



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

3 June 2025

CASE No: AIFC-C/SCC/2025/0003

CROWE AUDIT ASTANA LLP

Claimant

v

KAZAKHSTAN ENERGY REINSURANCE COMPANY LIMITED

Defendant

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JUDGMENT

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Justice of the Court:

Justice Josephine Higgs KC

## JUDGMENT

This Judgment is structured as follows:

Part 1. Introduction

Part 2. The Agreement

Part 3. Facts

Part 4. The Claimant's claim in respect of the April 2024 invoice

Part 5. The Claimant's claim in respect of the May and June 2024 invoices

Part 6. Costs

Part 7. Conclusion

### **1. PART 1. INTRODUCTION**

- 1.1. The Claimant, Crowe Audit Astana LLP the "**Claimant**"), commenced a claim against Kazakhstan Energy Reinsurance Company Ltd (the "**Defendant**"), by submitting a Claim Form to the AIFC Court which was issued by the Court on 12 February 2025.
- 1.2. In its Claim Form the Claimant alleges that the sum of 5 687 926 KZT, being the total of invoices for April 2024, May 2024, and June 2024 for accounting services allegedly provided by the Claimant to the Defendant pursuant to Agreement No. 2023/16 dated 27 September 2023, is due from the Defendant and claims that amount.
- 1.3. In the Claim Form, it is stated that each contracting party has a participatory status in the AIFC, and, in accordance with Article 26 of the AIFC Court Regulations, any dispute between them is subject to the exclusive jurisdiction of the AIFC Court. The Defendant has not contested jurisdiction. The Court is satisfied that the AIFC Small Claims Court has jurisdiction over the Claimant's claim.
- 1.4. In its Claim Form, the Claimant indicated that it wished its Claim to be determined on the papers, rather than at a hearing. By an email dated 29 April 2025, the Registry informed the parties that the Court intended to determine the claim on the papers, and noted that if the Defendant objected to such a course, it should notify the Court within 7 days. The Registry further informed the parties that if they wished the Court to take any further documents into account, they were required to file and serve such documents within 14 days.
- 1.5. Neither of the parties responded to the Registry's requesting a hearing or asking the Court to take into account any further information or documentation.
- 1.6. Accordingly, pursuant to Rule 28.39 of the AIFC Court Rules, I have considered this claim on the basis of the documents appended to the Claim Form and Defence.

### **2. PART 2: THE AGREEMENT**

- 2.1. The Claimant and the Defendant entered into Agreement No. 2023/16 dated 27 September 2023 (the "**Agreement**") for the provision of accounting services by the Claimant (named therein as the "**Contractor**") to the Defendant (named therein as the "**Customer**").

2.2. The Agreement is written in Russian and English, i.e. for all provisions, there is a version in Russian and a version in English. Clause 7.1 specifically provides that in the case of discrepancy between the Russian and English versions of the agreement, the Russian version prevails.

2.3. This Judgment quotes below the text from the English version of the Agreement. However, as will be apparent from those quotations, the English version is not well expressed and is difficult to understand. I have consulted with members of the AIFC Court staff who are fluent in both English and Russian, in order to seek to ascertain the meaning of the Russian version of the relevant provisions, and thus the true meaning of the contractual terms, in order to consider whether there is any discrepancy between the Russian version and the English version which is material to the issues I have to decide.

### **Relevant provisions of the Agreement**

2.4. Clause 1, entitled “Subject of the agreement”, includes the following provisions:

*“1.1. The Customer shall commit to render and pay for the services provided by the Contractor, and the Contractor shall provide the Customer with the following services:*

*1.1.1. Maintenance of the Customer’s accounting (hereinafter – Contractor accounting) according to the International Standards of Financial Reporting and the legislation in force in the Republic of Kazakhstan according to the procedure below:*

- *Until<sup>1</sup> the 2<sup>nd</sup> working day of the month following the reporting month, the Contractor shall receive primary documents from the Customer and the Customer’s suppliers;*
- *Based on the received primary documents and the list of primary documents approved by the Customer’s management, the Contractor will include transactions in the 1C accounting database in accordance with the Customer’s accounting policies and IFRS;*
- *During the 3<sup>rd</sup> working day of the month following the reporting month, the Contractor will carry out month closing procedures in 1C;*
- *Until<sup>2</sup> the 5<sup>th</sup> day of the month following the reporting month period, the Contractor will prepare an internal financial statements for the reporting period in the agreed form, in accordance with the Customer’s instructions in the provided Microsoft Excel format.”*

2.5. Clause 3 sets out “The rights and obligations of the Parties”.

2.6. By Clause 3.1, the Contractor’s responsibilities are stated to be, so far as relevant, as follows:

*“3.1.1 The Contractor shall properly perform its services and Tasks as requested by the Customer, which implies performance within agreed terms and due quality in accordance with the legislation of the Republic of Kazakhstan...”*

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<sup>1</sup> A more accurate translation would be “By the 2<sup>nd</sup> working day...”

