



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

27 May 2026

CASE No: AIFC-C/CFI/2025/0066

Posco Co. Ltd.

Claimant

v

Republican State Enterprise on the Right of Economic Management “National Centre
for Complex Processing of Mineral Raw Materials of the Republic of Kazakhstan”

Defendant

JUDGMENT

Justice of the Court:

Justice Sir Rupert Jackson

JUDGMENT

This judgment is in five parts, namely:

Part 1: Introduction

Part 2: The facts

Part 3: The present proceedings

Part 4: Does the AIFC Court have jurisdiction to deal with this claim?

Part 5: Conclusion

PART 1. INTRODUCTION

1.1 This claim is an application to enforce the arbitral award of an ICC Tribunal seated in Zurich, Switzerland, pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The central issue is whether the AIFC Court has jurisdiction to entertain such a claim or whether this must be left to the regular courts of the Republic of Kazakhstan.

1.2 The Claimant is Posco Co. Ltd., a company incorporated under the laws of the Republic of Korea with its registered office at 6261 Donghaean-ro, Nam-gu, Pohang-si, Gyeongsangbuk-do, Republic of Korea.

1.3 The Defendant is the Republican State Enterprise on the Right of Economic Management “National Centre for Complex Processing of Mineral Raw Materials of the Republic of Kazakhstan”, a 100% state-owned company of the Republic of Kazakhstan established under the laws of Kazakhstan, with its registered office at 67 Zhandosov Street, Almaty 050036, Republic of Kazakhstan.

1.4 In this judgment I use the following abbreviations:

- (i) ‘AIAC’ means the AIFC International Arbitration Centre.
- (ii) ‘AIAC arbitrations’ means arbitrations administered by the AIAC.
- (iii) ‘AIAC Rules’ means the Rules on Arbitration and Mediation issued by the Chairman of the AIAC.
- (iv) ‘AIFC’ means the Astana International Financial Centre.
- (v) ‘Civil Procedure Code’ means the Civil Procedure Code of the Republic of Kazakhstan dated 31 October 2015, No. 377-V LRK.
- (vi) ‘Constitutional Statute’ means the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre dated 7 December 2015, No. 438-V ZRK (with amendments of 30 December 2022).
- (vii) ‘ICC’ means the International Chamber of Commerce.
- (viii) ‘ICC Rules’ means the rules for international arbitration issued by the ICC.
- (ix) ‘New York Convention’ means the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 10 June 1958.
- (x) ‘The Almaty Court’ means the Almaty Specialised Interdistrict Economic Court.
- (xi) ‘The AIFC Arbitration Regulations’ means the AIFC Arbitration Regulations adopted by the Resolution of the AIFC Management Council dated 5 December 2017.
- (xii) ‘The AIFC Court Regulations’ means the AIFC Court Regulations adopted by the Resolution of the AIFC Management Council dated 5 December 2017.

1.5 I shall now set out the principal legislative provisions which are relevant to these proceedings.

1.6 The foundational statute, which establishes the AIFC Court and establishes its jurisdiction, is the Constitutional Statute. Articles 13 and 14 of the Constitutional Statute (as set out in the English version available on the AIFC Court’s website) provide:

“Article 13. AIFC Court

1. The judicial settlement of disputes specified by paragraph 4 of this article is to be undertaken exclusively by the AIFC Court. The purpose of the Court is to protect the rights, freedoms and legal interests of the parties and to ensure that the Acting Law of the AIFC is implemented.

2. The AIFC Court is independent in its activities and is not a part of the judicial system of the Republic of Kazakhstan.

3. The AIFC Court consists of two instances: the court of first instance and the court of appeal.

3-1. The Chief Justice and other judges of the AIFC Court are appointed and removed by the President of the Republic of Kazakhstan on the recommendation of the Governor of the AIFC.

