IN THE COURT OF APPEAL

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

12 November 2026

CASE No: AIFC-C/CA/2026/0035

POSCO Co. Ltd.

Claimant/Appellant

v.

Republican State Enterprise on the Right of Economic Management "National Centre for Complex Processing of Minerals Raw Materials of the Republic of Kazakhstan"

Defendant

CASE No: AIFC-C/CA/2026/0040

NATIONAL JOINT STOCK COMPANY "NAFTOGAZ OF UKRAINE" JSC

Claimant/Appellant

v.

GAZPROM PJSC

Defendant/Respondent

JUDGMENT

Justices of the Court:

Chief Justice The Rt. Hon. The Lord Burnett of Maldon KG PC DL
Justice The Rt. Hon. Sir Jack Beatson FBA
Justice The Rt. Hon. Sir Stephen Richards

Hearing date: 30 September 2026

Introduction

1. This is the judgment of the Court to which we have all contributed.

2. The issue raised in both of these appeals is whether the Astana International Financial Centre Court ("the Court") has jurisdiction to enforce a foreign arbitration award in the Republic of Kazakhstan against a party that is not a participant in, and has no connection with, the Astana International Financial Centre ("AIFC"). The answer depends upon consideration of the primary and secondary legislative scheme governing the Court and AIFC.

3. We heard full argument on behalf of Posco and Naftogaz in support of the appeals and from Gazprom as respondent in the second appeal. For reasons which we will develop, and which are not identical with the judgments below, we have concluded that the Court does not have jurisdiction to enforce these awards.

4. The resolution of the issue does not turn on the detailed circumstances of the cases before us which we summarise briefly.

5. In *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"* Posco succeeded in a claim against the National Centre in an arbitration before an ICC Tribunal in Switzerland to recover a loan of US$25 million with interest. Posco is a Korean company. The National Centre is a Kazakh company wholly owned by the Republic of Kazakhstan. It is not a participant in the AIFC, is not resident in the territory of the AIFC, does not conduct its activities from the territory and has no property there. Posco sought to enforce the award from the ICC Tribunal through the Kazakh civil courts but was unsuccessful. It was in those circumstances that Posco sought an order from the Court to recognise and enforce the ICC award in Kazakhstan. The application was considered on notice to the National Cantre and in due course came on for hearing before Justice Sir Rupert Jackson on 25 May 2026 who delivered a written judgment two days later.

6. In response to Posco's appeal, the National Centre provided a note on 26 August 2026 supporting the decision of the judge and explaining briefly why he was correct in his conclusion but indicating that it would not take part in the hearing of the appeal.

7. In *National Joint Stock Company "Naftogaz of Ukraine" JSC v Gazprom PJSC*, Naftogaz succeeded in a claim against Gazprom in an arbitration before an ICC Tribunal in Switzerland. By an award dated 16 June 2025 Gazprom was ordered to pay to Naftogaz about US$1.5 billion. The parties are respectively companies registered in Ukraine and Russia and are unconnected to the AIFC in the sense that they are not participants in the AIFC, do not conduct their activities from its territory and have no property there. It is that award that Naftogaz seeks to enforce in Kazakhstan through a recognition and enforcement order from the Court. It made an application for such an order in January 2026 which was dealt with without notice under the Court Rules. On 15 May 2026 Justice Andrew Spink KC made an order recognising and enforcing the award. He was provisionally satisfied, subject to any argument that might be advanced by Gazprom, that the Court had jurisdiction to do so. He made it clear that his reasons should be "regarded as preliminary". Gazprom was given permission to apply to set aside the order within 14 days.

8. Gazprom applied to set aside the order on a wide range of grounds. Justice Lord Faulks KC dealt with jurisdiction as a preliminary issue. He heard argument from both parties. On 7 July 2026 he set aside the recognition and enforcement order having concluded that the Court did not have jurisdiction to enforce the award in Kazakhstan.

Preliminary Issues

9. In advance of the appeal Posco filed an application to amend its Appellant's Notice to clarify the relief it sought. The application was not opposed. We doubt whether it was in fact necessary, but we allow that application.

10. The second application filed by Posco was for permission to rely on "fresh evidence" which comprises two short videos (with transcripts) of observations by Lord Mance, then Chief Justice of the Court, in

March 2021 and October 2022. The reason Posco wishes to introduce this material is because it refers to the Court enforcing "foreign awards". We would observe that the passages relied upon do not, in any event, deal with the issues we are concerned with and particularly what type of foreign award might be enforced. But the application is misconceived and must be dismissed. Lord Mance's observations are not "evidence" of the sort which Rule 29.46 of the Court Rules allows the Appeal Court to receive in strictly limited circumstances even though it was not before the lower Court. These are extra-judicial observations on an aspect of the statutory scheme and are not admissible as evidence any more than would be, for example, the observations of a lawyer given at a seminar or conference.

