2) they disagree, with a summary of their reasons for disagreeing.

19.26 The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

Consequence of failure to produce expert's report

19.27 A party who fails to produce an expert's report may not use the report at the trial or call the expert to give evidence orally unless the Court gives permission.

Expert's right to ask Court for directions

19.28 An expert may file a written request for directions to assist him in carrying out his function as an expert.

19.29 An expert shall, unless the Court orders otherwise, provide a copy of any proposed request for directions under Rule

19.28 to all parties at least 7 days before he files the request.

19.30 The Court, when it gives directions, may also direct that a party be served with a copy of the directions.

PART 20 OFFERS TO SETTLE AND PAYMENTS INTO COURT

SECTION I – OFFERS TO SETTLE

20.1 A party may make an offer of settlement which is not to be shown to the Court until the question of costs is to be decided.

SECTION II – PAYMENTS INTO COURT

Money paid into Court under a Court order

20.2 A party who makes a payment into Court under a Court order shall:

- (1) serve notice of the payment on every other party; and
- (2) in relation to each such notice, file a certificate of service.

20.3 A Practice Direction may make further provision in respect of payments into Court.

Money paid into court where defendant wishes to rely on a defence of tender before claim

20.4 Where a defendant wishes to rely on a defence of tender before claim he shall make a payment into Court of the amount he says was tendered.

20.5 If the defendant does not make a payment in accordance

with Rule 20.4, the defence of tender before claim will not be available to him until he does so.

Payment out of money paid into Court

20.6 Money paid into Court under a Court order or in support of a defence of tender before claim may not be paid out without the Court's permission except in accordance with a relevant Practice Direction.

PART 21 DISCONTINUING A CLAIM

21.1 The Rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.

21.2 A claimant who:

- (1) claims more than one remedy; and
- (2) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies;

is not treated as discontinuing all or part of a claim for the purposes of this Part.

Right to Discontinue Claim

21.3 A claimant may discontinue all or part of a claim at any time.

21.4 However:

- (1) a claimant shall obtain the permission of the Court if he wishes to discontinue all or part of a claim in relation to which:
 - (a) the Court has granted an interim injunction; or

- (b) any party has given an undertaking to the Court;
 - (2) where the claimant has received an interim payment in relation to a claim, he may discontinue that claim only if:
 - (a) the defendant who made the interim payment consents in writing; or
 - (b) the Court gives permission;
 - (3) where there is more than one claimant, a claimant may not discontinue unless:
 - (a) every other claimant consents in writing; or
 - (b) the Court gives permission.
- 21.5 Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

Procedure for Discontinuing

- 21.6 To discontinue a claim or part of a claim, a claimant shall:
- (1) file a notice of discontinuance; and
 - (2) serve a copy of it on every other party to the proceedings.
- 21.7 Where the claimant needs the consent of some other party, a copy of the necessary consent shall be attached to the notice of discontinuance.
- 21.8 Where there is more than one defendant, the notice of discontinuance shall specify against which defendants the claim is discontinued.

Right to apply to have notice of discontinuance set aside

- 21.9 Where the claimant discontinues under Rule 21.3, the defendant may apply to have the notice of discontinuance set aside.
- 21.10 An application under Rule 21.9 shall be made within 28 days after the date when the notice of discontinuance was served on him.

When discontinuance takes effect where permission of the Court is not needed

- 21.11 Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under Rule 21.6.
- 21.12 Subject to Rules 21.9 and 21.10, the proceedings are brought to an end as against him on that date.
- 21.13 This does not affect proceedings to deal with any question of costs.

Liability for Costs

- 21.14 Unless the Court orders otherwise, a claimant who discontinues a claim is liable for the defendant's costs incurred up to and on the date on which notice of the discontinuance was served on him or his legal representative. If proceedings are only partly discontinued:
- (1) the claimant is liable for costs relating only to the part of the proceedings which he is discontinuing; and
 - (2) unless the Court orders otherwise, the costs which the claimant is liable to pay shall not be assessed until the conclusion of the rest of the proceedings.

PART 22 HEARINGS

Interpretation

22.1 In this Part, reference to a hearing includes a reference to the trial.

Hearings to be in public

22.2 Subject to the terms of Regulation 32 of the AIFC Court Regulations or any relevant Practice Direction, the general rule is that a hearing is to be in public.

22.3 The requirement for a hearing to be in public does not require the Court to make special arrangements for accommodating members of the public.

22.4 The Court may order that the identity of any party or witness shall not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness, or in the interests of justice.

22.5 Nothing in this Part prevents a Judge ordering that a hearing taking place in public shall continue in private, or vice-versa.

22.6 When a hearing takes place in public, members of the public may obtain a transcript of any judgment given or a copy of any order made, subject to payment of the appropriate fee.

22.7 When a judgment is given or an order is made in private, if any member of the public who is not a party to the proceedings seeks a transcript of the judgment or a copy of the order, he shall seek the permission of the Judge who gave the judgment or made the order.

Failure to attend the trial

22.8 The Court may proceed with a trial in the absence of a

party but:

- (1) if no party attends the trial, it may strike out the whole of the proceedings;
- (2) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
- (3) if a defendant does not attend, it may strike out his defence or counterclaim (or both).

22.9 Where the Court strikes out proceedings, or any part of them, under Rule 22.8, it may subsequently restore the proceedings, or that part.

22.10 Where a party does not attend and the Court gives judgment or makes an order against him, the party who failed to attend may apply in accordance with Part 6 for the judgment or order to be set aside.

22.11 Where an application is made under Rule 22.9 or Rule 22.10 by a party who failed to attend the trial, the Court may grant the application if the applicant:

- (1) acted promptly when he found out that the Court had exercised its power to strike out or to enter judgment or make an order against him;
- (2) had a good reason for not attending the trial; and
- (3) has a reasonable prospect of success at the trial.

Representation at trial of Companies or Other Corporations

22.12 A company or other corporation may be represented at trial by an employee who is not otherwise authorised to appear before the Court if:

- (1) the employee has been authorised by the company or corporation to appear at trial on its behalf; and
- (2) the Court gives permission.

PART 23 ABRIDGED PROCEDURE FOR CLAIMS

23.1 A Claimant may use the Abridged Procedure where:

- (1) he seeks the Court's decision on a question which is unlikely to involve a substantial dispute of fact; or
- (2) a Rule or Practice Direction in relation to a specified type of proceedings requires or permits the use of the Abridged Procedure.

23.2 Rule 23.1 does not apply if a Rule or Practice Direction provides that the Abridged Procedure may not be used in relation to the type of claim in question.

23.3 The Court may at any stage order the claim to continue as if the Claimant had not used the Abridged Procedure and, if it does so, the Court may give any directions it considers appropriate.

