

IN THE COURT OF FIRST INSTANCE  
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

23 September 2025

CASE No: AIFC-C/CFI/2025/0021

MICHAEL WILSON & PARTNERS, LIMITED

Claimant

v.

(1) CJSC KAZSUBTON

(2) KAZPHOSPHATE LLP

(3) KAZPHOSPHATE LIMITED

Defendants

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JUDGMENT AND ORDER

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Justice of the Court:

Justice Sir Stephen Richards

## ORDER

1. **The claim is dismissed.**
2. **Costs are reserved.**

## JUDGMENT

### Introduction

1. This case arises out of costs orders made by this Court against the Claimant (“MWP”) and in favour of the Second Defendant (“KPLLP”) and the Third Defendant (“KPL”) on 31 October 2023 in Case No. AIFC-C/CFI/2023/0002. Execution Orders to give effect to the costs orders were made by the Court on 23 February 2024. On an application by MWP the Execution Orders were subsequently varied to a limited extent by Order of the Court dated 10 January 2025. A fuller summary of the background to the case can be found at paragraphs 2-3 of the Court’s judgment dated 6 May 2025 in Case Nos. AIFC-C/CFI/2023/0002, AIFC-C/CA/2023/0040 and AIFC-C/CFI/2024/0018, *Michael Wilson & Partners v (1) CJSC KazSubton, (2) Kazphosphate LLP, (3) Kazphosphate Limited, and Michael Earl Wilson*.
2. By a claim form registered on 3 June 2025, MWP has brought a late challenge to the lawfulness of this Court’s role in relation to the initiation of the enforcement process following the making of the Execution Orders. The procedural history of the claim is set out later in this judgment. It led to a video hearing on 10 September 2025 at which MWP was represented by Mr Michael Wilson and Mr Yermek Aubakirov; KPLLP by Ms Mariya Petrenko; and KPL by Mr Usen Tastanbekov. The First Defendant has played no part in the proceedings.

### The factual history

3. Part 30 of the AIFC Court Rules contains rules that provide *inter alia* for a party to obtain an Execution Order to enforce a judgment or order of the Court within the Republic of Kazakhstan. By Rule 30.2 a party in whose favour an order is made for the payment of money may apply to the Court for an Execution Order. Such an application may be made without notice (Rule 30.3) and will ordinarily be determined by an Enforcement Judge of the Court (Rule 30.4). The Court may deal with an application without a hearing (Rule 30.8).
4. By requests dated respectively 30 November 2023 and 13 December 2023, KPLLP and KPL applied without notice for Execution Orders for payment of the costs ordered in their favour by the Court’s judgment of 31 October 2023.
5. The requested Execution Orders were issued on 23 February 2024 by the duly appointed Enforcement Judge, who is also the Registrar of the Court.
6. By letters of the same date the Registrar sent the two Execution Orders, together with copies of the AIFC Court’s judgment, to the Chairman of the Republican Chamber of Private Enforcement Agents

of the Republic of Kazakhstan (“the RCPEA” or “the Republican Chamber”). The letters were numbered respectively “No.17” (enclosing the KPLLP Execution Order) and “No.18” (enclosing the KPL Execution Order) and included respective details of the costs orders made by the AIFC Court but were otherwise in identical terms, as follows:

*“APPLICATION  
on initiation of Enforcement proceedings*

*The Astana International Financial Centre Court (hereinafter – the AIFC Court), following the Cooperation Agreement between the AIFC Court and [the RCPEA] dated 26 February 2019 hereby sends the Execution Order No.2 dated 23 February 2024 for distribution and initiation of enforcement proceedings in accordance with the requirements of Article 37 of the Law of the Republic of Kazakhstan dated 2 April 2010 No.261-IV ‘On Enforcement Proceedings and the Status of Enforcement Agents’ ...”.*

The Law of 2 April 2010 mentioned in the letters is referred to hereafter as “The Law on Enforcement Proceedings”.

7. The RCPEA then assigned the Execution Orders to private enforcement agents, or bailiffs, to initiate enforcement proceedings. The AIFC Court Registry was notified of this by the RCPEA and passed on the information to KPLLP and KPL. The Registry subsequently received and passed on to KPLLP and KPL contact details of the enforcement agents appointed. The next stage in the process was entry by KPLLP and KPL into an agreement with the enforcement agent for payment of fees etc. It is unnecessary, however, to go into the details of that or into the difficulties experienced later in the enforcement process.

