IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

6 March 2026

CASE No: AIFC-C/CFI/2024/0028

International Academy of Medicine and Sciences Limited Liability Partnership

Claimant

v

State Institution "Health Department of Almaty Region"

Defendant

JUDGMENT

Justice of the Court:

The Lord Faulks KC

JUDGMENT

Introduction

1. This case marks another episode in the dispute between the International Academy and Science ("IAMS") ("the Private Partner"), the Claimant, and the Health Department of the Almaty Region (the "Public" (or "State") Partner"), the Defendant. It concerns the construction and running of a new hospital , built on the site of an old, state run, hospital.
2. In one sense, it appears that the hospital has been a considerable success. However, the project has been beset by differences between the parties, many of which have been referred to this court.
3. The Public/Private Partnership Contract 2020 ('the contract") was signed by the parties on 5th November 2020. It is apparent from the contract that the relationship between the parties was intended to continue until 2050.
4. Despite their differences, the parties have both told me that they do not want to pursue any remedies they may have under the contract which might result in the relationship coming to an end.
5. I have been told, and I accept, that the contract was in a standard form as required by the State Partner, save only for the insistence by the Private Partner that any dispute arising out of the contract was to be referred to the AIFC court.
6. This court has previously been asked to determine whether or not abortive attempts by representatives of the State Partner to enter the hospital to carry out inspections relieved the State Partner of an obligation to pay management fees to the Claimant. On 12th November 2024, I gave a judgment, after a trial, in which I decided that State Partner was obliged to pay management fees.
7. A judgment in an agreed sum of KZT 198,819,000 in respect of those management fees, was entered . There have also been judgments in favour of the Claimant in respect of costs and a contractual penalty.
8. There remained other issues between the parties. The contract contained a specific obligation to negotiate in good faith the resolution of any such issues. In those circumstances, I gave the parties time to do so.
9. There were a number of meetings at which attempts at settlement were made. A summary of what had and had not been agreed is contained in documents included in the e-bundle between pages 125 and 142.
10. Negotiations took place on 6th March 2025, 16th April 2025 and 24th June 2025. There also appears to have been an earlier meeting on 11th February 2025.
11. On 6th March 2025, the State Partner agreed to pay what was outstanding in relation to management fees, penalties and various legal costs. The State Partner also agreed to accept into municipal ownership the infectious disease unit at the hospital.
12. On the 16th of April 2025 it was further agreed that the State Partner would pay the sum of KZT 443, 551,300, this being the difference between the debt as declared by the State Partner at the outset of the contract and what the true debt was. The Private Partner had paid the debt in full and was entitled to be reimbursed.
13. I gave judgment on 10th June 2025 for the above sum, based on the State Partner's admission
14. Finally, at the 24th of June 2025 meeting, various outstanding issues were identified. These included whether the Public/Private partnership should continue until 31st December 2050, whether the judgment debt of KZT 443, 521, 300 should be paid by the State Partner in instalments and whether the court should "amend" the contract to reflect delays in the connection of utilities and delays in accepting the infectious disease unit. There were other unresolved issues.

15. The frequent recourse to this court is an expensive and time-consuming exercise. Whilst there is a right to do so, specifically referred to in the contract, the court should not be put in the position of acting as a contract manager. Rather it should remain as a last resort to decide matters which simply cannot be resolved by the parties.
16. The interests of both parties, and of the patients at the hospital, would be better served by their reaching sensible conclusions in resolving their disputes. I find it hard to avoid the conclusion that one explanation for the failure to reach agreement is a reluctance on the part of officials to take any responsibility, on behalf of the State Partner, for authorising payments, even when they are clearly due.
17. I was not impressed by the stance taken by the State Party's representative before me in relation to the debt referred to above. It was initially argued by him at trial that this should not be paid, despite the judgment on admissions. The argument was not pursued after the both the existence of a previous admission, and the judgment was brought to his attention.

The issue at trial

18. It became clear at the trial, which took place on 27th and 28th January 2026, that the main issue which I had to decide was whether the Private Partner was entitled to recover the costs of and related to the construction of the hospital . These had increased from approximately KZT 5.1 Billion to KZT 10.8 Billion.
19. The State Partner argued that in accordance with the contract and, as a matter of law, the Private Partner was restricted to recovering the lower sum .
20. The Private Partner, on the other hand, argued that there was no reason, as a matter of law , why the contract could not be varied or amended and that the increased costs were entirely the result of the State Partner's insistence on the greatly increased scope of the works to be done.
21. This had caused the Private Partner to provide a different design to comply with the State Partner's requirements. Thus, it was argued, that, as matter of fact, the contract was varied or amended and that the Claimant was entitled to recover the actual cost of construction, or, as the contract describes it, "Compensation for the Investor's investment costs" (CIC).

