

AIFC COURT ANNUAL REPORT 2018

BY THE CHIEF JUSTICE AND REGISTRAR AND CHIEF EXECUTIVE

MARCH 2019





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The Rt. Hon. The Lord Woolf CH


Chief Justice, AIFC Court

Welcoming Statement by the Chief Justice

It gives me great pleasure to present the first Annual Report of the AIFC Court. The report primarily covers the year 2018. It records how, from a standing start, by the end of that year, a fully functioning modern Common Law Court has been established for the first time in Kazakhstan and Eurasia.

The Court has its own judiciary, a Registrar and Chief Executive, and staff. It has modern premises which are attractively furnished and equipped with the latest digital technology.

What has been achieved in a short time scale is a remarkable achievement. It has required the support of the AIFC Governor, the AIFC Authority, and the Supreme Court of the Republic of Kazakhstan and its Chief Justice. All those involved deserve my sincere congratulations.

A handwritten signature in blue ink, appearing to read 'Lord Woolf', with a horizontal line underneath.

The Rt. Hon. The Lord Woolf CH
Chief Justice, AIFC Court
1 March 2019



Mr. Christopher Campbell-Holt

Registrar and Chief Executive,
AIFC Court

Statement by the Registrar and Chief Executive

It is my pleasure to welcome you to this first Annual Report of the AIFC Court (“the Court”). The Report describes the achievements of the Court in 2018. It was a most important year as it was the Court’s first year of operation. Considerable progress was achieved in 2018 building upon the successful establishment of the Court in 2017.

In 2018 work was undertaken to ensure the Court has permanent world class premises with the latest digital technology and international standard meeting and conference facilities. Our premises will rival those of any international court. Digital technology was developed to provide top class electronic filing and case management at the Court.

Staff were recruited and include outstanding Kazakh nationals with international education, fluent English and advanced professional experience. Our staff received continuous training to ensure the Court will provide an international standard of administration which will assist users with speedy and cost effective dispute resolution.

An enforcement system has been developed with key state authorities in Kazakhstan to ensure that Court decisions will be robustly enforced in Kazakhstan.

A comprehensive promotions campaign was developed and implemented throughout Kazakhstan, Central Asia, and the wider world including in the US, UK, the wider Europe, Middle East, and Asia. We engaged throughout with legal and business communities, corporations, lawyer associations and state authorities, and participated at leading regional and international dispute resolution conferences. Regular speeches and interviews were given to online media, print and television. Publications were produced and included a Court guide and rule book. Our promotions were delivered in English, Russian, Kazakh and other languages. We specifically and successfully targeted our promotions to encourage the inclusion of the Court in dispute resolution clauses in a large number of business contracts.

We met our targets in 2018 and now very much look forward to welcoming you to the Court in 2019 which promises to be a very productive and successful year.



Christopher Campbell-Holt
Registrar and Chief Executive, AIFC Court
1 March 2019



AIFC Law Conference
July 2018

Summary: 2018 Achievements

Case Management

Practice Directions, user fees, model dispute resolution clause, AIFC Court forms

E-Justice

Enables paperless AIFC Court – cost and time efficient, Crimson Logic which is Bureau Veritas ISO 9001 and TUV certified for quality management

Enforcement

Recommendations on amendments to Kazakhstan Enforcement Law, development of comprehensive enforcement programme

Appointments & Lawyer Registration

More than 20 lawyers registered at AIFC Court

Operational Infrastructure & Human Capital

SLA, budget and finance, Court relocation to new premises and office fit-out, 6 staff hires and development

Engagement & International Cooperation

SIFoCC, HK Arbitration Week, Users' Committee, lawyers' engagement (incl. KZ, UZ, RUS, BLS, UK), RCJ Gown ceremony, Russian Arbitration Association, CIETAC, CMAC, HKIAC, Law Society cooperation. 24 conferences, more than 17 locations, 95 speaking engagements

Legal Education

1st Moot Court Final, Legal Education (Mediation, Cambridge and UCL progs), KZ Supreme Court, KAZGUU, KIMEP, ENU. 172 attendees at Legal Education courses, 50 lectures / speeches, 3000 attendees

Key Media Activities

49 interviews and commentaries, 56000 social media outreach (FB, Twitter, Instagram), 101 positive/neutral publications in global, regional and local press



