IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

22 July 2026

CASE No: AIFC-C/CFI/2026/0019

R

Claimant

v

C

Defendant

JUDGMENT AND ORDER

Justice of the Court:

Justice Sir Jack Beatson FBA

ORDER

UPON consideration of the Claimant's application for the removal of B as the Sole Arbitrator in IAC Case 320 of 2025 and for the appointment of a new sole arbitrator, and

UPON the Court having dismissed the application for the reasons set out in the judgment, and

UPON consideration of the issue of costs,

IT IS ORDERED THAT:

1. The application by R for the removal of B as the Sole Arbitrator in IAC Case 320 of 2025 and the appointment of a new sole arbitrator is *dismissed*.

2. The parties are to seek to agree the costs of the application within 14 days of receipt of this order. In default of agreement, the parties shall file written submissions on costs, including a summary of time spent and hourly rates.

3. Upon receipt of such submissions, the Court will make an immediate assessment of costs pursuant to Rule 26.5 of the AIFC Court Rules.

JUDGMENT

This judgment is in seven parts, namely:
Part 1. Introduction
Part 2. The material AIFC Rules and Regulations
Part 3. The background
Part 4. The Decision of the Tribunal
Part 5. The Application under Regulation 22(3) of the AIFC Arbitration Regulations 2017
Part 6. The Parties' Principal Submissions
Part 7. The Court's decisions on the issues before it

PART 1. INTRODUCTION

1. This is an application for the removal of the sole arbitrator in a pending arbitration, IAC Case 320 of 2025 in the International Arbitration Centre (the "IAC") of the AIFC. The application also seeks any further relief this Court considers necessary to ensure the proper and impartial conduct of the arbitration. The principal issue raised by the application is whether the circumstances put before the Court individually or cumulatively give rise to justifiable doubts about the sole arbitrator's independence or impartiality.

2. The application is made under Regulation 22(3) of the AIFC Arbitration Regulations 2017 ("the Arbitration Regulations") by the Defendant in the underlying arbitration. The Claimant in the underlying arbitration is the Defendant to this application. The application was made after the rejection on 29 March 2026 by the tribunal (i.e. the sole arbitrator) of a challenge under Article 10 of the IAC Rules on Arbitration and Mediation 2022 ("the IAC Rules").

3. §2.7 of the Claim Form states that the application was filed with this Court on 20 April 2026. It was registered by the Court on 13 May 2026 and the defence was filed on 10 June 2026.

4. To preserve the confidentiality of the arbitration, I refer to the sole arbitrator as B, to the Claimant in the pending arbitration as C, and to the Respondent in that arbitration, a company based in a European country and represented by its branch in the Republic of Kazakhstan, as R. I refer to the partner in C's legal representatives who is one of the reasons for this application as X.

5. My pre-reading for the hearing led me to ask the Registry to request the parties to provide information and the following documents which had not been provided by the parties in support of R's application and C's defence to it:

   (a) the contract that gave rise to the dispute primarily to identify the wording of the dispute resolution provision in it,
   (b) the Request for Arbitration,
   (c) any e-mail exchanges with the Registry about proposed arbitrators before 13 February 2026 to assist the Court to understand the factual background to the dispute about B's appointment, and
   (d) documents relevant to the issue of B's invoice and suggestion that C alone pay the full amount of his fee and what then happened including the explanation given by B for his actions at a case management conference (CMC) which was not identified in either the claim, the documents provided with it, or in the defence.

   I am grateful to the parties for their responses to these requests.

6. On 9 July 2026 B asked to attend the hearing. Permission was given for him to attend the hearing on the basis that he would answer any questions I raised but would not otherwise speak.[1] On 13 July 2026, B emailed the Court Registry and the parties. His email reminded the parties and informed the Court of the discussion about the payment of his fees at the CMC (which he stated was held on 22 April 2026, shortly after this application was filed with the Court) and provided a translation into English by him of an audio-recording of the CMC. I am grateful to him for those. At the hearing, I asked the parties whether they had any objections to the translation of the audio-recording. There were none then or since the hearing, and what I say about the CMC at §§71-72 below is based on it.

7. At the hearing, I heard oral submissions on behalf of R from Mr Aidar Aralbayev of Magna Law LLP and on behalf of C from Ms Yelena Dvoretskaya-Yussupova of Advocates' Bureau Legit. In advance of the hearing, both parties lodged written submissions, which I have carefully considered, and for which I thank them, and responded to my requests. I also thank counsel for their helpful oral submissions today. After counsel for the parties had concluded their submissions, I put two questions to B on matters which counsel had raised during the hearing.

PART 2. THE MATERIAL AIFC RULES AND REGULATIONS

8. Articles 2.1 and 2.4 of the IAC Rules provide that the overriding objective is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense and that throughout proceedings the parties, the Chairman, the AIAC, the Registrar and the Tribunal shall act in accordance with this overriding objective. Article 2.2 provides that where are the 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

[1] This was the same basis as the attendance of arbitrator who was challenged in Case AIFC-C/CFI/2025/0009, heard and decided in June 2025.

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.