11. The third application before us was issued by Naftogaz on 9 September 2026. It seeks permission to admit expert evidence of Professor Nurzhan Yeshniyazov, an associate professor at Maqsut Narikbayev University in Astana with expertise in private international law, international civil procedure and international commercial arbitration. The professor's expertise in those matters is not in doubt. He provides his opinion on the meaning of two provisions in the Constitutional Statute on the AIFC of December 2015 ("the Constitutional Statute") and one in the AIFC Arbitration Regulations ("the Arbitration Regulations"). In doing so he gives his views on English law, German law, Russian law, the Law of the Dubai International Financial Centre ("DIFC") as well as AIFC law.

12. Gazprom takes a number of procedural and substantive points in objecting to the admission of this evidence, which in our view are well made. Procedurally, this application came late at a time when Gazprom could not respond to it. Naftogaz proposed simply to place the opinion before the Court without the professor giving oral evidence. In other words, the application envisages taking advantage of his opinion without Gazprom being given any opportunity to respond to it, save through oral submissions. That is not a fair way of proceeding. Moreover, even if it were otherwise admissible expert evidence, it should have been submitted to the Court of First Instance.

13. Those procedural objections are sufficient to exclude this evidence but there is a more profound objection. The expert opinion seeks to provide answers to several of the questions we have to decide. Common law courts do not receive expert evidence on the law of their own jurisdictions because expert evidence is admissible only to assist a court on matters which are not within its own capacity to decide. That is why expert evidence of foreign law may be given in some circumstances. We note, further, that the evidence of Professor Yeshniyazov was not referred to in terms in either the written or oral submissions of Naftogaz, although the substance of his views formed part of the oral submissions deployed before us. In reality, it has been provided as an additional written submission. That also illustrates that it is not being relied upon as expert evidence. We indicated at the hearing of the appeal that we had read the report of Professor Yeshniyazov without prejudice to whether it was admissible as expert evidence, and as with the other applications would rule on the question in our substantive judgment.

The AIFC Legislative Scheme

14. The AIFC was established by the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre No. 438-V ZRK of 7 December 2015. That is a Parliamentary statute enacted in the Russian and Kazakh languages. An unofficial translation provided by the AIFC Authority is available through the website of the AIFC. The Constitutional Statute empowers the AIFC Management Council ("the Council") to make delegated legislation including in connection with the Court and the AIFC International Arbitration Centre ("the IAC"). Pursuant to those powers the Council adopted the AIFC Court Regulations 2017 on 5 December 2017 ("the Court Regulations") and on the same day adopted the Arbitration Regulations. In turn the Court Regulations allow the Chief Justice to make rules and issue Practice Directions (Article 30) and confer power for the Court to take all steps that are required or expedient for the proper determination of a case (Article 27(1)). Broadly similar rule making powers are found in the Arbitration Regulations (Article 54) vested in the Chairman of the IAC. These regulations and rules are made in English.

15. Article 4 of the Constitutional Statute provides:

> "*Acting Law of the AIFC*
>
> 1. *The Acting Law of the AIFC is based on the Constitution of the Republic of Kazakhstan and consists of:*
>   1) *this Constitutional Statute; and*
>   2) *AIFC Acts, which are not inconsistent with this Constitutional Statute and which may be based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres, adopted by the AIFC Bodies in the exercise of the powers given by this Constitutional Statute; and*
>   3) *the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by this Constitutional Statute and AIFC Acts.*
> 2. *Procedures for the development, obtaining the approval of competent authorities, registration, commencement, publication, amendment, and termination, of AIFC Acts are to be determined by AIFC Acts.*
> 3. *The AIFC Bodies may adopt Acts that regulate the following relationships between AIFC Participants, AIFC Bodies, their Employees, AIFC Participants and AIFC Bodies, AIFC Participants and their Employees or Employees of AIFC Bodies, AIFC Bodies and their Employees or Employees of AIFC Participants:*
>   1) *civil relationships;*
>   2) *civil procedural relationships;*
>   3) *financial relationships;*
>   4) *administrative procedures;*
>   5) *procurement procedures by the AIFC Bodies for goods, works and services.*
>
>   *In cases expressly provided for by this Constitutional Statute, the AIFC Bodies may adopt Acts governing relationships that are not covered by first part of this paragraph.*
>
>   *To ensure the national interests of the Republic of Kazakhstan and to exclude conditions that may threaten the national security of the Republic of Kazakhstan, AIFC Acts may impose restrictions on AIFC Participants.*
> 4. *If an international treaty ratified by the Republic of Kazakhstan provides rules different to those provided by this Constitutional Statute, the rules of the international treaty must be applied*."

16. "AIFC Participants" are defined in Article 1 as meaning "legal entities registered under the Acting Law of the AIFC and legal entities recognised by the AIFC." A list of "AIFC bodies" is found in Article 9 and includes the Council, the Court and the IAC.

17. Article 10 concerns the Council. It is a body chaired by the President of the Republic of Kazakhstan. Article 10.3(3) empowers it to "adopt AIFC Acts … on matters within its competence as stipulated in this Constitutional Statute, to the extent specified in paragraph 3 of Article 4.