Standing International Forum of Commercial Courts New York Meeting

September 2018

Summary: 2018 Achievements

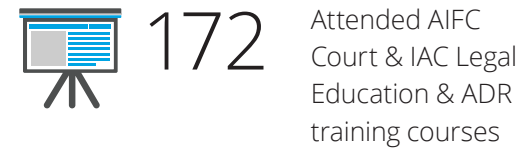
Promotions & Engagement



Users Attraction



Education



Appointments





“Astana: The City of Peace” International Conference

June 2018

Introduction to the Court

This Annual Report 2018 (“the Annual Report”) is intended to document the key activities of the AIFC Court (“the Court”) from 1 January 2018 until 31 December 2018. It addresses the Court’s objectives and achievements.

This Report has been drafted within the context of Kazakhstan’s “100 Concrete Steps to Implement Five Institutional Reforms”. It aims to assist with reporting on the achievements of the overall objectives of the Astana International Financial Centre (“the AIFC”) to facilitate Kazakhstan’s integration to the international financial system and position itself as the leading internationally recognised financial centre in Eurasia.

Who we are

The Court was registered as an AIFC Body on 22 December 2017 in accordance with the requirements of the AIFC Constitutional Statute 2015. It became operational from 1 January 2018. It is an independent legal entity and it is separate from the Republic of Kazakhstan’s judicial system.

It consists of a First Instance Court, a division of which is a Small Claims Court with a fast track procedure for claims up to the value of USD 150,000, and a Court of Appeal. It has a Chief Justice, eight judges, one Registrar who is also its Chief Executive, its own procedural rules, and international standard premises.

It applies the AIFC Acting Law¹. This is modelled on the English Common Law and international best practice. Decisions of the Court of Appeal are final and its decisions cannot be overturned by any other court.

¹The “Acting Law” refers to the relevant law of the AIFC. It consists of the AIFC Constitutional Statute 2015, AIFC “Acts” (which include AIFC Regulations, e.g. AIFC Contract Regulations 2017), and the laws of Kazakhstan which apply in part to matters not governed by the AIFC Constitutional Statute 2015 or AIFC Acts. See AIFC Constitutional Statute 2015, Article 4.



Affirmation Ceremony

December 2017

Introduction to the Court

Jurisdiction and Enforcement

The Court has the sole power to determine the proper scope of its jurisdiction within the limits of its competence given by the AIFC Acting Law. It does not have jurisdiction to hear administrative² or criminal cases but it does have jurisdiction to:

1. Interpret AIFC Regulations; and
2. Adjudicate any disputes:
 - a) between AIFC registered companies (“AIFC Participants”), AIFC bodies and or their foreign (i.e. non-Kazakh nationals) employees;
 - b) relating to operations carried out in the AIFC and regulated by the AIFC Acting Law; and
 - c) transferred to the Court by agreement of the parties (i.e. “opt-in” jurisdiction for parties who do not otherwise have any connection to the AIFC).

Enforcement of Court decisions within Kazakhstan shall be carried out in the same manner as the enforcement of decisions of other courts in the Kazakhstan legal system. Translations of the Court’s decisions into the Russian and Kazakh languages will be authorised by the Court in accordance with the AIFC Acting Law and provided to the Kazakhstan authorities for enforcement purposes.

² The term “administrative” is used to refer to matters such as road traffic offences or immigration issues which are dealt with by the RK Administrative Court. It is not intended to limit the review by the Court or an AIFC Body such as AFSA, the AIFC regulator. It differs from its meaning in English law. See AIFC Court Regulations 2017, Article 26(5), which provides that: “The Court of First Instance has jurisdiction to hear and determine an appeal from the decision of an AIFC Body ... 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.”





Meeting with the Kazakhstan Supreme Court judges

July 2018

Court and AIFC Platform

Platform

In documenting the achievements of the Court for 2018 it is important to understand how it fits within the context of the AIFC platform to understand the alignment and overall success of the Court and AIFC.

