IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

29 July 2026

CASE No: AIFC-C/CFI/2026/0029

CLAIMANT

Claimant

v

DEFENDANT

Defendant

JUDGMENT AND ORDER

Justice of the Court:
Justice Tom Montagu-Smith KC

ORDER

UPON the Claimant's claim dated 9 June 2026 challenging an arbitrator under Article 22 of the AIFC Arbitration Regulations 2017 ("the Claim").

AND UPON reading the evidence submitted by the parties.

AND UPON the Claimant's application dated 17 July 2026 for permission to adduce new evidence ("the Application").

AND UPON hearing counsel for the parties.

IT IS ORDERED THAT:

1. The Application is granted.
2. The Claim is dismissed.
3. The Defendant shall within 7 days file and serve a costs schedule setting out the costs claimed.
4. The parties shall within 21 days thereafter file and exchange written submissions on costs, limited to 3 pages.

REASONS

Introduction

1. This is a claim under Article 22 of the AIFC Arbitration Regulations challenging an arbitrator ("the Arbitrator").

2. In broad outline, it is said that the Arbitrator had connections to a number of members of the Defendant's legal team by reason of his role at HSE University in Moscow and their shared nationality. Those connections, it is said, give rise to reasonable doubts about the impartiality of the Arbitrator which should have been disclosed. In addition, specific further connections were alleged between two members of the Defendant's legal team, and between the arbitration secretary and another member of the team.

3. The Arbitrator's partiality is said to have manifested in 3 procedural decisions made by the Arbitrator which, it is said, were unfair. Taken together, these matters are said to justify the removal of the Arbitrator.

Background and preliminary matters

4. The Arbitrator was appointed under IAC Case No. […] ("the Arbitration").

5. On 4 May 2026, during the course of the Arbitration, the Claimant applied to challenge the arbitrator.

6. The Arbitrator considered that the challenge was brought too late. Despite that, he went on to consider the challenge on its merits.

7. In his decision, the Arbitrator explained his procedural decisions and rejected the allegation of bias. In relation to his connections to HSE University, he stated that none of the Defendant's representatives were taught by him, worked with him, defended a thesis under his supervision, or engaged in joint legal practice.

8. The Arbitrator considered that the connections relied on were similar to the IBA Green List Item 4.3 – teaching at the same institution / membership of the same professional association. They created no risk of actual or perceived bias.

9. The complaint was therefore rejected on 22 May 2026. I am told that the Arbitrator has subsequently declined to await the outcome of this claim or the associated challenge to his decision on jurisdiction. The merits hearing took place in May 2026 and the Arbitrator's present intention is to issue his decision in September.

10. According to the IAC Rules, Article 10.7, any application to Court was due to be made within 7 days of that decision. Despite that, the present claim was issued only on 9 June 2026. That would appear to be some 11 days late. Despite that, the timing concern was not strongly pressed by the Defendant at the hearing. Indeed, the Defendant appeared to accept that the claim was made in time. In the circumstances, I will not extend this judgment by considering the timing of the original complaint or of this claim. Instead, I will go on to consider the substance of the complaint in this Court.

11. At the outset of the hearing, two issues arose.

12. First, on 17 July 2026, the Claimant applied to introduce new documentary evidence. That evidence comprised website entries recording the roles at HSE University of 3 lawyers at "TKS Disputes" LLP who act for the Defendant in both this claim and the arbitration. The evidence was adduced, it appears to me, to evidence matters which were not ultimately in dispute. While the Defendant did not consent to the Claimant's application, when asked, Ms Petrenko on behalf of the Defendant did not seriously oppose the admission of this material. In the circumstances, I am prepared to grant the application and accept the evidence.

