

PRACTICE DIRECTION NO. 4: AIFC COURT CODE OF CONDUCT FOR LEGAL PRACTITIONERS

Part 1. Governing principles

1. The Astana International Financial Centre Court (the “**Court**”) was established to uphold the law by ensuring just and effective resolution of disputes within the Court’s jurisdiction. By registering with the Court to practice in the Court, each individual registered legal practitioner (the “**Practitioner**”) undertakes to:
 - a. Comply with the provisions of this Code of Conduct (as amended from time to time) (the “**Code**”) and the following governing principles (the “**Governing Principles**”).
 - i. to act with independence, integrity and civility;
 - ii. to comply with their duties to the Court and to other Practitioners;
 - iii. to act in the best interests of their clients;
 - iv. keep confidential the affairs of their clients; and
 - v. to maintain proper standards of professional practice, uphold the rule of law and enhance the honour, integrity, and dignity of the legal profession.
 - b. Recognise the Court’s power to refuse to permit the Practitioner to represent a party (or continue to represent a party) where, in the opinion of the Judge hearing the matter and/or the Registrar of the Court (the “**Registrar**”), the integrity of the process would be threatened by that Practitioner’s representation of the party or the fair administration of justice in accordance with the Overriding Objective in Part 1.6 of the AIFC Court Rules (the “**Rules**”) would be put in peril.
 - c. Recognise the Court’s power to suspend, terminate or place conditions on the Practitioner’s registration and power to sanction any breach of the Code in the circumstances set out in Part 6 of the Code.
2. For the purposes of the Code, practice in the Court includes the issue and conduct of proceedings as well as advocacy.

Part 2. Duties owed to the Court

3. Practitioners shall deal with the Court and its staff honestly, cooperatively, and with integrity and civility.
4. Practitioners shall not engage in conduct that aims to undermine the Court’s independent decision-making process.
5. Practitioners shall ensure that they are familiar with all applicable laws and regulations, including the Code and the Rules (in particular with the provisions of the Overriding Objective), as may be relevant to the matter before the Court.

6. Practitioners shall never knowingly or recklessly make any incorrect or misleading statement of fact or law to the Court and, if during the course of proceedings Practitioners become aware that they have inadvertently misled the Court, shall correct any incorrect or misleading statement of fact or law at the earliest opportunity.
7. Practitioners shall inform the Court of all relevant decisions, regulatory acts and legislative provisions of which they are aware, and of the effect of which the Court might not be aware, regardless of whether the effect is favourable or unfavourable to the contention for which they argue.
8. Practitioners shall not appear as advocate or otherwise conduct proceedings before the Court in any matter in which they have reason to believe they may be a witness, save where any evidence they may give is likely to be purely formal or uncontroversial.
9. When acting for a client in any proceedings before the Court, Practitioners –
 - a. must not express their personal opinion of the client's conduct or allow their personal feelings to affect their duty to the Court;
 - b. must not knowingly or recklessly advance any submission, opinion or proposition which is not properly arguable or contrary to the law; and
 - c. must disclose to the Court every relevant fact, item of evidence, item of information or other matter which they are required by law to disclose to the Court.
10. Practitioners shall inform the Court whether there is in place a funding agreement with regard to the proceedings in the Court, and if so, to require the funded party to disclose the identity of the funder.

Part 3. Duties owed to clients

11. Practitioners shall lawfully advance, defend and protect the interests of their client before the Court without regard to any consequences to themselves or any other person.
12. Practitioners shall not undertake work in a manner which unnecessarily increases the fees payable to them.
13. Practitioners shall at the earliest opportunity advise their client of any appropriate alternative means of dispute resolution.
14. Practitioners shall not as a condition of entering into or continuing any professional representation by the Practitioner or the Practitioner's firm, employ coercion, intimidation or undue influence.
15. Practitioners shall at the time of their engagement enter into a clear and transparent fee agreement with their client and thereafter ensure that sufficient records are kept of work done to enable the Court to properly assess any legal costs and expenses claimed during or at the conclusion of proceedings.
16. Practitioners shall keep the information communicated to them by their client confidential unless such disclosure is authorised by the client, ordered by the Court or is required by law. This duty continues even after the Practitioner has ceased to act for the client.
17. Practitioners shall not act if there is a conflict between interests of the Practitioner and the client or a significant risk of such a conflict. Practitioners that have acted for a client in a matter shall not

thereafter act against the client (or against persons who were involved in or associated with the client in that matter) in the same or any related matter before the Court unless the informed consent of the client is obtained.