The AIFC aims to create a sustainable investment centre in Nur-Sultan for Kazakhstan and the Eurasia region. It focuses on five main investment areas: capital markets, asset finance, private wealth, Islamic finance and financial technology (“fintech”). It has adopted a system of law that is modelled on the English Common Law. This is to provide a platform for business supported by the Court, which will uphold the rule of law. The Court will encourage the development of a robust financial and economic environment within the AIFC. The judges of the Court are distinguished judges who have previously presided over courts in the UK.

The Court has three different levels:

1. The Small Claims Court as a division of the Court of First Instance, with specialist judges and procedures for cost-effective and timely resolution of disputes valued up to USD 150,000.
2. The Court of First Instance is the first court where disputes will be heard applying the Court’s Rules. It will also hear appeals from the Small Claims Court.
3. The Court of Appeal will hear appeals from the Court of First Instance. To appeal to the Court of Appeal will require litigants to have been given permission to appeal by the Court of First Instance.

All Court judgments are enforceable in the Republic of Kazakhstan in accordance with the law of Kazakhstan, subject to an execution order from the Court.

All lawyers have rights of audience provided the lawyer has a practicing certificate from anywhere in the world, or in the case of Kazakhstan lawyers, qualified by a law degree and some court experience.

Court Vision and Mission

The Court’s Vision is to be the leading court of choice for the resolution of civil and commercial disputes in the AIFC and Eurasia region.

Its Mission is to establish and develop a fully independent system based on Common Law for the expeditious resolution of civil and commercial disputes. It will adopt practices of fairness and accessibility which demonstrate its adherence to the rule of law and that it is responsive to the needs of global business markets.

Court Objectives

These are:

1. To maintain the independence of the judges of the Court and uphold the trust and confidence of the international business and legal communities that justice will be administered at the Court free from external pressures and fully empowering the implementation of the rule of law.
2. Resolving litigation expeditiously and efficiently by trial, mediation or otherwise.
3. Empowering regional commerce by increasing confidence in the administration and accessibility of justice throughout the AIFC, Kazakhstan, the Eurasia region, and globally.
4. To be an innovative and technologically advanced commercial court which continually improves its working processes and standards.
5. Developing working relationships with other courts in Kazakhstan, the Eurasia region and other jurisdictions.
6. Delivering high quality legal education and training to meet the needs of lawyers and judges in Kazakhstan and the Eurasia region.



Roundtable with the Russian Arbitration Association in Moscow
June 2018

Court and AIFC Platform

Achievements

The Court achieved its objectives in 2017 and 2018 in the following areas:

1. Creation of the Court;
2. Legal and Judicial Support;
3. Operations - Finance, Human Capacity, Information Technology, Facilities;
4. Promotion of the Court; and
5. Education and Training.

Creation of the Court

Tasks completed in 2017 and 2018 include:

- a) The amendment to the Constitution of Kazakhstan to enable the AIFC and the Court to legitimately operate within the confines of the Constitution.
- b) The Court Regulations 2017 were drafted and later approved by the AIFC Management Council, the senior authority in the AIFC with the President of Kazakhstan as its Chairman, pursuant to the AIFC Constitutional Statute 2015, and provided for the establishment of the Court and its powers, jurisdiction and constitution.
- c) On 5 December 2017 The Rt. Hon. The Lord Woolf CH was appointed as the Chief Justice of the Court and eight judges were appointed to the Court by Decree of the President of Kazakhstan. Lord Woolf was affirmed as the Court's Chief Justice in the presence of the President of Kazakhstan and six judges were affirmed by Lord Woolf. One judge was affirmed by Lord Woolf in July 2018 and another judge was affirmed by Lord Woolf in October 2018.
- d) On 22 December 2017 the Court was formally registered within the AIFC as an AIFC Body and an independent legal entity.
- e) The Registrar and Chief Executive of the Court was appointed with effect from 1 January 2018.

- f) The Court's Procedural Rules pursuant to the AIFC Constitutional Statute 2015 were drafted and subsequently approved by the Chief Justice of the Court in accordance with the AIFC Court Regulations 2017 with effect from 1 January 2018.
- g) The Court became operational from 1 January 2018.
- h) Four Memoranda of Understanding ("MOUs") were signed in 2017 by Lord Woolf. They were also signed by the Chief Justice of the Kazakhstan Supreme Court, the Ministry of Justice, General Prosecutor's Office, and the National Chamber of Law Enforcement Agents. This was done to encourage mutual cooperation on the enforcement of judgments and orders by the Court, in addition to other matters.
- i) Recommendations were made in 2017 to amend the Kazakhstan Enforcement Law to enable the Court's judgments and orders to be enforced directly by national enforcement agents without the need for execution in the Kazakhstan courts. It was expected that the Kazakhstan Enforcement Law will be amended in 2019.

