



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

20 August 2026

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

R

Claimant

v

C

Defendant

JUDGMENT AND ORDER ON COSTS

Justice of the Court:

Justice Sir Jack Beatson FBA



JUDGMENT

1. This decision concerns the costs of an application under Regulation 22(3) of the AIFC Arbitration Regulations 2017 that the sole arbitrator in IAC Case No. 320 of 2025 be removed on the ground that there are justifiable doubts about his independence or impartiality. Judgment rejecting that application was given on 22 July 2026.
2. Paragraph 76 of the judgment invited the parties to attempt to reach an agreement on the costs and, if they could not, to submit written submissions, including a summary statement of the time spent on this application and the hourly rates involved. The parties were unable to agree and have made written submissions.
3. To preserve the confidentiality of the arbitration, the names of the parties and others involved in the application were anonymised in paragraph 4 of the judgment. They are referred to in the same way in this decision. The application to remove the sole arbitrator was brought by R, the Defendant in the arbitration, against C, the Claimant in the arbitration.
4. The submissions on C's behalf were filed in an email on 6 August 2026 by its lawyers. They rely on the provision in Article 26.5 of the AIFC Court Rules that the general rule is that the unsuccessful party shall pay the costs of the successful party. They state that the arrangement between C and XYZ LLC was that the lawyers would act for a fixed fee of KZT 5,000,000. They also state that the two advocates involved in the case usually charged USD 350 per hour. They submit that the fixed fee representing 30 hours of work for the two advocates is adequate and reasonable and that an hourly rate would have resulted in a larger sum.
5. The submissions on R's behalf were filed in an email dated 12 August 2026. Their primary submission is that each party should bear its own costs. They submit that applying the general rule in Article 26.5 would frustrate the Overriding Objective in Article 1.6 of the AIFC Court Rules because R's application was a necessary step to address genuine and objective doubts regarding the arbitrator's independence and impartiality. Resolving this threshold issue was essential to provide certainty and ensure that any subsequent award remains robust and unaffected by procedural doubt. Ordering that each party bears its own costs on a challenge such as this would ensure that parties feel supported in raising fundamental procedural questions without the deterrent of adverse cost consequences.
6. I reject R's primary submission. I take into account the number of points relied on by R without success in any and the way the application was pursued. They included R's submissions based on the arbitrator's attendance at arbitration events attended by C's legal representatives and the arbitrator's nationality considered and rejected in paragraphs 61-65 of the judgment. They also included R's complaint about the circumstances of the IAC's proposal and subsequent appointment of the sole arbitrator and the initial fee arrangements considered and rejected in paragraphs 66-67 and 69 of the judgment.
7. Moreover, if accepted, R's submission would in effect create an exception to the general rule in Article 26.5 in cases challenging an arbitrator's independence and impartiality save where it can be shown that the doubts raised about the arbitrator's impartiality are not genuine and objective. There is no justification for this in either the language of Article 26.5, Article 21 of the Arbitration Regulations, or Articles 9 and 10 of the IAC Arbitration and Mediation Rules.

8. There are three strands to the second and alternative limb to R's submissions, that C has not provided enough information to justify the amount claimed and that it should be reduced. The first is that it gave no information as to the time taken or whether any of the work overlapped with the underlying dispute. I observe that C's submission states that the advocates' hourly billing would have resulted in a larger sum than the fixed fee but does not state what time was in fact spent on the challenge.
9. The second strand of R's submissions is that, in any event, the amount claimed in relation to a single, discrete procedural issue is unreasonable and disproportionate in itself when viewed in the context of the proceedings as a whole and what is said in paragraph 15 to be "the total fee fixed for the conduct of the entire arbitration" of US\$20,000.
10. The third strand is that R has not established that the KZT 5,000,000 was in fact incurred exclusively in relation to the application challenging the arbitrator.
11. I do not consider that the comparison with the USD 20,000 is relevant. The US\$20,000 does not relate to lawyers' fees for the entire arbitration but to the arbitrator's fee in relation to the claim and R's defence. The arbitrator has stated that he will need to issue another invoice if R brings a counterclaim, and Article 29.4 and 5 of the IAC Rules entitle the IAC Registrar to fix separate deposits for claims and counterclaims.
12. Although the agreement between C and its lawyers about the fees for resisting the challenge to the arbitrator is not before the Court, I am prepared to accept Mrs Dvoretzkaya-Yussupova and Mr Kirichenko's written submission that the legal fees for it were set at KZT 5,000,000. A payment receipt for a transfer of that sum to the firm by C on 2 July 2026, shortly before the hearing of the challenge on 15 July 2026 is before the court.
13. The Court has a wide discretion under Rules 26.4 and 26.5 of the AIFC Court Rules as to the award of costs. I note that a claim for costs in the sum of KZT 5,000,000 in respect of legal assistance for preparing written objections to an application for permission to appeal was considered disproportionately high by this court in *International Academy of Medicine and Sciences LLP v. State Institution "Health Department of Almaty Region"* AIFC-C/CA/2024/0046, 28 March 2025. Although the successful party's written objections to the grant of permission were helpful to the court, Justice Sir Stephen Richards stated that the power to award costs in respect of such submissions can be expected to be exercised sparingly at that stage. He considered that KZT 2,000,000 was the appropriate figure, given the limited nature of the exercise required at the permission stage.
14. In the present case, the nature of the exercise was a more extensive substantive challenge to the arbitrator's impartiality and independence. In the light of the number of points relied on by R in support of its challenge, I reject its submission that the amount claimed for the hearing of what it described as a limited procedural issue involving no factual investigation beyond the record is in itself inconsistent with the proportionality principle. Having regard to all the circumstances, I consider it appropriate to make an award of costs in C's favour and to proceed to an immediate assessment under Rule 26.13(1). Doing the best that I can on the limited information before me, I summarily assess the costs payable by R to C as KZT 4,250,000, that is 85% of the sum claimed.
15. Accordingly, I will order R to pay to C KZT 4,250,000 by way of costs.



ORDER ON COSTS

Upon consideration of the written submissions on costs dated 6 August 2026 submitted by C, and the submissions on costs dated 12 August 2026 submitted by R, I direct that R pay C the sum of KZT 4,250,000 within 28 days.

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.