9. Article 8.2 provides that: "*[w]here the parties have not agreed a number of arbitrators, there shall be a sole arbitrator, unless the complexity of the claim calls for three arbitrators.*"

10. The material parts of Article 8.4 of the IAC Rules provide:

    (1) "*Where the tribunal is to consist of a sole arbitrator, the Registrar will ask the parties jointly to appoint a sole arbitrator within 10 days for appointment. If the parties fail jointly to appoint a sole arbitrator, the AIAC Chairman will appoint a sole arbitrator*."
    …
    (4) "*[i]f the parties are not all of the same nationality, the sole arbitrator or the Chairman of the Tribunal shall be of a different nationality to that of any of the parties, unless the parties agree otherwise".*

11. Article 9.1 provides that "*every arbitrator must be and remain independent and impartial*". Articles 9.2-9.3 respectively require disclosure of circumstances of which they are aware that might give rise to *"justifiable doubts as to their independence or impartiality"* before being appointed and, after being appointed, in a signed statement of "*acceptance, independence, impartiality and availability".*

12. Article 10.1 provides that a party "*… may challenge any arbitrator if circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence or if the arbitrator does not possess the required qualifications agreed by the parties*" within 14 days from the date the circumstances giving rise to the challenge become known to the party. After setting out the procedure in Article 10.2 to 10.6, Article 10.6 provides that, where the other parties do not agree to the challenge "*[t]he tribunal shall take a decision on the challenge having regard to the overriding objective".*

13. Article 10.7 provides that *"any decision of the Tribunal rejecting a challenge shall be without prejudice to any right the party may have to apply within seven days to the AIFC Court under the Arbitration Regulations Article 22(3)"*. Article 22(3) provides that where a challenge made to the arbitral tribunal is not successful, *"[t]he challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the AIFC Court of First Instance to decide on the challenge, which decision shall be subject to no appeal...".* It also provides that, "*while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.*"

PART 3. THE BACKGROUND

14. The parties contracted on 4 April 2023 for the execution by R, the contractor, of repairs to and reconstruction of part of C's industrial plant. Clause 8 of the contract provided as follows for the resolution of disputes by arbitration in the IAC:

    "8.1 *Disputes and disagreements that may arise in the performance of this contract will be resolved between the parties by negotiation. If the parties fail to reach a mutual solution to a dispute, a claim shall be filed.*

If the Parties fail to reach an agreement, the subject matter of the dispute shall be handed to the AIFC in Astana[2]*. The meeting will be presided over by arbitrators from the AIFC. The language of the litigation procedure will be Russian. The applicable law to the merits shall be the law of the Republic of Kazakhstan.*"

15. The Claimant's request for arbitration was received and registered at the IAC on 8 December 2025. In it, C proposed a Kazakh national on the IAC's panel of arbitrators as the sole arbitrator at a fee of USD 10,000. The IAC responded on the same day directing R to file its answer to the Request for Arbitration by 5 January 2026 and to confirm whether it agreed to the arbitrator proposed by 19 December. On 18 December 2025, R objected to that proposal stating that Clause 8.4 of Article 8 of the IAC's Rules provided that where the parties are not of the same nationality, the sole arbitrator shall be of a nationality different from that of any of the parties, unless the parties agree otherwise. It stated that it would propose a non-Kazakh national.

16. On 26 December 2025 the IAC Registry directed the parties by no later than 17:00 Astana time on Monday, 12 January 2026 to:

"propose a non-Kazakh arbitrator candidacy with an arbitration fee of US$ 10,000 or more, along with the CV attached. If the Parties fail to propose an arbitrator candidacy, the IAC Chairman will proceed with appointing a sole arbitrator with a fee of US$ 10,000 or more".

On 30 December 2025, R's senior project manager emailed the Registry stating that it would propose such a candidate and that it hoped to reach agreement with C on a mutually acceptable arbitrator. On 12 January 2026, in an email timed at 17:18 copied to C, R's legal representative identified two non-Kazakh nationals on the IAC's list of approved arbitrators and proposed that one of them be appointed as sole arbitrator in IAC Case No. 320 of 2025. It stated that the two individuals had been "*selected solely on the basis of their credentials, which indicate relevant experience in infrastructure disputes and proficiency in the Russian language*."

17. Shortly after receiving that email, the IAC identified B as a potential sole arbitrator with a fixed fee of USD 20,000 and was informed by R's counsel that R objected to the appointment. On 3 February 2026 the Registry wrote to parties stating that the Registrar had carefully considered an email from R's counsel and deemed B to be the most suitable arbitrator with many years proven expertise, including the type of dispute in this case. It stated that the IAC Chairman would appoint B unless any of the parties provided an acceptable written objection by 13 February 2026.[3] On that date, R's legal representative did so. Its email stated:

    i. R had previously proposed two "*highly qualified arbitrators from the IAC's own list*" and C had not objected to either even after they had disclosed their anticipated fee range. There was therefore no procedural objection to either candidate. R stated that it was not clear why the IAC sought to impose a non-nominated arbitrator when a path to consensus remained open and the arbitrator's fees were *"not a point of contention for either party"*.

[2] The English version refers to "the IFCA in Astana", which is obviously a typographical error.