Application of other Rules and Practice Directions

23.4 Where the Abridged Procedure is followed:

- (1) provision is made in Rule 23.5 for the matters which shall be stated in the Claim Form and the Defendant is not required to file a Defence and therefore:
 - (a) Rules 11.11 to 11.50 (Defence, Reply and Statements of Case) do not apply; and
 - (b) any time limit in these Rules which prevents the parties from taking a step before a Defence is filed does not apply;

- (2) the Claimant may not obtain default judgment under Part 9.
- (3) the Claimant may not obtain judgment by request on an admission and therefore Rules 10.3 to 10.7 do not apply.

Contents of the Abridged Procedure Claim Form

23.5 Where the Claimant uses the Abridged Procedure the Abridged Procedure Claim Form should be used and shall state:

- (1) that the claim is brought under the Abridged Procedure;
- (2) the question which the Claimant wants the Court to decide; or the remedy which the Claimant is seeking and the legal basis for the claim to that remedy;
- (3) if the claim is being made under a legislative provision, what that legislative provision is;
- (4) if the Claimant is claiming in a representative capacity, what that capacity is; and
- (5) if the Defendant is sued in a representative capacity, what that capacity is.

Issue of Abridged Procedure Claim Form without naming Defendants

23.6 A Practice Direction may set out circumstances in which an Abridged Procedure Claim Form may be issued without naming a Defendant.

Acknowledgment of Service

23.7 The Defendant shall:

- (1) file an Acknowledgment of Service (Abridged Procedure) not more than 14 days after service of the Abridged Procedure Claim Form; and
 - (2) serve the Acknowledgment of Service (Abridged Procedure) on the Claimant and any other party.
- 23.8 The Acknowledgment of Service (Abridged Procedure) shall indicate:
- (1) whether the Defendant contests the claim; and
 - (2) if the Defendant seeks a different remedy from that set out in the Claim Form, what that remedy is.
- 23.9 The following rules of Part 7 (Responding to a Claim) apply:
- (1) Rule 7.4 (period for filing an acknowledgment of service); and
 - (2) Rule 7.6 (contents of acknowledgment of service).

Consequence of not filing an Acknowledgment of Service (Abridged Procedure)

- 23.10 Where:
- (1) the Defendant has failed to file an Acknowledgment of Service (Abridged Procedure); and
 - (2) the time period for doing so has expired;
- the Defendant may attend the hearing of the claim but may not take part in the hearing unless the Court gives permission.

Defendant's objection to use of the Abridged Procedure

23.11 Where the Defendant contends that the Abridged Procedure should not be used, he shall state his reasons when he files his Acknowledgment of Service (Abridged Procedure). If the statement of reasons includes matters of evidence, it should be verified by a statement of truth.

Managing the claim

23.12 The Court may give directions immediately after an Abridged Procedure Claim Form is issued, either on the application of a party or on its own initiative.

23.13 Where the Court does not fix a hearing date when the Abridged Procedure Claim Form is issued, it will give directions for the disposal of the claim as soon as practicable after the Defendant has acknowledged service of the Abridged Procedure Claim Form or, as the case may be, after the period for acknowledging service has expired.

23.14 The Court may convene a directions hearing before giving directions.

Filing and serving written evidence

23.15 The Claimant shall file any written evidence on which he intends to rely when he files his Abridged Procedure Claim Form.

23.16 The Claimant's evidence shall be served on the Defendant with the Abridged Procedure Claim Form unless the evidence is contained in the Abridged Procedure Claim Form itself.

23.17 A Defendant who wishes to rely on written evidence shall file it when he files his Acknowledgment of Service (Abridged Procedure).

- 23.18 If he does so, he shall also, at the same time, serve a copy of his evidence on the other parties.
- 23.19 The Claimant may, within 14 days of service of the Defendant's evidence on him, file further written evidence in reply.
- 23.20 If he does so, he shall also, within the same time limit, serve a copy of his evidence on the other parties.
- 23.21 The parties may, subject to the following provisions, agree in writing on an extension of time for serving and filing evidence.
- 23.22 An agreement extending time for a Defendant to file evidence:
- (1) shall be filed by the Defendant at the same time as he files his Acknowledgement of Service (Abridged Procedure); and
 - (2) shall not extend time by more than 14 days after the Defendant files his acknowledgement of service.
- 23.23 An agreement extending time for a Claimant to file evidence in reply shall not extend time to more than 28 days after service of the Defendant's evidence on the Claimant.

Evidence at Hearing

- 23.24 No written evidence may be relied on at the hearing of the claim unless:
- (1) it has been served in accordance with Rules 23.15 to 23.23; or
 - (2) the Court gives permission.
- 23.25 The Court may require or permit a party to give oral evidence at the hearing.
- 23.26 The Court may give directions requiring the attendance

for cross-examination of a witness who has given written evidence.

Additional claims

23.27 Where the Abridged Procedure is used, Part 13 (Counterclaims and other Related Claims) applies except that a party may not make an additional claim without the Court's permission.

PART 24 JUDGMENTS AND ORDERS

SECTION I – JUDGMENTS AND ORDERS

24.1 This Section sets out Rules about judgments and orders which apply except where any other of these Rules or a Practice Direction makes a different provision in relation to the judgment or order in question.

Standard requirements

24.2 Every judgment or order shall state the name and judicial title of the person who made it.

24.3 Every judgment or order shall:

- (1) bear the date on which it is given or made;
- (2) be sealed by the Court; and
- (3) be signed by a Judge or the Registrar or an officer acting with the authority of the Registrar.

24.4 Court orders may be issued and sealed by the Registry electronically.

24.5 It is not necessary for the Judge or Judges to be present in the Court to deliver their judgments. Judgments shall be reduced to writing and shall be made public.

Drawing up and filing of orders

- 24.6 Except for orders made by the Court of its own initiative and unless the Court otherwise orders, every order will be drawn up by the parties.
- 24.7 Where an order is to be drawn up by a party:
- (1) he shall file it no later than 48 hours after the date on which the Court ordered or permitted him to draw it up so that it can be sealed by the Court; and
 - (2) if he fails to file it within that period, any other party may draw it up and file it.

Service of orders

- 24.8 Unless the Court orders otherwise, where an order has been drawn up by a party and is to be served by the Court:
- (1) the party who drew it up shall file a copy at Court; and
 - (2) once it has been sealed, the Court shall serve a copy of it on each party to the proceedings.
- 24.9 Unless the Court directs otherwise, any order made otherwise than at trial shall be served on:
- (1) the applicant and the respondent; and
 - (2) any other person on whom the Court orders it to be served.

Power to require judgment or order to be served on a party as well as his legal representative

- 24.10 Where the party on whom a judgment or order is to be served is acting by a legal representative, the Court may

order the judgment or order to be served on the party as well as on his legal representative.

Agreed orders

24.11 An application for an agreed order shall include a draft of the proposed order signed on behalf of all the parties to whom it relates.

When judgment or order takes effect

24.12 A judgment or order takes immediate effect from the time on the day when it is given or made, or such later time or date as the Court may specify.

