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# AIFC Court Rules

## 2018

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## **Part 1 The Overriding Objective**

### **Citation and Commencement**

- 1.1 These Rules may be cited as the AIFC Court Rules and may be abbreviated to “ACR”.
- 1.2 These Rules are made by the Chief Justice of the Court and shall come into force on 1 January 2018.

### **Application**

- 1.3 These Rules apply to all proceedings in—
  - (1) the Court of First Instance (including the specialist division known as the Small Claims Court); and
  - (2) the Court of Appeal,which are collectively referred to in these Rules as “the Court.”
- 1.4 The Court is established by Article 13 of the Constitutional Statute of the Republic of Kazakhstan “*On the Astana International Financial Centre*” no. 438-V 3PK dated 7 December 2015 (as amended) (“the Constitutional Statute”) and Regulation 9 of the AIFC Court Regulations 2017.
- 1.5 Practice Directions may modify or disapply any provision of these Rules.

### **The Overriding Objective**

- 1.6 These Rules have the overriding objective of enabling the Court to deal with cases justly. Dealing with a case justly includes, so far as is practicable:
  - (1) ensuring that the system of justice is accessible and fair;
  - (2) ensuring that the parties are on an equal footing;
  - (3) ensuring that the case is dealt with expeditiously and effectively, using no more resources than are necessary;
  - (4) dealing with the case in ways which are proportionate—
    - (a) to the amount of money involved;
    - (b) to the importance of the case;
    - (c) to the complexity of the issues; and
    - (d) to the financial position of each party; and
  - (5) making appropriate use of information technology.

### **Application by the Courts of the Overriding Objective**

- 1.7 The Court shall seek to give effect to the overriding objective when it—
  - (1) exercises any power, including any powers given to it by the Rules; or
  - (2) interprets any Rule or Practice Direction.
- 1.8 The Court may waive any procedural requirement if it is satisfied that it is in accordance with the overriding objective to do so.

## **Duty of the parties**

1.9 The parties shall help the Court to further the overriding objective.

## **Part 2 Interpretation, Court Documents and Forms**

### **Authentic text and language of proceedings**

2.1 The English text is the authoritative text of these Rules.

2.2 All proceedings before the Court shall be conducted in the English language.

2.3 All documents for use in the Court shall be in the English language or be provided with translations into the English language.

2.4 When a document to be used in the Court is a translation into the English language of a document, the original of which is in another language, and a dispute arises as to the meaning of the language in the original document, the Court may determine its true meaning having taken such expert advice as it deems fit. The Court's interpretation shall be determinative of the meaning.

### **Rules of interpretation**

2.5 In these Rules, a reference to:

- (1) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association or state;
- (2) the masculine gender includes the feminine and neuter genders whenever they should so apply;
- (3) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in these Rules, include publishing or causing to be published in printed or electronic form.

2.6 The headings in these Rules shall not affect their interpretation.

### **Time**

2.7 All dates shall be ascertained in accordance with the Gregorian calendar.

2.8 Where a period specified by a Rule, Practice Direction, Judgment or Order —

- (1) is 5 days or less; and
- (2) includes a day which is not a business day in the AIFC  
that day does not count.

2.9 Where the specified period is 6 days or more, both business days in the AIFC and days that are not business days in the AIFC shall be counted.

2.10 When the period specified—

- (1) by these Rules; or
- (2) by any judgment or Court order or direction,

for doing any act at the Registry ends on a day on which the Registry is closed, that act shall be in time if done on the next day on which the Registry is open.

### **Dates for compliance to be calendar dates and to include time of day**

- 2.11 Where the Court gives a judgment, order or direction which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable be expressed as a calendar date.
- 2.12 Where a party is required by a Rule, Practice Direction, Judgment or Order to do any act on or before a particular date, the act shall be done by 4pm Alma Ata time (UTC + 6) on that date.

### **Meaning of 'month' in judgments, etc.**

- 2.13 Where 'month' occurs in any judgment, order, direction or other document, it means a calendar month.

### **Variation of time limits**

- 2.14 The Court may extend or shorten any time limit set by any Rule or Practice Direction. An extension may be granted after the time limit has expired.
- 2.15 Unless these Rules provide otherwise or the Court orders otherwise, the time specified by a Rule or Practice Direction or by the Court for a person to do any act may be varied by the written agreement of the parties.

### **Court documents**

- 2.16 The Court may place the Court's seal on a document by hand or electronically.
- 2.17 A document purporting to bear the Court's seal shall be admissible in evidence without further proof.

### **Signature of documents**

- 2.18 Where these Rules require a document to be signed, that requirement shall be satisfied if the signature is placed on the document by hand, electronically or by any other mechanical means.
- 2.19 Documents drafted by a legal representative should bear the legal representative's signature, and if they are drafted by a legal representative as a member or employee of a firm they should be signed in the name of the firm.

### **Filing documents**

- 2.20 All documents to be filed with the Court shall be filed by electronic means in accordance with the relevant Practice Direction.
- 2.21 Unless the Court orders otherwise, no document may be filed unless the relevant fee is paid to the Registry.
- 2.22 The contents of documents filed by electronic means shall also be provided to the Registry in hard copy if this is required by a relevant Rule or Practice Direction.

### **Forms**

- 2.23 The Chief Justice may by Practice Direction prescribe the forms to be used in proceedings before the Court.

### **Part 3 Case Management Powers of the Court**

#### **The Court's general powers of case management**

- 3.1 The Court has the power to take all steps that are required or expedient for the proper determination of a case.
- 3.2 When the Court makes an order, it may:
- (1) make it subject to conditions, including a condition to pay a sum of money into Court; and
  - (2) specify the consequence of failure to comply with the order or a condition.
- 3.3 Where a party pays money into Court following an order under Rule 3.2 the money shall be security for any sum payable by that party to any other party in the proceedings.
- 3.4 Where there has been an error of procedure such as a failure to comply with a Rule or Practice Direction:
- (1) the error does not invalidate any step taken in the proceedings unless the Court so orders; and
  - (2) the Court may make an order to remedy the error.

#### **Court's power to make orders of its own initiative**

- 3.5 Except where a Rule, Practice Direction or some other legislation provides otherwise, the Court may exercise its powers on an application or of its own initiative.
- 3.6 Where the Court proposes to make an order of its own initiative:
- (1) it may give any person likely to be affected by the order an opportunity to make representations; and
  - (2) where it does so it shall specify the time by and the manner in which the representations shall be made.
- 3.7 The Court may make an order of its own initiative, without giving the parties an opportunity to make representations.
- 3.8 Where the Court has made an order without giving a party the right to make representations —
- (1) a party who has not had an opportunity to make representations and who is affected by the order may apply to have it set aside, varied or stayed; and
  - (2) the order shall contain a statement of the right to make such an application.
- 3.9 An application under Rule 3.8(1) shall be made:

- (1) within such period as may be specified by the Court; or
- (2) if the Court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.

### **Power to strike out a Statement of Case**

- 3.10 The Court may strike out all or any part of a Statement of Case if it appears to the Court:
- (1) that the Statement of Case discloses no reasonable grounds for bringing or defending the claim;
  - (2) that the Statement of Case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
  - (3) that there has been a failure to comply with a Rule, Practice Direction or Court order.
- 3.11 When the Court strikes out a Statement of Case it may make any consequential order it considers appropriate.

### **Sanctions have effect unless defaulting party obtains relief**

- 3.12 Where a party has failed to comply with a Rule, Practice Direction or Court order, any sanction for failure to comply imposed by the Rule, Practice Direction or Court order has effect unless the party in default applies for and obtains relief from the sanction.
- 3.13 Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

## **Part 4 Commencing a Claim**

### **SECTION I – GENERAL RULES FOR COMMENCING CLAIMS**

#### **How to start proceedings**

- 4.1 Proceedings are started when the Court issues a Claim Form at the request of the Claimant.
- 4.2 The Court issues a Claim Form by:
- (1) sealing the Claim Form;
  - (2) allotting and inscribing on the Claim Form a unique claim number; and
  - (3) dating the Claim Form with the date on which the Claim Form is sealed.
- 4.3 If a Claimant wishes his claim to proceed under Part 23 (the 'Abridged Procedure'), or if the claim is required by a Rule or a Practice Direction to proceed under the Abridged Procedure, the Abridged Procedure Claim Form shall be used.
- 4.4 The Claimant shall specify on the Claim Form:
- (1) In the case of an individual, the address at which the Claimant resides;
  - (2) In the case of a company, partnership or other body:

- (a) an address in Kazakhstan at which the Claimant carries on business; or
- (b) where no such address exists, the Claimant's registered address; or
- (c) where neither such address exists, an address in any other country at which the Claimant carries on business.

4.5 Where possible, the Claimant shall state an email address for service on the Claim Form. Where the Claimant is represented by a legal representative and the legal representative has signed the Claim Form, the address shall be the legal representative's business email address; otherwise the address for service that is given should be the Claimant's email address.

#### **Date of start of proceedings**

4.6 Where the Claim Form was received in the Registry on a date earlier than the date on which it is issued by the Court, the claim is 'brought' for the purposes of limitation on that earlier date.

4.7 The date on which the Claim Form was received by the Registry will be recorded on the Claim Form.

#### **Right to use one Claim Form to start two or more claims**

4.8 A Claimant shall use a single Claim Form to start all claims which can be conveniently disposed of in the same proceedings.

#### **Service of Claim Form**

4.9 After a Claim Form has been issued, it shall be served on the Defendant by the Claimant:

- (1) within 4 months after the date of issue where the Claim Form is to be served within the Republic of Kazakhstan; and
- (2) within 6 months after the date of issue where the Claim Form is to be served out of the Republic of Kazakhstan.

#### **Extension of time for serving a Claim Form**

4.10 The Claimant may apply for an order extending the period within which the Claim Form may be served.

4.11 The general rule is that an application to extend the time for service shall be made:

- (1) within the period for serving the Claim Form specified by Rule 4.9; or
- (2) where an order has been made extending the period within which the Claim Form may be served, within the period for service specified by that order.

4.12 If the Claimant applies for an order to extend the time for service of the Claim Form after the end of the periods specified by Rule 4.11 the Court may make such an order if:

- (1) the Court has been unable to serve the Claim Form; or

- (2) the Claimant has taken all reasonable steps to serve the Claim Form but has been unable to do so; and
  - (3) in either case, the Claimant has acted promptly in making the application.
- 4.13 An application for an order extending the time for service shall be made in accordance with Part 6 and supported by evidence stating:
- (1) all the circumstances relied on,
  - (2) the date of issue of the claim,
  - (3) the expiry date of any Rule 4.10 extension, and
  - (4) a full explanation as to why the claim has not been served.
- 4.14 The application may be made without notice.

#### **Application by Defendant for service of Claim Form**

- 4.15 Where a Claim Form has been issued against a Defendant, but has not yet been served on him, the Defendant may serve a notice on the Claimant requiring him to serve the Claim Form or discontinue the claim within a period specified in the notice.
- 4.16 The period specified in a notice served under Rule 4.15 shall be at least 14 days after service of the notice.
- 4.17 If the Claimant fails to comply with the notice, the Court may, on the application of the Defendant:
- (1) dismiss the claim; or
  - (2) make any other order it thinks just.

#### **Statement of truth**

- 4.18 The Claim Form and, where they are not included in the Claim Form, the Particulars of Claim, shall be verified by a Statement of Truth.

#### **Particulars of Claim**

- 4.19 Except where a claim proceeds in accordance with the Abridged Procedure, a Claimant shall provide Particulars of Claim to the Defendant(s) and to the Court in accordance with Part 11, Section I.
- 4.20 If Particulars of Claim are not contained in or served with the Claim Form:
- (1) the Claim Form shall state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, Particulars of Claim will follow;
  - (2) the Claimant shall serve Particulars of Claim within 28 days of the filing of an acknowledgment of service which indicates an intention to defend.
- 4.21 Where the Claimant serves Particulars of Claim separately from the Claim Form in accordance with Rule 4.20(2) he shall, within 7 days of service on the Defendant, file a copy of the Particulars of Claim together with a certificate of service.

4.22 All Claim Forms shall state:

- (1) the law which the Claimant maintains governs the dispute; and
- (2) the provision of the law which the Claimant maintains gives rise to the jurisdiction of the Court in respect of their claim.

## **Part 5 Service of Documents**

### **SECTION I – GENERAL RULES OF SERVICE**

5.1 The Rules in this Section of this Part apply to the service of documents except where:

- (1) the terms of a treaty require service of a document by a particular method;
- (2) any other enactment, a Rule in another Part, or a Practice Direction makes a different provision; or
- (3) the Court orders otherwise.

5.2 Nothing in these Rules or in any Court order shall authorise or require any person to do anything which is contrary to the law of the place where a document is to be served.

#### **Methods of service**

5.3 A document may be served by any method which brings the document and its contents to the attention of the party being served.

5.4 Where the party being served is not an individual, the method of service shall bring the document and its contents to the attention of a person holding a senior position within the party. Each of the following persons is a person holding a senior position:

- (1) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation, and
- (2) in respect of a party which is not a registered company, in addition to those persons set out in sub-paragraph (1), the chairman, president, or similar officer of the party;
- (3) in respect of a partnership, a partner or a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

5.5 Where a document is to be served by any means of electronic communication, the party seeking to serve the document should first seek to clarify with the party who is to be served whether there are any limitations to the recipient's ability to receive service by such means including the maximum size of attachments that may be received.

5.6 A company may also be served by the following methods:

- (1) service by leaving a document at or mailing it to the registered office of a company, pursuant to the AIFC Companies Regulations;
- (2) service upon a Recognised Company by a person appointed to accept service on the behalf of that Company pursuant to the AIFC Companies Regulations.

### **Who is to serve**

5.7 The party on whose behalf a document is to be served shall serve a document which it has issued or prepared except where:

- (1) a Rule or Practice Direction provides that the Court shall serve the document in question; or
- (2) the Court orders otherwise.

5.8 Where the Court is to serve a document, the Court may use any method of service it deems appropriate.

### **Address for service**

5.9 Where a party has given an email address for service, any document served on that party should be sent to that email address.

5.10 A party or his legal representative who changes his address for service shall give notice in writing of the change as soon as it has taken place to the Court and every other party.

### **Service of documents on children**

5.11 If any document would otherwise be served on a child, it shall instead be served:

- (1) where an email address for service has been provided on behalf of the child, by sending the document to that email address;
- (2) in any other case, by sending the document to:
  - (a) one of the child's parents or guardians; or
  - (b) if there is no parent or guardian, the person with whom the child resides or in whose care the child is.

5.12 The Court may make an order permitting a document to be served on the child, or on some person other than the person specified in Rule 5.11.