13. Second, in response to the exchange of skeleton arguments, the Claimant filed a supplementary skeleton argument, responding to the Defendant's skeleton. The submission was not invited. Unsolicited submissions are not to be encouraged. However, the document did little more than give advanced notice of the arguments the Claimant intended to make at the hearing. In the circumstances, I have read and taken on board what was written. That should not be taken as an indication that the Court will receive reply skeleton arguments in every case. Parties should include all of their arguments in their skeletons and should generally refrain from filing unsolicited submissions in this Court.

<u>The test to be applied</u>

14. By Article 21(2) of the AIFC Arbitration Regulations 2017:

> "An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment

he has participated, only for reasons of which he becomes aware after the appointment has been made."

15. The parties were agreed that in determining the claim, I should take the approach indicated in the English case of *Porter v McGill* [2001] UKHL 67. The test stated there is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a "real possibility" of bias.

16. There was some suggestion from the Claimant that, in this case, I should take a somewhat "stricter" approach to these issues on the basis that the claim involved a public procurement contract. I reject that submission. In my view, the test remains the same, regardless of the subject matter, the parties, or the issues at stake.

17. The independence of arbitrators is obviously of great importance. It is important that they should be both impartial and be seen to be impartial. As Ms Yermekbayeva for the Claimant put it: "impartiality is not a formality". It is essential and must be taken seriously. However, assertions of conflict must be examined critically. Parties are entitled to the orderly resolution of their disputes and – all things being equal – to their choice of counsel. Parties should not easily be able to displace an independently selected or agreed arbitrator. A challenge to an arbitrator at this stage of proceedings would also be extremely disruptive. Serious grounds are required to justify such a step.

18. The Court should not be over-eager to intervene on the grounds of perceived bias. Nor should the Court discourage professional interactions between members of the legal community. If, for example, simply attending the same legal conference was sufficient to generate a perception of bias capable of supporting a challenge to an arbitrator, that would discourage attendance and the valuable exchange of legal ideas and experience. A healthy legal community will tolerate – indeed encourage – interactions between its members.

19. As in most matters, what is required is balance. The Court should not err in either direction as to do so would do injustice to one party or the other.

20. In assessing whether there is a real risk of bias, I am assisted by the IBA Guidelines on Conflicts of Interest in International Arbitration. While they are not binding on this Court, they represent the product of serious thought in this area. They set out four lists of examples of relationships and contacts between an arbitrator and third parties, divided into red (non-waivable and waivable), orange and green. Those situations listed in the orange list are identified as likely to give rise to a duty to disclose. Those in the green list are examples of situations which do not give rise to any appearance of bias. The situations listed range from direct, personal interest in the party or litigation (at the non-waivable red list end) to more limited contact, for example through social media networks (at the green list end).

21. The IBA guidance is not, however, law. It is always necessary for the Court to consider the specific situation at hand. However, the IBA's lists are a helpful barometer of what parties can expect from arbitrators in international arbitration.

<u>The factual basis for the complaints</u>

22. In assessing these sorts of complaints, it is important to consider them in practical terms. It is not, in my view, sufficient to point to "connections", however numerous, between an arbitrator and a party or their representatives. I accept that the Court must step back and consider the totality of the matters relied on as a whole. However, in respect of each complaint, it is necessary to consider the nature of the alleged connections and ask the question whether they could cause or contribute to real and justifiable concerns about bias. It is therefore essential to understand the precise factual basis on which it is said a risk arises.

23. The factual basis relied on was, at times, quite difficult to ascertain. At times, "connections" were asserted by the Claimant with a level of generality which was unhelpful. At others, factual assertions were made which were unsupported by evidence and disputed by the Defendant. Some of those assertions appeared inconsistent with the Claimant's own earlier stated position. The burden is ultimately on the Claimant to allege and prove the essential facts.

24. As set out above, there were essentially three limbs to the complaint:

    a. Associations through HSE University;
    b. Direct personal connections; and
    c. Decisions made by the Arbitrator in the course of the arbitration.