Time from which interest begins to run

24.13 Where interest is payable on a judgment pursuant to Article 37 of the Court Regulations, the interest shall begin to run from the date that judgment is given unless:

- (1) a Rule in another Part or a Practice Direction makes different provision; or
- (2) the Court orders otherwise.

Who may apply to set aside or vary a judgment or order

24.14 A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

Time for complying with a judgment or order

24.15 A party shall comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless:

- (1) the judgment or order specifies a different date

for compliance (including specifying payment by instalments);

- (2) any of these Rules specifies a different date for compliance; or
- (3) the Court has stayed the proceedings or judgment.

Orders requiring an act to be done

24.16 An order which requires an act to be done (other than a judgment or order for the payment of an amount of money) shall specify the time within which the act should be done.

Correction of errors in judgments and orders

24.17 The Court may at any time correct an accidental slip or omission in a judgment or order either upon an application or on its own motion.

PART 25 CHANGE OF LEGAL REPRESENTATIVE

Legal representative acting for a party

25.1 Where the address for service of a party is the business address of his legal representative, the legal representative will be considered to be acting for that party until the provisions of this Part have been complied with.

25.2 A legal representative appointed to represent a party only as an advocate at a hearing will not be considered to be acting for that party within the meaning of this Part.

Change of legal representative — Duty to give notice

25.3 Where a party appoints a new legal representative to conduct the claim on his behalf or dismisses his legal

representative and intends to act in person, the party or his legal representative (where one is acting) shall:

- (1) file notice of the change; and
- (2) serve notice of the change on every other party.

25.4 The notice shall state the party's new address for service.

Order that a legal representative has ceased to act

25.5 A legal representative or any party may apply for an order declaring that the legal representative has ceased to act for a party.

25.6 Where an application is made under Rule 25.5, notice of the application shall be given to the party to whose legal representative the application relates, unless the Court directs otherwise.

25.7 Where the Court makes an order that a legal representative has ceased to act:

- (1) a copy of the order shall be served on every party to the proceedings;
- (2) if it is served by a party or the legal representative, they shall file a certificate of service;
- (3) the order takes effect when it is served; and
- (4) the party for whom the legal representative was acting shall give a new address for service.

PART 26 COSTS

SECTION I – GENERAL RULES ABOUT COSTS

Definitions and application

- 26.1 In this Part, unless the context otherwise requires:
- (1) ‘costs’ means the legal fees and associated expenses incurred by a party in conducting its case;
 - (2) ‘receiving party’ means a party entitled to be paid costs; and
 - (3) ‘paying party’ means a party liable to pay costs.
 - (4) ‘immediate assessment’ means the procedure whereby costs are assessed immediately by the Judge who has heard the case or application.
 - (5) ‘detailed assessment’ means the procedure by which the amount of costs is decided by the Court in accordance with any relevant Practice Direction.
- 26.2 The costs to which this Part applies include the following costs where those costs may be assessed by the Court:
- (1) costs of proceedings before an arbitrator; and
 - (2) costs which are payable by one party to another party under the terms of a contract, where the Court makes an order for an assessment of those costs.

Legal representative’s duty to notify client

- 26.3 Where:
- (1) the Court makes a costs order against a legally represented party; and
 - (2) the party is not present when the order is made;
the party’s legal representative shall notify his client in writing of the costs order no later than 7 days

after the legal representative receives notice of the order.

Court's discretion as to costs

26.4 The Court has discretion as to:

- (1) whether costs are payable by one party to another;
- (2) the amount of those costs; and
- (3) when they are to be paid.

26.5 If the Court decides to make an order about costs:

- (1) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
- (2) the Court may make a different order.

26.6 The costs orders which the Court may make include an order that a party must pay:

- (1) a proportion of another party's costs; and
- (2) costs relating only to a distinct part of or distinct issues in the proceedings.

26.7 Where the Court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

26.8 Where a party entitled to costs is also liable to pay costs the Court may assess the costs which that party is liable to pay and either:

- (1) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or

- (2) delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.

Costs in the Small Claims Court ('SCC')

26.9 The SCC may not order a party to a small claim to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except:

- (1) such part of any Court fees paid by that other party as the SCC may consider appropriate; and
- (2) such further costs as the SCC may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.

26.10 A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under Rule 26.9(2) but the Court may take it into consideration when it is applying the unreasonableness test.

Basis of assessment

26.11 Where the Court is to assess the amount of costs (whether by immediate or detailed assessment) it will allow costs which were reasonably and necessarily incurred and were proportionate to the matters in issue.

26.12 The Court may order a party which has behaved unreasonably to pay additional costs.

Procedure for assessing costs

26.13 Where the Court orders a party to pay costs to another party it may either:

- (1) make an immediate assessment of the costs; or

(2) order detailed assessment of the costs;

unless any Rule, Practice Direction or other enactment provides otherwise.

26.14 Each party who intends to claim immediate assessment of costs or an interim payment on account of costs shall prepare a written statement of the costs he intends to claim.

26.15 The statement of costs shall be filed at Court and copies of it shall be served on any party against whom an order for payment of those costs is intended to be sought. The statement of costs should be filed and the copies of it should be served as soon as possible and in any event not less than 24 hours before the date fixed for the hearing.

26.16 Where the Court orders the detailed assessment of costs, the parties may apply for those to be assessed. The Court may issue a Practice Direction relating to the detailed assessment of costs.

Time for complying with an order for costs

26.17 A party shall comply with an order for the payment of costs within 14 days of:

(1) the date of the judgment or order if it states the amount of those costs;

(2) if the amount of those costs (or part of them) is decided later, the date on which the costs are assessed; or

(3) in either case, such later date as the Court may specify.

Special situations

26.18 Where the Court makes an order which does not mention costs:

- (1) subject to Rule 26.19, the general rule is that no party is entitled to costs in relation to that order; but
- (2) this does not affect any entitlement of a party to recover costs out of a fund held by him as trustee or personal representative, or pursuant to any lease, mortgage or other security.

26.19 Where the Court makes:

- (1) an order granting permission to appeal; or
- (2) any other order or direction sought by a party on an application without notice;

and its order does not mention costs, it will be considered to include an order for the applicant's costs in the case.

26.20 Any party affected by an order for costs under Rule 26.19 may apply at any time to vary the order.

26.21 The Court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

Court's powers in relation to misconduct

26.22 The Court may, in connection with an immediate or detailed assessment, make an order under Rule 26.23 where:

- (1) a party or his legal representative fails to comply with a Rule, Practice Direction or Court order; or
- (2) it appears to the Court that the conduct of a party

or his legal representative, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.

26.23 Where Rule 26.22 applies, the Court may:

- (1) disallow all or part of the costs which are being assessed; or
- (2) order the party at fault or his legal representative to pay costs which he has caused any other party to incur.