[3] Although R's email stated that the proposal was made by the IAC Registry, it appears that, as stated in the Registry's email dated 26 December 2025 and in §5 of C's defence to this application, it was the Chairman of the IAC who proposed B as a candidate.

ii. R found it questionable that the IAC could pre-determinate a fixed a fee of USD 20,000 for the arbitrator. At that stage neither the IAC nor the proposed arbitrator could know the full scope, nature and complexity of the counterclaims R intended to file. R stated that "*given the anticipated complexity of this arbitration - which will involve numerous witnesses, multiple experts from both sides and extensive hearings - a fee of USD 20,000 seems to be highly unreasonable"* and "*such an exceptionally low figure raises more questions than it answers regarding the suitability and depth of the proposed mandate."* At the hearing before me, Mr Aralbayev suggested that the words "proposed mandate" referred to the proposed arbitrator.

iii. B, the proposed arbitrator, and X, the Claimant's counsel, had frequently been observed together side by side at various professional events including the Eurasia Arbitration Conference. R stated that this gave rise to justifiable doubts as to the appearance of independence and impartiality required of an arbitrator.

iv. Given "*the profound systemic, historical and legal overlaps between Russia and Kazakhstan*", the appointment of an arbitrator from the Russian Federation "*does not provide the meaningful legal and institutional distance contemplated by Article 8.4(4)*" of the IAC Rules. R submitted that the appointment of such an arbitrator "*undermines the transactional balance expected in an international arbitration*" and that "*substantive neutrality requires the appointment of an arbitrator from a jurisdiction offering true legal distance from the parties*".

18. The email then summarised the grounds upon which R formally objected to the appointment. R submitted that there were failures (i) to comply with the overriding objective in Articles 2.1 and 2.4 of the IAC Rules, and (ii) in substance to comply with Articles 8.4(4) and 9.1-9.4 of those Rules, the material parts of which are set out or summarised in Part 2 above.

19. On 23 February 2026, B returned the statement of acceptance. independence, impartiality and availability required by Article 9 of the IAC Rules to the Registry. Unfortunately, the Registry did not send copies of the statement to the parties, a matter relied on by R in this application.

20. On 2 March 2026 the IAC Registry e-mailed the parties stating that B was appointed as sole arbitrator. It noted the objections raised by R but stated that the grounds set out did not suffice to meet the criteria for justifiable doubts required by the IAC Rules. The e-mail stated:

(i) B is one of the IAC listed arbitrators;
(ii) He is highly experienced in disputes similar to that in IAC Case 320 of 2025;
(iii) He is a Russian native speaker;
(iv) B's statement of independence and impartiality complies with the IAC Rules; and
(v) B "*is available to manage the case now"* and his fee is a one-time fixed fee of US$20,000.

21. The IAC also stated that appointing a different arbitrator with all these qualities would be very difficult at the listed fee without causing unnecessary delay or expense and that B's appointment complies with the IAC Rules and the overriding objective. It concluded by stating that if R intended to maintain its objections, they could be dealt with in accordance with Article 10 of the IAC Rules by the tribunal itself once it was constituted.

22. On 5 March 2026, B emailed both parties attaching his invoice for €17,168.86, the sum equal to US$ 20,000. He stated: "*I suggest that the Claimant pays this sum in € and lets me know lets me know when it happened. Once this happened, I would send you my draft procedural order No 1*. This has given rise to one of the issues in the present application: see §§ 41, 51 and 71 below.

23. On 16 March 2026, R maintained its objections to the appointment and requested the tribunal formally to consider and issue a reasoned determination on the challenges. On 29 March 2026, B rejected the objections. The reasons he gave are summarised in Part 4 below.

PART 4. THE DECISION OF THE TRIBUNAL

24. In his decision, B stated that he would not comment on the concerns about the basis of the appointment because the IAC's proposal to him was a fixed-fee proposal which he accepted.

25. ***Impartiality and independence***: B rejected R's challenge to his impartiality and independence in the light of the IBA Guidelines on Conflicts of Interest approved on 25 May 2024 and *Erick van Egeraat Associated Architects BV v OOO Capital Group,* a decision of the Federal Arbitrazh Court of the City of Moscow on 27 August 2009.

26. As to the IBA Guidelines, B's decision referred to the general standards regarding impartiality, independence and disclosure in Part I and to the section setting out guidelines on the Practical Application of those General Standards in Part II containing four non-exhaustive categories of colour-grouped circumstances. The fourth category, the Green List, identifies situations in which objectively no appearance of or actual conflict of interest arises and there is no duty on a prospective arbitrator to disclose the situation. One such example in Group 4.3 of this list concerns "*contacts with another arbitrator, or with counsel for one of the parties".* The decision relied on paragraph 4.3.4, set out at §64 below which concerned participation in conferences and events of a professional, social or charitable organisation with another arbitrator or with one of the parties' counsel as within the Green List.

27. In the *OOO Capital Group* case, an arbitrator was unsuccessfully challenged on the ground that she was interested in the outcome of the case. The ground of the challenge was that she had participated in a conference on the United Nations Convention on Contracts for the International Sale of Goods, also known as the Vienna Convention, at which the partner of a law firm which subsequently represented the claimant in the arbitration had spoken.

28. B's decision stated that he was "*from time to time attending various events organised by the [IAC] in Astana. I am doing so as a speaker for as a less active participant. I came across many persons at such events, including lawyers representing the Claimants. However, there are no pecuniary relations between any of them (or the Claimants) and me. So I do not think that it makes sense to disclose this type of information*." He concluded that he did not agree that "*there are any justifiable doubts to [his] independence and impartiality with regard to any of the parties to this case".*

29. ***Neutrality considerations under Article 8.4(4) of the IAC Rules:*** In relation to the challenge that the appointment of an arbitrator from Russia may not sufficiently ensure the required level of neutrality, B cited three IAC cases in which he had been appointed as an arbitrator where the parties were of different nationalities. He stated that in one of them he rendered his award against a State agency of Kazakhstan and in another against Respondents, one of which was from Kazakhstan. After referring to the fact that since January 2026 he had two nationalities; Russian and German, he concluded that the close institutional, economic, and legal ties between Russia, the country of one of his nationalities, and Kazakhstan did not result in him lacking neutrality or sufficient neutrality to be an arbitrator in this case.