5.13 An application for an order under Rule 5.12 may be made without notice.

5.14 The Court may order that, although a document has been served on someone other than the person specified in Rule 5.11, the document is to be treated as if it had been properly served.

### **Considered date of service**

5.15 A document which is served in accordance with these Rules or any relevant Practice Direction shall be considered to be served:

- (1) if it is delivered before 4pm Alma Ata time (UTC + 6) on a business day in the AIFC, on the day on which it is delivered;

- (2) in any other case, on the business day after it is delivered.

### **Translation of Claim Form**

- 5.16 Where the Claim Form is to be served in the Republic of Kazakhstan outside the AIFC, it shall be accompanied by a Kazakh or Russian translation of the Claim Form, unless the Court orders otherwise.
- 5.17 Where the Claim Form is to be served outside the Republic of Kazakhstan in a place in which English is not an official language, it shall be accompanied by a translation of the Claim Form into an official language of that place, unless the Court orders otherwise.
- 5.18 Every translation to be served under Rule 5.16 or 5.17 shall be accompanied by a statement by the person making it that it is a correct translation, and the statement shall include:
  - (1) the name of the person making the translation; and
  - (2) his address.

### **Service by a particular method**

- 5.19 The Court may make an order requiring any document to be served by a particular method.
- 5.20 The Court may direct that steps be taken to publish any document or take any other step which the Court considers reasonably necessary to bring the document and its contents to the attention of a party or any other person.

### **Power of Court to dispense with service**

- 5.21 The Court may dispense with service of a document.
- 5.22 An application for an order to dispense with service may be made without notice.

### **Certificate of service**

- 5.23 Where a Rule, Practice Direction or Court order requires a certificate of service, the certificate shall:
  - (1) state the method of service used;
  - (2) exhibit any receipt for such service;
  - (3) set out the grounds on which the party serving considers that such method was sufficient to bring the document and its contents to the attention of the party being served;
  - (4) state the time and date of delivery; and
  - (5) set out any other information directed by the Court.

### **Notification of outcome of service by Court**

- 5.24 Where—
  - (1) a document is required to be served by the Court; and

- (2) such service is unsuccessful,  
the Court shall send notification of this to the party who requested service.

### **Certificate of service relating to the Claim Form**

- 5.25 Where a Claim Form is served by the Court, the Court shall send the Claimant a notice which will include the date when the Claim Form is considered to be served under Rule 5.15.
- 5.26 Where the Claim Form is served by the Claimant:
  - (1) he shall file a certificate of service not later than 7 days after the date for the filing by the Defendant of the acknowledgment of service, unless by that date the acknowledgment of service has been filed; and
  - (2) he may not obtain judgment in default under Part 9 unless he has filed the certificate of service.

### **Undertaking to be responsible for expenses of the Court**

- 5.27 Any request for service through the Court shall contain an undertaking by the person making the request:
  - (1) to be responsible for all expenses incurred by the Court or any foreign judicial authority; and
  - (2) to pay those expenses to the Court or foreign judicial authority on being informed of the amount.

### **Proof of service**

- 5.28 Where:
  - (1) a hearing is fixed when the claim is issued; and
  - (2) the Defendant does not appear at the hearing;the Court may direct that the Claimant may take no further steps against that Defendant until the Claimant has filed a certificate of service.

## **SECTION II – SERVICE OF PROCESS OF OTHER COURTS**

- 5.29 This Section of this Part applies to the service in the AIFC of any court process in connection with civil or commercial proceedings in another court.
- 5.30 Nothing in this Section of this Part shall deprive any person of any right they may have to effect such service themselves.

### **Request for service**

- 5.31 The Court will serve process where the Registrar receives:
  - (1) a written request for service from a consular or other authority;
  - (2) a translation of that request into English;
  - (3) the process to be served; and
  - (4) unless the other court certifies that the person to be served understands the language of the process, a translation of it into English.

### **Method of service**

5.32 The Registrar may arrange for service of the process by any method he considers to be appropriate.

### **After service**

5.33 The Registrar will send the following documents to the person who requested service:

- (1) a certificate stating:
  - (a) when and how the process was served or the reason why it has not been served; and
  - (b) where appropriate, an amount certified to be the costs of serving or attempting to serve the process; and
- (2) a copy of the process.

## **Part 6 Making Applications**

6.1 When a party makes an application to the Court:

- (1) before a claim is brought in accordance with Part 4, he shall issue and serve an Abridged Procedure Claim Form under Part 23 of the Rules, unless the Court orders otherwise;
- (2) after a claim is brought in accordance with Part 4, he shall file and serve an application notice subject to the rules of this Part.

6.2 In this Part:

- (1) 'application notice' means a document in which the applicant states his intention to seek a Court order; and
- (2) 'respondent' means:
  - (a) the person against whom the order is sought; and
  - (b) such other person as the Court may direct.

## **SECTION I – FILING AND SERVICE OF NOTICE OF AN APPLICATION**

### **Application notice to be filed**

6.3 The general rule is that an applicant shall file an application notice.

6.4 An applicant may make an application without filing an application notice if:

- (1) this is permitted by a Rule or Practice Direction; or
- (2) the Court dispenses with the requirement for an application notice.

### **Notice of an application**

6.5 The general rule is that a copy of the application notice shall be served by the applicant on each respondent.

6.6 An application may be made without serving a copy of the application notice if this is permitted by:

- (1) a Rule;

- (2) a Practice Direction; or
- (3) a Court order.

### **Applications without service of application notice**

- 6.7 The Court's permission is required for an application to be made without serving an application notice. The Court's permission will be granted:
- (1) where there is exceptional urgency;
  - (2) where the overriding objective is best furthered by doing so;
  - (3) by consent of all parties;
  - (4) where a Rule or Practice Direction permits; or
  - (5) where there are good reasons for making the application without notice, for example, because notice would or might defeat the object of the application.

### **Expedited applications**

- 6.8 The Court will expedite the hearing of an application on notice in cases of sufficient urgency and importance.
- 6.9 Where a party wishes to make an expedited application a request should be made to the Registrar. Such request should be made on notice to all other parties, unless the Court orders otherwise.

### **Time when an application is made**

- 6.10 Where an application is required to be made within a specified time, it is so made if the application notice is received by the Court within that time.

### **What an application notice shall include**

- 6.11 An application notice shall state:
- (1) what order the applicant is seeking; and
  - (2) briefly, why the applicant is seeking the order.

### **Service of a copy of an application notice**

- 6.12 Unless Rule 6.6 applies a copy of the application notice:
- (1) shall be served as soon as practicable after it is filed; and
  - (2) except where another time limit is specified in these Rules or the Court orders otherwise, shall in any event be served at least 3 days before the Court is to deal with the application.
- 6.13 When a copy of an application notice is served it shall be accompanied by:
- (1) a copy of any written evidence in support; and
  - (2) a draft of the order which the applicant seeks.

## **SECTION II – EVIDENCE IN SUPPORT OF APPLICATIONS**

### **Filing and service of evidence**

- 6.14 Subject to any directions the Court may make as to the service of evidence:
- (1) evidence in support of any application shall be filed and served with the application notice;
  - (2) any evidence in answer which has not already been served shall be served within 14 days thereafter;
  - (3) any evidence in reply shall be served within 7 days thereafter.
- 6.15 It is not necessary for written evidence:
- (1) to be filed if it has already been filed; or
  - (2) to be served on a party on whom it has already been served.
- 6.16 Evidence in support of an application may be set out in either:
- (1) a witness statement; or
  - (2) a statement of case provided that it is verified by a statement of truth; or
  - (3) the application notice provided that it is verified by a statement of truth;
- unless the Court, Regulations, a Rule or a Practice Direction requires evidence by affidavit.
- 6.17 The evidence shall set out the facts on which the applicant relies, including all material facts of which the Court should be made aware.
- 6.18 Where an application is made without notice to the respondent, the evidence shall also set out:
- (1) why notice was not given; and
  - (2) details of any possible defences that may be available to the respondent in response to the application.

### **SECTION III – HEARINGS AND ORDERS**

#### **Hearing of applications**

- 6.19 The general rule is that the Court will fix an oral hearing to deal with any application.
- 6.20 Applications (other than applications in arbitration claims under Part 27) will be heard in public in accordance with Article 32 of the Court Regulations, save where otherwise ordered by the Court.

#### **Applications may be dealt with without a hearing**

- 6.21 The Court may deal with an application without a hearing if the parties agree or if the Court does not consider that a hearing would be desirable.

#### **Power of the Court to proceed in the absence of a party**

- 6.22 Where the applicant or any respondent fails to attend the hearing of an application, the Court may proceed in his absence.
- 6.23 Where:

- (1) the applicant or any respondent fails to attend the hearing of an application; and
  - (2) the Court makes an order at the hearing;
- the Court may, on application or of its own initiative, re-hear the application.

### **Service of application where application made without notice**

- 6.24 Where the Court has disposed of an application which it permitted to be made without notice, unless the Court orders otherwise:
- (1) a copy of the application notice and any evidence in support shall be served with the order on any party or other person against whom the order was made or sought; and
  - (2) the order shall contain a statement of the right to make an application to set aside or vary the order under Rule 6.25.
- 6.25 A person who was not served with a copy of the application notice before an order was made under Rule 6.24, may apply to have the order set aside or varied.
- 6.26 An application under Rule 6.25 shall be made within 7 days after the date on which the order was served on the person making the application.

## **Part 7 Responding to a claim**

- 7.1 Save where a Rule or Practice Direction provides otherwise, a Defendant shall file an acknowledgment of service and serve a copy on every other party.
- 7.2 In addition to filing and serving an acknowledgment of service, the Defendant may also:
- (1) file and serve an admission in accordance with Part 10;
  - (2) file and serve a Defence in accordance with Part 11; or
  - (3) file and serve both an admission and a defence if he admits only part of a claim.
- 7.3 A Defendant who wishes to acknowledge service of a claim shall do so electronically through the Court e-filing system.

### **The period for filing an acknowledgment of service**

- 7.4 The period for filing an acknowledgment of service is:
- (1) Where a Claim Form has been served within the Republic of Kazakhstan, 14 days after service of the Claim Form;
  - (2) Where a Claim Form has been served out of the Republic of Kazakhstan, 28 days after the service of the Claim Form.

### **Consequence of not filing an acknowledgment of service**

- 7.5 If a Defendant fails to file an acknowledgment of service within the period specified in Rule 7.4 the Claimant may obtain default judgment if Part 9 allows it.

## **Contents of acknowledgment of service**

- 7.6 An acknowledgment of service shall:
- (1) be signed by the Defendant or his legal representative;
  - (2) in the case of an individual, state the address at which the Defendant resides;
  - (3) in the case of a Defendant which is not an individual, state:
    - (a) an address in Kazakhstan at which the Defendant carries on business; or
    - (b) where no such address exists, the Defendant's registered address; or
    - (c) where no such address exists, an address in any other country at which the Defendant carries on business;
  - (4) include the Defendant's address for service; and
  - (5) expressly agree or disagree with the Claimant's assertions on the Claim Form provided under Rule 4.22 (applicable law and basis for jurisdiction).
- 7.7 Where the Defendant is represented by a legal representative and the legal representative has signed the acknowledgment of service form, the address for service shall be the legal representative's business email address; otherwise the address for service that is given should be the Defendant's email address, if possible.

## **General**

- 7.8 The Defendant's name should be set out on the acknowledgment of service.
- 7.9 Where the Defendant's name has been incorrectly set out in the Claim Form, it should be correctly set out on the acknowledgment of service followed by the words 'described as' and the incorrect name.
- 7.10 If two or more Defendants to a claim acknowledge service of a claim through the same legal representative at the same time, only one acknowledgment of service need be used.
- 7.11 An acknowledgment of service may be amended or withdrawn only with the permission of the Court. The application shall be made in accordance with Part 6 and supported by evidence.

## **Part 8 Disputing jurisdiction**

- 8.1 A Defendant who wishes to:
- (1) dispute the Court's jurisdiction to try the claim; or
  - (2) argue that the Court should not exercise its jurisdiction;
- may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

- 8.2 A Defendant who wishes to make such an application shall first file an acknowledgment of service in accordance with Part 7 indicating that he intends to dispute jurisdiction.
- 8.3 A Defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the Court's jurisdiction.
- 8.4 An application under this Part shall:
- (1) be made within 14 days after filing an acknowledgment of service; and
  - (2) be supported by evidence.
- 8.5 If the Defendant files an acknowledgment of service and does not make an application disputing the Court's jurisdiction within the period specified in Rule 8.4:
- (1) he is to be treated as having accepted that the Court has jurisdiction to try the claim; and
  - (2) if his acknowledgment of service indicates an intention to dispute jurisdiction, he will be treated as if he has not filed an acknowledgment of service for the purposes of any application for judgment in default under Part 9.
- 8.6 If the Defendant files an acknowledgment of service indicating an intention to dispute the Court's jurisdiction, the Claimant need not serve Particulars of Claim before the hearing of the application, unless the Court orders otherwise.
- 8.7 If a Defendant makes an application under this Part, he shall file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file a Defence, or in the case of an Abridged Procedure claim, file any other written evidence, unless the Court orders otherwise.
- 8.8 An order containing a declaration that the Court has no jurisdiction or will not exercise its jurisdiction may also make further provision including:
- (1) setting aside the Claim Form;
  - (2) setting aside service of the Claim Form;
  - (3) discharging any order made before the claim was commenced or before the Claim Form was served; or
  - (4) staying the proceedings.
- 8.9 If on an application under this Part the Court does not make a declaration that it has no jurisdiction or will not exercise its jurisdiction, the Court shall give directions as to the filing and service of statements of case or, in an Abridged Procedure claim under Part 23, evidence.

## **Part 9      Default Judgment**

### **Meaning of 'Default judgment'**

- 9.1 In these Rules, 'default judgment' means judgment without trial where a Defendant —
- (1) has failed to file an acknowledgment of service; or
  - (2) has failed to file a Defence.
- 9.2 For the purposes of this Part, a Defence includes any document purporting to be a Defence.

## **SECTION I – OBTAINING DEFAULT JUDGMENT**

### **Claims in which default judgment may not be obtained**

- 9.3 A Claimant may not obtain a default judgment —
- (1) where he uses the Abridged Procedure set out in Part 23; or
  - (2) in any other case where a Rule or Practice Direction provides that the Claimant may not obtain default judgment.

