



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

22 June 2026

CASE No: AIFC-C/CFI/2025/0053

(1) CLAIMANT A

(2) CLAIMANT B

Claimants

v.

DEFENDANT

Defendant

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

It is ordered that:

- (1) The Arbitral Tribunal does have jurisdiction to hear the dispute in IAC Arbitration Case No. [...], and the challenge by CLAIMANT A and CLAIMANT B to the Arbitral Tribunal's Determination of Competence [...] is dismissed.**
- (2) The application by DEFENDANT for an anti-suit injunction is dismissed.**
- (3) Costs are reserved.**

JUDGMENT

1. The main issue in these proceedings concerns the interpretation of an arbitration agreement between the parties: in particular, whether a provision that "*The seat of the arbitration will be [Astana], Kazakhstan*" is to be interpreted in the circumstances as placing the seat of the arbitration in the AIFC, so that the domestic Law of the Republic of Kazakhstan "On Arbitration" ("the Kazakh Law on Arbitration") does not apply, or in Astana outside the AIFC, so that the Kazakh Law on Arbitration does apply.

Factual and procedural background

2. The Claimants, [...] ("CLAIMANT A") and [...] ("CLAIMANT B"), and the Defendant, [...] ("DEFENDANT"), entered into [...] Agreement on [...]. The [...] Agreement in its original form contained a UNCITRAL arbitration clause (Clause 12.3).
3. On [...] the parties executed a Settlement Deed to settle the obligations arising from the [...] Agreement. The Settlement Deed contained an arbitration agreement in these terms (Clause 12.2):

"Arbitration of Disputes. Any dispute, controversy, difference or claim, whether contractual or non-contractual, arising out of or in relation to this Deed, including its existence, validity, interpretation, performance, breach or termination, shall be referred to and finally resolved by arbitration administered by the International Arbitration Centre of the Astana International Financial Centre ('IAC') in accordance with the IAC Arbitration and Mediation Rules in force on the date on which the Request for Arbitration is filed with the Registrar of the IAC, which Rules are deemed to be incorporated into this Clause. The number of arbiters shall be three. The seat of the arbitration will be Nur-Sultan, Kazakhstan. The law governing the arbitration proceedings shall be the law of the seat. The language of the arbitration proceedings shall be Russian" (emphasis added).

The subsequent change of name of the capital city of Kazakhstan means that the reference to Nur-Sultan is now to be read, of course, as a reference to Astana.

4. On [...] the parties and others signed a Deed of Amendment to the [...] Agreement, by Clause 3.15 of which they agreed to replace the arbitration clause in the original Agreement (Clause 12.3) with an arbitration clause in identical terms to that contained in the Settlement Deed; and by Clause 6.2 of which they agreed that that clause was to apply to the Deed of Amendment itself as though set out in it.
5. On [...] the parties executed an Amendment Deed, by Clause 5.2 of which they agreed that the arbitration clause in the Settlement Deed (Clause 12.2) was to apply to the Amendment Deed as though set out in it.

6. On [...] DEFENDANT initiated arbitration proceedings in the IAC against CLAIMANT A and CLAIMANT B pursuant to Clause 12.2 of the Settlement Deed (IAC Arbitration Case No. [...]). On [...] the composition of the Arbitral Tribunal, consisting of three arbitrators, was approved.
7. As a preliminary issue CLAIMANT A and CLAIMANT B raised various arguments challenging the competence of the Arbitral Tribunal to hear the dispute. The relevant part of the challenge was, in brief, that the governing law was the law of the Republic of Kazakhstan; Article 8(10) of the Kazakh Law on Arbitration precludes arbitration without the consent of the relevant authorised body in respect of disputes involving legal entities that are in the majority ownership of the state; DEFENDANT is such an entity, yet such consent was not obtained; the arbitration clause in the Settlement Deed was therefore invalid and the Arbitral Tribunal had no jurisdiction to consider DEFENDANT's claim.
8. On [...] the Arbitral Tribunal issued a "Determination of Competence". The conclusion of the determination was that:
 - 1) *The Arbitral Tribunal shall have the power (jurisdiction) to hear the dispute referred to it under the Settlement Agreement between the Claimant and the Respondents.*
 - 2) *The seat of this dispute shall be the AIFC, Republic of Kazakhstan."*
9. The reasoning in support of that conclusion included the following:

"36. ... The English version [of the Settlement Agreement] specifies the law of the place of arbitration as the law governing the arbitration proceedings. According to Clause 13.9 of the Settlement Agreement, 'In the event of any inconsistency between the different language versions of the Agreement, the English language version shall prevail'. Accordingly, the Arbitral Tribunal shall be guided by the English version of the Settlement Agreement.

37. In view of this, and the fact that the parties have identified the IAC as the dispute resolution body, and the IAC is located in the AIFC, which has a law governing the arbitration proceedings that differs from the law of the Republic of Kazakhstan, then clause 12.2 of the Settlement Agreement should be understood so that the law governing the arbitration proceedings will be the law of the AIFC.

...

39. The Arbitral Tribunal considers that the words of clause 12.2 of the Settlement Agreement are sufficiently clear to conclude that, taken together, the agreement to resolve disputes at the IAC at the AIFC located in Nur-Sultan (now Astana) under the IAC Rules of Arbitration and the agreement to the seat of arbitration in Nur-Sultan (now Astana) constitutes the Parties' agreement to the AIFC as the seat of arbitration."
10. By Regulation 26(3) of the AIFC Arbitration Regulations 2017, if an arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the AIFC Court of First Instance to decide the matter, which decision shall not be subject to appeal.
11. By the present claim, brought pursuant to Regulation 26(3) within the time laid down, CLAIMANT A and CLAIMANT B request the AIFC Court of First Instance to decide the matter of jurisdiction and to order that the Arbitral Tribunal does not have jurisdiction to consider IAC Arbitration Case No. [...].
12. DEFENDANT seeks the opposite result, requesting the AIFC Court to dismiss the claim and to order that the Arbitral Tribunal does have jurisdiction to consider the arbitration.

13. By a separate Arbitration Claim Form as amended, DEFENDANT also seeks an anti-suit injunction against CLAIMANT A and CLAIMANT B, to restrain them from seeking the invalidation of the arbitration agreement through parallel proceedings in other courts. This Court directed that the application for an anti-suit injunction be heard together with the claim by CLAIMANT A and CLAIMANT B in respect of jurisdiction.
14. The hearing took place by video-link on 15 July 2026. The time at the hearing was taken up mainly by the jurisdiction issue, on which I heard submissions from Mr Alexander Korobeinikov on behalf of CLAIMANT A and CLAIMANT B, and from Mr Bakhyt Tukulov on behalf of DEFENDANT. On the anti-suit injunction issue I then heard submissions from Ms Mariya Petrenko on behalf of DEFENDANT. Mr Korobeinikov was due to respond on behalf of CLAIMANT A and CLAIMANT B but was unable to do so because of a technical problem with the link. The hearing had closed before the link was restored. Since the issue was a narrow one and Mr Korobeinikov had filed detailed written submissions upon which I could rely, I was satisfied that the transmission failure gave rise to no substantial unfairness requiring the hearing to be re-opened. I am grateful to all counsel for their submissions, written as well as oral.