Part 4. Duties owed to other Practitioners

18. Practitioners shall deal with each other honestly, cooperatively, with integrity and civility.

Part 5. General duties

19. Practitioners shall not engage in conduct that undermines the Overriding Objective (including conduct provoking or prolonging the Court proceedings unnecessarily) or which may otherwise result in procedural unfairness.

20. Practitioners shall not participate in any behaviour which may discredit the Court and the reputation of its Practitioners.

21. If a written communication is to be made to the Registry at any time, the Practitioner should at the same time deliver a copy of it to the opposing Practitioner or to the opposing party if it is not legally represented.

22. (1) A Practitioner must not appear before the Court in any proceedings where

- a. by reason of the Practitioner's relationship with a Judge of the Court or any individual sitting with the Court, the impartial administration of justice may appear to be prejudiced; or
- b. by reason of the Practitioner's relationship with a client, it will be difficult for the Practitioner to maintain the professional independence of the Practitioner.

(2) Where sub-paragraph (a) or (b) of paragraph (1) applies, the Practitioner must notify the Court of the relationship referred to in the applicable sub-paragraph, and seek directions from the Court to cease to participate in the whole, or such part, of the proceedings as the Court may direct.

23. A Practitioner must not make or offer to make payments to a witness which are contingent upon the nature of the evidence given or upon the outcome of a case. However:

- a. payment of reasonable expenses and reasonable compensation for loss of time attending Court may be made to witnesses. In the case of an expert witness, there is an implied obligation to pay a reasonable fee;
- b. Practitioners, on their client's instructions, may advertise for witnesses to come forward to testify as to a particular occurrence.

24. Practitioners shall not discuss the evidence with the witnesses, whom the Practitioner has called, or the witnesses, whom the opposing Practitioner has called, while this witness is in the course of giving evidence to the Court. This shall not prevent the Practitioner from cross-examining the witnesses in the order and the manner prescribed by the Judge hearing the matter.

25. When interacting with the media, Practitioners shall refrain from making public comments about ongoing cases that could prejudice the court proceedings. Practitioners shall not disclose confidential information to the media. Public comments of the Practitioners on the proceedings,

the Court, Judges, other Practitioners, or parties involved in a case shall be made in a respectful manner and shall be based on fact.

26. Practitioners shall not call a witness whose evidence they know to be untrue.
27. Practitioners must, in any proceedings before the Court, conduct the case in a manner which maintains the fairness, integrity, efficiency and orderly conduct of those proceedings.
28. Practitioners shall not engage in conduct involving dishonesty, fraud, deceit, or deliberate misrepresentation.
29. Practitioners shall not knowingly or recklessly assist in breaching an order or direction of the Court.
30. Practitioners must comply with any order of the Court requiring them to do or refrain from doing something; equally, Practitioners are bound to honour their undertakings given to the Court.
31. When conducting proceedings in the Court, Practitioners:
 - a. shall be personally responsible for the conduct and presentation of a case and shall exercise personal judgment upon the substance and purpose of statements made and questions asked;
 - b. shall not express personal opinion of their client's rights or liabilities or allow personal feelings to affect professional assessment of the facts or the law or to affect their duty to the Court;
 - c. shall bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal or in setting aside proceedings; or
 - d. shall not suggest that a witness or other person is guilty of any crime, fraud or misconduct or attribute to another person the conduct of which their client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to their client's case and which appear to them to be supported by reasonable grounds.
32. Practitioners shall not contrive facts which will assist their client's case or draft any originating process, pleading, affidavit, witness statement or notice or grounds of appeal containing:
 - a. any statement of fact or contention (as the case may be) which is not supported by their client's instructions or by other reasonably credible material;
 - b. any allegation of fraud or criminal behaviour unless they have clear instructions to make such allegation and have before them reasonably credible material which as it stands establishes a *prima facie* case of fraud or criminal behaviour; or
 - c. in the case of an affidavit or witness statement, any statement of fact other than the evidence which (in substance according to his instructions) the Practitioner reasonably believes the witness would give if the evidence contained in the affidavit or witness statement were being given orally.
33. When conducting proceedings in the Court, Practitioners shall not, by assertion in a speech, make an allegation against a witness whom they had an opportunity to cross-examine unless in cross-examination they have given the witness an opportunity to answer the allegation. However, Practitioners may make a submission concerning a witness' credibility based on observations of