4. The AIFC Court has exclusive jurisdiction in relation to the hearing and adjudication of the following disputes, but does not have jurisdiction in criminal and administrative proceedings:

1) disputes between AIFC Participants, AIFC Participants and AIFC Bodies and an AIFC Participant or AIFC Body and its expatriate Employees;

2) disputes relating to activities conducted in the AIFC and governed by the Acting Law of the AIFC;

3) disputes transferred to the AIFC Court by agreement of the parties.

5. The activities of the AIFC Court are governed by the resolution of the Council On the Court of Astana International Financial Centre, which is based on the principles and legislation of the law of England and Wales and the standards of leading global financial centres. The Resolution of the Council On the Court of Astana International Financial Centre determines the composition of the AIFC Court, the procedure for the appointment and removal of court officials, qualification requirements for judges and court officials, and other matters related to the functioning of the AIFC Court.

6. In adjudicating disputes, the AIFC Court is bound by the Acting Law of the AIFC and may also take into account final judgements of the AIFC Court in related matters and final judgements of the courts of other common law jurisdictions.

7. Decisions of AIFC Court of Appeal are final and not subject to appeal, and are binding on all natural and legal persons.

8. Decisions of the AIFC Court are to be enforced in the Republic of Kazakhstan in the same way, and on the same terms, as judicial acts of the courts of the Republic of Kazakhstan. To enforce a decision of the AIFC Court, a translation of the decision into the Kazakh or Russian language, in accordance with the procedure determined by AIFC Acts, is required.

9. Decisions of the courts of the Republic of Kazakhstan are to be enforced in the territory of the AIFC in accordance with legislation of the Republic of Kazakhstan.

10. The AIFC Court has exclusive jurisdiction to interpret AIFC Acts.

Article 14. International Arbitration Centre

1. The International Arbitration Centre hears disputes on the basis of an arbitration agreement between the parties.

2. The International Arbitration Centre is established and acts in accordance with the resolution of the Council On the International Arbitration Centre.

3. Awards of the International Arbitration Centre are to be recognised and enforced in the Republic of Kazakhstan in the same way, and on the same terms as, arbitration awards issued by arbitration institutions in the Republic of Kazakhstan. To enforce an award of the International Arbitration Centre, a translation of the award into the Kazakh or Russian language, in accordance with the procedure determined by AIFC Acts is required.

4. Awards of arbitration courts in the Republic of Kazakhstan are to be recognised and enforced in the territory of the AIFC in accordance with legislation of the Republic of Kazakhstan.”

1.7 Article 253 of the Civil Procedure Code provides:

“Article 253. Compulsory enforcement of arbitral court decisions

1. In the event that the arbitral award is not executed voluntarily within the time limit established therein, the party of the arbitration proceedings, in whose favor the arbitral award was made (recoverer), shall have the right to apply to the court for enforcement of the arbitration decision according the residence of the debtor or at the location of the body of the legal entity, if the place of residence or location is unknown, then at the location of the property of the debtor.

...

3. The application for issuing an enforcement order shall be filed no later than three years from the date when the term for the voluntary execution of the arbitration award expires.”

1.8 Having set out the principal statutory provisions with which I am concerned, I must now turn to the facts.

PART 2. THE FACTS

2.1 On 5 July 2013 the parties entered into a loan agreement under which the Claimant made a loan of USD 25,000,000 to the Defendant on the terms therein set out. Section 15 of the loan agreement provided that disputes between the parties should be referred to arbitration in accordance with the ICC Rules, with the seat of arbitration in Zurich, Switzerland. There were subsequent amendments which are not material to these proceedings.

2.2 Disputes arose between the parties concerning the repayment of the loan. Those disputes were referred to arbitration in accordance with section 15 of the loan agreement. An Arbitral Tribunal was duly constituted in accordance with the ICC Rules.

2.3 The Tribunal convened and conducted the arbitration in Zurich, Switzerland. The Claimant was represented by Mr John Rhie, Mr Duncan Watson QC and Ms Lillian Li. The Defendant was represented by Dr Lutz Kniprath, Ms Jacqueline Lopez and Mr Kniprath Lopez.