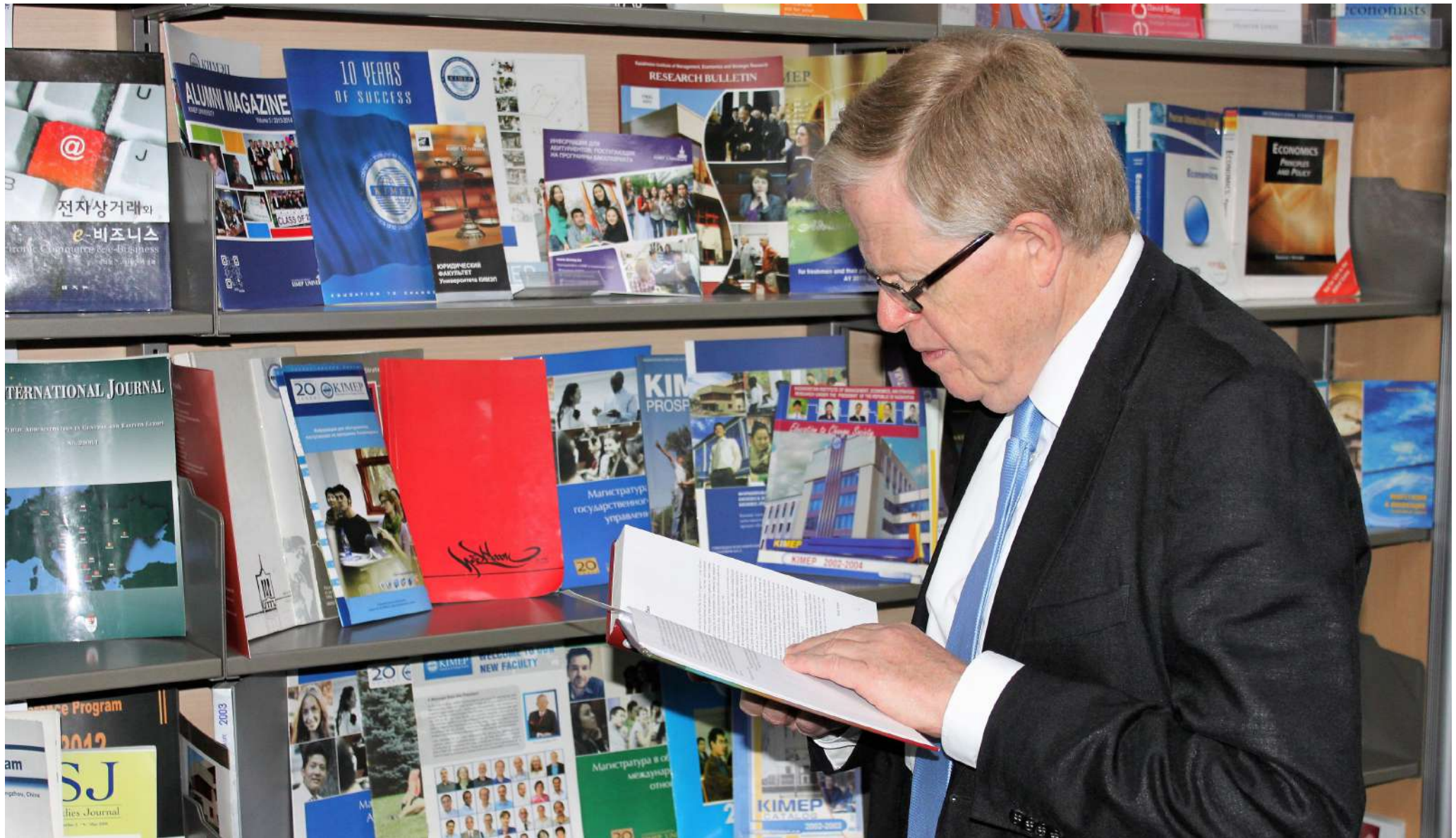
Legal and Judicial Support

Tasks completed in 2018 include:



1. Legal support team:

A Case Manager was appointed and trained to ensure the Court had case management support to assist the judges with preparation of case papers, legal research, production of publications and clerking for the judges during case hearings.