The Evidence

22. The Claimant called Professor Zhumagali Ismailov and Mr Najhavan Rupal as witnesses of fact . The Claimant also called Professor Karagusov , a professor of the Law of the Republic of Kazakhstan. Statements and supplementary statements from these witnesses had been provided to the court and to the other side.
23. The Defendant did not provide, in advance, witness statements which complied with AIFC Court Rules. Despite this procedural failure, I allowed Mr Oraz Asylan to give evidence on behalf of the Defendant.
24. There appeared to be an attempt to supplement this evidence by the attachment of letters to the Defendant's post-trial submissions. This is not acceptable and I have had no regard to them.
25. Mr Rupal described the process whereby the Private Partner became involved with the project. The tendering process followed the provision of what he described as "limited information" about the project.
26. After it had won the tender, the Private Partner discovered that there were a number of problems at the site, in addition to their finding out the true extent of the debt, as referred to above.
27. The Design and Estimate documentation (DED) was originally provided, based on the amount of KZT 5.1 billion, which was the contractual CIC.

28. However, the relevant state body required the Private Partner to carry out extensive further calculations and the submission of a revised DED. When this was done, Mr Rupal told me that this received "a positive conclusion, taking into account the increase in the cost of construction works, materials and services".
29. Despite completion of all the works, there was a reluctance on the part of the State Partner to "accept" the hospital into public ownership.
30. He also described delays in resolving issues and a lack of good faith on the part of the State Partner.
31. He gave as an example the concealment of relevant information, the lack of a centralised water or power supply and the fact that there was no boiler or other heating resources .
32. It took some time to receive final approval of the works but, he told me, there was no indication of any objection to the quality or extent of the works. But there were numerous delays in payment.
33. Professor Ismailov described "serious, previously unknown and hidden problems" that were not, at the outset, disclosed to the Private Partner or apparent from the tender documentation.
34. All these had to be resolved by the revised DED and by extensive works carried out in the most difficult circumstances (Covid). It was the State Partner who insisted on changes which resulted in increases in the cost of building.
35. He also described a generally obstructive approach to the attempts to reach agreement on the part of the State Partner and pointed to the fact that not one of the steps promised to be undertaken at the various meetings was in fact honoured.
36. Mr Oraz took a rather technical approach to the dispute . Although he admitted he was not a lawyer, he argued that Clause 66 of the contract did not permit any change to the CIC. To conclude otherwise, he said, would undermine the principle of bidding in a Public/Private partnership.
37. When he was asked if there were to be a suggested change in the terms of a contract whether this would be countenanced, he said that this would be "considered" but approval would be required of the Health Department, the opinion of an expert would be needed, together with a reference to a Budget Committee and a vote in Parliament. A positive decision would then have to be registered with the Treasury and receive the approval of the relevant auditing bodies . He did not spell out the time scale but it seemed to me to be a lengthy, complex and highly bureaucratic process.
38. He was cross-examined on the basis that this process all seemed to be in the hands of the Public Partner and could not be initiated by the Private Partner.
39. The minutes of the negotiations, it was suggested, appeared to show that the State Partner would, following meetings, attempt to obtain the relevant approvals.
40. Mr Oraz told me that he was aware that there had been written applications but he told me that "they did not comply". He said there could have been some application to the Department of Health but there was not a set of documents "needed by law".

Terms of the contract

41. The relevant terms(for the purposes of the dispute) included:
    (a) Clause 52 which provided that the law of the contract was the law of the Republic of Kazakhstan.
    (b) Clause 65 which described the "essence of the contract"
    (c) Clause 66 which said that "the essence shall not be varied"
    (d) Clause 76 which enumerated the finance to be provided by the Private Partner, being a total of KZT 5,100,000,000 for design and construction and KZT 448,463,000 for repayment of debt.
    (e) Clause 104 which made provision in relation to DED and possible changes.
    (f) Clauses 138 and 139 which governed the payment of penalties.

(g) Clause 146 which allowed the parties to make changes by mutual agreement but not change the "essential terms " of the contract
(h) Appendix 4 which described the project management in diagrammatic form.

The relevant law

42. This appeared to be in dispute at the outset of this case. The only expert in the relevant law was Professor Karagusov. There was no challenge to his authority or expertise.
43. His evidence was focussed on whether, as a matter of law, a contract of this sort could be amended or varied .
44. He told the court that this depended on the intention of the parties. An amendment could be evidenced in writing or by other form of communication, electronic or otherwise . It could also be evidenced by action.
45. He was asked whether a Public/Private contract was a special case. He said that the ordinary law in relation to civil law contracts applied.
46. He also told the court that it made no difference to the application of the law that one of the parties was the State.
47. He drew a distinction between retroactive change on a unilateral basis and a Public/Private partnership agreement where the Public Partner organises a bidding process and the Private Partner is selected . Then, he said , the parties develop a civil law contract which can be amended, revised or terminated.
48. He emphasised that parties have to agree to any change but how they agree is a matter for them.
49. Mr Oraz, by contrast, seemed to say that Clause 66 permitted no changes to the contract.