18. Articles 13 and 14 concern the Court and IAC respectively:

"*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 a 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.*

3-1. *The Chief Justice and other judges of the AIFC Court are appointed and removed by the President of the Republic of Kazakhstan on the recommendation of the Governor of the AIFC.*

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 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 Court 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 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 related to the functioning of the AIFC Court.
6. *In adjudicating disputes, the AIFC Court is bound by the Acting Law of the AIFC and may also take into account final judgements of the AIFC Court in related matters and final judgements of the courts of other common law jurisdictions.*
7. *Decisions of 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 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 and acts 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 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.*"

19. We have already identified a number of provisions of the Court Regulations and will set out the regulations on which submissions of the parties focused. Article 2 identifies the legislative authority for the Court Regulations as Article 13(5) of the Constitutional Statute. Article 3 provides that the Court Regulations "apply in the jurisdiction of the AIFC". Article 7 sets out the objectives of the regulations:

> "*The objective of these Regulations is to determine the matters related to the activities of the Court, including the Court's constitution and composition, appointment and removal of judges, management, budget and reporting, jurisdiction and powers, and practice and procedure.*"

20. The Schedule defines various terms including "AIFC Court":

> *"AIFC Court, means the Court established in Astana and having jurisdiction to adjudicate on certain disputes as indicated in Article 13 of the [Constitutional Statute]."*

21. Article 26 provides:

> "*26. Jurisdiction of the Court*
>
> *(1) The Court has exclusive jurisdiction, as provided by Article 13 of the AIFC Constitutional Statute, in relation to:*
> *(a) any disputes arising between the AIFC's Participants, Bodies, and/or their foreign employees;*
> *(b) any disputes relating to operations carried out in the AIFC and regulated by the law of the AIFC;*
> *(c) any disputes transferred to the Court by agreement of the parties; and*
> *(d) the interpretation of AIFC Acts.*
> *(2) The reference to "disputes" between the parties mentioned in this Article applies to civil or commercial disputes arising from transactions, contracts, arrangements or incidences.*
> *(3) The reference to "transferred to the Court by agreement of the parties" in this Article applies to all parties, including parties not registered in the AIFC, such that all parties may "opt in" to the jurisdiction of the Court by agreeing to give the Court jurisdiction pre or post-dispute.*
> *(4) The Court does not have jurisdiction in relation to any disputes that are of a criminal or administrative nature.*
> *(5) The Court of First Instance has jurisdiction to hear and determine an appeal from the decision of an AIFC Body, Organisation, or Participant, as provided for in the AIFC Constitutional Statute, AIFC Regulations, AIFC Court Rules, or other AIFC Rules where the appeal relates to:*
> *(a) a question of law;*
> *(b) an allegation of a miscarriage of justice;*
> *(c) an issue of procedural fairness; or*
> *(d) a matter provided for in or under AIFC law.*
> *Decisions of the Court of First Instance referred to in this Article 26(5) are final and shall not be subject to further appeal.*
> *(6) The Court may in the exercise of its appellate jurisdiction:*
> *(a) affirm, reverse or vary the decision appealed;*

(b) *set aside the decision appealed in whole or in part;*
(c) *make any other order it considers appropriate;*
(d) *remit proceedings to the AIFC Body from which the appeal was brought, subject to any directions the Court considers appropriate; or*
(e) *make any order or direction that is in the interests of justice.*

(7) *The Small Claims Court shall have a special fast track procedure for claims below a specified value and Small Claims Court jurisdiction shall be defined in the AIFC Court Rules. Appeals of decisions of the Small Claims Court may be brought to the Court of First Instance, subject to the permission of the Court as set out in the AIFC Court Rules. No appeal lies to the Court of Appeal from any judgment given of the Court of First Instance on an appeal from the Small Claims Court.*

(8) *The Court shall have jurisdiction in relation to any matter in respect of which jurisdiction is conferred on it by the AIFC Constitutional Statute or AIFC Regulations, including with regards to the Court's authority to perform functions to facilitate effective arbitration.*

(9) *Any issue as to whether a dispute falls within the jurisdiction of the Court shall be determined by the Court whose decision shall be final.*

(10) *The Court shall consider the express accord of the parties to a case that the Court shall have jurisdiction and if the Court considers it desirable or appropriate, it may decline jurisdiction or may refer any proceedings to another Court within the Republic of Kazakhstan.*

(11) *No appeal may be brought to the Court of Appeal without the permission of the Court as set out in the AIFC Court Rules.*

(12) *The Court of Appeal may determine the interpretation of any provision of the AIFC Law referred to it for this purpose by:*
(a) *the Court of First Instance concerning any matter before it;*
(b) *any of the AIFC Bodies; or*
(c) *any of the AIFC Participants with leave of the Court of Appeal.*

(13) *No appeal shall lie from a decision of the Court of Appeal under this Article*."