2.4 On 28 October 2022 the Tribunal issued its final award. By that award it ordered the Defendant (the respondent in the arbitration) to repay USD 25,000,000 to the Claimant, together with interest as therein set out within fourteen days. By an addendum dated 14 December 2022 the Tribunal made an order for payment of costs by the Defendant.

2.5 The Defendant failed to make payment in accordance with the award.

- 2.6 On 15 September 2025 the Claimant applied to the Almaty Court to enforce the arbitral award and issue a writ of execution. On 7 October 2025 the Almaty Court returned the application, stating that the application documents did not include (a) the original arbitration agreement or a duly certified copy or (b) evidence that the Defendant had received a copy of the award.
- 2.7 On 10 October 2025 the Claimant reapplied to the Almaty Court to enforce the award and issue a writ of execution. On 28 October 2025 the Defendant submitted a defence stating that (a) it had not received a copy of the Tribunal's award, as a result of which it was deprived of the opportunity to present a defence; (b) a criminal case had been initiated against the former General Director of the Defendant and other individuals for embezzlement, and that the Claimant was a party involved in the criminal case.
- 2.8 On 3 November 2025 the Almaty Court returned the Claimant's application on the grounds that the case materials contained no evidence confirming the proper receipt of the arbitration award by the debtor.
- 2.9 The Claimant applied to overturn the Almaty Court's order dated 3 November 2025. On 12 February 2025 the judicial panel rejected that application on two grounds: first, the translation of the arbitral award had not been certified by an appropriate official; secondly, there was no evidence confirming the proper receipt of the arbitral award by the Defendant.
- 2.10 The Claimant was aggrieved by the Almaty Court's repeated non-acceptance of its applications to enforce the arbitral award, on grounds which the Claimant regarded as insufficient. Accordingly, the Claimant commenced the present proceedings.

PART 3. THE PRESENT PROCEEDINGS

- 3.1 By a claim form issued on 11 November 2025, the Claimant applied to the AIFC Court to issue the following orders:
- 1) Order that the Arbitral Award dated 28 October 2022 made by Dr. Dorothee Ruckteschler, Mr. Daniel Hochstrasser, and Mr. Askar Kaldybayev under the auspices of the International Court of Arbitration of the International Chamber of Commerce in Case No. 25453/HBH between Posco Co. Ltd. and RSE on REM "National Center for Complex Processing of Mineral Raw Materials of the Republic of Kazakhstan" shall be recognised and enforced.
 - 2) Order that the Defendant shall pay the Claimant the following sums:
 - i. principal amount of USD 25,000,000;
 - ii. accrued interest of USD 18,345,374.38;
 - iii. arbitration costs in the amount of USD 574,000;
 - iv. legal costs, fees, and expenses in the amount of USD 1,084,448.45;
 - v. further accrued interest in the amount of USD 7,587,030.
 - 3) Order that the Defendant shall pay the Claimant post-judgment interest on the principal amount of USD 25,000,000 at 10% per annum, starting on 11 November 2025.
 - 4) Order that the Defendant shall pay the Claimant's costs of this claim.
- 3.2 On 31 December 2025 the Defendant submitted its statement of objection to the claim. In summary, the Defendant advanced the following defences:
- (i) The Defendant was not aware of the arbitral award.
 - (ii) This matter was the subject of proceedings before the Almaty Court.

- (iii) The Defendant is a Republican State Enterprise with Economic Management Rights. It is not a participant in the Astana International Financial Centre.
- (iv) Under the provisions of the Constitutional Statute the AIFC Court does not have jurisdiction to enforce the award.
- (v) The Claimant did not commence the enforcement proceedings within the three-year time limit imposed by Article 253 of the Civil Procedure Code.