26.24 Where:

- (1) the Court makes an order under Rule 26.23 against a legally represented party; and
- (2) the party is not present when the order is made;
the party's legal representative shall notify his client in writing of the order no later than 7 days after the legal representative receives notice of the order.

26.25 Before making an order under Rule 26.23 the Court shall give the party or legal representative in question a reasonable opportunity to give reasons why it should not make such an order.

Costs orders in favour of or against non-parties

26.26 Where the Court is considering whether to exercise its power to make a costs order in favour of or against a person who is not a party to proceedings:

- (1) that person shall be added as a party to the proceedings for the purposes of costs only; and
- (2) he shall be given a reasonable opportunity to attend a hearing at which the Court will consider the matter

further.

26.27 Rule 26.26 does not apply where the Court is considering whether to make a wasted costs order.

Personal liability of legal representative for costs — Wasted costs orders

26.28 The Court shall have power to disallow or, (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined.

26.29 The Court shall give the legal representative a reasonable opportunity to give reasons why it should not make such an order.

26.30 When the Court makes a wasted costs order, it shall:

- (1) specify the amount to be disallowed or paid; or
- (2) direct the Registrar to decide the amount of costs to be disallowed or paid.

26.31 The Court may direct that notice shall be given to the legal representative's client, in such manner as the Court may direct:

- (1) of any hearing under Rule 26.29; or
- (2) of any order made against his legal representative.

26.32 The Court may refer the question of wasted costs to the Registrar instead of making a wasted costs order.

Costs order in favour of a party represented pro bono

26.33 Where a party ("the claiming party") is represented by a law firm acting pro bono, the law firm may apply for

an order that the other party (“the paying party”) make a payment in respect of the costs of legal services provided to the pro bono litigant at no charge (“a pro bono costs order”). The Court shall consider the application and assess the costs as if the claiming party were obliged to pay the fees of the law firm at the normal commercial rates charged by the law firm.

- 26.34 Where the Court makes a pro bono costs order, such costs shall be subject to immediate assessment.
- 26.35 Any costs payable pursuant to a pro bono costs order shall be paid into Court and applied in accordance with any relevant Practice Direction.

PART 27 ARBITRATION CLAIMS

SECTION I – ARBITRATION CLAIMS

Interpretation

27.1 In this Part:

- (1) ‘the Arbitration Regulations’ mean the AIFC Arbitration Regulations 2017;
- (2) ‘arbitration claim’ means:
 - (a) any application to the Court under the Arbitration Regulations;
 - (b) any other application affecting:
 - (I) ARBITRATION PROCEEDINGS (WHETHER STARTED OR NOT); OR
 - (II) AN ARBITRATION AGREEMENT.

Starting the claim

- 27.2 Except where Rule 27.3 or Rule 27.4 applies an arbitration claim shall be started by the issue of an arbitration claim form in accordance with the Abridged Procedure.
- 27.3 An application under Article 16 of the Arbitration Regulations to stay legal proceedings shall be made by application under Part 6 in the proceedings.
- 27.4 An application under Article 37 of the Arbitration Regulations to secure the attendance of a witness should be made in accordance with Part 18, Section VI.

Arbitration Claim Form

- 27.5 An Arbitration Claim Form shall:
- (1) include a concise statement of the remedy claimed;
 - (2) give details of any arbitration award challenged, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
 - (3) show that any statutory requirements have been met;
 - (4) specify under which Article of the Arbitration Regulations the claim is made;
 - (5) identify against which (if any) defendants a Costs Order is sought; and
 - (6) specify either:
 - (a) the persons on whom the Arbitration Claim Form will be served, stating their role in the arbitration and whether they are defendants; or
 - (b) that the claim is made without notice and the

grounds relied on.

Service

27.6 An Arbitration Claim Form shall be served by the claimant.

27.7 Unless:

- (1) the Court orders otherwise; or
- (2) the Arbitration Claim Form seeks enforcement or recognition of an award under Part 3 of the Arbitration Regulations

an Arbitration Claim Form shall be served on the defendant within 30 days from the date of issue.

27.8 The claimant shall file a Certificate of Service within 7 days of serving the Arbitration Claim Form.

Notice

27.9 Where an arbitration claim is made under Article 22(3) (challenging an Arbitrator), Article 23(1) (terminating an Arbitrator's mandate) or Article 42(5) of the Arbitration Regulations (determination of fees and expenses payable to the arbitral tribunal), each Arbitrator shall be a defendant.

27.10 Where notice shall be given to an Arbitrator or any other person it may be given by sending him a copy of —

- (1) the Arbitration Claim Form; and
- (2) any written evidence in support.

27.11 Save where Rule 27.12 applies, where a party makes an Arbitration Claim, each of the other parties to the

arbitration shall be made a defendant to the Arbitration Claim.

27.12 Where a party makes an Arbitration Claim for recognition or enforcement of an award under Part 3 of the Arbitration Regulations:

- (1) only the party against whom such an order is sought need be made a defendant to the Arbitration Claim; and
- (2) the Arbitration Claim may be made without notice.

Representations by an arbitrator

27.13 Where an Arbitrator is sent a copy of an Arbitration Claim Form (including an Arbitration Claim Form sent under Rule 27.10), that arbitrator may:

- (1) apply to be made defendant; or
- (2) apply to make representations to the Court under Rule 27.14.

27.14 An application under Rule 27.13(1) to be made a defendant:

- (1) shall be served on the Arbitral Tribunal; but
- (2) need not be served on any other party.

27.15 An Arbitrator may make representations by filing written evidence or in writing to the Court.

27.16 Any Arbitrator filing written evidence or making representations to the Court may not be called to give oral evidence without the permission of the Court.

Supply of documents from Court records

27.17 An Arbitration Claim Form may only be inspected with the permission of the Court.

Case progression

27.18 Part 16 does not apply.

27.19 The claimant should apply for a hearing date as soon as possible after issuing an Arbitration Claim Form.

27.20 Where a claimant in an arbitration claim seeks to rely on written evidence, a copy of that evidence shall be filed and served with the Arbitration Claim Form.

27.21 A defendant who wishes to rely on evidence before the Court shall file and serve his written evidence within 21 days after the date by which he was required to acknowledge service.

27.22 A claimant who wishes to rely on evidence in reply to written evidence filed under Rule 27.21 shall file and serve his written evidence within 7 days after service of the defendant's evidence.

Hearings

27.23 The Court may order that an arbitration claim be heard either in public or in private.

27.24 The general rule is that arbitration claims are to be heard in private. The Court may order those proceedings to be heard in open court —

- (1) on the application of any party; or
- (2) if, in any particular case, the court is satisfied that those proceedings ought to be heard in open court.

27.25 The Court may direct that any judgment in respect of any arbitration claim be published and that the judgment be redacted or anonymised to conceal any matter.