The legal framework

8. Article 13(8) of the AIFC Constitutional Statute provides that “*Decisions of the AIFC Court are to be enforced in the Republic of Kazakhstan in the same way, and on the same terms, as decisions of the courts of the Republic of Kazakhstan*”. Regulation 40(2) of the AIFC Court Regulations provides in turn that “*Judgments, orders and directions of the Court ... may be enforced in ... the Republic of Kazakhstan in accordance with the AIFC Constitutional Statute*”. The national enforcement regime is therefore made available to the AIFC Court in the same way as to the ordinary courts of Kazakhstan.
9. Article 241 of the Civil Procedural Code of the Republic of Kazakhstan contains general provisions concerning enforcement of court decisions. Article 241(5) reads (in unofficial English translation):

*“For each court decision, one writ of execution shall be issued. The writ of execution shall be issued to the claimant or, upon his/her application, shall be sent by the court for implementation to the appropriate body of justice or the regional chamber of private bailiffs by territoriality.”*

(A similar approach applies under the Article 158(1) of the Civil Procedural Code which deals specifically with enforcement of a decision on security of a claim.)

10. Article 37 of the Law on Enforcement Proceedings contains further relevant provisions. It is headed “Adoption of a court order to proceedings” and reads (in unofficial translation):

*“(1) Enforcement agent shall initiate enforcement proceedings on the basis of a court order at the request of recoverer, unless otherwise [was not] established by this Law and other legislative acts of the Republic of Kazakhstan. [I have put the words “was not” in square brackets because the evident intention of the statutory proviso is better reflected by their omission from the translation of the text.]*

*(2) A statement shall be signed by recoverer or his representative. A representative shall attach to the statement a power of attorney or other document, proving his credentials ....*

*(3) A state bailiff shall initiate an enforcement proceeding without the request of the collector in cases where the enforcement document was sent to him by a court or another body (official).*

*A private bailiff shall initiate an enforcement proceeding without the request of the collector in cases where the enforcement document was sent to him in the manner prescribed by subparagraph 2) of paragraph 1 of Article 162 of this Law.*

*(4) The bailiff, after receiving a writ of execution corresponding to the requirements established by the legislation of the Republic of Kazakhstan, initiates enforcement proceedings no later than three working days, about which he makes a decision.*

*When initiating enforcement proceedings, a private enforcement agent concludes an agreement (agreement) with the recoverer on the conditions for the execution of the enforcement document ....”*

11. Article 37(3) refers both to state bailiffs and to private bailiffs. This case is concerned with private bailiffs, whose areas of responsibility are laid down by Article 138 of the Law on Enforcement Proceedings.
12. Article 162 of the Law on Enforcement Proceedings, to which the second subparagraph of Article 37(3) refers, sets out the powers of regional chambers of private enforcement agents. It provides in subparagraph 2) of paragraph 1 that the regional chamber “*distributes enforcement documents through the state automated information system of enforcement proceedings between private enforcement agents in the manner determined by the authorized body*”. It is to the receipt of enforcement documents through that system that Article 37(3) refers.
13. The RCPEA, or Republican Chamber, is the central, supervisory body for the regional chambers of private enforcement agents. Its powers and responsibilities are laid down by Article 163-1 of the Law on Enforcement Proceedings and include, in paragraph 1(1), the duty to “*coordinate the activities of the regional chambers of private enforcement agents*”.
14. The enforcement of judgments and orders of the AIFC Court has been accommodated neatly within the framework of domestic Kazakh law described above.