22. Article 40 is also material:

"*Enforcement*

(1) *Judgments, orders and directions of the Court, and arbitration awards ratified by the Court may be enforced within the AIFC in accordance with any execution order issued by the Court.*

(2) *Judgments, order and directions of the Court, and awards issued in arbitrations seated in AIFC which have been ratified by the Court, may be enforced in the AIFC and the Republic of Kazakhstan in accordance with the AIFC Constitutional Statute.*

(3) *The Court may issue rules and practice directions for the further enforcement of other judgments and arbitration awards.*"

23. We turn finally to the material provisions on the Arbitration Regulations. The legislative authority for these regulations is identified in Article 2 as Article 14 of the Constitutional Statute. That is a reference to Article 14.2. By virtue of Article 9, Part 3 (Articles 45, 46 and 47) of the Arbitration Regulations applies both where the seat of the arbitration is the AIFC and where the seat is one other than the AIFC. Articles 45, 46 and 47 concern recognition and enforcement of awards. They provide:

"45. Recognition and enforcement of awards

(1) An arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding within the AIFC and, upon application in writing to the AIFC Court, shall be enforced within the AIFC subject to the provisions of this Article and of Articles 46 and 47. For the avoidance of doubt, where the Republic of Kazakhstan has entered into an applicable treaty for the mutual enforcement of judgments, orders or awards, the AIFC Court shall comply with the terms of such treaty.

(2) The party relying on an award or applying for its enforcement shall supply the original award or duly certified copy and the original arbitration agreement referred to in Article 15 or a duly certified copy. If the award or the agreement is not made in English, the AIFC Court may request the party to supply a duly certified translation.

(3) For the purposes of the recognition or enforcement of any award within the AIFC, an original award or an original arbitration agreement shall be duly certified if it is a copy that is certified in the manner required by the laws of the jurisdiction in the place of the arbitration or elsewhere. A translation shall be duly certified if it has been certified as correct by an official or sworn translator in the place of arbitration or elsewhere.

46. Recognition

(1) Where, upon the application of a party for recognition of an arbitral award, the AIFC Court decides that the award shall be recognised, it shall issue an order to that effect.

(2) An order recognising an arbitral award shall be issued in English and Russian or Kazakh, unless the AIFC Court shall determine otherwise. Each language version, in its original or certified copy form, shall constitute sufficient proof of recognition.

47. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the State or jurisdiction in which it was made, may be refused by the AIFC Court only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the AIFC Court proof that:

(i) a party to the arbitration agreement as defined in Article 15 of these Regulations was under some incapacity; or the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication, under the law of the State or jurisdiction where the award was made;

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the State or jurisdiction where the arbitration took place;

(v) or the award has not yet become binding on the parties or has been set aside or suspended by a court of the State or jurisdiction in which, or under the law of which, that award was made; or

(b) if the AIFC Court finds that:

(i) the subject matter of the dispute would not have been capable of settlement by arbitration under the laws of the AIFC;

(ii) or the enforcement of the award would be contrary to the public policy of the Republic of Kazakhstan.

(2) If an application for the setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this Article, the AIFC Court may, if it considers it proper, adjourn its decision and may also, on the application of the party seeking recognition or enforcement of the award, order the other party to provide appropriate security.

(3) Any party seeking recourse against an arbitral award made in the seat of the AIFC shall not be permitted to make an application under paragraph (1)(a) of this Article if it has made or could have made an application under Article 44 of these Regulations."

The Judgments Below

24. In Posco, the judge agreed with the submission of the National Centre that the dispute did not fall within the categories identified in Article 13(4) of the Constitutional Statute. He concluded that Article 14(4) of the Constitutional Statute was concerned only with IAC awards. Posco relied heavily on Articles 45 to 47 of the Arbitration Regulations. The judge considered that these regulations were inconsistent with the Constitutional Statute. Article 4.1(2) of the Constitutional Statute provides that subordinate legislation must not be inconsistent with that statute. The Arbitration Regulations are thus incapable of conferring a wider jurisdiction on the Court than that set out in the primary legislation.

25. The judge considered the decision of Chief Justice Lord Mance in *Michael Wilson and Partners Ltd v. CJSC Kazsubton and Kazphosphate LLP* (Case No: AIFC-C/CFI/2023/0002) and agreed with the statement of law at paragraph 53 that "The AIFC Court has a specifically delimited jurisdiction which is exhaustive as regards the heads stated in Article 13 [of the Constitutional Statute]." The learned Chief Justice had also observed that the Court had jurisdiction to enforce foreign arbitration awards. However, that was not an issue in the Michael Wilson and Partners case (it was concerned with an application to enforce a foreign judgment), was not fully argued and was not part of the essential reasoning of the Chief Justice. It was an *obiter dictum* and therefore not binding. Justice Sir Rupert

Jackson concluded that a series of cases in the Court where foreign arbitration awards were enforced (without argument on jurisdiction) were wrong. Put simply he concluded that Articles 45 to 47 of the Arbitration Regulations in that respect were made by the Council in excess of the authority conferred on it by the Constitutional Statute.

26. In Naftogaz Justice Lord Faulks KC similarly concluded that Article 13(4) provides clear "gateways" for jurisdiction and that none covers the enforcement by the Court of an ICC award. The second argument before him had been framed by reference to Article 14(4) of the Constitutional Statute which he also rejected. The judge noted an argument made by Naftogaz relying upon Article 40(3) of the Court Regulations. That provides that "the Court may issue rules and practice directions for the further enforcement of other judgments and arbitration awards." He concluded that the provision was of no assistance to Naftogaz because no such rules or practice directions has been issued.