<sup>2</sup> Again, a more accurate translation would be “By the 2<sup>nd</sup> working day...”

2.7. By Clause 3.2, the Contractor's rights are stated to include the following:

*"3.2.1. The Contractor shall obtain from the Customer the information and documentation necessary to perform services and Tasks, subject to Clause 3.3.1 of the present Agreement.*

*...*

*3.2.4 The Contractor may refuse to perform services and Task, in case if:*

- the Customer did not submit the documents and/or the information necessary to perform services and the Task;*
- the Customer does not pay the account of the Contractor for the rendered services in terms stipulated in Clause 4.6.2 of the present Agreement;*

*...*

*3.2.6 The Contractor shall obtain a fee for the services rendered to the Customer in accordance with the Section IV of this Agreement..."*

2.8. By Clause 3.3, the Customer's responsibilities were stated to include the following:

*"3.3.2 The Customer shall pay for the services and reimburse the expenses of the Contractor according to the procedure and extent foreseen by the Section IV and extra expenses according to p. 4.7 and 5.4 of the present Agreement."*

2.9. By Clause 3.4, the Customer's rights were stated to include the following:

*"3.4.3. The Customer may object against the quality and/or completeness of the performance of services and the Task till the moment of signing of the Act of the executed works and according to p. 4.5 of this Agreement.*

*3.4.4. The Customer may appeal against the invoices of the Contractor for its services, including amount of expenses of the Contractor in terms stipulated in p. 4.5. of the given Agreement."*

2.10. Section 4 sets out the payment procedure. Section 4.4 entitled "Invoicing" provides, so far as material, as follows:

*"4.4.1 The invoices issued by the Contractor originally should be sent to the Customer by email and at absence of any objections from the Customer which presentation is regulated in clause 4.6 of the Agreement, the Contractor sends to the Customer originals of such invoices and documents applied on them.*

*4.4.2 Originals of invoices and documents applied on them should be sent by the Contractor to the Customer directly or by mail.*

*4.4.3 Thus date of reception by the Customer of this or that invoice for calculation of the terms stipulated clauses 4.6., 4.7., 4.7.1., is the date of reception by the Customer of the electronic version of the invoice..."*

*4.5. The Customer has the right to present the Contractor the objections on the amount of the invoice within 5 (five) working days from the date of receiving the Invoice by the Contractor of the corresponding account.*

*4.5.1 In case if the customer does not provide the proved objections in the specified term the invoice is considered to be accepted by the Customer without any objections.*

*4.5.2 The Contractor is obliged to give grounded reply to objections of the Customer against the sum of the invoice within 5 (five) working days from the moment of objections receipt.*

*4.6. The Customer shall make the payment for the services within 15 (fifteen) calendar days from the date of the Invoice, unless there are objections on the sum of the Invoice. After accepting the Invoice, the Customer shall sign the Acceptance Report and send it by fax to the Contractor. Simultaneously Customer sends the original of the Acceptance Report to the office of the Contractor within 30 (thirty) calendar days from the date of the Invoice by email or directly.*

*4.6.1 In case if the Contractor does not receive the signed Act by the Customer within 5 (five) working days from the date of received Invoice, and the Customer does not submit in the terms stipulated in clause 4.5 of the Agreement, the objections on the services rendered by the Contractor or the sum of the invoice, the services under corresponding Act are considered accepted by the Customer, and payment should be made within 30 (thirty) calendar days from the date of the Invoice by email or directly.*

*4.6.2 Services on quality or under accounts for which the Customer provides to the Contractor the proved objections, are subject to payment by the Customer within 15 (fifteen) calendar days:*

*- from the date of reception by the Customer the documents confirming the elimination by the Contractor of admitted infringements and the updated invoice – in cases if the sum of the invoice has changed,*

*- from the date of submission the documents by the Contractor to the Customer confirming elimination of admitted infringements if the sum of the invoice remains the same."*

2.11. Clause 5 entitled "Liabilities of the Parties", relevantly provides as follows:

*"5.1 The Parties are liable for violation (nonperformance or improper execution) of the terms of this Agreement according to the current legislation of the AIFC.*