Court

30. ***The overriding objective of the IAC Rules:*** B stated that he considered that he was able to meet the overriding objective in Article 2.1, set out in §8 above, and to provide the fair resolution of the dispute without undue delay. He would be prepared to follow the timetable agreed by the parties or, absent such agreement, propose an alternative. He referred to the provision that a final award shall normally be made not later than six months from the date the case is referred to the tribunal and to the power of the Registrar to extend the time limit upon request by the tribunal.

PART 5. THE APPLICATION UNDER REGULATION 22(3) OF THE ARBITRATION REGULATIONS 2017

31. Article 22(3) provides for a 30 day period after the challenging party has received notice of the decision. B's decision rejecting R's challenge was received by the parties on 29 March 2026, and R stated that it filed its application under Article 22(3) on 20 April 2026, within the 30 day period specified in Article 22(3).[4] As stated above, the application was registered by the AIFC Court on 13 May 2026.

32. As well as the correspondence summarised above, R provided photographic evidence of B at various legal conferences sitting next to or near X (described at §§3.8 and 6.4 of the claim and in R's skeleton argument as "the defendant's representative"). No further information about the nature of X's association with B is given in the skeleton argument or the documents before me although, at the hearing Mr Aralbayev referred to them also having been co-arbitrators.

33. As permitted by Article 22(3) of the Arbitration Regulations, the arbitral proceedings continued. A CMC was held on Wednesday, 22 April 2026, at which the issue of payment of the arbitrator's fee was raised.

PART 6. THE PARTIES' PRINCIPAL SUBMISSIONS

(A) R's submissions in support of the application:

34. The grounds of the present application and the arguments relied on by R are substantially the same as those it advanced below. There are, however, differences of formulation and emphasis between the grounds and written submissions in the claim form and those in R's skeleton argument's section on "the main arguments" which I sought to clarify at the hearing. The summary of R's position and submissions in the following paragraphs seek to reflect that clarification.

35. At the hearing, Mr Aralbayev emphasised that R did not suggest that B was not professionally qualified or consciously intends to favour C. He relied on an unconscious predisposition by B arising from a number of factors including professional familiarity and previous co-operation, and also on irregularities by the IAC Registry. While the written submissions maintained that these factors individually or cumulatively give rise to objectively justifiable doubts as to B's independence and impartiality within the meaning of Article 22 of the Arbitration Regulations 2017 and that his appointment is inconsistent with both the letter and the spirit of the IAC Rules, his oral submissions emphasised their cumulative effect. I summarise the submissions on the individual factors in the following paragraphs; first those that only concern impartiality and independence, and then those which are also said to involve irregularities by the IAC Registry.

[4] Claim form, §2.7. While Article 22(3) provides that the application to the AIFC Court must be made within 30 days of notice of the decision, the concluding paragraph of B's decision referred to the 7 day period referred to for such applications in Article 10.7 of the IAC Rules.

36. First, it was submitted that reasonable doubts as to B's independence and impartiality arise from his participation in professional arbitration events and conferences attended by X, one of C's legal representatives. At the hearing, Mr Aralbayev also stated that B had informed the parties that he had previously served as a co-arbitrator with X and that the fact B had taken a different position to X does not remove concerns arising because of professional familiarity. In its written submissions, R submitted (see Claim Form §§6.1 – 6.6) that "*the professional relationship between [B and X] as well as the legal environment in which they operate*" means that the appointment of B is inconsistent with the primary purpose of the IAC Rules and the obligations under Article 2.1 and 2.4 to adhere to the overriding objective "*to provide a fair resolution of disputes by an impartial tribunal*" and for the tribunal to be not only factually impartial but also "*be clearly perceived as impartial".*

37. Secondly, it is submitted that such doubts also arise because B signed the statement of independence, impartiality and availability required by Article 9.3 of the IAC Rules without disclosing (as Article 9.3 also required) that he had attended the same conference as X and had contact with X there: Claim Form, §§ 5.3 – 5.6. Although professional acquaintance alone may not justify removal, such relationships are relevant when considering whether an objective observer would perceive a sufficient degree of independence between an arbitrator and one party's representative: Skeleton Argument, §III(2).

38. Thirdly, the appointment of B, a citizen of the Russian Federation, the Republic of Kazakhstan's closest economic and geopolitical partner, with significant similarities in economic policies and legal approaches, does not provide the legal and institutional distance contemplated by Article 8.4(4) of the IAC Rules and undermines the transactional balance expected in international arbitration: Claim Form, §§ 4.1 – 4.5 and 5.7 – 5.8. Genuine neutrality requires the appointment of an arbitrator from a jurisdiction that possesses a genuine legal distance from both parties: Claim Form, § 4.6 and 5.9.