15. A party seeking to enforce a judgment or order of the AIFC Court within the Republic of Kazakhstan must first apply to the Court under Part 30 of the AIFC Court Rules for an Execution Order, as summarised in paragraph 3 above. An Execution Order issued by the AIFC Court has the same status for enforcement purposes within Kazakhstan as a writ of execution issued by the ordinary courts of Kazakhstan. This is underlined, for example, by the provisions of the Law on Enforcement Proceedings that include, in the list of court orders for the purposes of the Law, “writ of execution issued on the basis of court decisions of the Astana International Financial Centre” (Article 9(1-1)) and that set a time limit for submission of such a writ of execution to a compulsory enforcement (Article 11(1-1)).
16. When an Execution Order is issued by the AIFC Court in a case calling for the use of a private enforcement agent, the procedure laid down is that agreed between the Court and the RCPEA in a Cooperation Agreement dated 26 February 2019. This was the Agreement referred to in the two letters by which the Registrar of the AIFC Court sent the Execution Orders to the RCPEA in the present case (see paragraph 6 above). Article 1.2 of the Agreement states that “*The Cooperation Agreement was developed to ensure the enforcement of the AIFC Court’s judgments in the Republic of Kazakhstan by regulating and coordinating the cooperation between the AIFC Court and the RCPEA*”. The main section of the Agreement, headed “*Cooperation Procedure*”, reads in relevant part:

*“2.1 The AIFC Court, represented by the Registrar and Chief Executive of the AIFC Court (hereinafter – ‘the Registrar’) or another official of the AIFC Court Registry, duly authorized by the Registrar, issues an execution order (hereinafter – ‘the Execution Order’ in respect of a decision or order of the AIFC Court, including orders on enforcement of arbitration awards issued by the International Arbitration Centre. The Execution Order is issued to a party in whose favour the AIFC Court decision or order has been granted (hereinafter – ‘the Prevailing Party’) or is sent by the AIFC Court to the RCPEA in hard copy upon the Prevailing Party’s request.*

*2.2 In addition to the Execution Order, the AIFC Court shall serve on the RCPEA or the Prevailing Party the relevant AIFC Court decision or order, translated in Kazakh or Russian languages with the note specifying the effective date, signed by the Enforcement Judge of the AIFC Court and marked with the stamp of the AIFC Court.*

*Where possible, the Execution Order may be sent to the RCPEA in an electronic form, certified by the electronic signature of the Enforcement Judge.*

*2.3 The RCPEA registers and assigns the Execution Order ... on the day of receipt.*

*2.4 From the moment of the assignment to a Private Enforcement Officer according to the Rules of Assignment of Enforcement Cases among Private Enforcement Officers, as approved by [a ministerial decree], the enforcement proceedings order shall be initiated by the enforcement officer and the AIFC Court shall be notified of this.*

*...*

*2.8 The responsible Private Enforcement Officer shall inform the AIFC Court of the results of the enforcement proceedings involving the decisions and orders of the AIFC Court.”*

(An earlier Memorandum of Cooperation between the AIFC Court and the RCPEA, dated 28 August 2017, was referred to in argument but it does not appear to me to have any additional significance for the present case.)

17. I have no doubt that the procedures laid down in the Cooperation Agreement, with Execution Orders being channelled through the RCPEA rather than being sent to a regional chamber, are compatible with Article 241(5) of the Civil Procedural Code. Indeed, Mr Tastanbekov told me that when a party requests the transmission of a writ of execution for enforcement purposes in a case involving one of the ordinary courts of Kazakhstan, the court decides whether to send the document to the RCPEA or to a regional chamber for onward transmission.
18. As to Article 37 of the Law on Enforcement Proceedings, I was also told by Mr Tastanbekov that the RCPEA sends enforcement documents to private enforcement through the state automated information system referred to in subparagraph 2) of paragraph 1 of Article 162, so that the second subparagraph of Article 37(3) applies in such a case. Even if that were not correct, the compatibility of the procedure with Article 241(5) of the Civil Procedural Code means that transmission of enforcement documents in accordance with the Cooperation Agreement falls within the “unless otherwise ... established” proviso to Article 37(1).