*...*

*5.2 The default of the Party in violation of the terms and conditions of this Agreement may be recognized either upon agreement of the Parties or upon resolution of the court.*

*...*

*5.7 The Party recognized as guilty reimburses the losses (fines and penalties) caused to the other Party, if such losses (fines and extra fees<sup>3</sup>) are the direct consequence of the violation of the terms of present Agreement by the guilty Party.”*

2.12. Clause 6 entitled “Duration of the Agreement” provides for a termination right, as follows:

*“6.2 This Agreement may be terminated upon initiative of one of the Parties by the notice in writing of other Party on refusal of execution of the Agreement, directed not less than 60 (sixty) calendar days before to the date of termination”.*

2.13. Clause 7, entitled “Additional terms” contains the following relevant provisions:

*“7.1 This Agreement is composed in Russian and English in 2 (two) copies of equal force, in one copy for the each of the Party.*

*In case of discrepancy between Russian and English text, the Russian text shall prevail.”*

*...*

*7.3 All disputes, connected with this Agreement are settled by the Parties through the negotiations within 20 (thirty) [sic] calendar days, and if the agreement is not reached – in the judicial authorities at the place of provision of the Services (Almaty) in accordance with the legislation of the Republic of Kazakhstan.”*

### **3. PART 3: FACTS**

#### *Services during April 2024*

- 3.1. On 30 April 2024, the Claimant emailed to the Defendant an invoice for “*outsourcing services for the month of April*”. The Defendant replied by email the same day stating: “*The invoice for April will be paid as soon as we adopt the management reports for April*”. (Attachment 2 to the Claim Form)
- 3.2. In paragraphs 3.1 and 3.2 of its Defence, the Defendant states that the Claimant violated the obligations to properly provide services for the relevant period, i.e. April 2024. The Defendant alleges, in summary, that the Claimant violated the deadlines for submitting reports for April, and that there were material errors and discrepancies in the preliminary report submitted by the Claimant, which was therefore not accepted by the Defendant.
- 3.3. Based on the contemporaneous documents which have been submitted to the Court by the Defendant (Attachments 2 to 4 to the Defence), it appears clear that there was indeed delay by the Claimant in the provision of the reports for April, and further that the reports which the Claimant initially provided contained errors and mistakes. In particular:

3.3.1. By an email on 4 May 2024, Dinara Khudaibergenova of the Defendant sent an email to Samal Pulat of the Claimant, marked with high importance, stating “*Please send the final management reports (3 files) no later than the first half of the day on May 6.*”

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<sup>3</sup> Although the word “extra fees” rather than “penalties” appears in the second set of brackets in the English translation, in the Russian original, the words in both sets of brackets are the same.

- 3.3.2. On 6 May 2024, the Defendant sent several emails to Samal Pulat of the Claimant querying certain entries in the accounting system. The emails stated:  
*“What are the expenses of the IRTYSH hotel complex for 78 thousand dollars. Please, explain what is going on in our accounting system”; “Why is there only an accrual for vacation reserves. Where is the reserve reduction”.*
- 3.3.3. Later on 6 May 2024, the Defendant sent an email to the Claimant asking for a call to discuss termination of the contract due to inappropriate quality of services and missed deadlines.
- 3.3.4. On 7 May 2024 and again on 10 May 2024, the Defendant sent further emails to the Claimant chasing for reports which were stated to be urgent.
- 3.3.5. On 10 May 2024, the Claimant sent an email to the Defendant stating *“The new manager needs more time to prepare the report. Is there a possibility to extend the submission deadline. We apologise for the inconvenience caused”.*
- 3.4. On 13 May 2024, the Defendant sent an email to the Claimant stating as follows (Attachment 5 to the Defence):
- “Hereby, in accordance with clauses 6,2 of the Contract 2023-16, we notify you of the early termination of the contract due to inappropriate quality of services.*
- We kindly request to arrange a call with the management and ensure the preparation and handover of accounting and primary tax documents, as well as summary and reporting documents held by the Contractor.”*
- Services during May and June 2024*
- 3.5. Based on the information which has been provided to the Court (as set out below), it appears that the Claimant did not provide accounting services to the Defendant during May and June 2024, and that the Defendant instead engaged a different accountant to provide such services.
- 3.6. In its letter of 12 June 2024 (Attachment 4 to the Claim Form), the Defendant states that the Claimant did not provide any services in May and June 2024. In its Defence, the Defendant asserts that it was forced to complete and deliver the work itself. It appears from the Defendant’s Defence that it engaged KPMG Tax and Advisory Limited Liability Partnership (“**KPMG**”) to provide accounting services during April, May and June 2024. The Defendant’s Defence appends an “Act of Work performed” from KPMG which appears to evidence that KPMG provided additional accounting services during April to June 2024.
- 3.7. In its letter of 17 June 2024, the Claimant asserts that the Defendant unilaterally disabled the Claimant’s employees’ access to the Defendant’s 1C database and deactivated the digital signature which made it impossible for the Claimant to provide certain types of services using online banking and the taxpayer’s account.