The case for CLAIMANT A and CLAIMANT B

15. The case put forward on behalf of CLAIMANT A and CLAIMANT B proceeds along the following lines. First, it was expressly agreed in Clause 12.2 that the seat of the arbitration was to be Astana. The Settlement Deed does not contain any reference to the AIFC as the seat of the arbitration. Although Clause 12.2 refers to arbitration by the IAC in accordance with the IAC Rules, Regulation 30(1) of the AIFC Arbitration Regulations provides in terms that *“The parties are free to agree on the seat of the arbitration”*. If the parties intended to designate the AIFC as the seat of the arbitration, they were required to do so explicitly in the arbitration clause. Reference is made to the model arbitration clause published on the IAC website, which uses the language *“The seat of the arbitration will be [the AIFC in Astana, Kazakhstan]”*, thereby distinguishing between the AIFC and Astana. The case-law of the Dubai International Financial Centre (DIFC), in particular *Dhir v Waterfront Properties* [2009] DIFC CFI 011 (8 July 2009), is cited in support of the argument. The decision of the AIFC Court of First Instance on a very similar issue in Case No. 8 of 2021, *Success K LLP v Ministry of Healthcare of the Republic of Kazakhstan* (judgment of Lord Mance, Chief Justice, dated 24 January 2022), is said to be distinguishable in that the seat of the arbitration was stated in that case to be the Republic of Kazakhstan without specifying a particular city.
16. The second main step in the argument is that Clause 12.2 provides that the law governing the arbitration proceedings shall be the law of the seat. If the seat is Astana, not the AIFC, the governing law is the ordinary law of the Republic of Kazakhstan, not AIFC law. Regulation 9 of the AIFC Arbitration Regulations provides that *“Parts 1 to 3 and the Schedule of these Regulations shall apply where the Seat of the Arbitration is the AIFC”*. Those Parts, which include most of the AIFC procedural regulations, do not therefore apply where the seat is Astana outside the AIFC. It is also said that the ordinary law of the Republic of Kazakhstan was applied by the local courts of Kazakhstan in the rulings whereby they returned the claims made to them by CLAIMANT A in [...] (see §31 below).
17. The third main step in the argument is that Article 8(10) of the Law of the Kazakh Law on Arbitration therefore applies; and since DEFENDANT failed to obtain the consent of the authorised body required by Article 8(10), the arbitration clause in the Settlement Deed was invalid and the Arbitral Tribunal had no jurisdiction to consider DEFENDANT’s claim. The provision in Regulation 7 of the AIFC Arbitration Regulations that *“The requirements of the Arbitration Law of the Republic of Kazakhstan do not apply to arbitrations conducted under these Regulations”* is itself inapplicable, since it is contained in Part 1 of the Regulations and therefore, by reason of Regulation 9 (referred to above), applies only where the seat of the arbitration is the AIFC.

The case for DEFENDANT

18. The starting point for DEFENDANT is that from the outset the parties had a clear intention that any dispute should be subject to arbitration. That intention to arbitrate was clear from the UNCITRAL arbitration clause in the original [...] Agreement and from the IAC arbitration clauses contained in the subsequent amendments to the Agreement and in the Settlement Deed. Yet the interpretation put forward by CLAIMANT A and CLAIMANT B would achieve a situation where the arbitration agreement was meaningless. It is not disputed that if Article 8(10) of the Kazakh Law on Arbitration applied, the arbitration agreement would be invalid and ineffective. That result would be obviously contrary to the intention of the parties, and the avoidance of that result is a strong reason for interpreting Clause 12.2 as providing that the arbitration has its seat in the AIFC.
19. It is further submitted that to interpret Clause 12.2 as placing the seat of the arbitration in the AIFC accords with the principle of *effet utile* which requires that arbitration agreements are interpreted so as to give them a practical and effective meaning. It is the only reasonable interpretation and one that is in line with AIFC Court jurisprudence in the form of the *Success K* case, whereas the DIFC case of *Dhir v Waterfront Properties* is distinguishable.
20. It is further argued that CLAIMANT A affirmed the validity of the arbitration agreement in its Answer to the Request for Arbitration and is now estopped from asserting the contrary; and that the case now advanced by CLAIMANT A and CLAIMANT B, that the domestic Law on Arbitration law applies on the basis that the arbitration agreement designates Astana as the seat, was not raised before the Arbitral Tribunal and should not be permitted to be raised now. Another submission is that Article 8(10) of the domestic Law on Arbitration can be invoked by state-related entities but not by privately owned companies such as CLAIMANT A and CLAIMANT B.