### **Conditions to be satisfied**

- 9.4 The Claimant may obtain judgment in default of an acknowledgment of service if —
- (1) the Defendant has not filed an acknowledgment of service or a Defence to the claim (or any part of the claim); and
  - (2) the relevant time for doing so has expired.
- 9.5 Judgment in default of Defence may be obtained —
- (1) where an acknowledgement of service has been filed but a Defence has not been filed;
  - (2) in a counterclaim made under Rule 13.7, where a Defence has not been filed,
- and, in either case, the relevant time limit for doing so has expired.
- 9.6 The Claimant may not obtain a default judgment:
- (1) if the Defendant has applied:
    - (a) to have the Claimant's Statement of Case struck out under Rule 3.10; or
    - (b) for immediate judgment under Part 14;and, in either case, that application has not been disposed of;
  - (2) if the Defendant has satisfied the whole claim (including any claim for costs) on which the Claimant is seeking judgment;
  - (3) if the Claimant is seeking judgment on a claim for money and the Defendant has filed or served on the Claimant an admission of liability to pay all of the money claimed under Rule 10.5 together with a request for time to pay;
  - (4) unless either he has filed a certificate of service under Rule 5.26 or the Defendant has filed an acknowledgment of service.

## Procedure for obtaining default judgment

9.7 A Claimant may obtain default judgment by making an application in accordance with Part 6. An application for default judgment may be made without notice and may be decided without a hearing.

## Nature of judgment in certain cases

9.8 Where the claim is for a specified sum of money, the Claimant may specify in an application filed under Rule 9.7—

- (1) the date by which the whole of the judgment debt is to be paid; or
- (2) the times and rate at which it is to be paid by instalments.

9.9 Except where Rule 9.11 applies, a default judgment on a claim for a specified amount of money will be judgment for the amount of the claim (less any payments made) and costs—

- (1) to be paid by the date or at the rate specified in the application for default judgment; or
- (2) if none is specified, immediately.

9.10 Where the claim is for an unspecified amount of money a default judgment will be for an amount to be decided by the Court and costs.

9.11 Where the claim is for delivery of goods and the Claim Form gives the Defendant the alternative of paying their value, a default judgment will be judgment requiring the Defendant to—

- (1) deliver the goods or (if he does not do so) pay the value of the goods as decided by the Court (less any payments made); and
- (2) pay costs.

## Interest

9.12 A default judgment on a claim for a specified amount of money may include the amount of interest claimed to the date of judgment if—

- (1) the Claim Form includes the details required by Rule **Error! Reference source not found.**;
- (2) where interest is claimed under any Regulations of the Centre and the rate is no higher than any rate of interest fixed by these Rules or any Practice Direction under Article 37(3) of the AIFC Court Regulations 2017 payable on judgment debts at the date when the Claim Form was issued; and
- (3) the Claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the Claim Form to the date of the request for judgment.

9.13 In any case where Rule 9.12 does not apply, judgment will be for an amount of interest to be decided by the Court.

## Procedure for deciding an amount or value

- 9.14 Where default judgment is given on a claim for a sum of money expressed in a currency other than US Dollars, the judgment should be for the amount of that currency with the addition of 'or the US Dollar equivalent at the time of payment'.

### **Claim against more than one Defendant**

- 9.15 Where a Claimant applies for a default judgment against one of two or more Defendants —
- (1) if the claim can be dealt with separately from the claim against the other Defendants
    - (a) the Court may enter a default judgment against that Defendant; and
    - (b) the Claimant may continue the proceedings against the other Defendants;
  - (2) if the claim cannot be dealt with separately from the claim against the other Defendants
    - (a) the Court will not enter default judgment against that Defendant; and
    - (b) the Court shall deal with the application at the same time as it disposes of the claim against the other Defendants.
- 9.16 A Claimant may not enforce against one of two or more Defendants any judgment obtained under this Part for delivery of goods unless—
- (1) he has obtained a judgment for delivery (whether or not obtained under this Part) against all the Defendants to the claim; or
  - (2) the Court gives permission.

### **Claims served outside the Republic of Kazakhstan**

- 9.17 Where the Defendant was served with the claim outside the Republic of Kazakhstan and the Defendant has not acknowledged service, the evidence in support of an application for default judgment shall establish that:
- (1) the claim is one that the Court has and should exercise jurisdiction to hear and decide; and
  - (2) the claim has been properly served.

## **SECTION II – SETTING ASIDE OR VARYING DEFAULT JUDGMENT**

### **Cases where the Court shall set aside default judgment**

- 9.18 The Court shall set aside a judgment entered under Section I of this Part if judgment was wrongly entered because—
- (1) in the case of a judgment in default of an acknowledgment of service, any of the conditions in Rules 9.4 and 9.6 was not satisfied;
  - (2) in the case of a judgment in default of a Defence, any of the conditions in Rules 9.5 and 9.6 was not satisfied; or
  - (3) the whole of the claim was satisfied before judgment was entered.

### **Cases where the Court may set aside or vary default judgment**

- 9.19 In any other case, the Court may, on such conditions as it sees fit, set aside or vary a judgment entered under Section I of this Part if:
- (1) the Defendant has a real prospect of successfully defending the claim; or
  - (2) it appears to the Court that there is some other good reason why:
    - (a) the judgment should be set aside or varied; or
    - (b) the Defendant should be allowed to defend the claim.
- 9.20 In considering whether to set aside or vary a judgment entered under Section I of this Part, the matters to which the Court shall have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

### **Part 10 Admissions**

- 10.1 A party may at any time admit the truth of the whole or any part of another party's case by giving notice in writing (such as in a Statement of Case or by letter).
- 10.2 The permission of the Court is required to amend or withdraw an admission made in accordance with Rule 10.1.
- 10.3 Where a party makes an admission under Rule 10.1 (admission by notice in writing), any other party may apply for judgment on the admission.
- 10.4 Judgment entered under Rule 10.3 shall be such as it appears to the Court that the applicant is entitled to on the admission.
- 10.5 Where the remedy sought by the Claimant is payment of an amount of money, the Defendant may admit liability to pay the whole or part of the sum claimed.
- 10.6 Where the Defendant admits part of a claim for payment of an amount of money, the claimant may apply for judgment on the admission in accordance with Rule 10.3.
- 10.7 Where the defendant makes an admission of liability to pay the whole of a claim for a sum of money:
- (1) where the amount of the claim is specified, the claimant shall be entitled to apply for judgment for the whole of the claim (less any payment made) and costs;
  - (2) where the amount of the claim is unspecified, the claimant shall be entitled to apply for judgment for an amount to be decided by the Court and costs.

### **Request for time to pay**

- 10.8 A Defendant who makes an admission under Rules 10.5 to 10.7 may make a request for time to pay.

- 10.9 A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.
- 10.10 The Defendant's request for time to pay shall be served and filed with his admission.
- 10.11 If the Defendant is requesting time to pay he should provide as fully as possible a statement of his means.
- 10.12 The Defendant's request for time to pay will be considered at the same time as any application by the Claimant under Rule 10.3.

## **Part 11 Statements of Case and Further Information**

### **SECTION I – STATEMENTS OF CASE**

- 11.1 In these Rules, 'Statement of Case' means:
- (1) a Claim Form, Particulars of Claim, Defence, Additional Claim Notice, or Reply; and
  - (2) any other formal written further information given in relation to a Statement of Case, whether given voluntarily or by court order.

#### **Exceptions to this Section of this Part**

- 11.2 This Section of this Part does not apply where the Claimant uses the Abridged Procedure set out in Part 23.
- 11.3 The Court may at any time before or after the issue of the Claim Form order a claim to proceed without the filing or service of statements of case.

#### **General Rules about Statements of Case**

- 11.4 Statements of Case shall:
- (1) set out a concise statement of the facts on which the party relies;
  - (2) specify any remedy which the party seeks; and
  - (3) be set out in separate consecutively numbered paragraphs.
- 11.5 A Statement of Case shall be signed by the individual person(s) who drafted it or bear the name of the lawyer by whom it was settled.

#### **Contents of Claim Form**

- 11.6 The Claim Form shall include:
- (1) the matters required by Rule 11.4;
  - (2) where the Claimant's claim is for a specified sum, a statement of the interest accrued on that sum;
  - (3) the matters required by Rule 4.22 (governing law and basis of jurisdiction); and
  - (4) such other matters as may be set out in a Practice Direction.

- 11.7 If the Particulars of Claim are not contained in, or are not served with the Claim Form, the Claimant shall state on the Claim Form that the Particulars of Claim will follow if an acknowledgement of service is filed which indicates an intention to defend the claim.
- 11.8 If the Claimant is claiming in a representative capacity, the Claim Form shall state what that capacity is.
- 11.9 If the Defendant is sued in a representative capacity, the Claim Form shall state what that capacity is.

### **Contents of the Particulars of Claim**

11.10 Particulars of Claim shall include:

- (1) the matters required by Rule 11.4; and
- (2) such other matters as may be set out in a Practice Direction.

### **Defence**

11.11 A Defendant who wishes to defend all or part of a claim shall file a defence.

### **Consequence of not filing a defence**

11.12 If a Defendant fails to file a defence, the Claimant may obtain default judgment if Part 9 allows it.

### **Form of defence**

11.13 A party shall file a defence by submitting it electronically using the Court's e-filing system.

11.14 A defence shall be verified by a statement of truth.

### **Contents of Defence**

11.15 In his Defence, the Defendant shall state:

- (1) which of the allegations in the Particulars of Claim he denies;
- (2) which allegations he is unable to admit or deny, but which he requires the Claimant to prove; and
- (3) which allegations he admits.

11.16 Where the Defendant denies an allegation:

- (1) he shall state his reasons for doing so; and
- (2) if he intends to put forward a different version of events from that given by the Claimant, he shall state his own version.

11.17 A Defendant who:

- (1) fails to deal with an allegation; but
- (2) has set out in his Defence the nature of his case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

- 11.18 Where the claim includes a money claim, a Defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.
- 11.19 Subject to Rules 11.17 and 11.18, a Defendant who fails to deal with an allegation shall be taken to admit that allegation.
- 11.20 If the Defendant is defending in a representative capacity, he shall state what that capacity is.
- 11.21 The Defendant shall give details of the expiry of any relevant limitation period relied on.

#### **Defence of set-off**

- 11.22 Where a Defendant:
- (1) contends he is entitled to money from the Claimant; and
  - (2) relies on this as a Defence to the whole or part of the claim,
- the contention may be included in the Defence and set off against the claim, whether or not it is also a counterclaim.

#### **The period for filing a defence**

- 11.23 The general rule is that the period for filing a defence is 28 days after service of the particulars of claim.
- 11.24 The general rule is subject to the following rules:
- (1) Rule 8.7 (which provides that, where the Defendant makes an application disputing the Court's jurisdiction, he need not file a defence before the hearing); and
  - (2) Rule 14.4 (which provides that, if the Claimant applies for immediate judgment before the Defendant has filed a defence, the Defendant need not file a defence before the immediate judgment hearing).

#### **Agreement extending the period for filing a defence**

- 11.25 The Defendant and the Claimant may agree that the period for filing a defence specified in Rules 11.23 and 11.24 shall be extended by up to 28 days.
- 11.26 Where the Defendant and the Claimant agree to extend the period for filing a defence, the Defendant shall notify the Court in writing.

#### **Service of copy of defence**

- 11.27 A copy of the defence shall be served on every other party as soon as reasonably practicable after it is filed.

#### **Claim stayed if it is not defended or admitted**

- 11.28 Where:
- (1) at least 6 months have expired since the end of the period for filing a defence specified in Rules 11.23 and 11.24;

- (2) no Defendant has served or filed an admission or filed a defence or counterclaim; and
- (3) the Claimant has not applied for judgment under Part 9 (default judgment), or Part 14 (immediate judgment);

the claim shall be stayed, unless the Court orders otherwise.

- 11.29 Where a claim is stayed under Rule 11.28, any party may apply for the stay to be lifted.
- 11.30 Any application made under Rule 11.29 should be made in accordance with Part 6 and should give the reason for the applicant's delay in proceeding with or responding to the claim.

### **Reply to the Defence**

- 11.31 If a Claimant files a reply to the defence, he shall:
- (1) file his reply within 21 days after service of the defence; and
  - (2) serve it on all other parties at the same time.
- 11.32 Where a Claimant serves a reply and a defence to counterclaim, the reply and defence to counterclaim should normally form one document, with the defence to counterclaim following on from the reply.
- 11.33 A Claimant who does not file a reply to the Defence shall not be taken to admit the matters raised in the Defence.
- 11.34 A Claimant who:
- (1) files a reply to a Defence; but
  - (2) fails to deal with a matter raised in the Defence,
- shall be taken to require that matter to be proved.

### **No Statement of Case after a Reply to be filed without Court's permission**

- 11.35 A party may not file or serve any Statement of Case after a reply without the permission of the Court.

### **SECTION II – AMENDMENTS TO STATEMENTS OF CASE**

- 11.36 A party may amend his Statement of Case at any time before it has been served on any other party.
- 11.37 Where the Court's permission is not required, the amended Statement of Case shall be filed with the Court and served on every party to the proceedings.
- 11.38 If his Statement of Case has been served, a party may amend it only:
- (1) with the written consent of all the other parties; or
  - (2) with the permission of the Court.
- 11.39 If a Statement of Case has been served, an application to amend it by removing, adding or substituting a party shall be made in accordance with Part 12.

### **Power of Court to disallow amendments made without permission**

- 11.40 If a party has amended his Statement of Case where permission of the Court was not required, the Court may disallow the amendment.
- 11.41 A party may apply to the Court for an order under Rule 11.40 within 14 days of service of a copy of the amended Statement of Case on him.

### **Amendments to Statements of Case with the permission of the court**

- 11.42 Where the Court gives permission for a party to amend his Statement of Case, it may give directions as to:
- (1) amendments to be made to any other Statement of Case; and
  - (2) service of any amended Statement of Case.
- 11.43 The power of the Court to give permission to amend a Statement of Case is subject to:
- (1) Rules 11.44 to 11.47 (amendments of Statement of Case after the end of a relevant limitation period);
  - (2) Rules 12.3 to 12.6 (change of parties — general); and
  - (3) Rules 12.15 to 12.17 (special provisions about adding or substituting parties after the end of a relevant limitation period).

### **Amendments to Statements of Case after the end of a relevant limitation period**

- 11.44 Rules 11.45 to 11.47 apply where:
- (1) a party applies to amend his Statement of Case in one of the ways mentioned in Section II of this Part; and
  - (2) a period of limitation has expired under any AIFC Regulations under which such an amendment is allowed.
- 11.45 The Court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.
- 11.46 The Court may allow an amendment to correct a mistake as to the name of a party where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question.
- 11.47 The Court may allow an amendment to alter the capacity in which a party claims.

