



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

7 July 2026

CASE NO: AIFC-C/CFI/2026/0002

NATIONAL JOINT STOCK COMPANY “NAFTOGAZ OF UKRAINE” JSC

Claimant

v.

GAZPROM PJSC

Defendant

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JUDGMENT

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Justice of the Court:

Justice Lord Faulks KC

## JUDGMENT

### Introduction

1. On 15 May 2026, Justice Andrew Spink KC made an Order recognising and enforcing an Arbitration Award dated 16 June 2025 made under the auspices of the ICC International Court of Arbitration (“the ICC Award”).
2. The judge ordered the Defendant to pay to the Claimant the amount of the ICC Award together with interest and costs. He gave the Defendant liberty to apply to have the Order set aside within 14 days of service of the Order.
3. The judge gave reasons for making the Order and, in particular, he addressed the question of whether the Court had jurisdiction to recognise and enforce the ICC Award, having regard to the fact that it was issued by a tribunal seated in Switzerland rather than in the Republic of Kazakhstan or the AIFC International Arbitration Centre.
4. Both parties have taken various procedural points, but in essence the question is whether this court does indeed have jurisdiction to recognise and enforce the ICC Award.
5. The judge expressed himself in suitably tentative terms, having regard to the fact that he had not heard argument from the Defendant.
6. I, on the other hand, have heard full submissions by both sides on the question of jurisdiction.
7. I have also had the advantage of considering a judgment of this court by Justice Sir Rupert Jackson in the case of *Posco Co. Ltd. v. Republican State Enterprise on the Right of Economic Management “National Centre for Complex Processing of Mineral Raw Materials of the Republic of Kazakhstan”* (Case No: AIFC-C/CFI/2025/0025) (“*Posco*”), in which, after hearing full argument, he considered submissions that were very similar (but not identical) to those advanced before me.

### Statutory provisions

8. The Constitutional Statute establishes the jurisdiction of the AIFC Court. The relevant provisions are as follows:

#### “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 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.

...

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 an 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 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 the 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 relating to the functioning of the AIFC Court.
6. In adjudicating disputes the AIFC Court is bound by the Acting Law of the AFC and may also take into account final judgments of the AIFC Court in related matters and final judgments of the courts of other common law jurisdictions.
7. Decisions of the 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 the 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 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 the 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.”

### **AIFC Court decisions**

9. In addition to the decisions of Justice Andrew Spink KC and Justice Sir Rupert Jackson, referred to above, there have been other decisions in the AIFC Court of relevance.
10. Justice Tom Montagu-Smith KC considered Article 14.4 in *Roads Department of the Ministry of Infrastructure of Georgia v. Todini Costruzioni Generali S.p.A.* (Case No: AIFC-C/CFI/2025/0025) (“*Todini*”)
11. The significance of *Todini* was that the judge was persuaded (see paragraph 12) that the translation of Article 14.4 found on the AIFC website (as set out above) might be wrong and that a correct translation would be:

*“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”.*

12. Justice Sir Rupert Jackson conducted his own textual analysis of Article 14.4 and was able to conclude that the translation adopted in paragraph 12 of *Todini* was correct. I am happy to accept his reasoning, as were both parties before me.
13. In *Michael Wilson and Partners Ltd v. (1) CJSC Kazsubton, (2) Kazphosphate Limited* (Case No: AIFC C/CFI/2023/0002) (“*Michael Wilson*”), Lord Mance CJ considered the enforceability of foreign judgments.
14. He said (at paragraph 53) that:

*“The AIFC Court has a specifically delimited jurisdiction which is exhaustive as regards the heads stated in Article 13”.*

15. Lord Mance concluded that the AIFC Court had no jurisdiction as to the enforcement of foreign court judgments.

### **Discussion**

#### **Article 13**

16. Article 13.4, which sets out the jurisdiction of the AIFC Court, does not, on the face of it, assist the Claimant. The dispute does not fall within any of the three sub-clauses, which have been described to me as the “*jurisdictional gateways*”.
17. No attempt was made before Sir Rupert to rely on any of these sub-clauses as giving the court jurisdiction. The focus of the argument was on Article 14. That also appears to have been the focus before Justice Andrew Spink KC in this case.
18. Before me, however, a new argument was deployed. Counsel for the Claimant, who had appeared before Justice Spink, confirmed that they had not taken the point before, as it was not “*necessary*”.

19. The Defendant’s argument is straightforward. Since the enforcement of the ICC award is not within Article 13(4), the court lacks jurisdiction.
20. The Claimant, while not suggesting that the sub-clauses themselves assist their case, invites the court to have regard to the wider constitutional context in considering the scope of the AIFC Court’s jurisdiction.
21. The Claimant submitted that the AIFC Court is not a “special” court, the existence of which is prohibited by the Kazakhstani constitution, but should be regarded as a court exercising a general civil and commercial jurisdiction, as a part of the Kazakh court system.
22. There seem to me to be a number of difficulties about this argument. Article 13.1 uses the word “*exclusively*” when framing the disputes over which the court is to have jurisdiction. Likewise, Article 13.4 specifically uses the word “*exclusive*” in describing, with some precision, the disputes where the court has jurisdiction. It excludes “*criminal and administrative proceedings*”.
23. Counsel for the Claimant answers this by saying that using the word “*exclusive*” is not the same as using the word “*exhaustive*” and that it does not preclude jurisdiction over other matters not specifically described.
24. As to where the AIFC Court fits into the Kazakh legal system, Article 13.2 provides that it is “*...independent in its activities and is not part of the judicial system of the Republic of Kazakhstan*”.
25. Justice Sir Rupert Jackson in *Posco* said (at paragraph 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”.*
26. Counsel for the Claimant is critical of this analysis, pointing to the differences between the constitution of the United Kingdom and that of Kazakhstan. That there are differences is not in doubt, but I fail to see why that undermines his view (and that of Lord Mance) that the creation of the AIFC court was by statute. The jurisdictional gateways are clear on the face of that statute and do not give the court jurisdiction to enforce the ICC Award.