Jurisdiction: discussion

21. In my judgment, there are strong reasons for rejecting the interpretation of Clause 12.2 put forward by CLAIMANT A and CLAIMANT B. Such an interpretation would create an inconsistency and, as submitted by DEFENDANT, would render the arbitration agreement ineffective. On the one hand, the parties would have expressly agreed that any disputes be resolved by arbitration at the IAC in accordance with IAC Rules; yet, on the other hand, the choice of Astana outside the AIFC as the seat of the arbitration would have the consequence of invalidating that agreement to arbitrate, by causing the disapplication of Regulation 7 of the AIFC Arbitration Regulations and bringing into play the Kazakh Law on Arbitration and in particular Article 8(10) of that Law, as set out at §§16-17 above. Looked at objectively, it cannot have been the intention of the parties to create such a situation. On the contrary, they had shown a consistent intention, from the time of the [...] Agreement onwards, that any disputes were to be subject to arbitration, which presupposes effective arbitration.
22. It is important to keep in mind that the AIFC is itself part of Astana. By Article 1 of the Constitutional Statute on the AIFC (Constitutional Statute No.438-V ZRK of 7 December 2015), the AIFC “*means the territory within the City of Astana with precise borders determined by the President of the Republic of Kazakhstan where the special legal regime in the financial sphere established by this Constitutional Statute applies*”. A reference to Astana as the seat of an arbitration does not necessarily mean the City of Astana outside the AIFC, as opposed to the AIFC itself. Whether such a reference is to be taken as a reference to the AIFC or to the City of Astana outside the AIFC depends on context and the intention of the parties as it appears from the arbitration agreement read as a whole. I do not think that the reference to “*the AIFC in Astana*” in the IAC model arbitration clause adds anything material.

23. Taking Clause 12.2 in context and as a whole, the reference to Astana as the seat of the arbitration should in my view be read as a reference to the AIFC. That seems to me to be the only reasonable interpretation of the clause, and one that must have been intended by the parties. On that basis, the relevant arbitral law is that of the AIFC and Regulation 7 of the AIFC Arbitration Regulations applies, providing a conclusive answer to the contention that the absence of consent under Article 8(10) of the Kazakh Law on Arbitration operates to invalidate the arbitration agreement.
24. That view is supported by the approach taken in *Success K*, in which the AIFC Court was concerned with a very similar issue as arises here. The relevant clause of the arbitration agreement in *Success K* was Special Condition 49, as set out in §§13-14 of Lord Mance’s judgment. In an English translation put before the Court it read:

“49. Disputes shall be settled by arbitration in accordance with the following provisions:

Any dispute, controversy, difference or requirement, whether contractual or non-contractual, arising from or in connection with this contract, including regarding the existence, validity, interpretation, performance, breach or termination of this contract is transferred [to be] finally resolved by arbitration administered by the [IAC] in accordance with the rules of arbitration and media [sic] which are included in this disclaimer [sic] ...

2. Place of arbitration and applicable law

The place of arbitration in the Republic of Kazakhstan. Applicable law is the law of arbitration ...”

25. As the judge observed, something had evidently gone wrong in the translation. Other versions which were also before the Court assisted to understand the text. The translation in the Final Award referred to disputes being resolved by *“arbitration administered by the IAC in accordance with the IAC Arbitration and Mediation Rules in force on the date on which the Request for arbitration is filed with the Registrar of the IAC, which Rules are deemed to be incorporated into this clause”*. And paragraph 2 was translated in the Final Award as follows:

“The seat of the arbitration will be the Republic of Kazakhstan. The law governing the arbitration proceedings shall be the law of the seat.”