### **Applications to amend where the permission of the Court is required**

- 11.48 When making an application to amend a Statement of Case, the applicant should file with the Court:
- (1) the application notice;
  - (2) a copy of the Statement of Case with the proposed amendments; and
  - (3) any evidence submitted in support of the application.

11.49 Where permission to amend has been given, the applicant should within 14 days of the date of the order, or within such other period as the Court may direct, file with the Court the amended Statement of Case.

11.50 A copy of the order and the amended Statement of Case should be served on every party to the proceedings, unless the Court orders otherwise.

### **SECTION III – REQUESTS FOR FURTHER INFORMATION**

#### **Obtaining further information**

11.51 The Court may at any time order a party to file and serve a document:

- (1) clarifying any matter which is in dispute in the proceedings; or
- (2) giving additional information in relation to any such matter;

whether or not the matter is contained or referred to in a statement of case.

11.52 Rule 11.51 is subject to any rule of law to the contrary.

#### **Restriction on the use of further information**

11.53 The Court may direct that information provided by a party to another party (whether given voluntarily or following an order made under Rule 11.51) shall not be used for any purpose except for that of the proceedings in which it is given.

#### **Preliminary request for further information or clarification**

11.54 Before making an application to the Court for an order under Rule 11.51, the party seeking clarification or information should first serve on the party from whom it is sought a written request for that clarification or information (“**a Request**”), stating a date by which the response to the Request should be served. The date shall allow the party providing clarification or further information a reasonable time to respond.

11.55 A Request shall be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet.

#### **Responding to a request**

11.56 A response to a Request shall be in writing, dated and signed by the party providing clarification or further information or his legal representative.

11.57 The party providing clarification or further information shall when he serves his response on the party seeking it serve on every other party and file with the Court a copy of the Request and of his response.

#### **Statements of truth**

11.58 A response to a Request shall be verified by a statement of truth.

#### **General matters**

- 11.59 If the party providing clarification or further information objects to complying with the Request or part of it or is unable to do so at all or within the time stated in the Request:
- (1) he shall inform the party seeking clarification or information promptly and in any event within that time; and
  - (2) he may do so in a letter or in a separate document (a formal response), but in either case he shall give reasons and, where relevant, give a date by which he expects to be able to comply.
- 11.60 There is no need for a party providing clarification or further information to apply to the Court if he objects to a Request or is unable to comply with it at all or within the stated time. He need only comply with Rule 11.59.
- 11.61 Where the party from whom clarification or information is sought has made no response to a Request served on him:
- (1) the party seeking the clarification or information need not serve the application notice on that party, and the Court may deal with the application without a hearing;
  - (2) sub-paragraph (1) above only applies if at least 14 days have passed since the Request was served and the time stated in it for a response has expired.
- 11.62 Unless Rule 11.61 applies the application notice shall be served on the second party and on all other parties to the claim.
- 11.63 An order made under Rule 11.51 shall be served on all parties to the claim

## **Part 12 Parties**

### **Parties — General**

- 12.1 Any number of claimants or defendants may be joined as parties to a claim.
- 12.2 Parties may be removed, added or substituted in existing proceedings either on the Court's own initiative or on the application of either an existing party or a person who wishes to become a party.

## **SECTION I – ADDITION AND SUBSTITUTION OF PARTIES**

### **Change of parties — General**

- 12.3 Rules 12.4 to 12.5 apply where a party is to be added or substituted except where the case falls within Rules 12.15 to 12.17 (special provisions about changing parties after the end of a relevant limitation period).
- 12.4 The Court's permission is required to remove, add or substitute a party, unless the claim form has not been served.
- 12.5 The Court may order a person to be added, removed or substituted as a party if it is desirable to do so.

- 12.6 Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy shall be parties unless the Court orders otherwise.

### **Procedure for adding and substituting parties**

- 12.7 An order for the removal, addition or substitution of a party shall be served on:
- (1) all parties to the proceedings; and
  - (2) any other person affected by the order.
- 12.8 When the Court makes an order for the removal, addition or substitution of a party, it may give consequential directions about:
- (1) serving statements of case and any other relevant documents on any new party; and
  - (2) the management of the proceedings.

### **Addition or substitution of claimant**

- 12.9 Nobody may be added or substituted as a claimant unless:
- (1) he has given his consent in writing; and
  - (2) that consent has been filed with the Court.
- 12.10 If any person would otherwise be joined as a claimant but does not agree to be a claimant, he shall be made a defendant, unless the Court orders otherwise.
- 12.11 Any application to add or to substitute a new party to the proceedings as a claimant shall be accompanied by the signed, written consent of the new claimant.

### **Addition or substitution of defendant**

- 12.12 A new defendant does not become a party to the proceedings until the amended claim form has been served on him, unless the Court orders otherwise.

### **Transfer of interest or liability**

- 12.13 Where the interest or liability of an existing party has passed to some other person, an application may be made to the Court to add or substitute that person.
- 12.14 The application shall be supported by evidence showing the stage the proceedings have reached and what change has occurred to cause the transfer of interest or liability.

### **Special provisions about adding or substituting parties after the end of a relevant limitation period**

- 12.15 Rules 12.16 to 12.17 apply to a change of parties after the end of the relevant period of limitation period applicable a claim.
- 12.16 The Court may add or substitute a party if:

- (1) the relevant limitation period was current when the proceedings were started; and
- (2) the addition or substitution is necessary.

12.17 The addition or substitution of a party is necessary if the Court is satisfied that:

- (1) the new party is to be substituted for a party who was named in the claim form in mistake for the new party; or
- (2) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
- (3) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party.

## **SECTION II – REPRESENTATIVE PARTIES**

### **Representative parties with same interest**

12.18 Where more than one person has the same interest in a claim:

- (1) the claim may be begun; or
- (2) the Court may order that the claim be continued;

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

12.19 The Court may direct that a person may not act as a representative.

12.20 Unless the Court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule:

- (1) is binding on all persons represented in the claim; but
- (2) may only be enforced by or against a person who is not a party to the claim with the permission of the Court.

12.21 This rule does not apply to a claim to which Rules 12.23 to 12.28 apply.

### **Representation of interested persons who cannot be ascertained Etc.**

12.22 Rules 12.23 to 12.28 apply to claims about:

- (1) the estate of a deceased person
- (2) property subject to a trust; or
- (3) the meaning of a document, including legislation.

12.23 The Court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented:

- (1) are minors or unborn;
- (2) cannot be found;
- (3) cannot easily be ascertained; or
- (4) are a class of persons who have the same interest in a claim and;

- (a) one or more members of that class are within sub-paragraphs (1), (2) or (3); or
  - (b) to appoint a representative would further the overriding objective.
- 12.24 An application for an order under Rule 12.23:
  - (1) may be made by:
    - (a) any person who seeks to be appointed under the order; or
    - (b) any party to the claim; and
  - (2) may be made at any time before or after the claim has started.
- 12.25 An application notice for an order under Rule 12.23 shall be served on:
  - (1) all parties to the claim, if the claim has started;
  - (2) the person sought to be appointed, if that person is not the applicant or a party to the claim; and
  - (3) any other person as directed by the Court.
- 12.26 The Court's approval is required to settle a claim in which a party is acting as a representative under Rules 12.23 to 12.28.
- 12.27 The Court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- 12.28 Unless the Court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under Rules 12.23 to 12.28:
  - (1) is binding on all persons represented in the claim; but
  - (2) may only be enforced by or against a person who is not a party to the claim with the permission of the Court.

### **Representation of beneficiaries by trustees**

- 12.29 A claim may be brought by or against trustees or persons representing the estate of a deceased person in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate (the 'beneficiaries').
- 12.30 Any judgment or order given or made in the claim is binding on the beneficiaries unless the Court orders otherwise in the same or other proceedings.

### **Death**

- 12.31 Where a person who had an interest in a claim has died and that person has no person appointed by a competent authority to represent his estate the Court may order:
  - (1) the claim to proceed in the absence of a person representing the estate of the deceased; or
  - (2) a person to be appointed to represent the estate of the deceased.

- 12.32 Where a defendant against whom a claim could have been brought has died and:
- (1) a person or persons have been appointed by a competent authority to represent the estate of the deceased, the claim shall be brought against that person or those persons;
  - (2) no person or persons have been appointed by a competent authority to represent the estate of the deceased:
    - (a) the claim shall be brought against ‘the estate of’ the deceased; and
    - (b) the claimant shall apply to the Court for an order appointing a person to represent the estate of the deceased in the claim.
- 12.33 A claim shall be treated as having been brought against ‘the estate of’ the deceased in accordance with Rule 12.32(2)(a) where:
- (1) the claim is brought against the ‘personal representatives’ of the deceased but no appointment by a competent authority of those representatives has been made; or
  - (2) the person against whom the claim was brought was dead when the claim was started.
- 12.34 Before making an order under Rule 12.31 or 12.32(2)(b), the Court may direct notice of the application to be given to any other person with an interest in the claim.
- 12.35 Where an order has been made under Rule 12.31 or 12.32(2)(b) any judgment or order made or given in the claim is binding on the estate of the deceased.

**Power to make judgments binding on non-parties**

- 12.36 The Court may at any time direct that notice of the claim or any judgment or order given in the claim be served on any person who is not a party but who is or may be affected by it.
- 12.37 An application for an order under Rule 12.36:
- (1) may be made without notice; and
  - (2) shall be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.
- 12.38 Unless the Court orders otherwise a notice of a claim or of a judgment or order under Rule 12.36 will be issued by the Court and shall be accompanied by a form by which the person who is not a party may acknowledge service.
- 12.39 A notice of a judgment or order shall also be accompanied by a copy of the judgment or order.
- 12.40 A notice of a claim shall also be accompanied by:
- (1) a copy of the claim form, and
  - (2) such other statements of case, witness statements or affidavits as the Court may direct.

- 12.41 Any person served with a notice of a judgment or order under Rule 12.36:
- (1) shall be bound by the judgment or order as if he had been a party to the claim; but
  - (2) may, provided he acknowledges service in accordance with Rule 7.6:
    - (a) apply to the Court to set aside or vary the judgment or order; or
    - (b) take part in any proceedings relating to the judgment or order.

### **Derivative claims**

- 12.42 Rules 12.43 to 12.46 apply where a company or other incorporated body is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company or body for it to be given that remedy (a 'derivative claim').
- 12.43 The company or body for whose benefit a remedy is sought shall be a defendant to the claim.
- 12.44 After the claim form has been issued the claimant shall apply to the Court for permission to continue the claim and may not take any other step in the proceedings except:
- (1) as provided by Rule 12.45; or
  - (2) where the Court gives permission.
- 12.45 The:
- (1) claim form;
  - (2) application notice; and
  - (3) written evidence in support of the application;
- shall be served on the defendant within the period within which the claim form shall be served and, in any event, at least 14 days before the Court is to deal with the application.
- 12.46 The Court may order the company or body to indemnify the claimant against any liability in respect of costs incurred in the claim.

## **SECTION III – GROUP LITIGATION**

### **Group Litigation Orders (GLOs)**

- 12.47 The Court may make a Group Litigation Order ('GLO') where there are or are likely to be a number of claims giving rise to common or related issues of fact or law (the 'GLO issues').
- 12.48 A GLO shall:
- (1) contain directions about the establishment of a register (the 'group register') on which the claims managed under the GLO will be entered; and
  - (2) specify the GLO issues which will identify the claims to be managed as a group under the GLO.

- 12.49 A party to a claim entered on the group register may apply to the Court for the claim to be removed from the register.
- 12.50 Where a judgment or order is given or made in a claim on the group register in relation to one or more GLO issues:
- (1) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the Court orders otherwise; and
  - (2) the Court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.
- 12.51 Unless Rule 12.52 applies, any party who is adversely affected by a judgment or order which is binding on him may seek permission to appeal the order.
- 12.52 A party to a claim which was entered on the group register after a judgment or order which is binding on him was given or made may not:
- (1) apply for the judgment or order to be set aside, varied or stayed; or
  - (2) appeal the judgment or order;
- but may apply to the Court for an order that the judgment or order is not binding on him.
- 12.53 Unless the Court orders otherwise, production of any document relating to the GLO issues by a party to a claim on the group register is production of that document to all parties to claims:
- (1) on the group register; and
  - (2) which are subsequently entered on the group register.

### **Part 13 Counterclaims and other Related Claims**

- 13.1 This Part applies to:
- (1) a counterclaim by a defendant against the claimant or against the claimant and some other person;
  - (2) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
  - (3) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).
- 13.2 In these Rules:
- (1) 'additional claim' means any claim other than the claim by the claimant against the defendant; and
  - (2) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

#### **Application of these Rules to additional claims**

- 13.3 An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.
- 13.4 Rules 4.9 to 4.14 (time within which a claim form may be served) do not apply to additional claims.
- 13.5 Part 9 (default judgment) applies to a counterclaim but not to other additional claims.
- 13.6 Part 10 (admissions) applies to a counterclaim, but only Rules 10.1 to 10.4 apply to other additional claims.

#### **Defendant's counterclaim against the claimant**

- 13.7 A defendant may make a counterclaim against a claimant:
- (1) by filing particulars of the counterclaim;
  - (2) without the Court's permission if he files it with his defence;
  - (3) at any other time with the Court's permission.
- 13.8 Part 7 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

#### **Additional claim against a person other than the claimant**

- 13.9 A defendant who wishes to make an additional claim against a person who is not already a party shall apply to the Court for an order that that person be added as an additional party.
- 13.10 An application for an order under Rule 13.9 may be made without notice unless the Court directs otherwise.
- 13.11 Where the Court makes an order under Rule 13.9, it will give directions as to the management of the case.

#### **Defendant's additional claim for contribution or indemnity from another party**

- 13.12 A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by:
- (1) filing a notice containing a statement of the nature and grounds of his additional claim; and
  - (2) serving the notice on that party.
- 13.13 A defendant may file and serve a notice under Rule 13.12:
- (1) without the Court's permission, if he files and serves it:
    - (a) with his defence; or
    - (b) if his additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files his defence; or
  - (2) at any other time with the Court's permission.

#### **Procedure for making any other additional claim**

- 13.14 Rules 13.15 to 13.20 apply to any additional claim except:
- (1) a counterclaim only against an existing party; and
  - (2) a claim for contribution or indemnity made in accordance with Rule 13.12.
- 13.15 An additional claim is made when the Court issues the appropriate claim form.
- 13.16 A defendant may make an additional claim:
- (1) without the Court's permission if the additional claim is issued before or at the same time as he files his defence; and
  - (2) at any other time with the Court's permission.
- 13.17 Particulars of an additional claim shall be contained in or served with the additional claim form.
- 13.18 An application for permission to make an additional claim may be made without notice, unless the Court directs otherwise.
- 13.19 Where an application is made for permission to make an additional claim, the application notice should be filed together with a copy of the proposed additional claim.
- 13.20 An application for permission to make an additional claim shall be supported by evidence stating:
- (1) the stage which the proceedings have reached;
  - (2) the nature of the additional claim to be made or details of the question or issue which needs to be decided;
  - (3) a summary of the facts on which the additional claim is based; and
  - (4) the name and address of any proposed additional party.