Stay or dismissal of legal proceedings

27.26 An application notice seeking a stay or dismissal of legal proceedings under Article 16 of the Arbitration Regulations shall be served on all parties to those proceedings.

27.27 Where a question arises as to whether:

- (1) an arbitration agreement has been concluded; or
- (2) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement;

the Court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

Challenging an Arbitrator

27.28 An application to challenge an Arbitrator under Article 22(3) of the Arbitration Regulations shall be made within 30 days after receipt of notice of the ruling by the Arbitral Tribunal rejecting the party's challenge.

Applications to determine the jurisdiction of the Arbitral Tribunal

27.29 An arbitration claim for the determination of a preliminary question as to the substantive jurisdiction of the Arbitral Tribunal under Article 26(3) of the Arbitration Regulations shall be made within 30 days after receipt of notice of the ruling by the Arbitral Tribunal as a preliminary question that it has jurisdiction.

Interim measures

- 27.30 An application to the Court to enforce an interim measure made by an Arbitral Tribunal or for an order from the Court issuing an interim measure under Article 27 of the Arbitration Regulations shall be made in an Arbitration Claim Form in accordance with Part 15.
- 27.31 An application to enforce an interim measure made by an Arbitral Tribunal will not be granted unless the applicant files written evidence showing that the application is made with the written permission of the Arbitral Tribunal.

Court assistance in taking evidence

- 27.32 An Arbitral Tribunal or a party to arbitral proceedings being conducted in the AIFC who wishes to rely on Article 37 of the Arbitration Regulations to secure the attendance of a witness shall apply for a witness summons in accordance with Part 18, Section VI.
- 27.33 A witness summons will not be issued on the application of a party to arbitral proceedings unless the applicant files written evidence showing that the application is made with the approval of the tribunal.
- 27.34 Any other application made under Article 37 of the Arbitration Regulations for the assistance of the Court in taking evidence shall be made in an Arbitration Claim Form.

Applications to set aside an award

- 27.35 An application under Article 44 of the Arbitration Regulations to set aside an arbitral award shall be made:
- (1) within 3 months from the date on which the party making the application received the award; or

- (2) if a request had been made under Article 43 of the Arbitration Regulations, within 3 months from the date on which that request was disposed of by the Arbitral Tribunal; or
- (3) within such longer period as the parties to the arbitration agree in writing.

27.36 Where a party applies to set aside an arbitral award, the arbitration claim form shall state:

- (1) the grounds under Article 43(2) of the Arbitration Regulations on which the party alleges that the award should be set aside; and
- (2) whether the Arbitral Tribunal requests that the setting aside proceedings be suspended under Article 43(4) of the Arbitration Regulations in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as may eliminate the grounds for setting aside.

27.37 The written evidence in support of the application shall set out any evidence relied on by the party for the purpose of satisfying the Court:

- (1) of the matters referred to in Article 43(2) of the Arbitration Regulations; and
- (2) that the award should be set aside.

27.38 The written evidence filed by the respondent to the application shall:

- (1) state the grounds on which the Respondent opposes the award being set aside;
- (2) state whether the Respondent requests that the setting aside proceedings be suspended under Article

43(4) of the Arbitration Regulations in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as may eliminate the grounds for setting aside; and

- (3) set out any evidence relied on by him relating to the matters mentioned in Article 43(2) of the Arbitration Regulations.

Appeals

27.39 No appeal lies from a decision of the Court under Articles 20(3), 20(4), 20(5), 22(3), 23(1), 24(2) or 26(3) of the Arbitration Regulations.

SECTION II – RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

27.40 An application under Article 44(1) of the Arbitration Regulations to enforce an award or under Article 45 of the Arbitration Regulations for recognition of an award may be made without notice in an Arbitration Claim Form.

27.41 The application shall be supported by written evidence:

- (1) exhibiting:
 - (a) the original award; and
 - (b) the original arbitration agreement;
- (2) or copies of those documents certified in accordance with Article 44(3) of the Arbitration Regulations;
- (3) (if the award or agreement is not made in English), producing a translation of the award or agreement certified in accordance with Article 44(3) of the

Arbitration Regulations;

- (4) stating the name and the usual or last known place of residence or business of the parties or, if a party is a body corporate, its registered or principal address;
- (5) (in the case of an application to enforce an award) stating either:
 - (a) that the award has not been complied with; or
 - (b) the extent to which it has not been complied with at the date of the application.

27.42 A draft order in both English and Kazakh or Russian shall accompany the application unless the Court orders otherwise.

27.43 The Order enforcing or recognising the award shall be served on the defendant, unless the Court orders otherwise.

27.44 Within 14 days after service of an Order made without notice or within such other period as the Court may set:

- (1) the defendant may apply to set aside the Order; and
- (2) the award shall not be enforced until after:
 - (a) the end of that period; or
 - (b) any application made by the defendant within that period has been finally disposed of.

27.45 An Order made without notice shall contain a statement of

- (1) the right to make an application to set the Order aside; and
- (2) the restrictions on enforcement under Rule 27.44(2).

27.46 An application under Rule 27.44(1) shall:

- (1) be made in accordance with Part 6;
- (2) set out the grounds under Article 46(1) of the Arbitration Regulations on which the applicant alleges that the Order should be set aside;
- (3) set out any grounds under Article 46(2) of the Arbitration Regulations on which the applicant alleges that the decision to set aside the Order should be adjourned;
- (4) be accompanied by written evidence setting out any evidence relied on by the party for the purpose of satisfying the Court:
 - (a) of the matters referred to in Article 46 of the Arbitration Regulations; and
 - (b) that the Order should be set aside.

27.47 If the Respondent to the application wishes to rely on evidence in reply to written evidence filed under Rule 27.46(4) he shall file and serve his written evidence within 7 days after service of the Applicant's evidence.

27.48 The written evidence filed by the Respondent to the application shall:

- (1) state the grounds on which the Respondent opposes the recognition or enforcement of the award being set aside; and
- (2) set out any evidence relied on by him relating to:
 - (a) the matters referred to in Article 46(1) of the Arbitration Regulations; and

- (b) the provision by the applicant of appropriate security in accordance with Article 46(2) of the Arbitration Regulations.

27.49 After conclusion of the period referred to Rule 27.44(2), in relation to any award in respect of which the Court has made an Order enforcing the award:

- (1) the award may be enforced within the Republic of Kazakhstan in the same manner as a Judgment or Order of the Court to the same effect; and
- (2) the Court may enter Judgment in the terms of the award.

Interest on Awards

27.50 Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he shall file a statement giving the following particulars:

- (1) whether simple or compound interest was awarded;
- (2) the date from which interest was awarded;
- (3) where rests were provided for, specifying them;
- (4) the rate of interest awarded; and
- (5) a calculation showing:
 - (a) the total amount claimed up to the date of the statement; and
 - (b) any sum which will become due on a daily basis.