26. In that case, too, there was an argument that the law governing the arbitration proceedings was the general law of the Republic of Kazakhstan and that the arbitration agreement was invalid because consent had not been obtained as required by Article 8(10) of the Kazakh Law on Arbitration. The argument was rejected by the Court:

“24. Paragraph 2 of Special Condition 49 of the Contract is ... concerned with the applicable arbitral law. That is so, whichever translation set out in paragraphs 13-14 above is used. Regulation 30(1) of the AIFC Arbitration Regulations expressly provides that ‘The parties are free to agree on the seat of the arbitration’. Paragraph 2 contains the parties’ agreement on the place or seat of arbitration and on the law which is to govern the arbitral proceedings (the ‘arbitral law’).

25. The Court understands the Ministry’s case to be that paragraph 2 constitutes a choice by the parties of the law, and in particular the Arbitration Law, of the Republic of Kazakhstan as the applicable arbitral law. The Court does not accept that submission. Paragraph 2 must be read with the first main paragraph of Special Condition 49, which provides that the parties

are submitting to IAC arbitration under the IAC Rules. The IAC is part of the AIFC, which is itself both an area and a jurisdiction within the Republic of Kazakhstan ...

...

26. Reading Special Condition 49 as a whole, what the parties were agreeing was to resolve any disputes by IAC arbitration within the jurisdiction of the AIFC which is within the Republic of Kazakhstan and to do this subject to the arbitral law of the IAC which is found in the AIFC Arbitration Regulations and the IAC Rules. It makes no real sense to suppose that, by paragraph 2, the parties intended to select a seat outside the area and jurisdiction of the AIFC or an arbitral law different from or in addition to that of the AIFC and IAC, for which they elected in the first, main part of Special Condition 49. The arbitral law is therefore for all purposes that of the AIFC and IAC. It is not in any respect the general arbitral law, or the Arbitration Law, of the Republic of Kazakhstan.”

27. The present case fits squarely within the general reasoning in *Success K*. The provision in Clause 12.2 that “*The seat of the arbitration will be [Astana], Kazakhstan*” must be read with the first part of the clause, which provides that the parties are submitting to IAC arbitration in accordance with the IAC Arbitration and Mediation Rules. Reading Clause 12.2 as a whole, what the parties were agreeing was to resolve any disputes by IAC arbitration within the jurisdiction of the AIFC which is within Astana and to do this subject to the arbitral law of the IAC. Here, too, it makes no sense to suppose that the parties intended, by the “seat of the arbitration” provision, to select a seat outside the area and jurisdiction of the AIFC or an arbitral law different from or in addition to that of the AIFC and IAC. I do not accept that any relevant point of distinction lies in the fact that the seat was stated in *Success K* to be the Republic of Kazakhstan, without specifying a specific city, whereas Clause 12.2 specifies Astana. The fact that the AIFC is legally and geographically a part of Astana provides an even stronger reason than in *Success K* for interpreting the clause as including the choice of the AIFC as the seat.
28. In contrast to *Success K*, the DIFC case of *Dhir v. Waterfront Properties* is in my view clearly distinguishable. The relevant part of the decision in *Dhir* turned on the interpretation of an agreement that “*The arbitration shall take place in the Emirate of Dubai*”. There was no suggestion that if Dubai rather than the DIFC were the seat of the arbitration, the arbitration agreement in that case would be invalid and ineffective. Nor was there any provision corresponding to the first part of Clause 12.2 in the present case, involving agreement to submit to DIFC arbitration in accordance with DIFC Rules: the relevance of this is shown by the observation at §84 of the judgment that “*The choice of the seat could have been clearer if the Parties had specified whether the applicable arbitration law was to be that of Dubai or the DIFC*”. Moreover, the position of the DIFC within Dubai is not defined in the same way as that of the AIFC within Astana. Finally, I do not think that the observation at §87 of the judgment that “*if the Parties had wanted to stipulate the seat as the DIFC, they could have said so expressly*” has any real significance for the interpretation of Clause 12.2.
29. I have mentioned DEFENDANT’s argument that in application of the principle of *effet utile* the Court should lean against the interpretation of Clause 12.2 contended for by CLAIMANT A and CLAIMANT B. Reference is made, for example, to §2.198 of *Redfern & Hunter on International Arbitration* (6th ed., 2015) which states:
- “*Where there is an apparent inconsistency in the clause, most national courts usually attempt to give a meaning to it, in order to give effect to the general intention of the parties, which was to submit disputes to arbitration.*”

When Clause 12.2 is read as a whole as indicated above, there is no inconsistency requiring resolution; but the interpretation of the clause that I favour does give effect to the general intention of the parties, which was to submit disputes to arbitration, and is consistent with the application of the principle of *effet utile*.