#### **Service of claim form**

- 13.21 Where an additional claim may be made without the Court's permission, any claim form shall:
- (1) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;
  - (2) in the case of any other additional claim, be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the Court.
- 13.22 Rule 13.21 does not apply to a claim for contribution or indemnity made in accordance with Rule 13.12.
- 13.23 Where an additional claim form is served on a person who is not already a party it shall be accompanied by a copy of:
- (1) every statement of case which has already been served in the proceedings; and
  - (2) such other documents as the Court may direct.

- 13.24 A copy of the additional claim form shall be served on every existing party.
- 13.25 Where the Court gives permission to make an additional claim, it will at the same time give directions as to its service.

### **Statement of truth**

- 13.26 The contents of an additional claim should be verified by a statement of truth.

### **Effect of service of an additional claim**

- 13.27 A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.
- 13.28 When an additional claim is served on an existing party for the purpose of requiring the Court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the additional claim.

### **Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice**

- 13.29 Rules 13.30 to 13.32 apply if:
- (1) the additional claim is not:
    - (a) a counterclaim; or
    - (b) a claim by a defendant for contribution or indemnity against another defendant under Rule 13.12; and
  - (2) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.
- 13.30 Where this Rule applies, the party against whom the additional claim is made is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim.
- 13.31 Where this Rule applies, subject to Rule 13.32, the additional claimant may obtain default judgment in respect of the additional claim by making an application under Rule 9.7.
- 13.32 The Court may at any time set aside or vary a judgment entered under Rule 13.31 in accordance with Section II of Rule 9.

## **Part 14 Immediate Judgment**

### **Grounds for immediate judgment**

- 14.1 The Court may give immediate judgment in any type of proceedings against a claimant or defendant on the whole of a claim, part of a claim or on a particular issue if:
- (1) it considers that:
    - (a) that claimant has no real prospect of succeeding on the claim or issue; or

- (b) that defendant has no real prospect of successfully defending the claim or issue; and
  - (2) there is no other compelling reason why the case or issue should be disposed of at a trial.
- 14.2 An application for immediate judgment under Rule 14.1 may be based on:
- (1) a point of law (including a question of construction of a document);
  - (2) the evidence which can reasonably be expected to be available at trial or the lack of it; or
  - (3) a combination of subparagraphs (1) and (2).

### **Procedure**

- 14.3 A claimant may not apply for immediate judgment until the defendant against whom the application is made has filed:
- (1) an acknowledgement of service; or
  - (2) a defence;
- unless
- (a) the Court gives permission; or
  - (b) a Practice Direction provides otherwise.
- 14.4 If a claimant applies for immediate judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.
- 14.5 An application for immediate judgment shall be made under Part 6 and the application notice shall include a statement that it is an application for immediate judgment made under Part 14.

### **Setting aside order for immediate judgment**

- 14.6 If an order for immediate judgment is made against a respondent who does not appear at the hearing of the application, the respondent may apply for the order to be set aside or varied.
- 14.7 On the hearing of an application under Rule 14.6, the Court may make such order as it thinks just.

## **Part 15 Interim Remedies**

- 15.1 The Court may grant such interim remedies as are necessary in the interests of justice, including:
- (1) an interim injunction;
  - (2) an interim declaration;
  - (3) an order:
    - (a) for the detention, custody, inspection or preservation of relevant property;
    - (b) for the taking of a sample of relevant property;

- (c) for the carrying out of an experiment on or with relevant property;
  - (d) for the sale of relevant property which it is desirable to sell quickly;  
and
  - (e) for the payment of income from relevant property until a claim is decided;
- (4) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (3);
  - (5) an order providing for the delivery up of any goods to the claimant or to a person appointed by the Court for the purpose on such terms and conditions as may be specified in the order;
  - (6) an order (referred to as a 'freezing order') restraining a party from removing assets from Kazakhstan or from dealing with assets wherever they may be located;
  - (7) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;
  - (8) an order (referred to as a 'search order') requiring a party to admit another party to premises for the purpose of preserving evidence;
  - (9) an order for production of documents or inspection of property before a claim has been made;
  - (10) an order for production of documents or inspection of property against a non-party;
  - (11) an order (referred to as an order for interim payment) under Section II of this Part for payment by a defendant on account of any damages, debt or other sum (except costs) which the Court may hold the defendant liable to pay;
  - (12) an order for a specified fund to be paid into Court or otherwise secured, where there is a dispute over a party's right to the fund;
  - (13) an order permitting a party seeking to recover personal property to pay money into Court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him;
  - (14) an order directing a party to prepare and file accounts relating to the dispute;
  - (15) an order directing any account to be taken or inquiry to be made by the Court;
  - (16) an order appointing a receiver or receiver and manager, having such powers as the Court may see fit, of the property or any of the property of any body corporate;

(17) where the person against whom the order is to be made is a natural person:

- (a) an order appointing a receiver or trustee, having such powers as the Court may see fit, of the property or any of the property of that person;
- (b) an order requiring that person to deliver up to the Court his passport and such other documents as the Court sees fit; or
- (c) an order prohibiting that person from leaving the Republic of Kazakhstan without the consent of the Court; and

(18) any other remedy provided by any other legislation.

15.2 In Rules 15.1(3) and 15.1(7), relevant property means property (including land) which is the subject of a claim or as to which any question may arise on a claim.

15.3 The Court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

## **SECTION I INTERIM REMEDIES — GENERAL**

### **Making an application for an interim remedy**

15.4 Subject to any Rule, Practice Direction or legislation which provides otherwise, an order for an interim remedy may be made at any time.

15.5 Unless the Court otherwise orders, a defendant may not apply for any of the orders listed in Rule 15.1 before he has filed either an acknowledgment of service or a defence.

### **Evidence**

15.6 Applications for search orders and freezing orders shall be supported by affidavit evidence.

### **Application for an interim remedy where there is no related claim**

15.7 Subject to any Rule, Practice Direction or Court Order, where a party wishes to apply for an interim remedy but:

- (1) the remedy is sought in relation to proceedings which are taking place, or will take place, outside the AIFC; or
- (2) the application is made for an order for production of documents or inspection of property before a claim is made;

the party shall issue an Abridged Procedure Claim.

### **Orders for injunctions**

15.8 Any order for an injunction, unless the Court orders otherwise, shall contain:

- (1) (save where the applicant is the AFSA or the Registrar of Companies) an undertaking by the applicant to the Court to pay any damages which the respondent sustains which the Court considers the applicant should pay. Where the applicant for an interim remedy is not able to show sufficient assets within the Republic of Kazakhstan to provide substance to the undertakings given he may be required to reinforce his undertakings by providing security;
- (2) if made without notice to any other party, an undertaking by the applicant to the Court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable;
- (3) if made without notice to any other party, a return date for a further hearing at which the other party can be present;
- (4) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day; and
- (5) if made before issue of a claim form:
  - (a) an undertaking to issue a claim form and pay the appropriate fee on the same or next working day; or
  - (b) directions for the commencement of the claim.

#### **Interim injunction to cease if claim is stayed**

15.9 If:

- (1) the Court has granted an interim injunction other than a freezing order; and
- (2) the claim is stayed other than by agreement between the parties;

the interim injunction shall be set aside unless the Court orders that it should continue to have effect even though the claim is stayed.

#### **Interim injunction to cease after 14 days if claim struck out**

15.10 If:

- (1) the Court has granted an interim injunction; and
- (2) the claim is struck out under Rule **Error! Reference source not found.** (sanctions for non-payment of certain fees);

the interim injunction shall cease to have effect 14 days after the date that the claim is struck out unless Rule 15.11 applies or the Court orders otherwise.

15.11 If the claimant applies to reinstate the claim before the interim injunction ceases to have effect under Rule 15.10, the injunction shall continue until the hearing of the application unless the Court orders otherwise.

#### **Injunctions against third parties**

15.12 Rule 15.13 applies to orders which will affect a person other than the applicant or respondent, who:

- (1) did not attend the hearing at which the order was made; and

(2) is served with the order.

15.13 Where such a person served with the order requests:

(1) a copy of any materials read by the Judge, including material prepared after the hearing at the direction of the Judge or in compliance with the order; or

(2) a note of the hearing;

the applicant, or his legal representative, shall comply promptly with the request, unless the Court orders otherwise.

### **Inspection of property before commencement or against a non-party**

15.14 Where a person makes an application under Rules 15.1(9) or 15.1(10):

(1) the evidence in support of such an application shall show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property:

(a) is or may become the subject matter of such proceedings; or

(b) is relevant to the issues that will arise in relation to such proceedings; and

(2) he shall serve a copy of the application notice and a copy of the evidence in support on:

(a) the person against whom the order is sought; and

(b) in relation to an application under Rule 15.1(10), every other party to the proceedings.

## **SECTION II – INTERIM PAYMENTS**

### **Interim payments — General procedure**

15.15 The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgment of service applicable to the defendant against whom the application is made.

15.16 The claimant may make more than one application for an order for an interim payment.

15.17 The Court may order an interim payment in one sum or in instalments.

### **Interim payments — conditions to be satisfied and matters to be taken into account**

15.18 The Court may make an order for an interim payment where any of the following conditions are satisfied:

(1) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;

(2) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;

- (3) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment whether or not that defendant is the only defendant or one of a number of defendants to the claim; or
- (4) in a claim in which there are two or more defendants and the order is sought against any one or more of those defendants, the following conditions are satisfied:
  - (a) the Court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (but the Court cannot determine which); and
  - (b) all the defendants are either:
    - (i) a defendant that is insured in respect of the claim;
    - (ii) a defendant that is a Centre Body.

15.19 The Court shall not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

**Powers of Court where it has made an order for interim payment**

15.20 Where a defendant has been ordered to make or has made an interim payment (whether voluntarily or under an order), the Court may make an order to adjust the interim payment.

15.21 The Court may in particular:

- (1) order all or part of the interim payment to be repaid;
- (2) vary or discharge the order for the interim payment;
- (3) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.

15.22 The Court may make an order under Rule 15.21(3) if:

- (1) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution, indemnity or other remedy; and
- (2) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the Court could make an order for interim payment under Rule 15.18.

15.23 The Court may make an order under Rule 15.20 without an application by any party if it makes the order when it disposes of the claim or any part of it.

15.24 Where:

- (1) a defendant has made an interim payment; and
- (2) the amount of the payment is more than his total liability under the final judgment or order;

the Court may award him interest on the overpaid amount from the date when he made the interim payment.

### **Restriction on disclosure of an interim payment**

15.25 The fact that a defendant has made an interim payment, whether voluntarily or by Court order, shall not be disclosed to the trial Judge until all questions of liability and the amount of money to be awarded have been decided unless the defendant agrees or the Court orders otherwise.

### **SECTION III – SECURITY FOR COSTS**

15.26 A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.

15.27 An order for security for costs may not be made against the AFSA or the Registrar of Companies in proceedings initiated by the AFSA or the Registrar of Companies under Regulations.

15.28 Where the Court makes an order for security for costs, it will:

- (1) determine the amount of security; and
- (2) direct:
  - (a) the manner in which; and
  - (b) the time within which;

the security shall be given.

### **Conditions to be satisfied**

15.29 The Court may make an order for security for costs under Rule 15.28 if it is satisfied, having regard to all the circumstances of the case that it is just to make such an order; and

- (1) one or more of the conditions in Rule 15.30 applies; or
- (2) legislation permits the Court to require security for costs.

15.30 The conditions are:

- (1) the claimant is resident outside the Republic of Kazakhstan;
- (2) the claimant is a company or other legal person and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
- (3) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
- (4) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
- (5) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 12, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

- (6) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

### **Security for costs other than from the claimant**

15.31 The defendant may seek an order against someone other than the claimant, and the Court may make an order for security for costs against that person if:

- (1) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
- (2) one or more of the conditions in Rule 15.32 applies.

15.32 The conditions are that the person:

- (1) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him; or
- (2) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and

is a person against whom a costs order may be made.

### **Security for costs of an appeal**

15.33 The Court may order security for costs of an appeal against:

- (1) an appellant;
- (2) a respondent who also appeals;

on the same grounds as it may order security for costs against a claimant under this Part.

15.34 The Court may also make an order under Rule 15.33 where the appellant, or the respondent who also appeals, is a company or other legal person and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

## **Part 16 Case Progression**

### **Case Management Conferences**

16.1 The parties shall attempt to agree appropriate directions for the management of the case to trial as soon as possible after service of any defence and in any event before any Case Management Conference.

16.2 Where the parties are able to agree such directions they should file the agreed directions with the Court as soon as reasonably practicable after they have reached agreement.

16.3 The Court may fix a Case Management Conference at any time on its own initiative.

16.4 A party may apply in writing for a Case Management Conference at any time.

16.5 A Case Management Conference may not be postponed or adjourned without an order of the Court.

- 16.6 An application to postpone the Case Management Conference will be dealt with without a hearing unless the Court considers it appropriate to direct an oral hearing.
- 16.7 The Court may issue directions without convening a Case Management Conference in an appropriate case.
- 16.8 The Court may vary case management directions by Order of its own motion or on the application of a party.
- 16.9 The Court will fix trial dates as soon as practicable.
- 16.10 The parties may not agree the variation of any case management direction if its variation would make it necessary to vary the trial date.
- 16.11 The Court may upon the application of any party or by its own initiative, direct that proceedings in any division of the Court be transferred to any other division.

### **Requirements for a Case Management Conference**

- 16.12 Not less than 7 days before a Case Management Conference, each party shall file and serve:
- (1) a completed Case Management Information Form;
  - (2) a draft order setting out their proposed case management directions; and
  - (3) an application notice for any order which that party intends to seek at the Case Management Conference, other than directions referred to in the Case Management Information Form.
- 16.13 Unless the Court orders otherwise, the claimant, in consultation with the other parties, shall produce:
- (1) an agreed Case Memorandum (see Rule 16.13);
  - (2) an agreed list of issues (see Rule 16.14(3)); and
  - (3) an agreed Case Management Bundle (see Rules 16.15 to 16.16);
- and provide copies of the Case Management Bundle for the Court and the other parties at least 7 days before the first Case Management Conference or any earlier hearing at which the Court may give case management directions.