- 3.8. A letter sent by Kinstellar on behalf of the Defendant dated 21 June 2024 confirms that the Defendant did not provide access to the Claimant to the 1C database from 13 May 2024 and asserts that Claimant did not request documents and access to the 1C database in May and June 2024.

*The Claimant's request for payment in June 2024*

- 3.9. On 10 June 2024, the Claimant sent the Defendant an email (Attachment 3 to the Claim Form) attaching invoices for April 2024, May 2024 and June 2024. Neither party has alleged that, or submitted any document which demonstrates that, the Claimant had sent the invoices for May or June 2024 to the Defendant at any time prior to 10 June 2024.
- 3.10. I note that the English translation of that email (Attachment 3 to the Claim Form) bears a date of 6 June 2024. It is clear that this date is a mistake. The date on the Russian original of the email is 10 June 2024; and the Claim Form itself refers to the email as being dated 10 June 2024.
- 3.11. The Defendant replied to the Claimant's 10 June 2024 email by a letter dated 12 June 2024 (Attachment 4 to the Claim Form). This letter stated, in translation as follows:

*"In accordance with clause 4.5 of [the Agreement]... We formally object to the following invoices issued by your organization:*

*No. 00000000022 dated 10/06/24 for April 2024 for the amount 2 410 931.71 KZT;  
No. 00000000023 dated 10/06/24 for May 2024 for the amount 2 340 710.4 KZT;  
No. 00000000024 dated 10/06/24 for the period from 1 to 12 Juen for the amount 936 284.16 KZT.*

*According to the terms of the Agreement, the Customer undertakes to pay only for those services that were properly provided by the Contractor. In April 2024, the Contractor did not prepare internal financial statements in the agreed form and in accordance with the Customer's instructions. The preliminary report, provided on May 6, 2024, contained significant errors and discrepancies, which indicates the absence of appropriate verification procedures on the part of the Contractor to ensure the quality of services.*

*In view of these violations, on May 13, 2024, the Customer sent the Contractor a notice of termination of the Agreement.*

*Considering the above, guided by clause 4.5 of the Agreement, we object to any payments on the above invoices for services for the periods April, May and June 2024. We consider it possible to issue an invoice only for actual costs associated with the performance of additional services in April 2024, after written agreement between the parties in accordance with clause 4.7.1 of the Agreement."*

- 3.12. By a letter dated 17 June 2024 (Attachment 5 to the Claim Form), the Claimant responded to the Defendant asserting (in summary) that the April 2024 invoice was deemed to be accepted, as there had been no objection by the Defendant within 5 days of it being submitted, and further asserting



that the invoices for May and June 2024 were payable pursuant to paragraph 2 of Article 685 of the Civil Code of the Republic of Kazakhstan. As recorded in that letter, the Claimant sent the originals of the invoices to the Defendant on 17 June 2024.

3.13. On 21 June 2024, Kinstellar, acting on behalf of the Defendant, sent a further letter to the Claimant refusing to pay (Attachment 11 to the Defence).

3.14. As noted in paragraph 1 of this Judgment, the Claimant commenced this Claim in February 2025.

#### **4. PART 4: THE CLAIMANT'S CLAIM IN RESPECT OF THE APRIL INVOICE**

4.1. For the reasons set out in this Part, I have concluded that the Claimant is not entitled to payment from the Defendant in the amount set out in the April invoice.

4.2. The invoice was sent to the Defendant on 30 April 2024. Based on the documents which I have seen, the Defendant did not formally object to the invoice sent on 30 April 2024, within 5 days of receipt on 30 April 2024. However, for the reasons set out below, I do not agree with the Claimant's argument that this means that the Defendant is precluded by Clause 4.5 of the Agreement from contesting the validity of the invoice, and that the sum claimed in it has become due and payable.