#### **Article 14**

27. The Claimant’s alternative argument, relying on the revised translation of Article 14.4, is that it gives the AIFC court jurisdiction to recognise and enforce the ICC Award.
28. Justice Spink KC considered the matter on the basis of the revised translation. He found “*reasons for caution*” before ultimately accepting that the court had jurisdiction. He, correctly in my view, observed that the heading of Article 14 and Articles 14(1), 14(2) and 14(3) dealt with matters relating to the International Arbitration Centre (“IAC”). He observed (at paragraph 13) that “*...it is not obvious that ...Article 14(4) must have been intended to apply more broadly to the recognition and enforcement of all arbitration awards, wherever issued, rather than arbitration awards issued in the Republic of Kazakhstan*”.

29. However, relying on the terms of Article 40 of the AIFC Court Regulations and Article 45(1) of the AIFC Arbitration Regulations, he expressed himself as satisfied to the required standard that the AIFC Court had jurisdiction to recognise the ICC award despite it having been made by a tribunal outside the Republic of Kazakhstan.
30. Sir Rupert Jackson came to a different conclusion in *Posco*. His analysis, with which I agree, highlights the fact that when parties agree to refer any dispute to the Astana IAC, they agree to accept the jurisdiction of the AIFC Court. Under Article 13.4, the AIFC Court has “*exclusive jurisdiction...by agreement of the parties*”.
31. Article 40 of the AIFC Arbitration Regulations gives the court power to enforce IAC awards. By contrast, in agreeing to arbitrate under, say, the ICC (or by an ad hoc arbitration), parties do **not** agree to accept the jurisdiction of the AIFC Court.
32. The key question for me, as it was for Sir Rupert, is whether Article 14.4 refers not just to IAC awards but to arbitration tribunals anywhere in the world.
33. As set out above, Justice Spink did not regard it as “*obvious*” that it did. Sir Rupert (at paragraph 4.16) gave four reasons for concluding that Article 14 .4 did **not** refer to all arbitrations but only to IAC awards in Astana.
34. Sir Rupert (at paragraph 4.17) rejected the argument that jurisdiction to enforce awards from outside the IAC could be derived from Articles 45-47 of the AIFC Arbitration Regulations and/or under Article 40 of the AIFC Court Regulations. As he pointed out, the provisions are subordinate legislation and, as such, must not be “*inconsistent*” with the Constitutional Statute. My construction of the statute does **not** allow such enforcement.
35. Court Regulation 40(3) provides that the Court “*may issue rules and practice directions for the further enforcement of other... arbitration awards*” mentioned in Court Regulation 40(1) and 40(2). But the Court has not yet issued any such rules or practice directions, so that this does not assist the Claimant.
36. These are my conclusions, in relation to Articles 13 and Article 14. But in case this case should go further, and in deference to other arguments before me, I will make a few further observations.

### **Other arguments**

37. The Defendant relied on the case of *Sandra Holding Ltd & another v Al Saleh & ors* [2023] DIFC CA 003, a decision of the DIFC Court of Appeal. While there are certainly parallels with the statutory provisions setting up the DIFC Courts and the AIFC Court, I did not find it necessary to rely on the decision to reach my conclusions.
38. I am conscious that the Court in *Todini* and in *Pacific Trade House Ltd v (1) Altai Polymetals LLP and (2) Teretky Ken Bayytu LLP* (Case No: AIFC-C/CFI/2025/0034) reached conclusions that were different from mine, and from *Posco*, but these were decisions decided on a prima facie basis and without full argument from both sides.

39. The Claimant had an alternative argument, if their primary argument that the Court lacked jurisdiction failed, namely that the matter should be referred to the Constitutional Court. In the event, it is unnecessary for the Claimant to rely on this argument, but I very much doubt that, had I taken a different view on jurisdiction, I would have referred the matter to the Constitutional Court.
40. Finally, I refer to what might be described as procedural points, in particular whether the Defendant was properly served and whether there was a breach of the Claimant's duty of full and frank disclosure. On the latter point, I make no finding, but if there was any failure it has not prevented me from deciding the application, nor has any defect in service if there was one. Both parties have argued their respective cases in a full and helpful way.

### **Conclusion**

41. For these reasons, I will set aside Justice Spink's order. The parties should make any submissions they wish to make in writing in 14 days in relation to costs or other consequential orders. I would hope the parties could agree an Order, failing which I would welcome receipt of any draft.

By Order of the Court,

The Lord Faulks KC  
Justice, AIFC Court

### **Representation:**

The Claimant was represented by Ms Dina Berkaliyeva, Partner, ADL Disputes, Mr Valikhan Shaikenov, Partner, ADL Disputes, Astana, Republic of Kazakhstan and Mr Shawn Kirby, Partner, Wikborg Rein, London, United Kingdom.

The Defendant was represented by Mr Dmitry Andreev and Mr Sergei Lysov, Advocates, Monastyrsky, Zyuba, Stepanov & Partners, Moscow, Russia Federation.