### **Case Memorandum**

- 16.14 The Case Memorandum shall contain:
- (1) a short and uncontroversial description of what the case is about;
  - (2) a short and uncontroversial summary of the material procedural history of the case;
  - (3) a list of the important issues of fact and law in the case
  - (4) a list of the common ground between the parties (or any of them, specifying which);

- (5) a statement of any case management directions that have been agreed between the parties.

### **Case Management Bundle**

16.15 The Case Management Bundle shall contain the documents listed below (where the documents have been created by the relevant time):

- (1) the claim form;
- (2) all statements of case (excluding schedules);
- (3) the Case Memorandum and list of issues;
- (4) the Case Management Information Forms and the parties' proposed directions;
- (5) the principal orders in the case; and
- (6) any agreement in writing made by the parties about the production of documents.

16.16 The Case Management Bundle shall not include a copy of any order for an interim payment.

### **Pre-Trial Review and trial timetable**

16.17 The Court will order a Pre-Trial Review in any case in which it considers it appropriate to do so.

16.18 The claimant shall prepare and seek the agreement of all other parties to a draft trial timetable and shall file a copy of a draft trial timetable at least two days before the date fixed for the Pre-Trial Review. Any differences of view with any other party as to the timetable shall be clearly identified.

## **Part 17 Production of Documents**

### **Meaning of document**

17.1 In this Part:

- (1) 'document' means anything in which information of any description is recorded; and
- (2) 'copy', in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

### **Inspection of documents referred to in statements of case, etc.**

17.2 A party may request inspection of a document mentioned in any other party's:

- (1) statement of case;
- (2) witness statement;
- (3) witness summary;
- (4) expert report; or

(5) affidavit.

17.3 An application for an order requiring a party to produce a document referred to in Rule 17.2 should be made in accordance with Part 6. Before issuing an application, a party should request inspection of the documents in writing, and inspection should be provided by agreement unless the request is unreasonable.

### **Production of documents**

17.4 Within the time ordered by the Court, each party shall submit to the other parties:

- (1) all documents on which it relies, including public documents and those in the public domain, except for any documents that have already been submitted by another party; and
- (2) the documents which he is required to produce by any Regulations, Rule or Practice Direction.

17.5 A party need not produce more than one copy of a document. A copy of a document shall conform fully to the original.

17.6 The Court may order that the original of any document shall be presented for inspection.

17.7 A copy of a document that contains a modification, obliteration or other marking or feature shall be treated as a separate document. Where a party has been ordered to produce a document, he should not redact the document without the agreement of the other parties or the permission of the Court.

### **Request to produce**

17.8 Within the time ordered by the Court, any party may submit to the other party a Request to Produce.

17.9 A Request to Produce shall contain:

- (1) a description of a requested document sufficient to identify it; or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist;
- (2) a description of how the documents or category of documents requested are relevant and material to the outcome of the case; and
- (3) a statement of the reason why that party believes the documents requested to be in the possession, custody or control of the other party and either:
  - (a) a statement that the documents requested are not in the possession, custody or control of the requesting party, or
  - (b) a statement of the reasons why it would be unreasonably burdensome for the requesting party to produce such documents.

### **Production of documents as to which no objection is made**

- 17.10 Within the time ordered by the Court, the party to whom the Request to Produce is addressed shall:
- (1) carry out a reasonable search for the documents in his possession, custody or control as to which no objection is made;
  - (2) produce to the other parties all such requested documents which have been identified by such search as to which no objection is made;
  - (3) provide to the other parties information about his document retention policy and the nature of the searches which have been undertaken; and
  - (4) state that, to the best of his knowledge, he has produced copies of all documents in his possession, custody and control which have been requested and to which no objection is raised. Such statement should be supported by a statement of truth.

### **Objection to Request to Produce**

- 17.11 If the party to whom the Request to Produce is addressed has objections to the production of some or all of the documents requested or has grounds on which such documents should be redacted, he shall state them in writing within the time ordered by the Court.

### **Grounds for excluding documents from production**

- 17.12 The Court may, at the request of a party or on its own initiative, exclude from production any document.
- 17.13 A person who wishes to claim that he has a right or a duty to withhold production of a document, or part of a document, shall state in writing—
- (1) that he has such a right or duty; and
  - (2) the grounds on which he claims that right or duty.
- 17.14 A party may apply to the Court to decide whether a claim made under Rule 17.13 should be upheld.

### **Public interest objection**

- 17.15 A person may apply, without notice, for an order permitting him to withhold production of a document on the ground that production would damage the public interest.
- 17.16 Unless the Court orders otherwise, an order of the Court under Rule 17.15—
- (1) shall not be served on any other person; and
  - (2) shall not be open to inspection by any person.
- 17.17 For the purpose of deciding an application under Rule 17.14 (duty to withhold production) or Rule 17.15 (public interest objection) the Court may:
- (1) require the person seeking to withhold production of a document to produce that document to the Court; and
  - (2) invite any person, whether or not a party, to make representations.

- 17.18 An application under Rules 17.14 or 17.15:
- (1) should be made within the time ordered by the Court for objecting to the production of documents; and
  - (2) shall be supported by evidence.
- 17.19 This Part does not affect any rule of law which permits or requires a document to be withheld from production on the ground that its production would damage the public interest.

### **Document Production Order**

- 17.20 The Court may order the party to whom a Request to Produce is addressed to produce to the other parties those requested documents in its possession, custody or control (a “Document Production Order”).
- 17.21 Where a requesting party considers:
- (1) that a responding party’s objection to production is not justified; or
  - (2) that the responding party has failed to carry out a reasonable search for documents which have been requested or has otherwise failed, without objection, to produce such documents which are within his possession, custody or control,
- the requesting party may apply to the Court for a Document Production Order.
- 17.22 A Document Production Order will direct that a party shall do one or more of the following things:
- (1) produce documents or classes of documents specified in the order;
  - (2) carry out a search to the extent stated in the order;
  - (3) produce any documents located as a result of that search;
  - (4) identify documents or classes of documents which were, but are no longer, in the party’s possession, custody and control and explain, to the best of the party’s knowledge and belief, what has happened to them.
- 17.23 Compliance with a Document Production Order shall be verified by a Document Production Statement.
- 17.24 A Document Production Statement is a statement made by a party:
- (1) setting out the extent of the search that has been made to locate documents which he is required to produce;
  - (2) certifying that he understands the duty to search for and produce documents; and
  - (3) certifying that to the best of his knowledge he has carried out that duty.
- 17.25 Where the party making the Document Production Statement is a company, firm, association or other organisation, the statement shall also:
- (1) identify the person making the statement; and

- (2) explain why he is considered an appropriate person to make the statement.

### **Continuing obligation**

- 17.26 Where a party subsequently comes into possession of documents falling within the scope of a Request to Produce or a Document Production Order, the party shall notify the requesting party of that fact and either produce the document or object to its production in accordance with this Part.
- 17.27 Rule 17.26 shall not apply where the party has previously objected to production on grounds which apply to the new document and such objection has not been challenged by the other parties or has been upheld by the Court.

### **Production of documents before proceedings start**

- 17.28 An application for production of documents before proceedings have started under these Rules shall be made in accordance with the Abridged Procedure and be supported by evidence.
- 17.29 The Court may make an order where:
- (1) the respondent is likely to be a party to subsequent proceedings;
  - (2) the applicant is also likely to be a party to those proceedings;
  - (3) if proceedings had started, the Court would make a Document Production Order directing the production of the documents or classes of documents of which the applicant seeks production; and
  - (4) production before proceedings have started is desirable in order to:
    - (a) dispose fairly of the anticipated proceedings;
    - (b) assist the dispute to be resolved without proceedings; or
    - (c) save costs.
- 17.30 An order under Rule 17.29 shall:
- (1) specify the documents or the classes of documents which the respondent shall produce; and
  - (2) require him, when producing the documents, to specify any of those documents:
    - (a) which are no longer in his control; or
    - (b) in respect of which he claims a right or duty to withhold production.
- 17.31 Such an order may:
- (1) require the respondent to indicate what has happened to any documents which are no longer in his control; and
  - (2) specify the time and place for production.

### **Orders for production of documents against a person not a party**

- 17.32 An application for production of documents by a person who is not a party to the proceedings shall be supported by evidence.

- 17.33 The Court may make an order under this rule where:
- (1) the documents of which production is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
  - (2) production is necessary in order to dispose fairly of the claim or to save costs.

- 17.34 An order under Rule 17.33 shall:
- (1) specify the documents or the classes of documents which the respondent shall produce; and
  - (2) require the respondent, when producing the documents, to specify any of the documents which the Court has ordered should be produced:
    - (a) which are no longer in his control; or
    - (b) in respect of which he claims a right or duty to withhold production.

#### **Rules not to limit other powers of the Court to order production of documents**

- 17.35 Rules 17.28 to 17.34 do not limit any other power which the Court may have to order:
- (1) production of documents before proceedings have started; and
  - (2) production of documents against a person who is not a party to proceedings.

#### **Request to produce documents by the Court on its own initiative**

- 17.36 The Court may at any time request a party to produce to the Court and to the other parties any documents that it considers to be relevant and material to the outcome of the case.

#### **Consequence of failure to produce documents**

- 17.37 A party may not rely on any document which he fails to produce unless the Court gives permission.
- 17.38 If a party fails without satisfactory explanation to produce any document requested in a Request to Produce to which he has not objected in due time or fails to produce any document ordered to be produced by the Court, the Court may infer that such document would be adverse to the interests of that party.

#### **Subsequent use of produced documents**

- 17.39 A party to whom a document has been produced may use the document only for the purpose of the proceedings in which it has been produced, except where:
- (1) the document has been read to or by the Court, or referred to, at a hearing which has been held in public;
  - (2) the Court gives permission; or

(3) the party who produced the document and the person to whom the document belongs agree.

17.40 The Court may make an order restricting or prohibiting the use of a document which has been produced, even where the document has been read to or by the Court, or referred to, at a hearing which has been held in public.

17.41 An application for such an order may be made:

(1) by a party; or

(2) by any person to whom the document belongs.

### **Restriction on use of a privileged document inspection of which has been inadvertently allowed**

17.42 Where a party inadvertently allows a privileged document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the Court.

## **Part 18 Evidence**

### **SECTION I – GENERAL**

#### **Power of Court to control evidence**

18.1 The Court may give directions excluding or limiting evidence that would otherwise be admissible.

#### **Witness Evidence**

18.2 Subject to any Rule, Practice Direction, legislation or Order to the contrary, the general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved:

(1) at trial, by their oral evidence given in public; and

(2) at any other hearing, by their evidence in writing.

18.3 Evidence at a hearing other than the trial should normally be given by witness statement. A witness statement is a written statement signed by a person which contains the evidence that person would have otherwise submitted orally.

18.4 Statements of case and application notices may also be used as evidence at a hearing other than the trial, provided that their contents have been verified by a statement of truth.

18.5 If a party wishes to rely on a witness statement at trial, the other parties may cross-examine that witness at the hearing of the trial.

18.6 The Court may limit cross-examination.

#### **Evidence by video link or other means**

18.7 The Court may allow a witness to give evidence through a video link or by other means.

#### **Defects in witness statements and exhibits**

18.8 Where a witness statement or an exhibit to a witness statement does not comply with this Part in relation to its form, the Court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.

## **SECTION II – WITNESS STATEMENTS**

### **Preparation and form of witness statements**

18.9 A witness statement shall include a statement by the intended witness that he believes the facts in it are true.

18.10 If a witness is not sufficiently fluent in English to give his evidence in English, the witness statement should be in the witness's own language and a translation provided.

### **Filing and service of witness statements**

18.11 The Court will order a party to serve on the other parties any witness statement of the oral evidence on which the party serving the statement intends to rely in relation to any issues of fact to be decided at the trial.

### **Use at trial of witness statements which have been served**

18.12 If:

- (1) a party has served a witness statement; and
- (2) he wishes to rely at trial on the evidence of the witness who made the statement;

he shall call the witness to give oral evidence unless the Court orders otherwise.

18.13 Where a witness is called to give oral evidence under Rule 18.12, his witness statement shall stand as his evidence in chief unless the Court orders otherwise.

18.14 A witness giving oral evidence at trial may with the permission of the Court:

- (1) amplify his witness statement; and
- (2) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

18.15 Where a party intends to rely on a witness statement at trial and does not intend to call the maker of the statement to give oral evidence, he shall, at the same time as he serves the statement:

- (1) inform the other parties that the witness will not be called to give oral evidence; and
- (2) give the reason why the witness will not be called.

18.16 Where Rule 18.15 applies, the Court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

- 18.17 An application for permission to cross-examine under Rule 18.16 shall be made within 14 days after the day on which the applicant was informed that the maker of the statement would not be called to give oral evidence, unless the Court orders otherwise.
- 18.18 If a party who has served a witness statement does not call the witness to give evidence at trial, any other party may rely on the witness statement as evidence.
- 18.19 Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement.

### **Witness summaries**

- 18.20 A party who:
- (1) is required to serve a witness statement for use at trial; but
  - (2) is unable to obtain one, may apply, without notice, for permission to serve a witness summary instead.
- 18.21 A witness summary is a summary of:
- (1) the evidence, if known, which would otherwise be included in a witness statement; or
  - (2) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.
- 18.22 Unless the Court orders otherwise, a witness summary shall:
- (1) include the name and address of the intended witness; and
  - (2) be served within the period in which a witness statement would have had to be served.
- 18.23 Where a party serves a witness summary, Rule 18.11 (requirement to serve witness statements for use at trial) and 18.14 (amplifying witness statements) shall apply to the summary.

### **Consequences of failure to serve witness statement or summary**

- 18.24 If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the Court, then the witness may not be called to give oral evidence unless the Court gives permission.

### **Order for cross-examination**

- 18.25 Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the Court for permission to cross-examine the person giving the evidence.
- 18.26 If the Court gives permission under Rule 18.25 but the person in question does not attend as required by the order, his evidence may not be used unless the Court gives permission.

### **Use of witness statements for other purposes**

- 18.27 A witness statement may be used only for the purpose of the proceedings in which it is served unless:
- (1) the witness gives consent in writing to some other use of it;
  - (2) the Court gives permission for some other use; or
  - (3) the witness statement has been put in evidence at a hearing held in public.

#### **Availability of witness statements for inspection**

- 18.28 A witness statement which stands as evidence in chief is open to inspection during the course of the trial unless the Court otherwise directs.
- 18.29 Any person may ask for an order that a witness statement is not open to inspection.
- 18.30 The Court will not make a direction under Rule 18.29 unless it is satisfied that a witness statement should not be open to inspection because of:
- (1) the interests of justice;
  - (2) the public interest;
  - (3) the nature of any expert evidence in the statement; or
  - (4) the nature of any confidential information in the statement.
- 18.31 The Court may exclude from inspection words or passages in the statement.