Justice Sir Rupert Jackson visiting the KIMEP University library
May 2018

Court and AIFC Platform



2. Case management:

In accord with the experience of courts at other international financial centres including Qatar, Dubai, Abu Dhabi and Singapore, the Court did not hear any cases during its first year of operation.

The Court established a temporary e-filing system enabling lawyers and parties to file a case electronically via the Court website. A project was commenced to establish a permanent comprehensive digital e-Justice system to further develop the e-filing and case management system to provide the most high-tech, efficient and cost-effective filing for the management of cases. This will be completed in 2019.

The Court published a “Practice Direction” setting out fees (which will not be charged to Court users until 1 January 2021), claim and defence forms for filing and a model clause.



3. E-library and legal research facility:

Licences to access West Law legal e-resources, including English Common Law case judgments and articles for legal research purposes were received.



4. Translation services:

An efficient translation facility was set up for the Court, including for its publications, court hearings and judgments, and other proceedings.



5. Enforcement:

Work was undertaken in 2018 to agree a Court judgments and orders execution system for a fast track enforcement system with the National Chamber of Law Enforcement Agents and Ministry of Justice to ensure the Court will be able to enforce its decisions as efficiently and reliably as possible.

Enforcement was also considered at the international level in 2018. Work was completed in 2017 to identify countries with which Kazakhstan could consider entering into bi-lateral treaties for mutual recognition and enforcement of court decisions. The Kazakhstan Ministry of Justice considered those proposals and in 2018 work was undertaken with the expectation that in 2019 there would be ratification by Kazakhstan of the Hague Choice of Court Convention 2005.

The Court undertook considerable work with leading courts and law associations in 2018 with a view to signing MOUs with these organisations in 2019 for mutual cooperation including, where possible, for recognition and enforcement of Court decisions. In this regard, in 2018 the Chief Justice and Registrar and Chief Executive attended and participated at the second meeting of the Standing International Forum of Commercial Courts in New York to discuss potential future cooperation.

Operations

Tasks completed in 2018 include:



1. Finance:

An agreement has been entered into for the provision of financial services by the AIFC Authority to the Court. The agreement provides for the Court to have its own budget secured by the AIFC Authority from the Kazakhstan Government upon receipt of annual estimates of expected expenditure for the following calendar year from the Chief Justice and Registrar and Chief Executive. The Court has its own bank accounts for expenditure and for receipt of fees and charges received from court users and recipients of legal education provided by the Court.

The AIFC Authority administered the Court’s bank accounts, processed all Court payments, and provided all government reporting, in compliance with its internal policies and procedures and Kazakhstan legislation. The Court commissioned PWC to undertake its own independent audit of the Court Accounts.



Justice Sir Robin Jacob lecture at M. Narikbayev KAZGUU University
October 2018

Court and AIFC Platform



2. Human capacity:

The Court appointed with effect from February 2018 three administrative staff to provide capacity to assist with the implementation of the Court's objectives and administration. A Business Manager was recruited and was later promoted to Head of Business to manage all Court business and administrative systems and to project manage key business development projects. A Coordinator was recruited and was later promoted to Corporate Services Manager to assist with administrative support and coordination of the Court Registry. An External Relations Manager was recruited and was later promoted to Head of Communications to manage the public relations and communications of the Court.

In 2018 the Court staff received on the job training. They were supervised by the Registrar and Chief Executive and their performance was appraised. Additional hiring needs were considered on an ongoing basis, including the need to recruit a Case Manager. A Case Manager was hired in October 2018 to assist with case management and law-related work.



3. Information technology:

The Court received IT hardware and software support from the AIFC Authority subject to an agreement between the Court and AIFC Authority.

In 2018 the Court was equipped with appropriate hardware to include telephones, computers, and an adequate printing facility. Microsoft Office 365 and matter management software was provided.

The Court has a temporary website. A more sophisticated long term website will be developed in 2019 by the AIFC Authority in cooperation with the Court.