3.3 This matter was listed for oral hearing in the AIFC Court on 25 May 2026.

3.4 In advance of the hearing both parties lodged detailed skeleton arguments. At the hearing on 25 May 2026, Mr Farukh Iminov represented the Claimant and Mr Nikolay Germanov represented the Defendant. I am most grateful to both counsel for their assistance.

3.5 Having outlined the course of the proceedings, I must now address the issues, beginning with the question of whether the AIFC Court has jurisdiction to deal with this claim.

PART 4. DOES THE AIFC COURT HAVE JURISDICTION TO DEAL WITH THIS CLAIM?

4.1 Mr Germanov draws attention to Article 13.4 of the Constitutional Statute. This is the provision setting out the jurisdiction of the AIFC Court. He submits that the Defendant is not an AIFC Participant, so this case does not fall within sub-clause 1. The dispute between the parties does not relate to activities conducted in the AIFC, so this case does not fall within sub-clause 2. There is no agreement between the parties that the AIFC Court should deal with their dispute, so this case does not fall within sub-clause 3.

4.2 I agree with all those submissions. Therefore, Article 13.4 of the Constitutional Statute does not confer jurisdiction on the Court to deal with the present claim.

4.3 Mr Iminov submits that, although he cannot rely upon Article 13.4, Article 14.4 does confer jurisdiction upon the Court. Mr Iminov submits that the translation of Article 14.4, which appears on the Court's website, and which I have quoted in Part 1, is incorrect. The correct translation is as set out in paragraph 12 of the judgment of Justice Tom Montagu-Smith KC in *Roads Department of the Ministry of Infrastructure of Georgia v. Todini Costruzioni Generali S.p.A.* (Case No: AIFC-C/CFI/2025/0025). That translation reads as follows:

“Recognition and enforcement of arbitral awards in the territory of the Centre shall be carried out in accordance with the legislation of the Republic of Kazakhstan”.

I note that Justice Montagu-Smith KC states that it is “strongly arguable” that that translation is correct, not that it is correct. This is a matter which requires definitive resolution.

4.4 The official texts of the Constitutional Statute are the version in Russian and the version in Kazakh. Those two texts are of equal validity. The English translation on the Court's website has no similar status.

4.5 The Russian text of Article 14.4 reads as follows:

“Признание и исполнение решений арбитражей на территории Центра осуществляются в соответствии с законодательством Республики Казахстан”.

4.6 The Kazakh text of Article 14.4 reads as follows:

“Орталықтың аумағында төреліктердің шешімдерін тану және орындау Қазақстан Республикасының заңнамасына сәйкес жүзеге асырылады”.

4.7 With the assistance of two young lawyers at the Court, who are fluent in Kazakh, Russian and English, I have gone through the Kazakh and Russian texts word by word. I now understand the meaning of each word, as well as the grammar and syntax of both the Kazakh and Russian texts. I am quite satisfied that the translation set out in paragraph 12 of *Roads Department* is correct. I note that this translation is adopted by the Defendant in paragraph 3.17.1 of its defence. Thus, there is no translation dispute in this case.

4.8 Neither the advice of junior court staff nor my amateur effort at applying that advice has the status of an official notarised translation. It will be open to any party in a future case to adduce formal evidence as to the correct translation of Article 14.4. But, subject to that somewhat unlikely possibility, it is safe to proceed on the basis that the translation in paragraph 12 of *Roads Department* is correct. I shall certainly proceed on that basis in this case, because it is agreed between the parties.

4.9 The crucial question is whether Article 14.4 empowers the AIFC Court to enforce all arbitration awards or only awards resulting from AIAC arbitrations. Before addressing this question, I must consider the context.

4.10 There is a significant difference between arbitrations proceeding in the AIAC and all other arbitrations. The AIFC Court is the supervising court for AIAC arbitrations. See Article 14 of the AIFC Arbitration Regulations and the other articles listed in that provision.

4.11 Rule 2.2 of the AIAC Rules provides:

“Where parties have agreed to refer any dispute to the AIAC or to arbitration under the AIAC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by the AIAC in accordance with this Part of these Rules, or such amended rules as are in force at the date of the commencement of the arbitration or, if earlier, the filing of an application for the appointment of an Emergency Arbitrator”.