The Submissions in Summary

27. For Naftogaz Mr Holiner submits that Article 13(5) of the Constitutional Statute expressly empowers the Council to adopt subordinate legislation that confers jurisdiction on the Court beyond the matters identified in Article 13(4). That is reflected in Article 26 of the Court Regulations dealing with jurisdiction and in particular Article 26(8) which speaks of the Court having jurisdiction in relation to any matter conferred on it "by the Constitutional Statute or AIFC Regulations." The use of the word "exclusive" in Article 13(4) does not define the outer limits of the Court's jurisdiction but rather the areas over which it, and no other court, has competence. Exclusive does not mean exhaustive. The Arbitration Regulations expressly confer jurisdiction on the Court to enforce foreign awards which is broad enough to enable the Court to recognise and enforce a foreign arbitration award in the Republic of Kazakhstan. The statutory scheme has conferred on the Court jurisdiction to enforce such awards which is parallel to the jurisdiction enjoyed by the courts of Kazakhstan. That enables a party to choose which legal system to use to enforce an award such as that Naftogaz obtained against Gazprom.

28. Both Naftogaz and Posco had relied on Article 14 of the Constitutional Statute as conferring jurisdiction. Consideration of Article 14 had also loomed large in the provisional thinking of Justice Andrew Spink KC who considered the original without notice Naftogaz application. Mr Holiner now disavows any reliance on Article 14. He submits that Articles 14(3) and 14(4) are concerned with the seamless enforcement of Kazakh awards within the AIFC and awards of the IAC within Kazakhstan. It is not concerned with foreign awards. The question, he submits, is whether Article 13(5) authorises the Council to confer jurisdiction on the Court.

29. Mr Iminov for Posco adopts the submissions advanced on behalf of Naftogaz. He emphasises that the Constitutional Statute is a Kazakh statute which must be interpreted in accordance with Kazakh canons of interpretation. Two features are of particular importance. In Kazakh law the term "exclusive jurisdiction (or competence)" does not define exhaustively the limits of jurisdiction but assigns exclusive jurisdiction or competence over the matter in question to the exclusion of other courts. He maintains that Article 14(4) confers jurisdiction to enforce foreign awards of the type these appeals are concerned with. He submits that the unofficial translation into English of Article 14(4) is materially different from the correct translation from Russian. He adopts the translation offered by Justice Sir Rupert Jackson:

> "*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*".

30. He would refine it further to be "on the territory of the Centre". This, he submits, provides authority for the Court to enforce a foreign award in the territory of the Republic of Kazakhstan.

31. Mr Iminov submits that it is immaterial that Posco tried but failed to enforce its award through the Kazakh courts because there is concurrent jurisdiction. It is appropriate to choose between the two jurisdictions and, if a party fails in the first, then to try again in the second. He recognises that there are differences of approach between the Kazakh courts and the AIFC Court, including recent Supreme Court authority that denies enforcement against a corporate entity unless that entity is registered in Kazakhstan. However, he submits that the Supreme Court's recent approach is wrong. He also

submits that the court in Almaty was wrong to reject Posco's application to enforce on procedural grounds.

32. Mr Andreev for Gazprom advances four submissions. First, that Article 13(4) of the Constitutional Statute sets out the entirety of the Court's jurisdiction and that, self-evidently, it does not include the enforcement of foreign arbitration awards because they are not a dispute of the sort identified. Secondly, that it is impermissible to expand that jurisdiction through secondary legislation. Article 13(5) does not allow the Council to do so. Thirdly, that in any event properly understood neither the Court Regulations nor the Arbitration Regulations confer jurisdiction to enforce foreign arbitration awards that have no nexus with the AIFC. Fourthly, that Kazakh law does not allow the enforcement of a foreign arbitration award against a corporate entity resident outside its jurisdiction. These cases represent clear attempts to circumvent Kazakh law.

33. Through its letter of 26 August 2026, the National Centre relies upon Article 14 of the Constitutional Statute, Article 45(3) of the Arbitration Regulations and Article 503 of the Civil Procedure Code of the Republic of Kazakhstan. It submits that taken together, those provisions demonstrate that an arbitral award made other than within the IAC "is recognised as binding and enforced only within the AIFC" and not more widely in Kazakhstan. The National Centre has no assets within the AIFC territory. The National Centre also asks this Court to take into account that Posco has tried and failed in the Kazakh courts to enforce the award in accordance with Article 503 of the Civil Procedure Code.

34. It is apparent that the arguments deployed in this appeal are different from those presented to the judges below.

Michael Wilson & Partners Ltd v CJSC Kazsubton and Kazphosphate LLP

35. This case concerned unpaid fees of the claimant, a company registered in the British Virgin Islands, in respect of which it had secured judgments in England and the Netherlands. The claimant applied to enforce those judgments in Kazakhstan through the Court. In para 25, Lord Mance identified the core issue in the case as "whether it is possible to apply for and obtain recognition and permission to

enforce an English or Dutch judgment without bringing the circumstances within … any head of jurisdiction stated in Article 13 of the Constitutional Statute."