39. I turn to the matters that are said to involve irregularities by the IAC Registry as well as whether there are objectively justifiable doubts about B's apparent impartiality and independence. Mr Aralbayev submitted that the circumstances of the IAC's proposal that B be appointed as an arbitrator and its subsequent appointment of him do not reflect the fact that it is the parties who choose arbitrators. On 12 January 2026 R identified two "*highly qualified arbitrators from the IAC's own list*" either of whom could have been appointed and to whom C did not object. Mr Aralbayev stated that without further discussion with the parties, the IAC identified B as a potential sole arbitrator and R objected to him. As stated at §§17-20 above, after considering those objections, on 2 March 2026 it appointed B.

40. Mr Aralbayev also submitted that there were a number of reasonable doubts regarding B's fees. One was the appointment being for a fixed fee at a time when the full scope and complexity of the counterclaim R was drafting and intends to bring could not have been known. At the hearing Mr Aralbayev stated that as R is a company based in another country there would be international advisers. He submitted that the exceptionally low figure raised questions about the suitability of the proposed arbitrator because the low fee created an objective appearance of dependence by B on one of the parties.

41. The second matter was the fact that B issued what R described as a demand for the payment of his fee exclusively to C notwithstanding the provision in Article 29 of the IAC Rules that arbitration costs including the arbitrator's fee are to be shared equally between the parties unless otherwise determined by the Registrar of the IAC. R submitted this constituted a fundamental procedural breach of the Rules which objectively compromised the appearance of independence despite the subsequent explanation provided by the Arbitrator during the case management conference. It was also submitted that B did

this giving no justification as to why the entire fee was charged exclusively to C, and that as B had expressly conditioned the continuation of the arbitration on the settlement of the demand it was reasonable to infer undisclosed one-sided communications between B and C.

42. Thirdly, although B was appointed on 2 March 2026, the Registry did not provide R with a copy of B's signed statement of independence, impartiality and availability as required by Article 9.3 of the IAC Rules. R submitted that the failure to comply with the obligation to provide this weighs heavily in favour of the challenge: Claim Form, §§6.12 – 6.14 and Skeleton Argument, §III(5).

(B) C's submissions in opposition to the application:

43. C relied on General Standard 2 on Conflicts of Interest in the IBA Guidelines on Conflicts of Interest adopted in 2014 and updated on 10 August 2015[5] and the decisions of the Supreme Court of the United Kingdom in *Halliburton v Chubb* [2020] UKSC 48 at [1] and of this court, by Justice Sir Rupert Jackson in *Claimant v Defendants A, B, C, and D AIFC-C/CFI/2023/0033*, 23 November 2023 at §5.9.

44. The two decisions relied on the well-established reasonable third-party test applied in common law jurisdictions and by arbitral institutions around the world including the AIFC Arbitration Regulations and IAC Rules. That test accords importance not only to actual impartiality, but to the perception of impartiality, and asks whether a fair-minded and informed observer, having considered the facts and circumstances, would conclude that there was a real possibility that the tribunal was biased.

45. The material parts of paragraph (b) of General Standard 2 of the IBA Guidelines provide that an arbitrator shall decline to accept appointment or to continue to act if, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, there are "*justifiable doubts as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard 4*".

46. C then turned to the five grounds relied on by R.

47. ***Acquaintance of B and X and their participation the same professional events and conferences (Defence §§ 22-25):*** C's main response to this ground is that participation in such events is classified as a Green List item in paragraph 4.3.4 of Part II of the IBA Guidelines where no appearance of conflict objectively exists and there is no duty on a prospective arbitrator to disclose the situation. C also submitted that since the "arbitration community" is very compact not only within Kazakhstan, but internationally, most arbitrators know one another and attend and deliver presentations at the same conferences, such activities should not be a ground for challenging an arbitrator.

48. ***Breach of disclosure obligations under Article 9.3 of the IAC Rules (Defence §§ 29-32):*** As to the statement of independence, impartiality and availability, C submitted that Article 9.3 expressly required it to submit that to the Registrar of the IAC rather than to R and the fact that R has not received the statement cannot be taken as evidence of B's bias. As to non-disclosure by B of his participation in the same professional events and conferences, C relied on the matters referred to in § 47 above.

[5] Note that, as stated in §21 above, the arbitrator's decision relied on the more recent IBA Guidelines, approved by the IBA's Council on 25 May 2024 but it was not suggested that on the issues relevant to this application there is a material difference between the two.

49. ***B is a national of the Russian Federation (Defence §§ 18-21):*** C submitted that the argument that the appointment of an arbitrator who is a citizen of a “friendly” republic neighbouring Kazakhstan does not provide the degree of institutional and legal distance required by Article 8.4(4) of the IAC Rules is in direct conflict with the constitution of Kazakhstan because the Republic of Kazakhstan is an independent and sovereign state. The deep systemic, historical and legal ties between it and the Russian Federation do not unite the two countries into a single entity or make one of them dependent on the other.

50. ***The level of B’s fee (Defence §§ 14-17):*** R’s submissions on this are said to be absurd and not to stand up to the reasonable third-party observer test. Each arbitrator independently assesses the fee and decides whether to take on a particular case. C submitted that on R’s submission, an arbitrator who agrees to take on a case for a fee that the other party considers to be low would not be considered independent and impartial.

51. ***Improper demand for payment of fee by only one party and the potential for one sided ex parte communications (Defence §§ 26-28):*** C submitted (i) in international arbitration practice costs associated with the proceedings may be charged to the claimant and that this is not a ground for alleging bias by the arbitrator; (ii) B explained his actions at the case management conference and R did not object or raise counter-arguments but accepted the explanation; and (iii) the submission regarding the potential for one sided communication is unsubstantiated and is nothing more than speculation by R.

