

IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

28 May 2025

CASE No: AIFC-C/CFI/2024/0005

BONDHOLDERS (138) OF THE BONDS
(Listed in Annex 1 and Annex 2 to this Judgment)

Claimants / Judgment Assignor

v

(1) LIMITED LIABILITY PARTNERSHIP NEF QAZAQSTAN
(2) TIMUR GAYRIMENKUL GELİŞTİRME YAPI VE YATIRIM A.S.

Defendants

and

NEF & RAM LLP

Judgment Assignee

JUDGMENT AND ORDER

Justice of the Court:
Justice Tom Montagu-Smith KC

ORDER

UPON the Court giving judgment on 25 June 2024 in favour of the Claimants against the First Defendant (“the Judgment”) and ordering the First Defendant to pay the Claimants a total of KZT 1,930,716,120.39, consisting of KZT 1,888,333,956.03 for debt and penalties and KZT 42,382,164.36 for costs (“the Judgment Debt”).

AND UPON the Court issuing execution orders in favour of each of the Claimants in respect of the Judgment Debt (“the Execution Orders”).

AND UPON the Claimants entering into an agreement with the Judgment Assignee to assign the Claimants’ rights under the Judgment to the Judgment Assignee in exchange for the Judgment Assignee paying the Claimants a sum equal to the Judgment Debt.

AND UPON the Judgment Assignee paying those sums to the Claimants.

AND UPON the Claimants’ application to substitute the Judgment Assignee (a) as a party to the proceedings and (b) as Judgment creditor and (c) as the party entitled to execution pursuant to the Execution Orders.

AND UPON hearing counsel for the Claimant, the First Defendant and the Judgment Assignee.

IT IS ORDERED THAT:

1. The Judgment Assignee is substituted for the Claimants as the Claimant in these proceedings pursuant to AIFC Court Rules, r.12.5 and r.12.13.
2. The Judgment Assignee shall be entitled to enforce the Judgment Debt in its own name against the First Defendant.
3. The Execution Orders are cancelled.
4. The Court shall issue a new execution order in favour of the Judgment Assignee for enforcement of the Judgment Debt against the First Defendant.

JUDGMENT

A. Introduction

1. The Claimants are the holders of bonds (“the Bonds”) issued by the First Defendant and guaranteed by the Second Defendant, pursuant to the terms of a prospectus (“the Prospectus”) dated 22 November 2022.
2. On 25 June 2024, I gave judgment (“the Judgment”) in favour of the Claimants against the First Defendant in the total sum of KZT 1,930,716,120.39, comprising KZT 1,888,333,956.03 for debt and penalties and KZT 42,382,164.36 for costs (“the Judgment Debt”).
3. Thereafter, the Court proceeded to issue a total of 139 execution orders, one in favour of each Claimant, in respect of their individual share of the Judgment debt.
4. On 7 November 2024, the Claimants entered into an agreement with NEF & RAM LLP (“the Agreement”). NEF & RAM had previously been associated with the First Defendant but was under new management. NEF & RAM had certain liabilities towards the First Defendant.
5. Under the terms of the Agreement, the Claimants and NEF & RAM agreed that it would pay the amount of the Judgment Debt to the Claimants in exchange for an assignment of the Judgment Debt.
6. As a term of the Agreement, the Claimants were required to procure the substitution of NEF & RAM for the Claimants as the parties entitled to pursue execution of the Judgment debt.
7. On 19 November 2024, NEF & RAM paid the sums due to the Claimants into brokerage accounts in their names. The Claimants have therefore received what they were entitled to under the Judgment.
8. On 2 December 2024, the Claimants applied for an Order substituting NEF & RAM in the execution Orders. While initially they said they were not seeking any amendment of the Judgment, their position before me was that they would be content with any form of Order which gave effect to the Agreement and their obligation to take such steps as are necessary to allow NEF & RAM to pursue execution.