<u>Associations through HSE University</u>

25. As to the first category, the essential factual assertions appeared to me to be as follows:

    a. The Arbitrator had a variety of connections to HSE University, through his teaching a course, holding examination roles in two years, and participating in university events;
    b. Four lawyers who represented the Defendant in the arbitration also had a variety of connections to HSE University. They all studied at the university at either undergraduate or graduate level. One taught a course; and
    c. The Arbitrator's assistant, who acted as the arbitration secretary, studied at HSE University at the same time as one of the Defendant's representatives.

26. As to the Arbitrator's connections with HSE University, the Claimant relied on the fact that the Arbitrator taught a course in international investment law. In addition, the Arbitrator had the following interactions with the University:

    a. Acting as Chairman of the State Examination Commission for 2019, in which he is said to have participated in the selection of HSE students;
    b. Acting as a reviewer of dissertations of HSE students;
    c. Participating in or speaking at round table discussions on 4 and 7 April and 18 May 2023;
    d. Presiding over moots on 11 June 2024 and 24 May 2025;
    e. Acting as the Chairman of the State Examination Commission in 2025;
    f. Participating in an academic seminar on anti-suit injunctions on 28 March 2025.

27. In addition, the Arbitrator's firm is said to have organised meetings with HSE University students at its offices, on occasion.

28. Four members of the TKS Disputes team studied at undergraduate and graduate level at the university between 2021 and 2025. One of them participated in a Masters programme in 2022 and undertook some teaching there. During the same year, the Arbitrator's assistant participated in an HSE University's Master's programme.

29. Finally, it was pointed out that the Arbitrator was Russian and, as such, was of the same nationality as some of the members of the TKS team.

30. In his rejection of the Claimant's objection, the Arbitrator confirmed that none of the Defendant's representatives was ever his student, worked with him on the same programme, or defended a thesis under his supervision. In its Reply in these proceedings, the Claimant said:

> "The Claimant does not dispute the narrow literal accuracy of that statement."

31. Despite that, in the course of the hearing, the Claimant's representatives made a number of statements indicating that they did dispute the statement. At various stages, counsel asserted that:

    a. The Arbitrator was "personally familiar with the representatives";
    b. The Arbitrator "knows very well his students", which appeared to be meant to refer to the representatives of the Defendant;
    c. The Arbitrator taught representatives of the Defendant;
    d. The Arbitrator and the students knew each other and had known each other for a long time;
    e. The Arbitrator and one of the representatives taught at the same university and so went to the same meetings.

32. In response to my questions, counsel appeared to draw back from these assertions, saying that the Arbitrator "might have" had such interactions, given his shared connections with the university. Ultimately, as I understood the Claimant's position, the Claimant did not allege actual contact between the Arbitrator and any of the Claimant's representatives as a result of their involvement with the university. Their position was that they did not know one way or another, but had suspicions arising from those individuals' roles.

33. I was told by the Claimant's counsel that HSE University was a "small private school" with around 350 students per year across all specialisations. As such, there was a high chance of interactions between the Arbitrator, his assistant and the Defendant's representatives.

34. In writing, the Claimant focussed on the fact that one TKS lawyer had attended the university's graduate program at the same time as the Arbitrator's assistant and had taught there. In response to questioning from me, I was told that the TKS lawyer had actively represented the Defendant in the arbitration. He had, I was told, made oral submissions in the arbitration and had taken "one of the leading roles".

35. Counsel for the Defendant took issue with a number of statements of fact asserted by the Claimant. According to her, there are around 60,000 students at HSE University. Within the law faculty, there were a number of masters' programmes.

36. I was told that there was no overlap between the Arbitrator, his assistant and members of the Defendant's legal team in the arbitration.

37. First, only 3 members of the TKS legal department had worked on the Arbitration. None had studied under the Arbitrator. I understand that two of the three had graduated long before the period in question.

38. The TKS lawyer who had attended a graduate program at the university and had taught there had no involvement in the arbitration and had, in any event, been enrolled in a different course to the Arbitrator's assistant. There was no evidence that he had even met the Arbitrator.