4.3. First, I agree with the Defendant's arguments that the fact that the Defendant did not raise an objection within 5 days of 30 April 2024 cannot mean that the April invoice is deemed to have been accepted pursuant to Clause 4.5.1, in circumstances in which the invoice was sent to the Defendant prior to the provision by the Claimant of the reports for the relevant period. I agree that, as a matter of common sense, the Customer must be entitled to consider the services provided by the Contractor before it is required to accept or object to the Contractor's invoice, and I consider that Clauses 3.4.3, 3.4.4, 4.4 and 4.5 of the Agreement must be interpreted and applied so as to give effect to that common sense proposition. Part 5 of the AIFC Contract Regulations provides that the contract must be interpreted according to the common intention of the parties. The parties cannot reasonably have intended that the Defendant would be contractually deemed to accept an invoice received from the Claimant by failing to object to it within 5 days, in circumstances in which the Defendant was unable properly to assess whether there were grounds to object.

4.4. I further agree with the Defendant's argument that this is consistent with the Defendant's response at the time that the invoice was sent to it on 30 April 2024 that the invoice would be paid once the April management report had been accepted, i.e. the Defendant's response reflected the obvious point that the Defendant could not reasonably be expected to accept and pay (or object to) the invoice prior to receipt of the relevant work product.

4.5. An initial version of the management report appears to have been provided by the Claimant to the Defendant on 5 or 6 May 2024. By emails on 6 May 2024, the Defendant raised several queries regarding various entries in the accounts. It was obvious from these emails that the Defendant was not satisfied with the accounting services provided by the Claimant for April 2024. By a further email to the Claimant on 6 May 2024, the Defendant urgently requested a call to discuss termination of the Agreement due to inappropriate quality of services and missed deadlines. I do not consider that the Defendant can be deemed to have accepted the invoice in these

circumstances, even if it did not formally invoke the objection procedure in Clause 4.5.1. It was clear in all the circumstances that the Defendant did not accept and agree to pay the April 2024 invoice, but rather objected to it.

- 4.6. In my judgment, therefore the Defendant is not precluded by Clause 4.5.1 from contesting whether the April invoice is due and payable.
- 4.7. I agree with the Defendant that the Claimant is only entitled to payment of the contractually agreed monthly fee under the Agreement if the Claimant in fact provides accounting services in accordance with the Agreement. Clause 1.1 of the Agreement provides that: *“The Customer shall commit to render and pay for the services provided by the Contractor, and the Contract shall provide the Customer with the following services...”*. The agreed monthly fee is payable by the Defendant in consideration of the services provided by the Claimant in accordance with its contractual obligations.
- 4.8. The emails set out in paragraph 3.3 above provide strong *prima facie* evidence that the Claimant did not properly perform accounting services in accordance with its contractual obligations in April 2024. Further, the Claimant has not asserted, either in contemporaneous correspondence, or in its Claim Form or in response to the Defendant’s Defence, that, contrary to the Defendant’s assertions, it did adequately perform the accounting services in April 2024.
- 4.9. On the basis of the information and documents provided to the Court, I conclude that the Claimant was in breach of its obligations pursuant to Clauses 1.1 and 3.1 of the Agreement to provide accounting services for the month of April 2024. The Claimant did not therefore become entitled to the full monthly fee stipulated in Annex 1 to the Agreement, and the April 2024 invoice is not due and payable.
- 4.10. Further, as set out above, Clause 5.1 of the Agreement provides that the parties are liable for non-performance or improper execution of the Agreement in accordance with the current legislation of the AIFC.. Pursuant to the AIFC Contract Regulations, a party is entitled to claim damages from the other party for non-performance, which is defined by Section 77 to include defective performance and late performance.<sup>4</sup>
- 4.11. Even if, contrary to my findings above, the April invoice did become due and payable, in my judgment, the Defendant would be entitled to damages from the Claimant for any loss suffered as a result of the Claimant’s failure adequately to provide accounting services in accordance with the Agreement.
- 4.12. In its Defence, the Defendant alleges that it engaged KPMG to perform additional accounting services for the months of April, May and June 2024, and the Defendant has provided a copy of the

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<sup>4</sup> Clause 5.7 of the Agreement also provides that the party recognized as guilty should reimburse the other party for such losses which are the direct consequence of such violation. However, after the word which is translated as “losses”, there are words in brackets which are translated as “fines” and “penalties”, and it appears that Clause 5.7 may be intended to deal with “penalties”, which is a defined concept under the Civil Code.

invoice charged by KPMG which demonstrates that KPMG provided accounting services to the Defendant during these months.