#### **SECTION III – AFFIDAVIT EVIDENCE**

- 18.32 Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the Court or by any Rule, Practice Direction or legislation.
- 18.33 An affidavit shall be in a form and affirmed in a manner which complies with any relevant Practice Direction.

#### **SECTION IV – MISCELLANEOUS RULES ABOUT EVIDENCE**

##### **Authenticity of documents**

- 18.34 A party shall be deemed to admit the authenticity of a document produced to him under Part 17 (production of documents) unless he serves notice that he wishes the document to be proved at trial.
- 18.35 A notice to prove a document shall be served:
- (1) by the latest date for serving witness statements; or
  - (2) within 7 days of production of the document, whichever is later.

##### **Hearing bundles**

- 18.36 All documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless:
- (1) the Court orders otherwise; or

- (2) a party gives written notice of objection to the admissibility of particular documents.

### **Notarial acts and instruments**

18.37 A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

## **SECTION V – WITNESS SUMMONS AND DEPOSITIONS**

18.38 This Section of this Part provides:

- (1) for the circumstances in which a person may be required to attend Court to give evidence or to produce a document; and
- (2) for a party to obtain evidence before a hearing to be used at the hearing.

### **Witness summonses**

18.39 A witness summons is a document issued by the Court requiring a witness to:

- (1) attend the Court or a tribunal to give evidence; or
- (2) produce documents to the Court or a tribunal.

### **Issue of a witness summons**

18.40 A party asking the Court to issue a witness summons should make an application. An application for a witness summons may be made without notice and will normally be determined without a hearing.

18.41 The Court may set aside or vary a witness summons.

### **Time for serving a witness summons**

18.42 The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the Court or tribunal.

18.43 The Court may direct that a witness summons shall be binding even though it will be served less than 7 days before the date on which the witness is required to attend before the Court or tribunal.

18.44 A witness summons which is:

- (1) served in accordance with this Rule 18.42 or 18.43; and
  - (2) requires the witness to attend before the Court to give evidence;
- is binding until the conclusion of the hearing at which the attendance of the witness is required.

### **Who is to serve a witness summons**

18.45 A witness summons is to be served by the Court unless the party on whose behalf it is issued indicates in writing, when he applies for the summons, that he wishes to serve it himself.

18.46 Where the Court is to serve the witness summons, the party on whose behalf it is issued shall deposit, in the Court office, the money to be paid or offered to the witness under Rule 18.47.

### **Right of witness to travelling expenses and compensation for loss of time**

18.47 At the time of service of a witness summons the witness shall be offered or paid:

- (1) a sum reasonably sufficient to cover his expenses in travelling to and from the Court; and
- (2) such sum by way of compensation for loss of time as may be specified in any relevant Practice Direction.

### **Evidence by deposition**

18.48 A party may apply for an order for a person to be examined before the hearing takes place.

18.49 A person from whom evidence is to be obtained following an order under Rule 18.48 is referred to as a 'deponent' and the evidence is referred to as a 'deposition'.

18.50 An order under Rule 18.48 shall be for a deponent to be examined on oath before:

- (1) a Judge; or
- (2) such other person as the Court appoints (the 'examiner').

18.51 The order may require the production of any document which the Court considers is necessary for the purposes of the examination.

18.52 The order shall state the date, time and place of the examination.

18.53 At the time of service of the order the deponent shall be offered or paid:

- (1) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and
- (2) such sum by way of compensation for loss of time as may be specified in the relevant Practice Direction.

18.54 Where the Court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

### **Conduct of examination**

18.55 The examination shall be conducted in accordance with any relevant Practice Direction.

### **Use of deposition at a hearing**

18.56 A deposition ordered under Rule 18.48 may be given in evidence at a hearing unless the Court orders otherwise.

- 18.57 A party intending to put in evidence a deposition at a hearing shall serve notice of his intention to do so on every other party at least 21 days before the day fixed for the hearing.
- 18.58 The Court may require a deponent to attend the hearing and give evidence orally.
- 18.59 Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of Rule 18.28 (availability of witness statements for inspection).

**Restrictions on subsequent use of deposition taken for the purpose of any hearing except the trial**

- 18.60 Where the Court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.
- 18.61 However, it may be used for some other purpose:
- (1) by the party who was examined;
  - (2) if the party who was examined agrees; or
  - (3) if the Court gives permission.

**SECTION VI – EVIDENCE FOR OTHER COURTS**

- 18.62 Where an application is made to the Court for an order for evidence to be obtained in the AIFC and the Court is satisfied:
- (1) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (“the requesting court”); and
  - (2) that the evidence to which the application relates is to be obtained for the purposes of proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated;
- the Court may make such provision for obtaining evidence in the AIFC as may appear to the Court to be appropriate for the purpose of giving effect to the request.
- 18.63 A person who, by virtue of an order under Rule 18.62, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in proceedings before the Court.

**Application for order**

- 18.64 An application for an order under Rule 18.62:
- (1) shall be:
    - (a) supported by written evidence which includes or exhibits, in English:
      - (i) a statement of the issues relevant to the proceedings; and

- (ii) a list of questions or the subject matter of questions to be put to the proposed deponent;
  - (b) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English; and
- (2) may be made without notice.

### **Examination**

- 18.65 The Court may order an examination to be taken before an appropriate person (the 'examiner').
- 18.66 Unless the Court orders otherwise, the examination will be conducted in accordance with Part V of this Rule and any relevant Practice Direction.

### **Dealing with deposition**

- 18.67 The examiner shall send the deposition of the witness to the Registrar unless the Court orders otherwise.
- 18.68 The Registrar will:
- (1) give a certificate sealed with the seal of the Court for use out of the AIFC identifying the following documents:
    - (a) the request;
    - (b) the order of the Court for examination; and
    - (c) the deposition of the witness; and
  - (2) send the certificate and the documents referred to in sub-paragraph (1) to the requesting court.

## **Part 19 Experts**

### **Introductory**

- 19.1 A reference to an 'expert' in this Part is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.
- 19.2 A reference to a 'single joint expert' in this Part is a reference to an expert who has been instructed to prepare a report for the Court on behalf of two or more of the parties (including the claimant) to the proceedings.

### **Experts — Overriding duty to the Court**

- 19.3 It is the duty of an expert to help the Court on the matters within his expertise.
- 19.4 This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

### **Court's power to restrict expert evidence**

- 19.5 Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.
- 19.6 No party may call an expert or put in evidence an expert's report without the Court's permission.

- 19.7 The Court may specify the issues which the expert should address.
- 19.8 When a party applies for permission under Rule 19.6 he shall identify:
- (1) the field in which he wishes to rely on expert evidence;
  - (2) the issues which the expert should address; and
  - (3) where practicable the expert in that field on whose evidence he wishes to rely.
- 19.9 If permission is granted under Rule 19.6 such permission shall be in relation only to the issues specified under Rule 19.7 and to the expert named or the field identified under Rule 19.8.

### **Orders**

- 19.10 Where an order requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert shall serve a copy of the order on the expert instructed by him.

### **General requirement for expert evidence to be given in a written report**

- 19.11 Expert evidence is to be given in a written report unless the Court directs otherwise.
- 19.12 The report shall:
- (1) State that the expert understands his duty to the Court and has complied and will continue to comply with that duty;
  - (2) State the substance of all material instructions, whether written or oral, on the basis of which the report was written and such instructions shall not be privileged against production;
  - (3) Be verified by a statement of truth; and
  - (4) Comply with any relevant Practice Direction.

### **Documents referred to in experts' reports**

- 19.13 Unless they have already been provided, copies of any photographs, plans, analyses, measurements, survey reports or other similar documents relied on by an expert witness as well as copies of any unpublished sources shall be provided to all parties at the same time as his report.

### **Written questions to experts**

- 19.14 A party may put written questions to an expert about his report.
- 19.15 Written questions under Rule 19.14 shall be proportionate. They shall be put within 28 days of service of the expert's report, unless the Court orders otherwise or the party who instructed the expert agrees.
- 19.16 An expert's answers to questions put in accordance with Rule 19.14 shall be treated as part of the expert's report.
- 19.17 Where:

- (1) a party has put a written question to an expert instructed by another party in accordance with Rule 19.14; and
- (2) the expert does not answer that question;

the Court may make one or both of the following orders in relation to the party who instructed the expert:

- (a) that the party may not rely on the evidence of that expert; or
- (b) that the party may not recover the fees and expenses of that expert from any other party.

### **Single joint experts**

- 19.18 Where two or more parties wish to submit expert evidence on a particular issue, the Court may direct that the evidence on that issue is to be given by a single joint expert.
- 19.19 Where the parties who wish to submit the evidence ('the relevant parties') cannot agree who should be the single joint expert, the Court may select the expert.
- 19.20 Any relevant party may give instructions to a single joint expert.
- 19.21 When a party gives instructions to the expert that party shall, at the same time, send a copy to the other relevant parties.
- 19.22 Unless the Court otherwise directs, the relevant parties are jointly and severally liable for the payment of the single joint expert's fees and expenses.

### **Discussions between experts**

- 19.23 The Court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to –
- (1) identify and discuss the expert issues in the proceedings; and
  - (2) where possible, reach an agreed opinion on those issues.
- 19.24 The Court may specify the issues which the experts shall discuss.
- 19.25 The Court may direct that following a discussion between the experts they shall prepare a statement for the court setting out those issues on which –
- (1) they agree; and
  - (2) they disagree, with a summary of their reasons for disagreeing.
- 19.26 The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

### **Consequence of failure to produce expert's report**

- 19.27 A party who fails to produce an expert's report may not use the report at the trial or call the expert to give evidence orally unless the Court gives permission.

### **Expert's right to ask Court for directions**

- 19.28 An expert may file a written request for directions to assist him in carrying out his function as an expert.
- 19.29 An expert shall, unless the Court orders otherwise, provide a copy of any proposed request for directions under Rule 19.28 to all parties at least 7 days before he files the request.
- 19.30 The Court, when it gives directions, may also direct that a party be served with a copy of the directions.

## **Part 20 Offers to Settle and Payments into Court**

### **SECTION I – OFFERS TO SETTLE**

- 20.1 A party may make an offer of settlement which is not to be shown to the Court until the question of costs is to be decided.

### **SECTION II – PAYMENTS INTO COURT**

#### **Money paid into Court under a Court order**

- 20.2 A party who makes a payment into Court under a Court order shall:
- (1) serve notice of the payment on every other party; and
  - (2) in relation to each such notice, file a certificate of service.
- 20.3 A Practice Direction may make further provision in respect of payments into Court.

#### **Money paid into court where defendant wishes to rely on a defence of tender before claim**

- 20.4 Where a defendant wishes to rely on a defence of tender before claim he shall make a payment into Court of the amount he says was tendered.
- 20.5 If the defendant does not make a payment in accordance with Rule 20.4, the defence of tender before claim will not be available to him until he does so.

#### **Payment out of money paid into Court**

- 20.6 Money paid into Court under a Court order or in support of a defence of tender before claim may not be paid out without the Court's permission except in accordance with a relevant Practice Direction.

## **Part 21 Discontinuing a Claim**

- 21.1 The Rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.
- 21.2 A claimant who:
- (1) claims more than one remedy; and
  - (2) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies;
- is not treated as discontinuing all or part of a claim for the purposes of this Part.

### **Right to Discontinue Claim**

21.3 A claimant may discontinue all or part of a claim at any time.

21.4 However:

- (1) a claimant shall obtain the permission of the Court if he wishes to discontinue all or part of a claim in relation to which:
  - (a) the Court has granted an interim injunction; or
  - (b) any party has given an undertaking to the Court;
- (2) where the claimant has received an interim payment in relation to a claim, he may discontinue that claim only if:
  - (a) the defendant who made the interim payment consents in writing; or
  - (b) the Court gives permission;
- (3) where there is more than one claimant, a claimant may not discontinue unless:
  - (a) every other claimant consents in writing; or
  - (b) the Court gives permission.

21.5 Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

### **Procedure for Discontinuing**

21.6 To discontinue a claim or part of a claim, a claimant shall:

- (1) file a notice of discontinuance; and
- (2) serve a copy of it on every other party to the proceedings.

21.7 Where the claimant needs the consent of some other party, a copy of the necessary consent shall be attached to the notice of discontinuance.

21.8 Where there is more than one defendant, the notice of discontinuance shall specify against which defendants the claim is discontinued.

### **Right to apply to have notice of discontinuance set aside**

21.9 Where the claimant discontinues under Rule 21.3, the defendant may apply to have the notice of discontinuance set aside.

21.10 An application under Rule 21.9 shall be made within 28 days after the date when the notice of discontinuance was served on him.

### **When discontinuance takes effect where permission of the Court is not needed**

21.11 Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under Rule 21.6.

21.12 Subject to Rules 21.9 and 21.10, the proceedings are brought to an end as against him on that date.

21.13 This does not affect proceedings to deal with any question of costs.

### **Liability for Costs**

- 21.14 Unless the Court orders otherwise, a claimant who discontinues a claim is liable for the defendant's costs incurred up to and on the date on which notice of the discontinuance was served on him or his legal representative. If proceedings are only partly discontinued:
- (1) the claimant is liable for costs relating only to the part of the proceedings which he is discontinuing; and
  - (2) unless the Court orders otherwise, the costs which the claimant is liable to pay shall not be assessed until the conclusion of the rest of the proceedings.

## **Part 22 Hearings**

### **Interpretation**

22.1 In this Part, reference to a hearing includes a reference to the trial.

### **Hearings to be in public**

- 22.2 Subject to the terms of Regulation 32 of the AIFC Court Regulations or any relevant Practice Direction, the general rule is that a hearing is to be in public.
- 22.3 The requirement for a hearing to be in public does not require the Court to make special arrangements for accommodating members of the public.
- 22.4 The Court may order that the identity of any party or witness shall not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness, or in the interests of justice.
- 22.5 Nothing in this Part prevents a Judge ordering that a hearing taking place in public shall continue in private, or vice-versa.
- 22.6 When a hearing takes place in public, members of the public may obtain a transcript of any judgment given or a copy of any order made, subject to payment of the appropriate fee.
- 22.7 When a judgment is given or an order is made in private, if any member of the public who is not a party to the proceedings seeks a transcript of the judgment or a copy of the order, he shall seek the permission of the Judge who gave the judgment or made the order.

### **Failure to attend the trial**

- 22.8 The Court may proceed with a trial in the absence of a party but:
- (1) if no party attends the trial, it may strike out the whole of the proceedings;
  - (2) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
  - (3) if a defendant does not attend, it may strike out his defence or counterclaim (or both).
- 22.9 Where the Court strikes out proceedings, or any part of them, under Rule 22.8, it may subsequently restore the proceedings, or that part.