#### MWP’s challenge

19. MWP’s case is that the Registrar’s letters of 23 February 2023 sending the Execution Orders to the RCPEA were *applications by the Court on behalf of KPLLP and KPL* seeking the initiation of enforcement proceedings and that this went beyond the proper role of the Court. It is submitted that under Article 37(1) and (2) of the Law on Enforcement Proceedings it is for the relevant party to make such an application, which shall be signed by the party itself or by its legal representative (attaching a power of attorney or other document certifying his authority). It is further submitted that in acting for the parties in making the enforcement applications, the Court “entered the fray”, which no court should ever do. The relief sought is that the “applications” by the Court should be declared null and void and should be rescinded and set aside.
20. In elaboration of that case in oral submissions, Mr Wilson argued that KPLLP and KPL, whilst requesting the issue of the Execution Orders, did not request the transmission of those Orders to the RCPEA. MWP contends that there has been inadequate disclosure and that the basis on which the Court acted as it did has not been disclosed, but that the incomplete documentary material that has been disclosed indicates that the parties did not know what was going on. The Court told KPLLP and KPL after the event about the applications it had made, and also provided them with information about the private enforcement agents that had been appointed. It acted for them and helped them, going beyond its proper role. Complaint is also made about the *ex parte* nature of the whole exercise, with no notice being given to MWP.

#### The submissions of KPLLP and KPL

21. KPLLP’s position is that in so far as the claim is directed against KPLLP as a defendant it is improperly directed and should be dismissed. No allegations of wrongdoing are made against KPLLP. The claim

relates solely to the actions of the Court's Registry in its administrative capacity. Further, KPLLP has sought to enforce a binding costs order of the AIFC Court in its favour, and MWP has failed to identify how its rights have suffered because of the way in which enforcement was initiated: the result would have been the same if KPLLP had acted itself directly to initiate enforcement. In her oral submissions Ms Petrenko submitted in any event that the proper procedure had been followed: KPLLP applied for an Execution Order together with an implied request for transmission of that Order to the RCPEA in accordance with the Cooperation Agreement. She also submitted that KPLLP had disclosed all relevant documents.

22. KPL takes the same position that the claim should be dismissed as against KPL as it is not a proper party to the proceedings, in that the relief sought relates solely to administrative acts undertaken by the Court Registry and is not directed at KPL. Without prejudice to that primary objection, KPL submits further that MWP's argument that only the creditor may initiate enforcement is unsustainable and that the Registry acted in full compliance with the applicable legal framework in transmitting execution documents to the RCPEA. It is submitted that the Claim Form fails to engage with the express powers conferred on the Court under both AIFC and Kazakh law. In his oral submissions Mr Tastanbekov submitted that Article 241(5) of the Civil Procedural Code applies directly and is mirrored in the Cooperation Agreement. He referred me to a decision of the Specialized Interdistrict Administrative Court of the Almaty Region (Decision dated 8 April 2025 in Case No. 1993-24-00-4/318) on the application of Article 245(1). I have already touched on his submissions about the applicability of the second subparagraph of Article 37(3) of the Law on Enforcement Proceedings. Among other submissions, he referred to the "without notice" nature of applications for enforcement, and submitted that if no request for transmission of the Execution Order to the RCPEA was made by KPL, the only party with standing to challenge the transmission would be KPL itself.

### Discussion

23. In my judgment, on the basis of the legal framework described above, the Cooperation Agreement lays down a lawful procedure for the initiation of enforcement proceedings in respect of judgments or orders of the AIFC Court:
- (1) The first step is the making of an Execution Order by the AIFC Court. The procedure for obtaining such an order is laid down by Part 30 of the AIFC Court Rules.
  - (2) Once an Execution Order is made, two alternative routes are available for giving effect to it, as provided for in Article 2.1 of the Cooperation Agreement. In summary:
    - (a) The Execution Order may be issued by the AIFC Court to the party in whose favour the relevant judgment or order was made (that is in practice the party who applied for the Order: see the wording of Rule 30.2 of the AIFC Court Rules). That party can then itself apply to a bailiff under Article 37(1) of the Law on Enforcement Proceedings for the initiation of enforcement proceedings and enter into the necessary agreement with that bailiff as to payment of fees etc.