B. The parties’ positions

9. The Claimants’ position was that the Judgment Debt was property within the meaning of the AIFC Personal Property Regulations (“the Property Regulations”). As such, it was capable of assignment pursuant to Article 8 of the Property Regulations. All that was required was agreement between the parties to the assignment, which was provided for in the Agreement.
10. The First Defendant objected to the application. In written submissions sent before the hearing, the First Defendant raised a number of grounds of objection. Not all of them appeared to be pressed at the hearing. They were:
 - 1) That the First Defendant had not consented to the assignment.
 - 2) That the payments made by NEF & RAM to the Claimants were illegal. This was because they were said to violate the terms of the Prospectus and of the “*Bondholder Agreement*”. It was also said that there were violations of AIX Rules and Regulations.
 - 3) It was suggested that counsel for the Claimants, was not authorized to represent “the

bondholders”.

- 4) The First Defendant complained of unspecified “*procedural violations*”, saying that “*the notifications and actions undertaken*” by counsel for the Claimants and by NEF & RAM “*were executed in a non-transparent and non-compliant manner, bypassing required legal processes.*”
- 5) The First Defendant demanded “*an investigation into the conduct of AIX and its employees*” in respect of (a) “*unauthorized payments made without issuer approval*” (b) procedural violations in the handling of bondholder rights and (c) “*potential conflicts of interest involving AIX personnel*”.

11. In the course of the hearing, Mr Shek on behalf of the Claimant confirmed that it was not disputed that NEF & RAM had paid the Claimants the amount of the Judgment Debt. The First Defendant’s objection was to the procedure by which this had been achieved.
12. On behalf of the Judgment Assignee, Ms Olga Kichigina supported the application. She noted that, so far as the Judgment Assignee was concerned, the Claimants had failed to comply with their obligations under the Agreement and the Judgment Assignee would need to consider cancelling the arrangement.

C. Decision

13. The Court has wide powers to substitute parties to proceedings.
14. AIFC Court Rules r.12.5 provides:

“The Court may order a person to be added, removed or substituted as a party if it is desirable to do so.”
15. Rule r.12.13 provides:

“Where the interest or liability of an existing party has passed to some other person, an application may be made to the Court to add or substitute that person.”
16. I consider that these rules apply both before and after judgment. That is the position under the Rules in England and Wales on which these rules are ultimately based – see White Book, para 12.2.6.
17. The First Defendant’s primary objection to the application was that it had not consented to the assignment. According to the First Defendant, the terms of the Prospectus stated that its consent was required.
18. I reject this argument.
19. First, the First Defendant was unable to point to any term of the Prospectus which had that effect. Mr Shek initially identified “*section 6*” of the Prospectus as the relevant provision. Section 6 deals with the management of the issuer of the Bonds. It does not obviously relate to assignments and Mr Shek was unable to point to any language that supported his position.
20. In the course of his submissions, Mr Shek asked for an adjournment of the hearing to the following day, 22 May 2025, to allow him to be better prepared. He was, he said, attending a funeral and had had to travel to a different region of Kazakhstan. I refused the application. While the Court expresses its condolences to Mr Shek, I consider that the First Defendant had had enough time to prepare its

position. Having asserted that the Prospectus prohibited the assignment, I would have expected the First Defendant to be able to identify the provision concerned. In addition, the Court would not have been available to reconvene for some time, meaning any adjournment would have had to be for a number of weeks, not for a single day. Given the position of NEF & RAM that it would need to consider terminating the Agreement if the Claimants did not procure the substitution sought, I considered it would be unfair to the Claimants to subject them to further delay. I would add that I would be extremely reluctant to grant any last-minute adjournment without proper evidence and without any notice being given to the other parties. There is no obvious reason why the First Defendant could not have applied sooner or found someone else to present the position of the First Defendant.