27.51 A statement under Rule 27.50 shall be filed whenever the

amount of interest has to be quantified for the purpose of:

- (1) obtaining a Judgment or Order under Rule 27.49; or
- (2) enforcing such a Judgment or Order.

PART 28 THE SMALL CLAIMS COURT

28.1 This Part:

- (1) sets out the special procedure for dealing with claims (“small claims”) which are issued in or have been transferred to the Small Claims Court (“the SCC”); and
- (2) limits the amount of costs that can be recovered in respect of a small claim.

28.2 The SCC will hear and determine claims within the jurisdiction of the Court:

- (1) where the amount of the claim or the value of the subject matter of the claim does not exceed USD 150,000;
- (2) where the amount of the claim or the value of the subject matter of the claim does not exceed USD 300,000 and all parties to the claim elect in writing that it be heard by the SCC;
- (3) where the claim relates to the employment or former employment of a party and all parties elect in writing that it be heard by the SCC; and
- (4) such other claims as may be ordered or directed by the Chief Justice to be heard by the SCC from time to time.

- 28.3 Where a claimant issues multiple claims against the same defendant, the SCC Judge may, where appropriate, treat those claims as a single consolidated claim for the purposes of deciding whether the amount in dispute exceeds the limits of the SCC’s jurisdiction.
- 28.4 Reference in this Part to “claims” shall include reference to counterclaims, save that, where a counterclaim would not otherwise be within the SCC’s jurisdiction, a SCC Judge may direct that the proceedings be transferred to the Court of First Instance

Re-allocation

- 28.5 The Court may order that a small claim be transferred to the Court of First Instance.

SCC Judge’s power to grant a final remedy

- 28.6 A SCC Judge may grant any final remedy in relation to a small claim which a Judge of the Court of First Instance could grant if the proceedings were before that Court.

Extent to which other Parts apply

- 28.7 The following provisions of these Rules shall apply to small claims except to the extent that a Rule limits such application or the SCC Judge orders otherwise:
- (1) Error! Reference source not found. to Part 3;
 - (2) Part 5 (service of documents);
 - (3) Part 6 (making applications)
 - (4) Part 8 (disputing jurisdiction);
 - (5) Part 10 (admissions);

- (6) Rules 18.1 and 18.6 (power to control evidence);
- (7) Rules 19.3 to 19.9 (experts— overriding duty to the court and power to restrict expert evidence) and Rules 19.18 to 19.22 (single joint experts);
- (8) Rules 21.1 to 21.13 (discontinuance);
- (9) Part 23 (judgments and orders);
- (10) Rules 26.9 and 26.10 (costs in the SCC); and
- (11) Part 29 to Part 30.

Commencement of a small claim

- 28.8 A small claim shall be started by a Small Claim Form.
- 28.9 The claimant shall set out in or attach to the Small Claim Form a statement summarising the remedy sought and the claimant's reasons for claiming that he is entitled to that remedy. The claimant shall include on the face of the Claim Form a statement of the monetary value of the small claim.
- 28.10 The claimant shall include in the Claim Form the name and email address for service and residential address of the claimant and (if known) the defendant. Where the claimant or defendant is not an individual, the claimant shall state the address where they carry on business.
- 28.11 The SCC will serve the claim form on the defendant, unless otherwise directed by the Registry.

Responding to a small claim

- 28.12 Within 14 days after he is served with a Small Claim Form, a defendant shall:

- (1) Admit the claim by filing and serving on the claimant an admission in accordance with Part 10;
- (2) File a Small Claim Defence to the claim setting out:
 - (a) which parts of the claim are admitted;
 - (b) which parts are denied and his reasons for denying those parts; and
 - (c) the details of any counterclaim; or
- (3) Make an application to dispute the jurisdiction of the SCC in accordance with Part 6
- (4) and in every case shall provide an email address for service and state his residential address. Where the defendant is not an individual, he shall state the address at which he carries on business.

28.13 Where the defendant admits the claim in accordance with Rule 28.12(1), the SCC shall issue an order giving judgment on the claim.

28.14 Where the defendant files and serves an application to dispute the jurisdiction in accordance with Rule 28.12(3), the application will be heard by a SCC Judge in accordance with Part 6.

Consultation

28.15 After the defendant has filed and served a Small Claim Defence in accordance with Rule 28.12(2), or after the time for filing such a statement has passed, the parties may request and the Court may fix a time and place for the parties to attend for a consultation.

28.16 Any such request should be made within 7 days of the

service of the Small Claim Defence or the time for such service, whichever is earlier.

- 28.17 The purpose of the consultation will be to allow the parties to attempt to resolve their dispute by agreement.
- 28.18 A consultation may be conducted by the Registrar or by a person appointed by the Registrar for that purpose.
- 28.19 The SCC will attempt to fix any consultation on a date on which both parties are able to attend.
- 28.20 Any full-time officer or employee of a corporate party may represent a corporate party at the consultation.
- 28.21 Unless the Court directs otherwise, the consultation shall take place in private.
- 28.22 If the claim is settled at the consultation, the person conducting the consultation will record the terms of the settlement in writing. The written record of the settlement will be referred to an SCC Judge, who will issue a consent order, recording the terms of the settlement.
- 28.23 If the claim is not settled at the consultation, the Court may either:
- (1) fix a date for a further consultation; or
 - (2) make arrangements for the hearing of the claim in accordance with Rules 28.24 to 28.27 below.

Preparation for the hearing

- 28.24 If no consultation is fixed by the Court or if the claim is not settled at the consultation, the Court will give directions for the preparation of the small claim for trial.

28.25 The Court may:

- (1) fix a date for the final hearing of the small claim;
- (2) inform the parties of the time allowed for the final hearing;
- (3) require the parties to give further information about their case; and
- (4) order each party to file and serve on every other party statements of any witness or copies of any further documents on which they intend to rely at the hearing.

28.26 A party may ask the Court to give particular directions about the conduct of the case.

28.27 No expert may give evidence, whether written or oral, at a hearing without the Court's permission.

Conduct of the hearing

28.28 The SCC Judge may adopt any method of proceeding at a hearing that he considers to be fair.

Hearings will be informal

28.29 The strict rules of evidence do not apply.

28.30 The SCC Judge may take evidence on affirmation but is not required to do so.

28.31 The SCC Judge may limit cross-examination.

28.32 Any full-time officer or employee of a corporate party may represent a corporate party at the hearing.

28.33 The SCC will take a minute of or otherwise record by

such means as the SCC Judge considers appropriate any hearing that takes place at the SCC. A party may obtain a copy of that minute or other recording on payment of the proper charges specified by the SCC.

28.34 The SCC Judge shall give reasons for his decision.

28.35 The SCC Judge may give reasons for his judgment as briefly and simply as the nature of the case requires.

Non-attendance of parties at a final hearing

28.36 If a claimant does not attend the hearing, the SCC may strike out the claim.

28.37 If a defendant does not attend the hearing and the claimant does attend the hearing, the SCC may decide the claim on the basis of the evidence of the claimant alone.