- (b) Alternatively, the Execution Order may be sent by the AIFC Court to the RCPEA upon the request of the party in whose favour the relevant judgment or order was made. Where this is done and the supplementary requirements in Article 2.2 as to accompanying documents are met, the RCPEA registers the Execution Order and assigns it to a bailiff (Article 2.3). The bailiff must then initiate the enforcement proceedings, and the AIFC Court must be notified of this (Article 2.4). The notification enables the AIFC Court to provide the relevant information to the party concerned, and that party will then need to enter into the necessary agreement with the bailiff as to payment of fees etc. This alternative procedure fits within Article 37 of the Law on Enforcement Proceedings, as already explained, on the basis that the second subparagraph of Article 37(3) applies or on the basis that the procedure is covered in any event by the “unless otherwise ... established” proviso to Article 37(1).
24. Where the procedure in (2)(b) above is followed, the AIFC Court is performing straightforward administrative functions in sending the documents to the RCPEA and thereafter in receiving information as to the initiation of the enforcement proceedings and sending such information on to the party concerned. The procedure provides for the Court to act in the first place upon the *request* of the party concerned, and the act of transmission of the documents to the RCPEA may be loosely described as an “application”, but the Court is *not* on proper analysis making an application at all and it is certainly not acting in any way *on behalf of* the party concerned. It is not “entering the fray” or going beyond the proper role of a court. It is simply carrying out administrative tasks that are its proper responsibility in accordance with the applicable legal framework.
25. The letters dated 23 February 2024 from the Court’s Registry to the RCPEA in the present case (see paragraph 6 above) could have been better expressed but give effect in substance to the Court’s role under the procedure in (2)(b) above. They state that the Court “*following the Cooperation Agreement hereby sends the Execution Order No.2 ... for distribution and initiation of enforcement proceedings ...*”, which makes clear that the function of the letters is to transmit the attached Execution Orders to the RCPEA for implementation pursuant to the Cooperation Agreement. The text continues, “*in accordance with the requirements of Article 37 of [the Law on Enforcement Proceedings]*”, which is an incomplete reference to the legal position as described above, but that does not affect the function of the letters or what they achieve. The heading to the letters, “*APPLICATION on initiation of Enforcement proceedings*”, is inaccurate since strictly speaking the letters do not constitute or contain an application but are concerned only with the transmission of documents; but it is the substance of the letters that matters and nothing ultimately turns on the heading.
26. It follows that the procedure in (2)(a) above, involving an application by a party to a bailiff under Article 37(1) of the Law on Enforcement Proceedings, was not in play in this case, and I reject MWP’s case that the AIFC Court was acting unlawfully by making applications on behalf of KPLLP and KPL that should have been made under Article 37(1) by those parties themselves.
27. I also reject MWP’s complaint that it was not given notice at the time of what was being done. By Rule 30.3 of the AIFC Court Rules an application for an Execution Order may be made without notice; and likewise the procedure laid down by the Cooperation Agreement does not require the giving of



notice to the party against whom enforcement is sought. That party knows of the judgment or order of the AIFC Court enforcement of which is sought, and will be provided with relevant information by the bailiff following initiation of enforcement proceedings, but it is not entitled to notice of the steps taken to bring about the initiation of such proceedings.

28. One point advanced on behalf of MWP does, however, have substance to it, namely that Article 2.1 of the Cooperation Agreement, mirroring Article 241(5) of the Civil Procedural Code, provides for the Execution Order to be sent to the RCPEA *upon the request* of the party concerned, yet there does not appear to have been any such request either by KPLLP or by KPL in this case. The documentary evidence is patchy and unsatisfactory, but the AIFC Court Registry undertook an extensive exercise earlier this year to disclose documents requested by MWP; I accept what KPLLP and KPL say to the effect that they have no further material documents to disclose; and I do not think that any order for further disclosure would be capable of achieving any useful purpose or that such an order is necessary or appropriate. The case can and must be decided on the basis of the existing disclosed material. That material establishes that KPLLP and KPL each requested the making of an Execution Order by the AIFC Court, but it contains nothing to suggest that either of those parties also requested the Court to send the Execution Orders to the RCPEA. There was certainly no express request to send the Execution Orders to the RCPEA; nor is there sufficient in my view to justify the implication of such a request. The probability is that the need for such a request was simply overlooked by the Registry.
29. That brings me to the question of remedy. I am satisfied that the grant of relief in a case such as this lies in the discretion of the Court. The claim is analogous to a claim for judicial review under the law of England and Wales, although the specific procedural framework of judicial review does not exist under the AIFC Court Rules and the claim is brought under the standard procedures of those Rules. The Court is not named as a defendant to the claim but the substance of the challenge is directed at the actions of the Court's Registry. KPLLP and KPL are properly named as parties to the claim, since they are directly affected by the relief sought and would be joined as interested parties in a claim for judicial review; indeed, they had very helpful submissions to make on the issues in the case. In judicial review the court has an ultimate discretion, to be exercised for good reasons, to refuse relief even where an error of law has been established. The same must apply to proceedings of a similar character in the AIFC Court. Moreover, the existence of a discretion is inherent in Regulation 27(3) of the AIFC Court Regulations which confers a power on the Court to "*grant all such relief and make all such orders as may be appropriate and just, in accordance with the overriding objective ...*".
30. In the exercise of my discretion, I refuse the relief sought by MWP. Although the Registry was in error in sending the Execution Orders to the RCPEA without a request by KPLLP or KPL, it is clear that both those parties would have made such a request if their attention had been drawn to the issue at the time. They were evidently keen to pursue enforcement action and had no complaint about the course adopted. The RCPEA, for its part, was entitled to treat at face value the letters sending the Execution Orders and to give effect to the process leading to the initiation of enforcement proceedings; and once the Execution Orders were assigned to bailiffs, KPLLP and KLP entered into the relevant agreements with those bailiffs so as to enable the process to continue. Moreover all this happened a long time ago, early in 2024. Execution took place thereafter to the extent that relevant assets could be found. MWP applied in the course of 2024 to have the Execution Orders withdrawn and reissued in amended form. That led to a limited variation of the Orders but the