36. For a multitude of reasons, he concluded that there was no jurisdiction to enforce foreign judgments, a conclusion with which we respectfully agree. The Chief Justice looked in detail at Articles 13 and 14 of the Constitutional Statute, Articles 26 and 40 of the Court Regulations and Article 45 of the Arbitration Regulations. In para 37 he summarised Article 14 as providing reciprocal enforcement of arbitration awards in the Republic of Kazakhstan and the AIFC (in essence the position now advanced by Mr Holiner for Naftogaz); In para 38 he noted the difference between Article 40(2) of the Court Regulation and Article 45 of the Arbitration Regulation. The former is concerned with arbitrations seated in the AIFC while the latter makes wider provision for recognition and enforcement "within the AIFC" of "any award, irrespective of the State or jurisdiction in which it was made". He continued with a passage on which the appellants rely at para 39:

> "*The drafters were therefore careful in these provisions to distinguish between judgments and awards emanating within and outside Kazakhstan. AIFC Court judgments are enforceable without more in both the AIFC and the Republic, just as judgments of the ordinary Kazakh court are enforceable in Kazakhstan and the AIFC. Arbitration awards are enforceable in the AIFC and the Republic if the arbitration was seated in the AIFC and the award has been ratified by the AIFC Court. But in other cases arbitration awards are only enforceable "within the AIFC". It is also very noticeable here that there are no provisions relating to the enforcement, either in the AIFC Court and still less in the Republic, of judgments from outside Kazakhstan.*"

37. At para 47 the Chief Justice made the statement quoted by Justice Sir Rupert Jackson that "the jurisdiction of the AIFC Court is a special, and carefully delineated jurisdiction. The AIFC Court is not a court of general, let alone inherent, jurisdiction". He had heard argument from both sides directed to whether the Court had jurisdiction to enforce foreign judgments but noted (at para 38) that the Court Regulations and Arbitration Regulations "were not the subject of close analysis" before him. But he did not question that that the Council had power to make Article 45 of the Arbitration Regulations.

Our Analysis and Conclusions

38. We start with Article 13(4) of the Constitutional Statute.

39. The term "exclusive jurisdiction" in Article 13(4) is capable of bearing two meanings. The first is that the categories of dispute identified in the three subparagraphs are the only categories or types of case that the Court is empowered by the Constitutional Statute to hear and adjudicate upon. The second is that the Court is empowered to hear and adjudicate upon the disputes enumerated to the exclusion of other Kazakh courts but that they do not necessarily set the boundaries of its jurisdiction. It is of note that in Article 13(10) the Court is given exclusive jurisdiction to interpret AIFC Acts. Those are defined in Article 1 as:

> "*an official written document, adopted by an AIFC Body, relating to the relationships between AIFC Participants, AIFC Bodies, their Employees, AIFC Participants and AIFC Bodies, AIFC Participants and their Employees of Employees of AIFC Bodies, AIFC Bodies and or Employees of AIFC Participants.*"

40. The use of the term exclusive jurisdiction in Article 13(10) is unequivocally being used in the second sense. We consider that it is unlikely that the term "exclusive jurisdiction" is being used in two different senses within the same Article.

41. At the heart of the submissions of Naftogaz and Posco is the proposition that in Kazakh law when using the term "exclusive jurisdiction" (or "exclusive competence") it is used in the second rather than the first sense, just as it is in Article 10(2). Examples were given in written and oral submissions by reference to the Civil Procedure Code, including Articles 31 and 467. Article 31 is concerned with conferring exclusive jurisdiction on certain Kazakh courts in respect of five types of case and Article 467 with a subset of cases involving foreigners. In each of those examples we accept that the term is being used in the sense suggested by the appellants, namely that other courts are excluded from adjudicating on the matters enumerated. They allocate categories of case to particular courts rather than defining the exhaustive scope of the matters that a court may hear. The Constitutional Statute is a Kazakh statute and can be expected to have been drafted in conformity with Kazakh principles. This provides further support for the appellants' construction of Article 13(4).

42. The appellants further submit that various AIFC Acts which provide for the Court to adjudicate on questions that arise in insolvency and company reconstructions do not obviously fall within the scope

of disputes identified in Article 13.4 and would be *ultra vires* if the construction advanced by Gazprom were correct. We were not persuaded by the examples given but another which might give rise to difficulty concerns employment related disputes. Article 13.4(1) of the Constitutional Statute refers to disputes relating to "expatriate employees" within the AIFC, rather than all employees; and Article 1(6) further restricts the definition of "employee" to someone "who is responsible for implementing the primary purposes and objectives of the AIFC Participant or AIFC Body." That would suggest, if "exclusive jurisdiction" were given the interpretation advanced by Gazprom, that the Court has jurisdiction only over a narrow range of employment disputes which arise within the AIFC. Yet the AIFC Employment Regulations apply to all employees of AIFC Participants or AIFC Bodies. On that interpretation only a small proportion of employment disputes relating to these regulations would be within the jurisdiction of the Court. Disputes affecting most employees would have to be determined in the Kazakh Courts.