4.12 It therefore follows that when parties agree to refer any dispute to the AIAC or to arbitrate under the AIAC Rules, they thereby agree to accept the jurisdiction of the AIFC Court. Thus, under Article 13.4 of the Constitutional Statute the AIFC Court has “exclusive jurisdiction ... by agreement of the parties”.

4.13 The AIFC Court’s exclusive jurisdiction in respect of AIAC arbitrations specifically includes the power to enforce AIAC arbitration awards. This is set out in Article 40 of the AIFC Arbitration Regulations.

4.14 When parties agree to arbitrate under the auspices of any other institution (for example, the ICC, as in the present case) or agree to an ad hoc arbitration, they do not thereby agree to accept the jurisdiction of the AIFC Court. Their agreement does not come within the ambit of Article 13.4 of the Constitutional Statute.

4.15 Bearing in mind that context, I now return to the crucial question in this case. Does Article 14.4 of the Constitutional Statute refer only to awards of AIAC arbitral tribunals or is it referring to awards of all arbitration tribunals anywhere in the world, whether ad hoc or institutional?

4.16 Article 14.4 does not specifically say whether it is referring to all arbitrations or only to AIAC arbitrations. But with the utmost respect to my fellow judges who take a different view, Article 14.4 can only be referring to AIAC arbitrations. I say this for four reasons:

- (i) Article 14.4 is headed 'International Arbitration Centre'. Articles 14.1, 14.2 and 14.3 are solely talking about the AIAC, its procedures and the enforcement of its awards.
- (ii) Admittedly, Article 14.4 does not specifically say that it is referring only to AIAC arbitration awards, but it would be very strange if the legislator is suddenly changing the subject and talking about all arbitration awards anywhere in the world.
- (iii) The parties to non-AIAC arbitrations have not agreed to accept the jurisdiction of the AIFC Court. They do not come within any of the provisions of Article 13 of the Constitutional Statute. It is Article 13, not Article 14, of the Constitutional Statute which defines the jurisdiction of the AIFC Court.
- (iv) It would be bizarre in the extreme to construe the last limb of Article 14 of the Constitutional Statute (an Article solely concerned with the International Arbitration Centre in Astana) as supplementing Article 13 and *sub silentio* conferring a new world-wide jurisdiction upon the AIFC Court.

4.17 Mr Iminov places heavy reliance upon Articles 45-47 of the AIFC Arbitration Regulations and upon Article 40 of the AIFC Court Regulations. These Articles purport to give the AIFC Court power to enforce arbitration awards made in other jurisdictions. But I do not see how these provisions can be effective. They are subordinate legislation made by the AIFC Management Council. Under Article 4.1(2) such subordinate legislation must be "not inconsistent" with the Constitutional Statute. In my view, those provisions in the AIFC Arbitration Regulations and the AIFC Court Regulations which envisage the AIFC Court enforcing arbitration awards from other jurisdictions are inconsistent with the Constitutional Statute. They cannot empower the Court to exercise a wider jurisdiction than is conferred by Article 13 of the Constitutional Statute.

4.18 The AIFC Court is a creature of statute, not a court of inherent jurisdiction like the High Court in England and Wales. Its powers are defined in and limited by the Constitutional Statute.

4.19 In the course of his submissions Mr Germanov placed reliance on the decision of Lord Mance CJ in *Michael Wilson & Partners Ltd v. (1) CJSC Kazsubton, (2) Kazphosphate LLP, (3) Kazphosphate Limited* (Case No: AIFC-C/CFI/2023/0002). In that case the Chief Justice held that the AIFC Court did not have jurisdiction to enforce foreign judgments. In paragraph 53 the Chief Justice stated:

"The AIFC Court has a specifically delimited jurisdiction which is exhaustive as regards the heads stated in Article 13 [of the Constitutional Statute]".