4. Facilities:

The main IT development project for the Court in 2018 was an e-Justice Solution project and appropriate data security which were managed by the Court and AIFC Authority. All competitor courts at similar international financial centres have or are developing this technology and the delivery of this project was critical to the Court's e-case management facility. It was also a major marketing asset to promote the Court as a modern, efficient and cost-effective court to meet business needs. Work was undertaken in 2018 to develop the eJustice system with completion and launch expected to happen in 2019.

The Court had its own temporary premises in Nur-Sultan. Architectural plans for permanent premises at the EXPO-2017 site were drafted, revised, and finalised. In 2018 the AIFC Authority worked in cooperation with the Court to appropriately fit-out the permanent premises. The Court moved into its permanent premises in January 2019.



Kazakhstan Supreme Court judges at the lecture of The Rt. Hon.
The Lord Faulks QC, AIFC Court Justice
September 2018

Court and AIFC Platform

Promotion of the Court

The Court received positive publicity within Kazakhstan regarding the appointment of its Chief Justice and judges. It is imperative to the Court's future success and implementation of its objectives for it to be comprehensively marketed within Kazakhstan and internationally to include the Eurasia region and at other international financial centres. An extensive, targeted and structured communications and media strategy was developed by the Court and was implemented throughout 2018.

Tasks completed in 2018 include:



1. Media campaign:

Personal interviews from the Chief Justice, judges and Registrar and Chief Executive were published in the Kazakhstan media, including TV and online print. The Chief Justice and Registrar and Chief Executive participated in regular exclusive interviews for Kazakhstan TV media. Regular press releases were published in Kazakh and international media to promote Court achievements including visits to Nur-Sultan by the judges and their activities, the July 2018 AIFC events with Court participation, and on Court projects including the Court and IAC Moot Final 2018. Social media was utilised to maximise publicity.

The Court's media and promotional activities were concentrated on "Get the Court and IAC ["International Arbitration Centre"] dispute resolution clauses into your contracts". The campaign focussed on marketing to law firms to include the Court and IAC in their clients' contracts. The Court conducted research from the Kazakhstan legal and business communities and the results provided that at a minimum the Court and IAC had been included in 220 contracts including AIFC and non-AIFC parties and Kazakh and foreign parties.



2. Events, meetings and lectures:

The Royal Courts of Justice in London ("the RCJ") hosted an evening reception of the Court in March 2018 with attendance by the Kazakhstan Ambassador to the UK, HE Erlan Idrissov, the Chief Justice, IAC Chairman, judges, and representatives from the Kazakh and UK legal communities. The gown that was worn by the Chief Justice during his affirmation ceremony in Nur-Sultan on 6 December 2017 was displayed in a cabinet at the RCJ to formally promote the Court to an international audience. The RCJ is the main centre or "home" of the English Common Law courts and the display publicly announced the Court's international recognition.

The judges visited Nur-Sultan during the months of April, May, June, July, September, October, and November 2018. The visits followed a structured programme of activities including meetings with the Kazakhstan Supreme Court Chief Justice, Kazakh and Eurasian business people, Kazakh law students, giving lectures at Kazakh law schools and to Kazakh judges at the Kazakhstan Supreme Court, and participating at other events that occurred during their visits including high profile events and meetings supported by foreign embassies based in Nur-Sultan.

In May 2018 the Registrar and Chief Executive and a judge presented the Court to senior Kazakhstani business people at a Law Conference publicity event in Almaty, Kazakhstan, that was organised by the AIFC Authority.

In July 2018 the AIFC hosted in Nur-Sultan a programme of AIFC events to announce the formal commencement of operations. The Chief Justice and three judges participated on a panel discussion about the Court at a Law Forum event as a part of an AIFC day.



AIFC Court & IAC Moot Final 2018

October 2018

Court and AIFC Platform

In October 2018 the Court and IAC hosted the first Court and IAC Moot Competition Final at KAZGUU University in Nur-Sultan. The event was judged by two judges and a Visiting Judge, Lord Mance, a former Deputy President of the UK Supreme Court. Students from two of the most competitive law schools at Kazakh universities, KAZGUU and KIMEP, competed in open court applying their knowledge and skills to advocate a Common Law dispute problem. Guidance was provided to the law students during a May 2018 Almaty visit of a Court judge and by the Registrar and Chief Executive. The Final was heavily marketed and achieved widespread prime time TV news coverage in Kazakhstan.