PART 7. DECISIONS ON THE ISSUES BEFORE THE COURT

52. It is agreed that the following issues and sub-issues arise for determination by the Court.

53. The first is whether the circumstances relied upon by R, individually or cumulatively, give rise to justifiable doubts as to B’s independence and impartiality within the meaning of Article 22 of the AIFC Arbitration Regulations and Article 9 of the IAC Rules. That involves consideration of the following sub-issues:
    (i) B’s participation in professional arbitration events and conferences also attended by X, one of C’s legal representatives.
    (ii) The initial fee arrangements, their level and the lack of transparency about them, and B’s unilateral demand for his full fees issued exclusively to C.
    (iii) Whether the appointment of an arbitrator from the Russian Federation satisfies the neutrality objective of Article 8.4(4) of the IAC Rules given the systemic, economic, and geopolitical integration between Russia and Kazakhstan.

54. The second, closely allied to the question whether there are justifiable doubts as to the appearance of independence and impartiality is whether there has been a breach of Article 9.3 of the IAC Rules because of the failure to provide the R with a signed declaration independence and impartiality by B.

(A) Are there justifiable doubts as to B’s independence and impartiality?

55. I first consider the test to be applied and will then consider its application to the circumstances of this case.

56. **The test:** There is no dispute between the parties that the test to be applied is whether the circumstances individually or cumulatively give rise to objectively justifiable doubts as to B’s independence and impartiality. This well-established “reasonable third-party” or “justifiable doubts” test is applied in

common law jurisdictions as well as in arbitral institutions around the world including the UNCITRAL Model Law on International Commercial Arbitration, the LCIA Arbitration Rules, and the AIFC Arbitration Regulations and IAC Rules.

57. The test accords importance not only to actual impartiality, but to the perception of impartiality and the appearance of bias. It asks whether a fair-minded and informed observer who is assumed to be in possession of all the relevant facts and has considered them, would conclude that there was a real possibility that the tribunal was biased. The assessment is an objective assessment: see the decision of the United Kingdom Supreme Court in *Halliburton v Chubb* [2020] UKSC 48 at [1], [54], [55] and [152]. It has been applied in this court, in *Claimant v Defendants A, B, C, and D* AIFC-C/CFI/2023/0033, 23 November 2023 at §5.9, by Justice Sir Rupert Jackson, and in *R JSC v B & C Pvt. Ltd* AIFC-C/CFI/2025/0009, 19 June 2025 at §5 by me.

58. It has been stated that the reasonable third party, although not a lawyer, is assumed to be aware of the way the legal profession operates in practice: see *Claimant v Defendants A, B, C, and D* at §§5.2 and *R JSC v B & C Pvt. Ltd* at §5, citing Hamblen J in the English Commercial Court in *Cofely Ltd v Anthony Bingham* [2016] EWHC 240 (Comm) at [72(3)]. It was also stated in *Halliburton v Chubb* at [68] that "t*he objective observer is alive to the possibility of opportunistic or tactical challenges … in the hope of having their dispute determined by a tribunal which might, without any question of bias, be more predisposed to their view or simply to delay an arbitration*". The Court must therefore also be alive to the possibility of opportunistic or tactical challenges.

59. The importance of disclosure is also emphasised in *Halliburton v Chubb* and in the various arbitral codes and the IBA Guidelines. In *Halliburton v Chubb* it was stated (at [56]) that the privacy and confidentiality of arbitration puts a premium on frank disclosure. A disclosure does not imply the existence of a conflict of interest (see [72]) but is one way of avoiding the appearance of bias. This is because (see [70]) it allows the parties to consider the circumstances disclosed and decide whether there is a problem with the involvement of the arbitrator in the reference and, if so, whether to object or otherwise to act to mitigate or remove the problem.

60. In *Halliburton v Chubb* the UK Supreme Court also approved the ruling of the Court of Appeal that there is a legal duty to disclose in English law: see [74], [81] and [116]. The obligation to disclose extends to matters which may not ultimately suffice to establish justifiable doubts as to the arbitrator's impartiality, but a failure to disclose may be a factor in the assessment of whether there is a real possibility of bias: see *Halliburton v Chubb* at [155]. An example of breach of this duty was found where a person nominated as arbitrator by a firm of solicitors acting for one of the parties disclosed only two out of four other arbitral nominations by the same firm of solicitors: *Aiteo Eastern E & P Co Ltd v Shell Western Supply and Trading Ltd and others* [2024] EWHC 1993 (Comm). Another area of concern is an arbitrator's appointment in multiple cases in which overlapping or common issues arise and there is one party or set of legal representatives: Mustill & Boyd, *Commercial and Investor State Arbitration,* 3rd ed., 2024, §§8.103 – 8.106.

61. **(i) B's participation in professional arbitration events and conferences also attended by one of C's legal representatives:** I reject R's submission that this raises objectively justifiable doubts about B's independence and impartiality or that he was under a duty to disclose that participation. I do so for two reasons. First, legal professionals within a given specialism encounter each other at events other than in their capacity as representing clients, and lawyers and arbitrators commonly attend and speak at the same conferences and other professional events. R's skeleton argument acknowledges that

"*professional acquaintance alone may not justify removal*" but I consider that in itself such acquaintance does not justify removal. The issue is the nature of the acquaintance.