28.38 If neither party attends the hearing, the SCC may strike out the claim and any defence and counterclaim.

Disposal without a hearing

28.39 The SCC may deal with the claim without a hearing.

Setting Judgment aside and re-hearing

28.40 A party who was not present at the hearing of the claim may apply for an order that a Judgment under this Part shall be set aside and the claim re-heard.

28.41 A party who applies for an order setting aside a Judgment under Rule 28.40 shall make the application not more than 7 days after the day on which notice of the Judgment was served on him.

28.42 The SCC may grant an application under Rule 28.40 if the

applicant:

- (1) had a good reason for not attending the hearing; and
- (2) has a real prospect of success at the hearing.

28.43 If a Judgment is set aside:

- (1) the SCC shall fix a new hearing for the claim; and
- (2) the hearing may take place immediately after the hearing of the application to set the Judgment aside and may be dealt with by the SCC Judge who set aside the Judgment.

28.44 A party may not apply to set aside a Judgment under Rule 28.40 if the SCC dealt with the claim without a hearing under Rule 28.39.

Claim re-allocated from the SCC to the Court of First Instance

28.45 Where a claim is transferred from the SCC to the Court of First Instance, Rules 26.9 and 26.10 (costs in the SCC) will cease to apply from the date of the order transferring the claim.

Enforcement

28.46 An Order of the SCC shall have the same status as an Order of the Court of First Instance and may be enforced in accordance with the procedures set out in Part 30.

PART 29 APPEALS

29.1 The Rules in this Part apply to appeals:

- (1) to the Court of Appeal from the Court of First Instance; and
- (2) to the Court of First Instance from the Small Claims Court or pursuant to the Court Regulations, Article 26(5).

29.2 In this Part:

- (1) ‘appeal Court’ means the Court to which an appeal is made;
- (2) ‘lower Court’ means the Court, tribunal or other person or body from whose decision an appeal is brought;
- (3) unless the use or context otherwise requires, ‘decision’ means an order or direction or, where a matter is to be disposed of otherwise than by order or direction, the pronouncement of the disposal;
- (4) ‘appellant’ means a person who brings or seeks to bring an appeal;
- (5) ‘respondent’ means:
 - (a) a person other than the appellant who was a party to the proceedings in the lower Court and who is affected by the appeal; and
 - (b) a person who is permitted by the appeal Court to be a party to the appeal; and
- (6) ‘appeal notice’ means an appellant’s or respondent’s notice.

29.3 This Part is subject to any Rule, enactment or Practice Direction which sets out further provisions with regard to any particular category of appeal.

Stay

29.4 Unless the appeal Court or the lower Court orders otherwise, an appeal shall not operate as a stay of any decision of the lower Court.

Permission to appeal

29.5 An appellant or respondent requires permission to appeal, except where the appeal is against a contempt order.

29.6 Permission to appeal may be given where the lower Court or the appeal Court considers that:

- (1) the appeal would have a real prospect of success; or
- (2) there is some other compelling reason why the appeal should be heard.

Conditions for allowing an appeal

29.7 The appeal Court will allow an appeal from a decision of the lower Court where the decision of the lower Court was:

- (1) wrong; or
- (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.

Appellant's Application for Permission

29.8 An appellant's application for permission to appeal may be made:

- (1) orally to the lower Court at any hearing at which the decision to be appealed was handed down; or
- (2) to the appeal Court in an appellant's notice.

29.9 Where the lower Court refuses permission to appeal, a further application for permission to appeal may be made to the appeal Court in an appellant's notice.

Time for appeal

29.10 The appellant shall file the appellant's notice as referred to in Rule 29.8(2):

- (1) within such period as may be directed by the lower Court; or
- (2) where the lower Court makes no such direction, within 21 days after the date of the decision.

29.11 The parties may not agree to extend the time for appeal.

29.12 Where the time for appeal has expired, the appellant shall file the appellant's notice and include therein –

- (1) an application for an extension of time; and
- (2) a statement of the reason for the delay and the steps taken prior to the application being made.

Respondent's submissions

29.13 A respondent may make written submissions in opposition to an application for permission to appeal.

29.14 A respondent wishing to make submissions in opposition to permission to appeal shall file and serve the submissions:

- (1) within 21 days of the service upon him of the appellant's notice; or
- (2) in the event that the grounds of appeal and/or skeleton argument are filed within 21 days of the date of the appellant's notice pursuant to Rule 29.25, within

21 days of the service upon him of the appellant's grounds of appeal and/or skeleton argument.

Decision of the application for permission

- 29.15 An application for permission to appeal made to the appeal Court in an appellant's notice may not be decided by the Judge against whose decision permission to appeal is sought.
- 29.16 An application for permission to appeal not made orally to the lower Court at the hearing will be determined on paper, except as provided for by Rule 29.17.
- 29.17 The judge considering the application on paper may direct that the application be determined at an oral hearing, and shall so direct if the judge is of the opinion that the application cannot be fairly determined on paper without an oral hearing.
- 29.18 The lower Court or the appeal Court may direct the filing of further submissions by the appellant or any respondent.
- 29.19 If permission to appeal is granted without an oral hearing, the parties will be notified of that decision.
- 29.20 If permission to appeal is refused without an oral hearing, the parties will be notified of that decision and brief reasons for it.

Limited permission

- 29.21 An order giving permission to appeal may:
- (1) limit the issues to be heard; and
 - (2) be made subject to conditions.

29.22 Where the lower Court or the appeal Court gives permission to appeal on some issues only, it will:

- (1) refuse permission to appeal on any remaining issues;
or
- (2) reserve the question of permission to appeal on any remaining issues to the Court hearing the appeal.

Appellant's notice

29.23 An appellant's notice shall be filed in all cases other than an application for permission to appeal made orally as referred to in Rule 29.8(1).

29.24 Subject to Rule 29.25, an appellant's notice shall:

- (1) set out the grounds of appeal relied on and
- (2) include or be accompanied by a skeleton argument.

29.25 Where it is impracticable to comply with Rule 29.24, a statement of the grounds of appeal and the skeleton argument shall be filed within 21 days of filing the appellant's notice.

29.26 Unless the Court otherwise orders, the appellant shall serve on each respondent –

- (1) a sealed copy of the appellant's notice;
- (2) copies of any statement of the grounds of appeal and any skeleton argument; and
- (3) copies of any other documents required to be filed pursuant to a Practice Direction
- (4) as soon as practicable and in any event within 7 days after they are filed.

29.27 The appellant shall, as soon as practicable, file a certificate of service of the documents referred to in Rule 29.26.

Applications

29.28 An application to be made to the appeal Court for a remedy incidental to the appeal may be included in the appellant's notice or respondent's notice or made in a Part 6 application notice.