43. That would be an odd result.

44. The AIFC was conceived of as a separate territory with its own legal system distinct from and independent of the Kazakh Courts. It would be a strange failing if the statutory scheme did not enable all employment related cases arising from employment in the AIFC to come within the jurisdiction of the Court. If the narrow interpretation of Article 13(4) advanced by Gazprom were correct the only way to confer jurisdiction in circumstances such as this would be by way of amendment to the Constitutional Statute, that is by primary rather than secondary legislation. By contrast, the alternative reading of the term "exclusive jurisdiction" advanced by the appellants would not exclude the possibility that secondary legislation could provide the vehicle to confer jurisdiction on the Court beyond the narrow confines of Article 13(4). That too tells in favour of the interpretation advanced by the appellants.

45. Gazprom relies upon the exclusion of criminal and administrative proceedings from the jurisdiction of the Court in Article 13(4) as strongly suggesting that the disputes identified in the following three

subparagraphs define the entirely of the Court's jurisdiction. We do not accept that argument. We remind ourselves of the whole sentence which governs the three subparagraphs:

> "*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.*"

46. The absence of those qualifying words would arguably confer exclusive jurisdiction, including in criminal and administrative proceedings, in disputes of the nature set out which might well arise under any of the three subparagraphs but most obviously under subparagraph 3, "disputes transferred to the AIFC Court by agreement of the parties." It may be unlikely, for example, that the parties to criminal proceedings would agree to transfer them to the Court but absent the words of exclusion it would at least be arguable that they could do so and that the Court would then have exclusive jurisdiction. The exclusionary words make it clear that criminal and administrative proceedings remain a matter for the Kazakh Courts.

47. The parties drew our attention to several decisions of the DIFC Court and Qatar International Court dealing with the jurisdiction of those institutions by reference to their respective legislative schemes. Whilst in some respects the language used is similar to the legislation of the AIFC, the context is different. We mean no disrespect to the judges whose decisions were cited to us, nor to the industry of the legal teams before us in exploring and deploying the authorities, in saying that we do not find those cases of assistance in resolving the issue of the scope of Article 13(4).

48. For these reasons, we accept the argument of Posco and Naftogaz that the wording of Article 13(4) does not itself preclude them from seeking to enforce in Kazakhstan through the Court the foreign arbitration awards in question in these proceedings. Article 13(4) identifies those disputes which the Court is empowered to hear and adjudicate upon to the exclusion of the Kazakh domestic courts.

49. We have noted in para 28 above the revised submission of Naftogaz regarding Article 14. Article 14 was substantially relied upon as founding jurisdiction by both appellants in argument before the judges below. Naftogaz now disavows such reliance. We accept Mr Holiner's submission that Articles 14(3) and 14(4) are concerned with the seamless enforcement of Kazakh awards within the AIFC and

awards of the IAC within Kazakhstan and are not concerned with foreign awards. We add that the alternative translation of Article 14.4 of the Constitutional Statute commended by Posco (see para 30 above) does not advance matters because, on any view, it is concerned with enforcement within the AIFC.

50. The next question is whether Article 13(5) confers power upon the Council to make regulations that confer jurisdiction on the Court. For convenience we set it out again:

> "*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 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 related to the functioning of the AIFC Court."*

51. Gazprom submit that Article 13(5) does not confer express power on the Council to regulate the jurisdiction of the Court and that a reference to jurisdiction would be necessary to do so. By contrast, Posco and Naftogaz submit that read together the two paragraphs of 13(5) are broad enough to achieve that end.

52. In considering this question it is of note that the first sentence of Article 13(5) not only recognises that the resolution of the Council governs the "activities of the AIFC Court" but refers to the "resolution of the Council On the Court of [AIFC]" in the present tense: "are governed". That is because the Constitutional Statute and the Court Regulations are properly to be regarded as complementary or as part of a suite of legislation, which included the Arbitration Regulations. The Constitutional Statute was enacted in the clear expectation that Regulations would deal with many matters of substance.

53. We are satisfied that the Council has the power to determine the jurisdiction of the Court in addition to practice, procedure etc which are comprised within the general language of Article 13(5) of the Constitutional Statute. The Constitutional Statute envisages the Council filling in the detail of the operation of the Court and IAC. Those powers are not unlimited because, as Article 4.1(2) of the

Constitutional Statute states, they must not be inconsistent with that Statute (for example the exclusion of criminal or administrative proceedings) and must be exercised to advance the purposes, objectives and principles of the AIFC as identified in Article 2.

54. The Council has achieved that end through the Court Regulations. We have set out Article 26 of the Court Regulations which is concerned with jurisdiction in various respects. Article 26(8) states that the Court shall have jurisdiction "in relation to any matter in respect of which jurisdiction is conferred on it by the AIFC Constitutional Statute or AIFC Regulations, including with regards to the Court's authority to perform functions to facilitate effective arbitration." The Council made the Arbitration Regulations, including Article 45, which is concerned with recognition and enforcement of awards. The Court Regulations include Article 40 which is also concerned with enforcement.