21. In the circumstances, I reject the argument that anything in the Prospectus prevented the assignment. It would seem highly unusual for bonds to be subject to such a restriction. Bonds are usually tradeable instruments.
22. Second, it is doubtful that terms as to the assignment of the Bonds would be relevant. It is the Judgment Debt, not the Bonds, which has been assigned.
23. I accept the Claimants' argument that the Judgment Debt is property within the meaning of the Property Regulations. The term "*Property*" is defined in Schedule 1 to mean:

"anything (other than Real Property) that may be owned and Transferred under the Acting Law of the AIFC, and, as the context requires, may refer to either the thing itself or title to it."

24. A judgment is generally considered to be a *chose in action* which is capable of assignment.
25. Transfers of property are governed by Article 8 of the Property Regulations. This provides, at Article 8(1):

"If there is a consensual Transfer of Property, title is Transferred to the Transferee at the time that the Transferor and the Transferee mutually intend it to be Transferred."

26. In those circumstances, there appears to be no requirement that the First Defendant consent to the assignment, whether pursuant to the law or under the terms of the Prospectus.
27. The First Defendant's second argument – that the payments made by NEF & RAM to the Claimants were "*illegal*" appeared to boil down to the argument that there was no consent and that consent was required. Mr Shek was unable to point to any other contractual terms which were relevant. Nor could he identify any AIFC rule or regulation which applied and which prohibited the assignment.
28. The First Defendant's third argument was that Ms Mirasheva was not authorized by "*the bondholder*". On questioning, it emerged that the First Defendant does not Ms Mirasheva's authority to act on behalf of the Claimants and I have in any event been provided with copies of powers of attorney issued by each of them. Instead, the complaint was that the Agreement also related to other bondholders who had not issued powers of attorney.
29. I reject this argument.
30. First, it is irrelevant. The issue before me is whether there has been a valid assignment of the Judgment Debt. I am not concerned with Ms Mirasheva's authority to act for bondholders who were not Claimants.
31. Second, I have been shown nothing to suggest that Ms Mirasheva required a power of attorney from the other bondholders in order to conclude the Agreement on their behalf.

32. The First Defendant's fourth argument was that there had been "*procedural violations*" by the Claimants. On questioning, Mr Shek said that AIX Rules required notification where there was a change of a party. He said that the First Defendant had not received notice from AIX or from the Claimants; it had only received notice from NEF & RAM, with which it had no contractual relationship.
33. I was not shown any relevant provision of AIX Rules. It is very difficult to see how they could impose restrictions on the assignment of AIFC Court judgments. Nor was I shown anything else which required notice to be provided, or that it was required to take a particular form. In any event, the First Defendant plainly did receive notice. The Agreement was sent to the First Defendant on 19 November 2024. The fact that this was sent by NEF & RAM makes no obvious difference. Furthermore, the Agreement was included in the application made by the Claimants, which was served on the First Defendant. At the very least, that would be sufficient, even if there was a requirement that the Claimants themselves give notice.
34. The First Defendant's "*demand*" for an investigation into AIX's conduct and that of its employees is not a proper objection to the application. Any regulatory complaint should be made to the regulator. In any event, Mr Shek did not elaborate on the conduct which was said to justify such an investigation. I have seen nothing to suggest that there has been any regulatory breach.
35. In the circumstances, I allow the application and order that NEF & RAM shall be substituted for the Claimants as a party to these proceedings and that the AIFC Court shall issue execution orders in favour of NEF and RAM as the new judgment creditor under the Judgment of 25 June 2024. For good order, I shall direct the Court to cancel the existing execution orders in favour of the Claimants.

By Order of the Court,

Justice Tom Montagu-Smith KC,
Justice, AIFC Court

Representation:

The Claimant was represented by Ms Guldana Mirasheva, Legal representative.

The First Defendant was represented by Mr Alexander Shek, Legal representative.

NEF & RAM LLP was represented by Ms Olga Kichigina, Legal Representative.