application was otherwise refused by an Order of the Court dated 10 January 2025; and MWP's application for permission to appeal against that order was dismissed by judgment dated 28 May 2025 in Case No. AIFC-C/CA/2025/0004. I accept that the delay in bringing the present challenge is explained in part by the time it took for MWP to obtain disclosure of documents that showed the procedure that had been followed, but in my view it is still far too late to go back to the start of the enforcement process by setting aside the letters sending the Execution Orders to the RCPEA in the first place. In any event, setting those letters aside would have no effect on the underlying costs orders to which the Execution Orders relate and which KPLL and KPL remain entitled to enforce. The enforcement process could, and no doubt would, be started again, whether by correct use of the procedure under the Cooperation Agreement or by applications by KPLL and KPL under Article 37(1) of the Law on Enforcement Proceedings, and the same result could be expected, though after further delay and with additional cost. In all the circumstances I think that the appropriate and just course, despite the Registry's error, is to leave in place the two letters to the RCPEA and the legal consequences that flowed from them.

#### The procedural history of the case

31. I have left this topic to the end of the judgment so as not to distract from the substantive issues in the case. Since MWP has taken issue with the procedure adopted, however, and has bombarded the Court and the parties with correspondence raising procedural issues, it is necessary for me to deal with the topic.
32. The claim form was registered, as I have said, on 3 June 2025. Defences were duly filed by KPLL and KPL on 1 July 2025 and 9 July 2025 respectively. An "outline Reply" was filed by MWP on 22 July 2025, with a claimed reservation of "the right to add to, supplement and vary these Outline Reply ... when the Memorandum and Cooperation Agreement ... are finally produced and disclosed, together with all (not just some) of the *ex parte* correspondence and documents ...".
33. On 23 July 2025 my Directions, drafted before receipt of the outline Reply, were sent to the parties. They provided:

*"(2) Copies of the Cooperation Agreement between the AIFC Court and the Republican Chamber of Private Enforcement Agents dated 26 February 2019 ("the Cooperation Agreement"), to which reference is made in the letters dated 23 February 2024 from the Court's Registry to the Republican Chamber, are to be supplied forthwith by the Court's Registry to the parties.*

*(3) Time for MWP's Reply is extended to 17.00 Astana time on Friday 8 August 2025 to allow for account to be taken of the Cooperation Agreement.*

*(4) KPLL and KPL are to have until 17.00 Astana time on Friday 8 August 2025 to file and serve any written submissions arising out of the Cooperation Agreement.*

*(5) No further written pleadings or submissions may be filed thereafter without the express permission of the Court.*

*(6) Any further evidence, legislation and authorities relied on by any party are to be filed and served by 17.00 Astana time on Friday 22 August 2025.*

*(7) Subject to any further directions by the Court's Registry, e-bundles for the hearing of the application are to be prepared in accordance with the Court's Practice Direction No.5: Bundles and are to be filed by 17.00 Astana time on Friday 29 August 2025 ....*