The Chief Justice, judges, and Registrar and Chief Executive gave law firm client awareness presentations and roundtable events on the Court to leading international law firms in 17 global locations including in Kazakhstan, USA, UK, Europe, Eurasia, Russia, and Asia. They gave lectures to law students, law faculty, and legal professionals, on the Court and its procedures, at law schools in Kazakhstan. The Registrar and Chief Executive was appointed "Honorary Professor" at KAZGUU Law School in Nur-Sultan. He also attended and participated at AIFC-wide "roadshow" events organised by the AIFC Authority and AIFC Governor's Office to market the AIFC.

3. Marketing materials:

The Court developed its marketing materials including an information guide and a rule book.



4. High profile conference participation:

In addition to the Court participating at Eurasia regional events, the Chief Justice of the Court and the Registrar and Chief Executive, and occasionally the Chairman of the IAC in cooperation with the Court, attended and participated at international conferences. Conferences were attended on a selective basis to ensure maximum coverage with leaders and potential users of the Court in the international legal and business communities.

The following international conferences were attended in 2018:

1. The Prime Finance 7th Annual Conference on Dispute Resolution, at The Peace Palace in The Hague, 22-23 January 2018;
2. The Standing International Forum of Commercial Courts 2018, in New York, 27-28 September 2018;
3. COMBAR North American Meeting, in Vienna, 31 May – 1 June 2018;
4. European Circuit Meeting, at the Arbitration Institute of the Stockholm Chamber of Commerce, 20 September 2018; and
5. Hong Kong Arbitration Week 2018, Hong Kong International Arbitration Centre, 28 October – 2 November 2018.



5. Users' Committee:

A Users' Committee for the Court was established and its first meeting was held in Nur-Sultan. The Committee was chaired by the Registrar and Chief Executive and comprised members from leading international and local Kazakhstan law firms. It provided the Court with feedback on its services and on developments in the Kazakhstan, Eurasian and international legal and business markets. It was intended to keep the Court updated to enable it to consistently provide the highest standards of modern and efficient services.



**AIFC Court & IAC Legal Education Week – Introduction to the English
Common Law by Prof. Dame Hazel Genn DBE, UCL, at ENU in Nur-Sultan**

June 2018

Court and AIFC Platform

Education and Training

The Court has in its remit an obligation to assist with training, development, and awareness about the English Common Law, given that the law applied in the Court is modelled on the English Common Law, Common Law courts and dispute resolution. It partnered with the IAC and AIFC Bureau for Continuing Professional Development to deliver a comprehensive education programme for legal and business professionals in Nur-Sultan in 2018. The education programme was intended to improve awareness about the Court and positively contribute to the educational development of Kazakh law and business students and professionals.

The 2018 Court and IAC education programme was delivered in June 2018 and included the following:

1. “An Introduction to the English Common Law”: a two days course of four intensive lectures provided by Professor Dame Hazel Genn DBE (former Dean, Law Faculty, University College London). This was hosted by the Eurasian National University Law School in Nur-Sultan and was attended by eighty Kazakh and Eurasia region lawyers. Completion certificates were awarded to the attendees.
2. “English Commercial Law at the Court and IAC”: a two days course of four intensive lectures provided by Dr. Marc Moore (Director, Masters in Corporate Law, Cambridge University). This was hosted by KAZGUU Law School in Nur-Sultan and was attended by eighty Kazakh and Eurasia region lawyers. Completion certificates were awarded to the attendees.
3. “CEDR Accredited Mediation Skills Training Qualification”: a six days intensive mediator skills training course and assessment provided by the Centre for Effective Dispute Resolution, London. This was hosted by KAZGUU Law School in Nur-Sultan and was attended by twelve Kazakh lawyers selected by the Court and Bureau for Continuing Professional Development following a competitive interview and selection process. Eleven out of twelve candidates successfully passed the CEDR assessment and received CEDR mediator accreditation certificates.





**Honourary Professorship Award Ceremony at KAZGUU University
for the Registrar and Chief Executive**

December 2018





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