Respondent's notice

29.29 A respondent may file and serve a respondent's notice –

- (1) applying for permission to appeal; or
- (2) asking the appeal Court to uphold the decision of the lower Court for reasons different from or additional to those given by the lower Court.

29.30 The rules in relation to applying for permission to appeal in an appellant's notice and decision of the application apply to an application for permission to appeal in a respondent's notice as if the respondent were the appellant.

29.31 A respondent who wishes only to request that the appeal Court upholds the decision of the lower Court for reasons different from or additional to those given by the lower Court does not appeal and does not require permission to appeal.

29.32 If the respondent does not file a respondent's notice, he will not be entitled, except with the permission of the Court, to rely on any reason not relied on in the lower Court.

Time for respondent's notice

29.33 A respondent's notice shall be filed within:

- (1) such period as may be directed by the Court; or
- (2) where the Court makes no such direction, 21 days after:
 - (a) where permission to appeal is not required, the date the respondent is served with the appellant's notice or (if served later) skeleton argument;
 - (b) in all other cases –
 - (I) THE DATE THE RESPONDENT RECEIVES A COPY OF THE ORDER GIVING PERMISSION TO APPEAL; OR
 - (II) THE DATE THE RESPONDENT RECEIVES NOTIFICATION THAT THE APPLICATION FOR PERMISSION TO APPEAL AND THE APPEAL ITSELF ARE TO BE HEARD TOGETHER.

29.34 Rule 29.12 (extension of time for appeal) applies to a respondent and a respondent's notice. Accordingly, where an extension of time is required the extension shall be requested in the respondent's notice and the reasons why the respondent failed to act within the specified time shall be included.

29.35 The respondent shall file a skeleton argument in all cases where he proposes to address arguments to the Court. The respondent's skeleton argument may be included within a respondent's notice.

29.36 Unless the Court orders otherwise a respondent's notice shall be served on the appellant and any other respondent:

- (1) as soon as practicable; and

- (2) in any event not later than 7 days;
after it is filed.

29.37 A respondent who:

- (1) files a respondent's notice; but
- (2) does not include his grounds of appeal and skeleton argument within that notice;
may file his grounds of appeal and skeleton argument accompanying the notice but in any event shall file his skeleton argument within 21 days of filing the notice.

29.38 A respondent who does not file a respondent's notice but who files a skeleton argument shall file that skeleton argument no later than 28 days after:

- (1) where permission to appeal is not required, the date the respondent is served with the appellant's notice or (if served later) skeleton argument;
- (2) in all other cases –
 - (a) the date the respondent receives a copy of the order giving permission to appeal; or
 - (b) the date the respondent receives notification that the application for permission to appeal and the appeal itself are to be heard together.

29.39 The respondent shall:

- (1) serve his skeleton argument on:
 - (a) the appellant; and

- (b) any other respondent
- (2) at the same time as he files it at the Court; and
- (3) file a certificate of service.

Amendment of appeal notice

29.40 An appeal notice may not be amended without the permission of the appeal Court.

Striking out appeal notices and setting aside or imposing conditions on permission to appeal

29.41 The appeal Court may:

- (1) strike out the whole or part of an appeal notice;
- (2) set aside permission to appeal in whole or in part;
- (3) impose or vary conditions upon which an appeal may be brought.

Powers on appeal

29.42 On hearing an appeal from a decision of the lower Court, the appeal Court may:

- (1) affirm, vary or set aside the decision appealed;
- (2) make or give any order that could have been made or given by the lower Court;
- (3) attach terms or conditions to an order it makes;
- (4) make a declaration of facts;
- (5) remit proceedings to the lower Court, subject to any directions the appeal Court considers appropriate; or

- (6) make any other order that the appeal Court considers appropriate or just.

29.43 The appeal Court may exercise its powers in relation to the whole or part of an order of the lower Court.

Hearings of appeals

29.44 Every appeal will be limited to a review of the decision of the lower Court unless:

- (1) the Court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing;
- (2) any other Rule or enactment requires a re-hearing.

29.45 At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal Court gives permission.

Evidence on appeal

29.46 Unless it orders otherwise, the appeal Court will not receive:

- (1) oral evidence; or
- (2) evidence which was not before the lower Court.

Non-disclosure of certain offers

29.47 The fact that an offer has been made under Part 20, Section I shall not be disclosed to any Judge of the appeal Court who is to hear or determine:

- (1) an application for permission to appeal; or
- (2) an appeal;

until all questions (other than costs) have been determined.

29.48 Rule 29.47 does not apply if the offer is relevant to the substance of the appeal.

No second appeal

29.49 No appeal lies from the decision of the Court of First Instance on an appeal from the Small Claims Court or pursuant to the Court Regulations, Article 26(5).

PART 30 ENFORCEMENT

30.1 This Part contains rules which provide:

- (1) For a party to obtain an order (an “Execution Order”) to enforce a judgment or order of the Court within the Republic of Kazakhstan; and
- (2) For certification of a judgment or order of the Court for enforcement outside the Republic of Kazakhstan.

SECTION I – ENFORCEMENT ORDERS

Applying for an Execution Order

30.2 A party in whose favour a judgment or order is made for the payment of money or the delivery of goods (the ‘judgment creditor’) may apply to the Court for an Execution Order.

30.3 An application for an Execution Order may be made without notice.

30.4 An application for an Execution Order will ordinarily be determined by an Enforcement Judge of the Court.

- 30.5 The Court will arrange for a translation into the Kazakh or Russian language of the judgment or order which is to be enforced, in accordance with the Constitutional Statute, Article 13(8).
- 30.6 The applicant shall pay any applicable fee for such translation and the Court may refuse to issue the Execution Order until the applicant has paid the fee.
- 30.7 Practice Directions may specify the mechanisms of enforcement which may be provided for in an Enforcement Order and the procedure for applying for each such remedy.
- 30.8 The Court may deal with an application for an Execution Order without a hearing.
- 30.9 An Execution Order in respect of a judgment or order requiring a party to pay money to the judgment creditor shall specify the amount of money due to the judgment creditor under the judgment or order, including interest (if any).

Costs

- 30.10 An Execution Order in respect of any judgment or order may require a party against whom it is made to pay the judgment creditor's reasonable costs of obtaining the Execution Order.

SECTION II – ENFORCEMENT OF AIFC JUDGMENTS OR ORDERS OUTSIDE THE REPUBLIC OF KAZAKHSTAN

- 30.11 Any party seeking to enforce a judgment or order of the Court outside the Republic of Kazakhstan may apply for a certified copy of the judgment or order to be issued by the Court.

30.12 An application under Rule 30.11 may be made without notice.

Approved by the Chief Justice of the AIFC Court in accordance with Article 30 of the AIFC Court Regulations 2017:

A handwritten signature in blue ink, appearing to read 'Alamy 2018', with a horizontal line underneath.

The Rt. Hon. The Lord Woolf CH,
Chief Justice, AIFC Court

1 January 2018