*(8) The application is to be listed for hearing by video link at 10.00 UK time, 14.00 Astana time, on Wednesday 10 September 2025, with a time estimate of 1.5 hours.*

*(9) The parties have liberty to apply to vary these directions."*

34. The timetable in the Directions was set with the aim of achieving a reasonably speedy resolution of the case, given the staleness of the claim (challenging enforcement action commenced in February 2024) and the importance of avoiding further delay.
35. MWP reacted to the Directions by email dated 25 July 2025, stating that a revised draft order would be sent early the following week pursuant to the liberty to apply; and further stating *inter alia* that "with reference to paragraph 3 MWP is fully committed for the week commencing 08.08.25, and also for the week ending 22.08.25, as referred to in paragraph 6. ... MWP is also unfortunately otherwise committed on 10.09.25". No detail of the commitments was given.
36. MWP sent the promised draft amended directions by email dated 8 August 2025. The draft proposed an order for disclosure of documents by KPLL, KPL and the AIFC Court Registry, together with amendments to the content of, and/or the dates laid down by, paragraphs 2, 3, 6, 7 and 8 of my Directions. KPLL and KPL both submitted objections to the proposed amendments.
37. By a decision sent to the parties by email from the Registry dated 26 August 2025 I refused MWP's application to amend the Directions and directed that those Directions were to stand in the form in which they were issued. Brief reasons were given in writing at the time, as follows:

*"(1) No sufficiently cogent reason has been put forward to justify any of the amendments sought to the timetable laid down by the Directions. (2) As to §3 of the Directions, MWP filed an outline Reply at about the same time as the Directions were issued, with the consequence that the outline Reply did not take account of the Cooperation Agreement. But MWP had the opportunity, within the extended time allowed by §3 of the Directions, to file a full Reply that did take account of the Cooperation Agreement or, if in doubt about compliance of that with the Directions, to submit a draft amended Reply and seek permission of the Court under §5 of the Directions for its filing. MWP did not adopt either course. It will nevertheless have an opportunity at the video hearing on 10 September 2025 to make oral submissions relating to the Cooperation Agreement."*

38. I would add, by way of further explanation, that the generalised reference to commitments affecting all the relevant dates did not persuade me that MWP was unable to take the relatively limited steps

needed to meet the timetable in the Directions; and as regards the hearing date in particular, there was ample opportunity to instruct alternative counsel (including Mr Aubakirov, who had represented MWP in a previous case before me) if Mr Wilson was unavailable.

39. In emails dated 28 August 2025 and 29 August 2025 MWP complained about that decision, asserting that the timetable did not take account of MWP's prior commitments, specifically mentioning (for the first time) a hearing in Vancouver, Canada on the day of the video hearing. The issue of disclosure of documents was raised again, coupled with a request for a short directions hearing.
40. On 29 August 2025 MWP also filed a 397 page ebundle, without prejudice to its submissions about timetable but showing an ability to comply at least in part with the timetable in the Directions. The Registrar, acting pursuant to §7 of my original Directions had in fact directed KPLL's representatives to prepare the ebundle, and objection was therefore taken by KPLL to the filing of MWP's ebundle. Nothing, however, turns on that for present purposes: at the hearing, in the interests of avoiding unnecessary argument, I allowed reference to MWP's ebundle as well as to the ebundle properly filed by KPLL.
41. Further emails complaining about the timetable were sent by MWP on 4 September, 8 September and 9 September 2025, referring again to MWP's commitment in Vancouver and stating that the hearing date fixed by my Directions would have to be vacated. The parties were informed by the Registry on 9 September that I had considered the correspondence and that the video hearing would proceed as planned in accordance with those Directions. The point was made that there had been ample time to instruct alternative counsel.
42. Late on 9 September 2025 MWP filed a new application seeking further disclosure and also seeking a case management conference, directions and a listing of the case for hearing on a date mutually convenient to the Court and the parties once disclosure had been given. Whether or not this application was designed to prevent the video hearing fixed for 10 September from proceeding, the hearing did in fact proceed on that date. In the event, notwithstanding all its previous objections, MWP fielded both Mr Wilson and Mr Aubakirov to make oral submissions on its behalf at the hearing. At the outset of the hearing I heard submissions from Mr Wilson and counsel for KPLL and KPL on the new application; and having heard such submissions, I refused the application for reasons to be given at a later date as part of this judgment. This was followed by an oral application by Mr Wilson that I recuse myself from the case on grounds of apparent bias. I refused that application as well, for reasons to be included in this judgment. I then proceeded to hear full submissions from counsel, including submissions from both Mr Wilson and Mr Aubakirov, on MWP's claim, before reserving judgment on the case.
43. On 12 September 2025, two days after the hearing, MWP sent the Court and the parties an email attaching or providing a link to further material, namely a Law Society article and a 2022 judgment of the England and Wales Court of Appeal. No explanation was proffered as to why this material had not been provided in a timely manner. KPLL and KPL both objected to its introduction after the conclusion of the hearing. I uphold those objections and have had no regard to the additional material.