62. Secondly, this is reflected in the IBA Guidelines which include such acquaintance within the Green List of situations "*where no appearance and no actual conflict of interest can exist either under the subjective or the objective standard"* and "*the arbitrator has no duty to disclose situations falling within the Green List"*: §7 of Part II. The circumstances relied on for this limb of the challenge fall squarely within §4.3.4. which identified situations where "*[t]he arbitrator was a speaker, moderator, or organiser in one or more conferences, or participated in seminars or working parties of a professional, social, or charitable organisation, with another arbitrator or counsel to the parties"* as within the Green List. The fact that B has previously been a co-arbitrator with X, not emphasised in R's submissions but referred to at the hearing, also falls squarely within the Green List: see §4.3.2 which includes cases in which "*The arbitrator and counsel for one of the parties have previously served together as arbitrators*".

63. **(ii) Does the appointment of an arbitrator who is a national of the Russian Federation satisfy the requirements of Article 8.4(4) of the IAC Rules?** R accepts that B "formally meets" the requirements of Article 8.4(4) but (see my summary at §38 above) submits that given the deep systematic, historical, and legal bonds between the Russian Federation and the Republic of Kazakhstan genuine neutrality requires the appointment of an arbitrator from a jurisdiction that possesses a genuine legal distance from both parties. I reject this submission. The purpose of institutional rules such as Article 8.4.(4) is "*to ensure that there is no perception of favourable treatment based on a shared nationality*": Mustill & Boyd, §8.39. However, where an appointment does not breach such a requirement, a challenge solely based on the nationality of the arbitrator will not succeed: see *Exmek Pharmaceuticals SAC v Alkem Laboratories Ltd* [2015] EWHC 3158 (Comm) at [47] "*neither the [Arbitration Act 1996] nor English law more generally impose any nationality restrictions".*

64. There is no case for extending the ambit of a provision such as Article 8.4(4) to those where the challenge is based on them having relevant knowledge and expertise of the sort that B has in this case. B has referred to three IAC cases in which he was appointed the sole or emergency arbitrator where the parties had different nationalities. There may be other cases in which this has happened although C's representatives did not draw these to the attention of the court in their submissions.

65. It was recognised in *Halliburton v Chubb* at [93] that parties often wish their arbitral tribunal to have particular knowledge and expertise in the law and practices of the relevant business or market. if the reasonable third party, although not a lawyer, is assumed to be aware of the way the legal profession operates in practice, he or she will also be aware of such preferences. In this case, the governing law of the contract is the Republic of Kazakhstan and the language of the arbitral proceedings is to be Russian. A reasonable third party would not consider that there is a real possibility that a sole arbitrator with knowledge of the language and of a system with a similar legal structure appeared to be biased so that there are objectively justifiable doubts as to the arbitrator's independence and impartiality.

66. **(iii) The complaint about the circumstances of the IAC's proposal that B be appointed as an arbitrator and its subsequent appointment of him:** R's submission that what occurred does not reflect the fact that it is the parties who choose arbitrators does not take account of the role of arbitral institutions such as the IAC. Although the default position is a principle of party autonomy in deciding on the composition of the arbitral tribunal, if the parties choose an arbitral institution then the rules of that institution including its rules governing the appointment of arbitrators apply to the arbitration. It is common for

such rules to provide for the institution to make the appointment where the parties have not done so, particularly in cases where there is to be a sole arbitrator.

67. In the present case the relevant provisions are Article 2.2 and Article 8.4(1) of the IAC Rules, set out at §§ 8 and 10 above. Article 8.4(1) explicitly provides that where the parties have not jointly appointed his sole arbitrator within 10 days of a request by the Registry the IAC Chairman will do so. On 26 December the IAC directed the parties to propose a non-Kazakh national and stated that if they did not do so by the close of business on 12 January 2026 the IAC Chairman would appoint a sole arbitrator. Notwithstanding the hope expressed by R in its email dated 30 December 2025 that it would agree with C on a mutually acceptable arbitrator, as is clear from R's e-mail dated 12 January, it had not done so by the deadline set by the IAC. Under the IAC Rules, in those circumstances the Chairman was entitled to make the appointment. I therefore reject the submission that what happened constituted procedural irregularity by the IAC.

68. I add that neither C's written submissions nor Ms Dvoretskaya-Yussupova's oral submissions addressed this precise point. Ms Dvoretskaya-Yussupova stated that they were not against either of the candidates proposed by R but was not sure whether they responded on this. She also stated that they had confidence in the IAC Chairman's choice of B. She observed that it was possible that the Chairman, having received proposals from C and then from R, decided that as both parties wanted their proposed arbitrator, he should identify and appoint one who had not been proposed by either but who satisfied the required criteria.

69. **(iv) The initial fee arrangements, their level, and the lack of transparency about them, and B's invoicing C for his full fees:** I reject Rs submission about the level of the fee. It was not a fee proposed by C. It was proposed by the IAC and accepted by B. It cannot be said, as R has submitted, that its level created an objective appearance of dependence by the arbitrator on one of the parties. Moreover, it was a fee fixed in relation to the claim brought by C and R's defence to that claim, not in relation to counterclaims that might be brought by R. In answering a question by me about this at the hearing, B stated that if R brings a counterclaim he will need to issue another invoice to be paid by R. I note that Article 29.4 of the IAC Rules provides that the Registrar may fix separate deposits on costs for claims and counterclaims, respectively and Article 29.5 empowers him from time to time to direct parties to make further deposits towards the costs of the Arbitration.