the witness' conduct and demeanour in Court without having put such observations to the witness for comment.

34. Practitioners shall never withdraw from any matter before the Court solely for the purpose of obtaining tactical advantage in the proceedings.
35. Practitioners instructed in respect of a matter before the Court shall not initiate any communication about that matter directly with a party who is known to have retained another Practitioner to represent them in the matter. The only exceptions to this duty arise where (1) the Practitioner has obtained the consent of the other Practitioner, (2) the relevant communication is a notice which by law or contract must be personally served on the other Practitioner's client, or (3) the interests of the party with which it is intended to communicate will be prejudiced if the communication is delayed. In the latter case, the other Practitioner must be informed as soon as possible.
36. Practitioners shall not agree to act in any matter before the Court other than at the direct request of the client party concerned, or their clearly authorised agent. For the purposes of this Code an insurer acting in the name of an insured shall be deemed a client party.

Part 6. Sanctions for breach of the Code

37. Where there is inappropriate conduct in Court contradicting the Governing Principles but no one, including the Registrar or Court, makes a formal complaint of breach of the Code, the Registrar may reach out to the concerned Practitioner for the purposes of giving him/her the feedback, and/or requiring the Practitioner to undertake further training and provide evidence of completing such training, reminding that Practitioner of his/her duties to the Court. Failure to comply with the instructions of the Registrar is a breach of the Code.
38. Any complaint by any person or body, including the Court (the "**Complainant**") that a Practitioner has acted in breach of the Code shall be made in writing to the Registrar.
39. Unless the Registrar decides on reasonable grounds that the complaint is frivolous or vexatious, the Registrar shall:
 - a. Send a copy of the complaint to the Practitioner whose conduct is subject to the complaint;
 - b. Require from the Practitioner a written response to the complaint;
 - c. Make any further investigation that the Registrar considers necessary;
 - d. Refer the complaint and the finding of any further investigation the Registrar has conducted, to an Independent Committee consisting of at least two Independent Members, which shall issue an opinion to the Registrar on the appropriate action to be taken;
 - e. Consider the written opinion of the Independent Committee and draw up and issue a written decision on the complaint explaining reasons for such decision.
40. The decision of the Registrar may be appealed to the Chief Justice on the application of the Practitioner whose conduct is subject to the complaint or the Complainant.
41. The Registrar may impose the following sanctions upon any Practitioner found on a balance of probabilities to have committed a breach of the Code:
 - a. Private admonition;

- b. Public admonition;
- c. Suspension of the Practitioner's rights of audience;
- d. Permanent withdrawal of the Practitioner's rights of audience.

42. The Court, acting through the Registrar, may impose a combination of sanctions. Any sanction other than a Private admonition shall be published together with a summary of the complaint and the names of the Complainant and the Practitioner.
43. When imposing any sanction other than a Private admonition, the Court, acting through the Registrar, may notify the fact of the breach and of the decision imposing the sanctions for the breach on the Practitioner to any Bar Association or similar body responsible for the supervision or regulation of the Practitioner concerned.

This Practice Direction prescribes the code of conduct for legal practitioners that comes into effect on 23 October 2023.

Approved by the Chief Justice of the AIFC Court in accordance with Article 49(1)(b) of the AIFC Court Regulations 2017:

The Rt. Hon. The Lord Mance
Chief Justice, AIFC Court

Date: 23 October 2023