39. Ultimately, none of the TKS team – even those with no involvement in the Arbitration – had studied under or worked with the Arbitrator.

40. In my view, there are some surprising features of this case.

41. First, it is surprising to me that there is any dispute about which TKS lawyers were involved in the arbitration. That is not something which ought to be the subject of any doubt amongst the lawyers. I understand that the Claimant's current lawyers have only recently taken over the case from the previous lawyers. I also understand that the name of the lawyer who attended the graduate program appears in the power of attorney issued by the Defendant, along with the names of all the other lawyers in the firm. That may explain misunderstanding on the part of the Defendant's current team as to who was actually involved in presenting the case to the Arbitrator. However, if the lawyer concerned was not in fact involved in the arbitration, I do not understand how I was told that he made oral submissions and took a leading role. The source of those assertions was never explained. Ultimately, I was shown no evidence to suggest his involvement.

42. Second, I am similarly surprised at the difference in the submissions as to the size of the university. I was ultimately shown no evidence. However, at least one of the parties appears to have been making submissions which were very factually wrong. The point is not without significance. The prospect of actual interactions between people attending a university is likely to be very much greater at a very small university than one with 60,000 students. Once again, ultimately, there was no evidence to support the case that this was a small university.

43. Third, I was surprised by the way in which the interactions between the Arbitrator and other individuals were described by the Claimant's representatives. Assertions were made that there were interactions. However, the Arbitrator had said there were not, the assertion was denied by the Defendant, and there was no evidence whatsoever of actual interaction, and under questioning, the Claimant's position appeared to be that it was not known whether there were interactions. It seemed to me that the Claimant's factual position was significantly overstated on a number of occasions.

44. In my view, there is no evidence at all of any actual interactions through HSE University between representatives of the Defendant and the Arbitrator or his assistant. I agree with the Defendant that, on this element, the case does not even rise to the level of the IBA Green List. That list included, at paragraph 4.3.3:

> "The arbitrator teaches in the same faculty or school as another arbitrator or counsel to one of the parties…"

Court

45. That is listed as an example of an association which creates no arguable conflict and does not need to be disclosed.

46. As the Defendant points out:

    a. Even this paragraph is drafted in the present tense. It is not even contemplated that a past teaching appointment could trigger a complaint; and
    b. The TKS lawyer who taught at the university in the past has had no involvement in the arbitration and so is not "counsel to one of the parties".

47. The Claimant's position was that the case was more closely analogous to item 3.2.6 in the IBA Orange List, such that it should have been disclosed. This arises where:

> "A close personal friendship exists between an arbitrator and counsel of a party."

48. There is – as the Claimant's representatives accepted – no evidence whatsoever of an actual close personal friendship. However, their position was that this description was closest to the relationship between the Arbitrator and the TKS lawyer who attended the graduate course. They were, it was said "likely" attending the same work meetings. There was however nothing to support that assertion. Even if they had attended meetings together, that would not be something which required disclosure. In my view, the Defendant is correct that this relationship does not even rise to the level of item 4.3.3 in the IBA Green List.

49. A teacher-student affiliation does not feature in the list at all. It is, with respect, very difficult to see how simply teaching at a university could render an arbitrator liable to be biased towards a person who was a student at that university. Associations such as speaking at round tables and judging mooting contests are, similarly, not the sorts of interactions which are likely to generate reasonable concerns about partiality. Still less when there is no evidence that any counsel of the Defendant actually attended any of those events.

50. In the circumstances, I can see absolutely nothing in the Arbitrator's association with HSE University that could cause a reasonable person to believe that there was a real possibility that the Arbitrator would be biased in favour of the Defendant. As a result, there was no obligation to disclose that role.