Submissions

50. The Defendant submitted in opening that this was a fixed price contract . It was said that the increase in construction costs was not authorised or agreed.
51. It was submitted that the court cannot "rewrite a contract".
52. In the Defendant's post -trial submissions the Private Partner's claim was characterised as an attempt to "extract funds" from the State.
53. Reliance was placed on Clause 66, and on Clauses 104 and Clause 146. By reference to British common law authority , it was submitted that the increased costs were simply an example of a risk a contractor has to bear. It was, in other words, an entrepreneurial risk.
54. In the Defendant's closing submissions it was argued that *de facto* there were changes to the contract . The State Partner had insisted on changing the parameters and thus the budget of the project . And when the Private Partner amended the design and implemented the approved changes, these were accepted without objection.
55. It was submitted that the tender document contained limited information and the Private Partner had no opportunity to verify the information provided before the tender process .
56. It was soon discovered that the extent of debt had been misrepresented . The Private Partner paid this off but it was necessary to take legal proceedings before the Public Partner reimbursed the Claimant appropriately.
57. The original DED was met with a "negative conclusion" and the Private Partner was required to change the DED. Then it was necessary to get approval for the project, as amended, from the Department of State Construction Control.

58. All the work was accepted and there was never any objection to the amended scheme. The Defendant submitted that the Claimant is treating this claim as a "cost overrun" case whereas in fact it was a contract amended at the insistence of the State Partner.

Discussion

59. It seems likely that the e-bundle contained only a portion of the documents that would have been generated by this project, and the various disputes between the parties. But the combination of the documents included in the e-bundle and the oral evidence has given me an opportunity to assess the merits of this case.
60. I am quite satisfied that, as a matter of law, the Claimant's case is tenable. In other words, if there *was* in fact an amendment to the contract then there is no reason, as a matter of law, why the court should not reflect that in its findings
61. It is clear to me that the tender process did not allow the Private Partner a very clear picture of the nature of the work needed in relation to the hospital. And it is agreed that the full extent of indebtedness was undisclosed
62. However, the contract required the CIC to be of a fixed sum to reflect the works outlined in the tender document and if the works had simply proved to be more expensive (or cheaper) than originally envisaged then that might well have been a risk properly allocated to the Private Partner
63. But in my judgement, the Public Partner required a substantial change to the scope of the works to be done and this *did* involve an amendment to the contract.
64. It is right that there was no agreement in writing as to this amendment, or at least none that has been drawn to my attention. But I find that the parties agreed the enlarged scope of the works. This would inevitably increase construction costs and result in an increase in the CIC.
65. The stance taken by the Public Partner at trial has been an unbending one namely that the contract could not be altered and the CIC remained in the sum specified in the contract.
66. It is surprising, in those circumstances, that there appears to have been no issue taken with the right to increased CIC at any stage after it was attempted to recover the relevant sums from the Public Partner. In the various meetings that took place with a view to compromising the dispute, the Public Partner promised, on a number of occasions, that the relevant approvals would be obtained. But it appears that very little progress was made in doing so.
67. Although this court is requested to "amend" the contract, I do not think that is the role of a court . What it can do is to find that there was an amendment to the contract and make any orders that follow from that finding.
68. I am conscious that the Claimant also asks me to give judgment in relation to performance deadlines. There may well be merit in this argument but I do not have enough material to enable me to reach any findings .
69. As to the collection of penalties, I cannot see any justification for the non-payment of the CIC outstanding and the Claimant is entitled to recover penalties in accordance with the contract.
70. I do not, however, have enough material to enable me to come to any conclusion as to any entitlement to penalties in relation the connection of engineering networks or as to the delay in accepting the infectious disease ward facility .
71. Nor will I make any general order recognising the Defendant's actions as unlawful.

Conclusions

72. It follows from the above that the Claimant (the Private Partner) is entitled to recover the amount of the CIC debt (as amended) together with a fine/penalty from the Defendant, (the Public Partner).
73. I invite the parties to provide written submissions to me within 14 days as to what the total amount should be in the light of my findings.

By Order of the Court,

Justice The Lord Faulks KC,
AIFC Court

Representation:

The Claimant was represented by Mr. Sergey Vatayev, Advocate, Ms. Elena Dvoretskaya-Yussupova, Advocate, and Mr. Ilya Kirichenko, Advocate, Legit Advocates' Bureau, Almaty, Republic of Kazakhstan.

The Defendant was represented by Mr. Yerzhan Suleimenov, Head, State Institution "Health Department of Almaty Region", and Ms. Galiya Turlybekova, General Department Specialist, State Institution "Health Department of Almaty Region", Almaty region, Republic of Kazakhstan.