30. In the circumstances it is unnecessary for me to consider DEFENDANT's further arguments as to estoppel, alleged reliance on a point not advanced before the Arbitral Tribunal, or whether Article 8(10) of the Law on Arbitration can be invoked by privately owned companies.
31. For the reasons I have given, I am satisfied that the Arbitral Tribunal has jurisdiction to hear the dispute in IAC Arbitration Case No. [...] and that the challenge by CLAIMANT A and CLAIMANT B to the Arbitral Tribunal's Determination of Competence must be dismissed.

DEFENDANT's application for an anti-suit injunction

32. The application by DEFENDANT for an anti-suit injunction was made in response to the initiation of proceedings by CLAIMANT A in the local courts of Kazakhstan in parallel to IAC Arbitration Claim No. [...] and the present proceedings in the AIFC Court. On [...] CLAIMANT A filed a claim before the Specialised Interdistrict Economic Court of Astana seeking to invalidate Clause 12.2 of the Settlement Deed and a materially identical arbitration clause in the [...] Agreement of [...] as amended. On [...] the Astana court issued a ruling returning the claim (i.e. dismissing it without prejudice) on the basis that the dispute was subject to arbitration and that the issue of jurisdiction had to be decided first by an arbitral tribunal. On [...] CLAIMANT A re-submitted its claim to the Astana court, seeking the same relief. On [...] the Astana court issued a further ruling returning the claim. On [...] the Judicial Collegium for Civil Cases of the Court of the City of Astana rejected an appeal against that ruling. The decision of the Judicial Collegium is not subject to further appeal or review.
33. DEFENDANT's application for an anti-suit injunction was filed on [...], while the proceedings in the Astana courts were still ongoing. DEFENDANT has subsequently amended the application to take account of the rulings of those courts. It argues now that although those parallel proceedings have been concluded, there remains a risk that CLAIMANT A and CLAIMANT B will initiate further proceedings in the local courts; and it still seeks an order compelling CLAIMANT A to refrain from any claims in any other courts connected with the invalidation of the arbitration agreement, and compelling CLAIMANT B not to take any actions in support of any such claims.
34. The difficulty about the case now advanced, however, is that it is purely speculative. The position as it is now and has been for several months is that there are no parallel proceedings either ongoing or pending or threatened. CLAIMANT A and CLAIMANT B failed in the attempt to invalidate the arbitration clauses in the local courts. There is nothing to suggest that they intend to try again. If they do, I can readily see that there may be a case for the grant of an anti-suit injunction, as there probably was when DEFENDANT's application was first made to this Court in [...]. In present circumstances, however, the issue has become moot and the threshold for the grant of injunctive relief is not met.
35. Accordingly, DEFENDANT's application for an anti-suit injunction is dismissed.

Costs

36. Any application for costs is to be made in writing within 14 days of the date of this judgment; any replies within 14 days thereafter; and the Court will then decide the issue on the papers.

By Order of the Court,

The Rt. Hon. Sir Stephen Richards
Justice, AIFC Court

Representation:

The Claimants were represented by Mr Alexander Korobeinikov, Partner, Mr Khaidar Beissov, Ms Alissa Inshakova, lawyers, Baker McKenzie Kazakhstan BV, Almaty, Kazakhstan.

The Defendant was represented by Mr Bakhyt Tukulov, Partner, Ms Maria Petrenko, Senior Associate and Mr Artem Kuznetsov, Associate, TKS Disputes, Almaty, Kazakhstan.