55. We turn to those provisions so far as they concern arbitration awards. Article 40(2) of the Court Regulations is concerned with awards in arbitrations seated in the AIFC. They may be enforced both in the AIFC, and in Kazakhstan in accordance with the Constitutional Statute. Article 40(1) is concerned with external arbitration awards. They may be enforced within the AIFC in accordance with an execution order of the Court. We agree with the observations of Chief Justice Lord Mance, quoted at para 36 above, that judgments of the Court are enforceable by the Court in both the AIFC and Kazakhstan, just as judgments of the ordinary Kazakh courts are enforceable in Kazakhstan and the AIFC. Arbitration awards are enforceable by order of the Court in the AIFC and Kazakhstan if the arbitration is seated in the AIFC and the award has been ratified by the AIFC Court. In other cases, arbitration awards are only enforceable "within the AIFC".

56. Article 45 of the Arbitration Regulations expressly contemplates the recognition and enforcement of an arbitral award "irrespective of the state or jurisdiction in which it was made" but only "within the AIFC". That is a territorial and jurisdictional limitation. Neither provision contemplates the enforcement by the Court of a foreign arbitration award in the Republic of Kazakhstan or the use of a recognition and enforcement order for enforcement elsewhere.

57. Both the applications for enforcement with which these appeals are concerned do not seek to enforce the award within the AIFC but rather to use the Court as a mechanism to enforce against assets elsewhere in Kazakhstan. The statutory scheme does not allow for that. It is more tightly drawn. For that reason, the Court does not have jurisdiction to enforce the two awards in issue in these appeals.

58. We turn finally to Gazprom's fourth submission namely that these applications to enforce are a clear attempt to circumvent Kazakh law.

59. Posco and Naftogaz submit that the statutory scheme governing the Court created two parallel systems for the enforcement of foreign arbitration awards in Kazakhstan. That enables a litigant to choose which scheme to use to enforce an award and then, having failed to succeed with the first, use the other. That is what Posco are seeking to do, having failed in the Almaty Court to secure a recognition and enforcement order against the National Centre. Naftogaz have made no secret of choosing the AIFC Court route because of the difficulty in securing a favourable order from the Kazakh courts.

60. Articles 501 and 503 of the Civil Procedural Code of Kazakhstan, on one view, do not allow the Kazakh courts to enforce a foreign arbitral award against the property of the debtor unless "the legal entity's place of business is unknown". That approach was upheld by the Civil Division of the Supreme Court on 10 June 2025 in a case involving a Russian award against a Turkish company referred to as "JSC T". The Supreme Court overturned rulings of the first instance and appellate courts of Atyrau region which had acceded to an application to enforce. Posco submits that this approach was inconsistent with earlier Supreme Court authority and inconsistent with the New York Convention which is directly applicable in Kazakh Law. Posco invites us to rule to that effect. It is unnecessary to deal with the substance of this argument given the conclusion we have reached on the construction of the AIFC statutory scheme. We would, anyway, approach this question with the principle of judicial comity firmly in mind which would inhibit us from expressing a view on a matter so obviously within the

responsibility of the Supreme Court of Kazakhstan. But the prospect of conflict between the AIFC Court and the Kazakh courts, which the submissions advanced by the appellants in these appeals necessarily entails, is a further reason in support of the more restricted interpretation which we consider to be the correct one.

61. For these reasons both these appeals must be dismissed.

62. The application of ordinary principle reflected in Rule 26(5) of the Court Rules would suggest that the appellants should pay the respondents' costs of the appeal. We direct that the appellants if so advised, within seven days of this judgment, make written submissions why they should not pay the respondents' costs. In the event of such representations being made the respondents may reply within a further seven days. If no such submissions are made, we encourage the parties to agree costs. Any dispute about costs will be dealt with on the papers by the Chief Justice.

ORDER

(i) Appeals dismissed;

(ii) Each appellant, if so advised, shall within seven days of this judgment, make written submissions why it should not pay the respective respondent's costs of the appeal;

(iii) If such representations are made the respondents may reply within a further seven days;

(iv) If the appellants do not make such submissions, each appellant shall pay the respective respondent's cost of the appeal;

(v) Any dispute about costs will be resolved by the Chief Justice on the papers.

By Order of the Court,

The Rt. Hon. The Lord Burnett of Maldon KG PC DL
The Rt. Hon. Sir Jack Beatson FBA
The Rt. Hon. Sir Stephen Richards
Justices, AIFC Court

Representation:

CASE No: AIFC-C/CA/2026/0035

The Claimant/Appellant was represented by Ms Ardak Idayatova, Partner, Mr Farukh Iminov, Senior Associate, and Mr Usen Tastanbekov, Associate, Kinstellar Law Firm.

The Defendant was not represented.

CASE No: AIFC-C/CA/2026/0040

The Claimant/Appellant was represented by Mr Valikhan Shaikenov, Partner, Ms Dina Berkaliyeva, Partner, ADL Disputes, and Mr Drew Holiner, Barrister, Monckton Chambers.

The Defendant/Respondent was represented by Mr Dmitry Andreev and Mr Sergei Lysov, Advocates, Monastyrsky, Zyuba, Stepanov & Partners.