51. I add that I do not think the Arbitrator's nationality adds anything to the complaint. It is true that where – as in this case – the parties are from different countries, the IAC Rules require that the Arbitrator have a different nationality to both. However, there is no prohibition on representatives sharing nationality with the arbitrator and no real risk of bias that results if they do.

<u>Direct personal connections</u>

52. In the second category of complaint, three issues are raised.

53. First, one of the Defendant's representatives spoke at a legal conference, IAC Eurasian Arbitration Week 2025, at which the Arbitrator also spoke. Once again, the Claimant's description of these events was somewhat loose. The representative and the Arbitrator were described as "co-speakers". In fact, it appears that they spoke at different events and it is said that they never even met each other.

54. I agree with the Defendant that, at most, this falls within the IBA Green List Item 4.3.4, which refers to:

> "The 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."

55. Counsel for the Defendant was minded to accept that this case fell within that language. I am not so sure. The description of the arbitrator speaking "with" another person indicates to me that they would need to be speaking at the same event. That would seem logical as the list is about relationships between the arbitrator and other people. It is very difficult to see how speaking at different events in the same conference amounts to or gives rise to any relationship at all. In any event, even if it did fall within the item, it would not, according to the IBA, need to be disclosed. I would agree. These are not the sorts of matters which could cause a reasonable person to doubt the independence of an arbitrator.

56. Second, it is said that the same representative of the Defendant studied at a university at which the Arbitrator was involved in testing the defence of dissertations. This complaint was not pressed at the hearing. I was told that the timings did not match. The representative had graduated long before the Arbitrator's involvement.

57. In any event, in my view, it is not the sort of interaction which would lead to a concern that the Arbitrator would be biased towards the representative. It would not need to be disclosed, even if it had happened.

58. Finally, it is said that a representative of the Defendant is a member of the IAC AIFC panel of arbitrators, together with the Arbitrator. That is, as I understand it, not disputed. However, it does not raise concerns about bias. It falls within IBA Green List Item 4.3.1:

> "The arbitrator has a relationship with another arbitrator, or with the counsel for one of the parties, through membership in the same professional association, or social or charitable organisation, or through a social media network."

59. Ultimately, none of the matters raised begin to suggest that there was a real risk of bias. None even suggests a situation in which the Arbitrator was in a subordinate position to the Defendant or its representatives in any way. None needed to be disclosed. In my view, they provide no support whatsoever for the claim.

<u>The arbitrator's decisions</u>

60. In the third category of objection, the Claimant complains about 3 decisions of the Arbitrator which, it says, demonstrate his bias.

    a. On 8 September 2025, the Arbitrator found that he had jurisdiction over the dispute. In doing so, it is said, he "failed to address the applicable law" and "disregarded a binding ruling of the Almaty City Court";
    b. The Arbitrator refused to admit as witnesses certain public officials, "while imposing no corresponding restrictions on witnesses called by [the Defendant"]; and

c. On 30 April 2026, the Arbitrator "rejected the Claimant's "Reply to Counter-Response" without considering alternative procedural measures".

61. In relation to each of these, the facts relied on by the Defendant were surprisingly hazy.

62. In oral submissions, but not in writing, it was said that, in relation to some, or possibly all, of these points:

   a. The Arbitrator had "only heard from one party";
   b. The Arbitrator had made comments at hearings which indicated bias. The example given was that the Arbitrator said "the purchaser is always right";
   c. The Arbitrator made his decisions "without any explanation".

63. None of these submissions was addressed in any written submissions by the Claimant. As a result, they were not addressed in the evidence. As to the second, counsel for the Claimant said that the transcript of the hearing was not in the bundle because the Claimant had been under "time pressure". In response to my questioning, it was revealed that the transcript was received at the end of June, nearly a month before the hearing. Given that, on 17th July, the Claimant had applied to introduce new documents into these proceedings, I cannot understand that explanation at all.

64. Without the transcript, it is simply not possible to understand what was said and its context. It would not be fair to do so either. The Defendant was taken by surprise by this submission. In the circumstances, I disregard it.