- 4.13. In my judgment, the Claimant's failure adequately to provide accounting services in accordance with the Agreement for April 2024 was the cause of the Defendant engaging KPMG to provide these additional services, and the sums paid to KPMG would therefore be recoverable as damages for the Claimant's non-performance. Pursuant to Section 91 of the AIFC Contract Regulations the Defendant would be entitled to set-off such damages against the sums due to the Claimant. The total amount paid by the Defendant to KPMG exceeds the sum charged by the Claimant in the April, May and June 2024 invoices.
- 4.14. For the reasons set out above, in my judgment, no sums are due to the Claimant in respect of the April invoice.

## **5. PART 5: THE CLAIMANT'S CLAIM IN RESPECT OF THE MAY AND JUNE INVOICE**

- 5.1. The Defendant undoubtedly raised objection to the May and June invoices within 5 days of receipt of those invoices: the invoices were sent to the Defendant on 10 June 2024 (see paragraph 3.9 above), and the Defendant objected to them on 12 June 2024.
- 5.2. Accordingly, these invoices are not deemed to have been accepted by the Defendant pursuant to section 4.5.1 of the Agreement.
- 5.3. The Court's understanding, as set out in paragraphs 3.5 to 3.8 above, is that the Claimant did not in fact provide the accounting services during May and June 2024.
- 5.4. In previous correspondence between the parties, the Claimant relied on paragraph 2 of Article 685 of the Civil Code of the Republic of Kazakhstan (the "**Civil Code**") to argue that payment is nonetheless due in full. However, in its Claim Form, the Claimant refers to the AIFC Contract Regulations and does not contend that the Civil Code is applicable; accordingly, this Judgment does not address Article 685 of the Civil Code.
- 5.5. In paragraph 8 of its Claim Form, the Claimant relies on Section 83 of the AIFC Contract Regulations, stating as follows:

*"In accordance with section 83 of the AIFC Contract Regulations #3 of 2017 (Performance of monetary obligation) If a party who is obliged to pay money does not do so, the other party may require payment notwithstanding section 82."*

- 5.6. I do not consider that Section 83 of the AIFC Contract Regulations is of any relevance. Section 82 is entitled "Force majeure", and provides (in summary) that, except with respect to a mere obligation to pay, non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond the party's control. Section 83, entitled "Performance of a monetary obligation", then provides that if a party who is obliged to pay money does not do so, the other party may require payment notwithstanding Section 82. In my judgment, the effect of these provisions is that an impediment beyond the party's control does not excuse the non-payment of

money, even if it would excuse failure to perform some other contractual obligation. These provisions are therefore of no relevance to the current dispute, and do not support the Claimant's claim for payment in respect of the May and June 2024 invoices.

5.7. Given that the Claimant did not provide accounting services to the Defendant for May and June 2024 pursuant to the Agreement, the Claimant is not entitled to be paid in respect of services which it did not perform. I therefore hold that the May and June 2024 invoices did not become due and payable.

5.8. Moreover, even if, contrary to that finding, the May and June invoices did become due and payable, in my judgment, the Defendant would have a right to damages from the Claimant for the loss suffered as a result of the Claimant's previous violation of the Agreement in failing to provide adequate accounting services. As already discussed in paragraph 4.13 and 4.13 above, the Defendant engaged KPMG to provide accounting services in May and June 2024. In my judgment, the Claimant's failure to provide adequate accounting services was the direct cause of the Defendant engaging KPMG, and as such, the Defendant would be entitled to claim the sums charged by KPMG as damages from the Claimant, and to set-off such damages against the amounts due under the May and June 2024 invoices.

5.9. For the reasons set out above, in my judgment, no sums are due to the Claimant in respect of the May and June invoices.

## **6. PART 6: COSTS**

6.1. Rule 26.9 of the AIFC Court Rules provides that the Small Claims Court may not order a party to pay a sum to another party in respect of costs, fees and expenses except for such part of any Court fees as the Small Claims Court considers appropriate, or such further costs as the Small Claims Court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.

6.2. I do not consider that a costs order is appropriate in this case.

## **7. PART 7: CONCLUSION**

7.1. For the reasons set out above, the Claimant's claim is dismissed, with no order as to costs.

By Order of the Court,

Josephine Higgs KC,  
Justice, AIFC Small Claims Court



**Representation:**

The Claimant was represented by Baimyshev Arman Nazymbekuly.

The Defendant was represented by Ruan Dairbekov of Redbrick Law Firm.