Mr Germanov submitted that the same principle applies in this case. I agree and I apply that same principle.

4.20 In the course of his judgment in *Michael Wilson* the Chief Justice observed that the AIFC Court had jurisdiction to enforce foreign arbitration awards. That aspect was not an issue in the case and was not an

essential part of the Chief Justice’s reasoning. Presumably, it was not fully argued. That part of the Wilson decision is not binding upon me.

- 4.21 Mr Iminov drew my attention to the following decisions of the AIFC Court, in which it was held that the Court had jurisdiction to enforce overseas arbitration awards: *Roads Department of the Ministry of Infrastructure of Georgia v. Todini Costruzioni Generali S.p.A.* (Case No: AIFC-C/CFI/2025/0025), *Pacific Trade House Limited v. (1) Altai Polymetals LLP (2) Terekty Ken Bayyту LLP* (Case No: AIFC-C/CFI/2025/0034) and *National Joint Stock Company “Naftogaz of Ukraine” JSC v. Gazprom PJSC* (Case No: AIFC-C/CFI/2026/0002).
- 4.22 The jurisdiction issue does not appear to have been fully argued in any of those cases, which is unfortunate. Having had the benefit of full argument in the present case, I am driven to the conclusion that all those cases were wrongly decided.
- 4.23 Mr Iminov also relies upon the reasoning, but not the decision of Justice Tom Montagu-Smith KC, in *Mohammed Bashir Mohammed Elhassan v. Elnaim Osama Hassan Ahmed* (Case No: AIFC-C/SCC/2025/0008). I agree with the judge’s decision in that case but respectfully disagree with certain of his *obiter* comments about enforcement of overseas arbitration awards.
- 4.24 Mr Iminov submits that the AIFC Court should be empowered to enforce overseas arbitration awards, in order that the Republic of Kazakhstan may comply with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Mr Germanov submits that this is incorrect. The regular courts of Kazakhstan have jurisdiction to enforce foreign arbitral awards and do not need the assistance of the AIFC Court in that regard. On this issue, Mr Germanov is correct. The Republic of Kazakhstan has been compliant with the New York Convention (to which it is a signatory) since before the AIFC Court was established, and it still is compliant. Article 253 of the Civil Procedure Code (upon which Mr Germanov relies in support of his limitation argument) sets out the procedure and time limit for enforcing arbitration awards, including those awards to which the New York Convention applies.
- 4.25 Mr Iminov makes forceful criticisms of the manner in which the Almaty Court has dealt with the enforcement application in this case. I understand those criticisms. But, as both counsel accept, I am not sitting as a court of appeal in respect of the Almaty Court’s decisions. It is not appropriate for me to comment upon whether I agree or disagree with those decisions.
- 4.26 Let me now draw the threads together. For the reasons set out above, this Court does not have jurisdiction to deal with the Claimant’s application. I must therefore draw this judgment to a conclusion.

PART 5. CONCLUSION

- 5.1 I am aware that the scope of this Court’s jurisdiction has become the subject of much political debate since the decision in *National Joint Stock Company “Naftogaz of Ukraine” JSC v. Gazprom PJSC* (Case No: AIFC-C/CFI/2026/0002), which was published on 15 May 2026. I have taken no notice whatsoever of that debate and focused solely upon the legal issues which have been argued by counsel before me.
- 5.2 Since this Court does not have jurisdiction, the other issues which have been argued (most ably) by counsel do not arise for decision.

5.3 The Claimant's claim is dismissed.

By order of the Court,

Justice Sir Rupert Jackson
Justice, AIFC Court

Representation:

The Claimant was represented by Mr Farukh Iminov, Senior Associate, Kinstellar Law Firm.

The Defendant was represented by Mr Nikolay Germanov, in-house lawyer of the Republican State Enterprise on the Right of Economic Management "National Centre for Complex Processing of Mineral Raw Materials of the Republic of Kazakhstan".