



AIFC COURT REGULATIONS

RESOLUTION OF THE AIFC MANAGEMENT COUNCIL

Dated 5 December 2017



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AIFC COURT REGULATIONS

PART 1: GENERAL

1. **Name**

These Regulations are 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



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- (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.



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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 President of the Republic of Kazakhstan upon the proposal of the Governor.
- (2) The proposal of the Governor to the 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 President of the Republic of Kazakhstan in accordance with these Regulations, a new Chief Justice of the Court shall be appointed by the 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.



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- (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.



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- (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 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 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 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 President



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



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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



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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



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- (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;



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- (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.



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- (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.



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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;



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- (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;



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- (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.



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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.



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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.



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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.



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- (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.



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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**



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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.



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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.



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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 Astana 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



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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.