70. I turn to the submission in §§6.8-6.9 of R's Claim Form and its further articulation at the hearing that the invoice issued by B to C on 5 March 2026 (described by R as a demand) was a patent impropriety because it was issued without any reasoned decision from either the IAC's Registrar or the sole arbitrator justifying why, contrary to Article 29 of the IAC Rules, the entire fee burden was imposed exclusively on C. §27 of C's defence to the present application states that "*During the case management conference, … [the] arbitrator explained his actions; this explanation did not raise any objections or counter arguments from the representative of R and was accepted by them.*" I have noted that neither party's written submissions stated what that explanation was or filed any documentary or other evidence relevant to the issue of B's sending an invoice only to C and what then happened.

71. At the CMC on Wednesday 22 April 2026, when R stated that it did not understand why the entire fee was charged to C because in general practice the two parties should share the cost, B stated that if the parties agreed he would issue two invoices. C stated that it was open to that although it saw no difficulty in it paying the entire fee. Mr Aralbayev stated that he would need to discuss the matter with his colleagues and would get back immediately after the CMC. He did not do so and, five days later, on 27

April 2026, B wrote to the parties asking R to confirm within 3 working days whether it wanted to pay 50% of the fee. R did not do so and on 4 May 2026 B's fee was paid by C.

72. The issue of IAC practice was also raised at the CMC. B and C's representative stated that it was IAC practice for the parties to pay the arbitrator's fee directly and for the arbitrator initially to invoice the claimant who had initiated the arbitral proceedings with adjustments to be made after the award in the light of the result. The question whether this was compatible with Article 29 of the IAC Rules was not raised at the CMC. Absent a direction by the IAC Registrar in the individual case or in guidance available to parties to an arbitration in the IAC, a general practice for an arbitrator initially to invoice the claimant who initiated the arbitral proceedings does not sit altogether comfortably with Article 29.4 of the IAC Rules. That provides that, unless the Registrar directs otherwise, 50% of deposits should be payable by each party. In the present case, while there may have been such a direction to the arbitrator or the parties, there was no documentary evidence of it or of any guidance before the Court. The hearing proceeded on the basis that what happened reflected IAC practice and I assume there was no direction by the Registrar that C alone should initially pay the fee or guidance on this. The circumstances of this case and the position of R, C, and B at the CMC are, however, important. Although R is a company based in a European country, it was represented by a Kazakh law firm and Kazakh counsel who accepted that he had some experience of practising in the AIFC institutions. I do not consider that the reasonable third party, knowing this and the circumstances in which C paid the entire arbitrator's fee, would consider that an objectively justifiable doubt as to B's apparent independence and impartiality had arisen.

(B) Has there been a failure to provide the R with a signed statement of acceptance, independence, impartiality and availability by the arbitrator required by Article 9.3 of the IAC Rules?

73. As stated at §19 above, the Registry did not send copies of B's signed statement dated 23 February 2026 to the parties. This was unfortunate and a breach by the Registry of its obligation to do so. The same happened in *R JSC v B & C Pvt. Ltd* AIFC-C/CFI/2025/0009, 19 June 2025 where the statement was provided only on the morning of the hearing. In that case, although the Respondent said that this failure until then undermined transparency and cast doubt on the integrity of the process, it did not pursue the point. It was correct not to do so. In that case, as in this, the substantive case for challenge on the ground of apparent bias was rejected and no prejudice to the Respondent had been shown. In my judgment the breach by the Registry of its duty under Article 9.3 does not in itself warrant the removal of an arbitrator who has complied with his or her duties under Article 9 and where other grounds for removal for perceived bias or other breaches of the IAC Rules have been rejected. I also observe that, although the Registry informed the parties on 2 March 2026 that B had been appointed, it appears from the supporting documents R filed when it issued its claim in this application on 20 April 2026 and those provided in response to my requests that this point was first raised in the claim form. Earlier documents do not state that it had not received the signed statement or requested that it be provided.

74. It is important that there is timely provision by the IAC Registry to the parties to an arbitration of the signed statement of acceptance, independence, impartiality and availability by the arbitrator required by the Rules. It may also be that the documentation issued by the IAC Registry in relation to IAC practice about arrangements concerning arbitration costs in particular the initial payment of arbitrators' fees from the claimant to the underlying arbitration considered at §§ 70 – 71 above could be clearer. But for the reasons given, in the circumstances of this case neither matter gives rise to objectively justifiable doubts as to B's independence and impartiality.

75. **Conclusion:** For the reasons in this Part of my decision, R's application that B be removed as the Sole Arbitrator in IAC Case 320 of 2025 and a new sole arbitrator be appointed is dismissed.

76. There remains the question of the costs of the application. Rule 26.5 of the AIFC Court Rules provides that the general rule is that the unsuccessful party pay the costs of the successful party, here C, but that the Court may make a different order. I invite the parties to attempt to reach an agreement on the costs to be awarded, or to provide submissions on costs, including a summary statement of the time taken on this application and the hourly rates involved within 14 days of receipt of this decision. On receipt of such submissions, I am minded to make an immediate assessment of costs.

By Order of the Court,

Justice Sir Jack Beatson FBA,
Justice, AIFC Court

Representation:

The Claimant was represented by Magna Law Firm LLP, Almaty, Republic of Kazakhstan.

The Defendant was represented by Legit Advocates' Bureau, Almaty, Republic of Kazakhstan.