44. In so far as the new application filed on 9 September was concerned with disclosure, MWP sought *“compliance by the AIFC [Court] Registry, KPL and KPLLP with its prior application of 09.12.24 requiring the provision and disclosure of all ex parte and without notice correspondence and documents, passing between the AIFC, KPL and KPLLP, as well as the RCPEA and other parties, none of which has been provided to MWP”*. My reasons for refusing to make any order for further disclosure have been dealt with briefly but sufficiently at paragraph 28 above. In the absence of an order for further disclosure, the application for a case management conference etc effectively fell away. I have already given my reasons for adhering previously to the timetable laid down in my original Directions, and the application contained no cogent reasons for a last-minute departure from that timetable.
45. The application that I recuse myself on grounds of apparent bias was put essentially, as I understood it, on the basis that no impartial judge could sensibly have refused the new application. I do not accept, however, that the relevant circumstances, including my refusal of that application for the reasons I have given, would get even remotely near to leading a fair-minded and informed observer to conclude that there was a real possibility that I was biased (see the test in *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 356).
46. I should mention finally a different point concerning alleged lack of impartiality, raised by MWP in emails though not advanced as part of its pleaded case. It is said that Clyde & Co have been involved in acting elsewhere for the Kazphosphate group and also lie behind the lawyers for KPLLP and KPL (respectively TKS Disputes and Kinstellar) in the litigation brought against the Kazphosphate companies by MWP in Kazakhstan; and that in those circumstances the participation of Messrs Clyde & Co in training events and other professional events organised by the AIFC Court has given rise to *“conflicts of interest and perceived, if not actual, concerns of lack of partiality”* on the part of the Court. The contention lacks any foundation either factually or as a matter of law. As to the facts, TKS entirely denies all allegations as to the alleged influence of Clyde & Co over TKS or any improper involvement of Clyde & Co in AIFC proceedings, and has stated that *“TKS is not a ‘local agent’ of Clyde & Co but is an independent counsel and has no professional or operational relationship with Clyde & Co in relation to these proceedings”*. Kinstellar likewise wholly denies the allegations and states that *“Kinstellar does not act as a local agent of Clyde & Co and Clyde & Co has not been involved in the preparation, management or conduct of this litigation”*. There is no reason to doubt the truth of those statements. In any event, participation (whether by Clyde & Co or by Kazakh legal firms such as TKS and Kinstellar) in professional events organised by the AIFC Court or the related International Arbitration Centre cannot have any conceivable impact on the independence and impartiality of the Court or the individual judges of the Court. There is nothing in the point raised by MWP.

### Conclusion

47. For the reasons I have given, the claim is dismissed.
48. Both KPLLP and KPL indicated that they would be making applications for costs. Any such application must be made in writing within 2 weeks of the date of this judgment; any response by MWP must be made in writing within 2 weeks thereafter; and in the absence of any further direction the Court will reach a decision on the applications in writing and without a further hearing.



By the Court,

The Rt Hon. Sir Stephen Richards

Justice, AIFC Court

Representation:

The Claimant was represented by Mr Michael Wilson and Mr Yermek Aubakirov, of Michael Wilson & Partners, Limited, Almaty, Kazakhstan.

The First Defendant did not appear and was not represented.

The Second Defendant was represented by Ms Mariya Petrenko, Associate at TKS Disputes, Almaty, Kazakhstan.

The Third Defendant was represented by Mr Usen Tastanbekov, Junior Associate at Kinstellar, Almaty, Kazakhstan.