65. The first and third of these submissions appear simply to be wrong. I have not been provided with the submissions made in advance of each of the three rulings. However, I have been told that the parties addressed the points by email and the Arbitrator issued a decision by email. The Claimant's own complaint refers to the Arbitrator's reasons, so they must exist, and the Arbitrator has confirmed that he provided a reasoned decision in respect of each. If the Claimant had wished to complain about these matters, they needed to be raised in the claim, so that they could be addressed in evidence.

66. As to the Arbitrator's decisions themselves, in my view, they do not support the view that the Arbitrator was or might be biased. It is not the function of the Court to police procedural decisions of arbitrators. That is not to say that there could never be a case where an arbitrator demonstrated consistent bias through their decisions. However, there is no material on which I could draw that conclusion in this case.

67. The first complaint is about the Arbitrator's decision on jurisdiction. He is said to have disregarded the applicable law. That is simply to complain that he was wrong on jurisdiction. The Arbitrator has said in his response to the Claimant's objections that he disagrees with the Claimant's characterisation of his decision. Despite that, I have not even been shown the decision. I have been provided with no material on which to second guess it. In any event, the Claimant has challenged jurisdiction in this Court, which challenge will be heard in September. If the Claimant is right, that challenge will succeed. But even if it does, that would not by itself be an indication of any bias.

68. The second complaint does allege unequal treatment. However, the details provided are very limited. The Arbitrator is said to have refused to summons the Prosecutor of the City of Almaty and a

"representative of the authorised procurement body of Samruk-Kazyna JSC". By contrast, "witnesses for the Claimant were not restricted… from participating".

69. Once again, I have not been shown the decision. As I understand the position, the Claimant asked the Arbitrator to summon the two witnesses without supplying any witness statements for them. As the Arbitrator has explained, that made it very difficult for him to decide that the evidence of those witnesses would be material to the case. The decision was simply a case management decision in response to an approach by the Claimant which – in my experience – was highly unusual. I have no power to interfere with it and have seen no basis on which to do so.

70. The Claimant says that there was unequal treatment because the Defendant was allowed to summon its witnesses. However, the Defendant did file witness statements and the witnesses were not state officials. The factors which applied were different. There is nothing to suggest that the Arbitrator applied a different standard to the parties' requests.

71. The third decision concerned an unsolicited submission by the Claimant. The agreed procedural timetable provided for a Reply to the Defence to Counterclaim. The Claimant sought to put in a rejoinder to that document, which was rejected by the Arbitrator. Once again, I have not been shown the decision. The Claimant's case on this amounts to little more than a complaint that it disagrees with the Arbitrator. There is no suggestion of any bias.

<u>Result</u>

72. In the circumstances, I find that none of the complaints raised by the Claimant come anywhere near the required standard. I have no hesitation in dismissing the claim.

<u>Costs</u>

73. I discussed with the parties how to deal with the issues of costs. As agreed:

    a. The Defendant, being the successful party, should file and serve a schedule of costs for the claim within 7 days of this judgment;

    b. The parties should then file and exchange written submissions, limited to 3 pages on the issues of (a) whether the Claimant should pay the Defendant's costs of the claim and if so (b) how much it should pay. The Defendant asked for "2 to 3 weeks" to provide those submissions. Given the summer month, I give the parties 21 days after service of the costs schedule to file those submissions.

    c. I will then make a decision on costs on paper.

By Order of the Court,

Tom Montagu-Smith KC,
Justice, AIFC Court

Representation:

The Claimant was represented by Mr Aidar Kashkarbayev, Ms Dinara Cherniyazova, Ms Kamar-Sulu Yermekbayeva, lawyers, Almaty, Kazakhstan.

The Defendant was represented by Mr Bakhyt Tukulov, Partner, Ms Mariya Petrenko, Senior Associate, TKS Disputes LLP, Almaty, Kazakhstan.