- 22.10 Where a party does not attend and the Court gives judgment or makes an order against him, the party who failed to attend may apply in accordance with Part 6 for the judgment or order to be set aside.
- 22.11 Where an application is made under Rule 22.9 or Rule 22.10 by a party who failed to attend the trial, the Court may grant the application if the applicant:
- (1) acted promptly when he found out that the Court had exercised its power to strike out or to enter judgment or make an order against him;
  - (2) had a good reason for not attending the trial; and
  - (3) has a reasonable prospect of success at the trial.

### **Representation at trial of Companies or Other Corporations**

- 22.12 A company or other corporation may be represented at trial by an employee who is not otherwise authorised to appear before the Court if:
- (1) the employee has been authorised by the company or corporation to appear at trial on its behalf; and
  - (2) the Court gives permission.

## **Part 23 Abridged Procedure for Claims**

- 23.1 A Claimant may use the Abridged Procedure where:
- (1) he seeks the Court's decision on a question which is unlikely to involve a substantial dispute of fact; or
  - (2) a Rule or Practice Direction in relation to a specified type of proceedings requires or permits the use of the Abridged Procedure.
- 23.2 Rule 23.1 does not apply if a Rule or Practice Direction provides that the Abridged Procedure may not be used in relation to the type of claim in question.
- 23.3 The Court may at any stage order the claim to continue as if the Claimant had not used the Abridged Procedure and, if it does so, the Court may give any directions it considers appropriate.

### **Application of other Rules and Practice Directions**

- 23.4 Where the Abridged Procedure is followed:
- (1) provision is made in Rule 23.5 for the matters which shall be stated in the Claim Form and the Defendant is not required to file a Defence and therefore:
    - (a) Rules 11.11 to 11.50 (Defence, Reply and Statements of Case) do not apply; and
    - (b) any time limit in these Rules which prevents the parties from taking a step before a Defence is filed does not apply;
  - (2) the Claimant may not obtain default judgment under Part 9.

- (3) the Claimant may not obtain judgment by request on an admission and therefore Rules 10.3 to 10.7 do not apply.

### **Contents of the Abridged Procedure Claim Form**

23.5 Where the Claimant uses the Abridged Procedure the Abridged Procedure Claim Form should be used and shall state:

- (1) that the claim is brought under the Abridged Procedure;
- (2) the question which the Claimant wants the Court to decide; or the remedy which the Claimant is seeking and the legal basis for the claim to that remedy;
- (3) if the claim is being made under a legislative provision, what that legislative provision is;
- (4) if the Claimant is claiming in a representative capacity, what that capacity is; and
- (5) if the Defendant is sued in a representative capacity, what that capacity is.

### **Issue of Abridged Procedure Claim Form without naming Defendants**

23.6 A Practice Direction may set out circumstances in which an Abridged Procedure Claim Form may be issued without naming a Defendant.

### **Acknowledgment of Service**

23.7 The Defendant shall:

- (1) file an Acknowledgment of Service (Abridged Procedure) not more than 14 days after service of the Abridged Procedure Claim Form; and
- (2) serve the Acknowledgment of Service (Abridged Procedure) on the Claimant and any other party.

23.8 The Acknowledgment of Service (Abridged Procedure) shall indicate:

- (1) whether the Defendant contests the claim; and
- (2) if the Defendant seeks a different remedy from that set out in the Claim Form, what that remedy is.

23.9 The following rules of Part 7 (Responding to a Claim) apply:

- (1) Rule 7.4 (period for filing an acknowledgment of service); and
- (2) Rule 7.6 (contents of acknowledgment of service).

### **Consequence of not filing an Acknowledgment of Service (Abridged Procedure)**

23.10 Where:

- (1) the Defendant has failed to file an Acknowledgment of Service (Abridged Procedure); and
- (2) the time period for doing so has expired;

the Defendant may attend the hearing of the claim but may not take part in the hearing unless the Court gives permission.

### **Defendant's objection to use of the Abridged Procedure**

23.11 Where the Defendant contends that the Abridged Procedure should not be used, he shall state his reasons when he files his Acknowledgment of Service (Abridged Procedure). If the statement of reasons includes matters of evidence, it should be verified by a statement of truth.

### **Managing the claim**

23.12 The Court may give directions immediately after an Abridged Procedure Claim Form is issued, either on the application of a party or on its own initiative.

23.13 Where the Court does not fix a hearing date when the Abridged Procedure Claim Form is issued, it will give directions for the disposal of the claim as soon as practicable after the Defendant has acknowledged service of the Abridged Procedure Claim Form or, as the case may be, after the period for acknowledging service has expired.

23.14 The Court may convene a directions hearing before giving directions.

### **Filing and serving written evidence**

23.15 The Claimant shall file any written evidence on which he intends to rely when he files his Abridged Procedure Claim Form.

23.16 The Claimant's evidence shall be served on the Defendant with the Abridged Procedure Claim Form unless the evidence is contained in the Abridged Procedure Claim Form itself.

23.17 A Defendant who wishes to rely on written evidence shall file it when he files his Acknowledgment of Service (Abridged Procedure).

23.18 If he does so, he shall also, at the same time, serve a copy of his evidence on the other parties.

23.19 The Claimant may, within 14 days of service of the Defendant's evidence on him, file further written evidence in reply.

23.20 If he does so, he shall also, within the same time limit, serve a copy of his evidence on the other parties.

23.21 The parties may, subject to the following provisions, agree in writing on an extension of time for serving and filing evidence.

23.22 An agreement extending time for a Defendant to file evidence:

- (1) shall be filed by the Defendant at the same time as he files his Acknowledgement of Service (Abridged Procedure); and
- (2) shall not extend time by more than 14 days after the Defendant files his acknowledgement of service.

23.23 An agreement extending time for a Claimant to file evidence in reply shall not extend time to more than 28 days after service of the Defendant's evidence on the Claimant.

### **Evidence at Hearing**

23.24 No written evidence may be relied on at the hearing of the claim unless:

- (1) it has been served in accordance with Rules 23.15 to 23.23; or
- (2) the Court gives permission.

23.25 The Court may require or permit a party to give oral evidence at the hearing.

23.26 The Court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

### **Additional claims**

23.27 Where the Abridged Procedure is used, Part 13 (Counterclaims and other Related Claims) applies except that a party may not make an additional claim without the Court's permission.

## **Part 24 Judgments and Orders**

### **SECTION I – JUDGMENTS AND ORDERS**

24.1 This Section sets out Rules about judgments and orders which apply except where any other of these Rules or a Practice Direction makes a different provision in relation to the judgment or order in question.

#### **Standard requirements**

24.2 Every judgment or order shall state the name and judicial title of the person who made it.

24.3 Every judgment or order shall:

- (1) bear the date on which it is given or made;
- (2) be sealed by the Court; and;
- (3) be signed by a Judge or the Registrar or an officer acting with the authority of the Registrar.

24.4 Court orders may be issued and sealed by the Registry electronically.

24.5 It is not necessary for the Judge or Judges to be present in the Court to deliver their judgments. Judgments shall be reduced to writing and shall be made public.

#### **Drawing up and filing of orders**

24.6 Except for orders made by the Court of its own initiative and unless the Court otherwise orders, every order will be drawn up by the parties.

24.7 Where an order is to be drawn up by a party:

- (1) he shall file it no later than 48 hours after the date on which the Court ordered or permitted him to draw it up so that it can be sealed by the Court; and
- (2) if he fails to file it within that period, any other party may draw it up and file it.

### **Service of orders**

24.8 Unless the Court orders otherwise, where an order has been drawn up by a party and is to be served by the Court:

- (1) the party who drew it up shall file a copy at Court; and
- (2) once it has been sealed, the Court shall serve a copy of it on each party to the proceedings.

24.9 Unless the Court directs otherwise, any order made otherwise than at trial shall be served on:

- (1) the applicant and the respondent; and
- (2) any other person on whom the Court orders it to be served.

### **Power to require judgment or order to be served on a party as well as his legal representative**

24.10 Where the party on whom a judgment or order is to be served is acting by a legal representative, the Court may order the judgment or order to be served on the party as well as on his legal representative.

### **Agreed orders**

24.11 An application for an agreed order shall include a draft of the proposed order signed on behalf of all the parties to whom it relates.

### **When judgment or order takes effect**

24.12 A judgment or order takes immediate effect from the time on the day when it is given or made, or such later time or date as the Court may specify.

### **Time from which interest begins to run**

24.13 Where interest is payable on a judgment pursuant to Article 37 of the Court Regulations, the interest shall begin to run from the date that judgment is given unless:

- (1) a Rule in another Part or a Practice Direction makes different provision; or
- (2) the Court orders otherwise.

### **Who may apply to set aside or vary a judgment or order**

24.14 A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

### **Time for complying with a judgment or order**

- 24.15 A party shall comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless:
- (1) the judgment or order specifies a different date for compliance (including specifying payment by instalments);
  - (2) any of these Rules specifies a different date for compliance; or
  - (3) the Court has stayed the proceedings or judgment.

#### **Orders requiring an act to be done**

- 24.16 An order which requires an act to be done (other than a judgment or order for the payment of an amount of money) shall specify the time within which the act should be done.

#### **Correction of errors in judgments and orders**

- 24.17 The Court may at any time correct an accidental slip or omission in a judgment or order either upon an application or on its own motion.

### **Part 25 Change of Legal Representative**

#### **Legal representative acting for a party**

- 25.1 Where the address for service of a party is the business address of his legal representative, the legal representative will be considered to be acting for that party until the provisions of this Part have been complied with.
- 25.2 A legal representative appointed to represent a party only as an advocate at a hearing will not be considered to be acting for that party within the meaning of this Part.

#### **Change of legal representative — Duty to give notice**

- 25.3 Where a party appoints a new legal representative to conduct the claim on his behalf or dismisses his legal representative and intends to act in person, the party or his legal representative (where one is acting) shall:
- (1) file notice of the change; and
  - (2) serve notice of the change on every other party.
- 25.4 The notice shall state the party's new address for service.

#### **Order that a legal representative has ceased to act**

- 25.5 A legal representative or any party may apply for an order declaring that the legal representative has ceased to act for a party.
- 25.6 Where an application is made under Rule 25.5, notice of the application shall be given to the party to whose legal representative the application relates, unless the Court directs otherwise.
- 25.7 Where the Court makes an order that a legal representative has ceased to act:
- (1) a copy of the order shall be served on every party to the proceedings;

- (2) if it is served by a party or the legal representative, they shall file a certificate of service;
- (3) the order takes effect when it is served; and
- (4) the party for whom the legal representative was acting shall give a new address for service.

## **Part 26 Costs**

### **SECTION I – GENERAL RULES ABOUT COSTS**

#### **Definitions and application**

26.1 In this Part, unless the context otherwise requires:

- (1) 'costs' means the legal fees and associated expenses incurred by a party in conducting its case;
- (2) 'receiving party' means a party entitled to be paid costs; and
- (3) 'paying party' means a party liable to pay costs.
- (4) 'immediate assessment' means the procedure whereby costs are assessed immediately by the Judge who has heard the case or application.
- (5) 'detailed assessment' means the procedure by which the amount of costs is decided by the Court in accordance with any relevant Practice Direction.

26.2 The costs to which this Part applies include the following costs where those costs may be assessed by the Court:

- (1) costs of proceedings before an arbitrator; and
- (2) costs which are payable by one party to another party under the terms of a contract, where the Court makes an order for an assessment of those costs.

#### **Legal representative's duty to notify client**

26.3 Where:

- (1) the Court makes a costs order against a legally represented party; and
- (2) the party is not present when the order is made;

the party's legal representative shall notify his client in writing of the costs order no later than 7 days after the legal representative receives notice of the order.

#### **Court's discretion as to costs**

26.4 The Court has discretion as to:

- (1) whether costs are payable by one party to another;
- (2) the amount of those costs; and

- (3) when they are to be paid.
- 26.5 If the Court decides to make an order about costs:
  - (1) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
  - (2) the Court may make a different order.
- 26.6 The costs orders which the Court may make include an order that a party must pay:
  - (1) a proportion of another party's costs; and
  - (2) costs relating only to a distinct part of or distinct issues in the proceedings.
- 26.7 Where the Court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.
- 26.8 Where a party entitled to costs is also liable to pay costs the Court may assess the costs which that party is liable to pay and either:
  - (1) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or
  - (2) delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.

### **Costs in the Small Claims Court ('SCC')**

- 26.9 The SCC may not order a party to a small claim to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except:
  - (1) such part of any Court fees paid by that other party as the SCC may consider appropriate; and
  - (2) such further costs as the SCC may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.
- 26.10 A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under Rule 26.9(2) but the Court may take it into consideration when it is applying the unreasonableness test.

### **Basis of assessment**

- 26.11 Where the Court is to assess the amount of costs (whether by immediate or detailed assessment) it will allow costs which were reasonably and necessarily incurred and were proportionate to the matters in issue.
- 26.12 The Court may order a party which has behaved unreasonably to pay additional costs.

### **Procedure for assessing costs**

- 26.13 Where the Court orders a party to pay costs to another party it may either:
  - (1) make an immediate assessment of the costs; or

(2) order detailed assessment of the costs;

unless any Rule, Practice Direction or other enactment provides otherwise.

26.14 Each party who intends to claim immediate assessment of costs or an interim payment on account of costs shall prepare a written statement of the costs he intends to claim.

26.15 The statement of costs shall be filed at Court and copies of it shall be served on any party against whom an order for payment of those costs is intended to be sought. The statement of costs should be filed and the copies of it should be served as soon as possible and in any event not less than 24 hours before the date fixed for the hearing.

26.16 Where the Court orders the detailed assessment of costs, the parties may apply for those to be assessed. The Court may issue a Practice Direction relating to the detailed assessment of costs.

### **Time for complying with an order for costs**

26.17 A party shall comply with an order for the payment of costs within 14 days of:

- (1) the date of the judgment or order if it states the amount of those costs;
- (2) if the amount of those costs (or part of them) is decided later, the date on which the costs are assessed; or
- (3) in either case, such later date as the Court may specify.

### **Special situations**

26.18 Where the Court makes an order which does not mention costs:

- (1) subject to Rule 26.19, the general rule is that no party is entitled to costs in relation to that order; but
- (2) this does not affect any entitlement of a party to recover costs out of a fund held by him as trustee or personal representative, or pursuant to any lease, mortgage or other security.

26.19 Where the Court makes:

- (1) an order granting permission to appeal; or
- (2) any other order or direction sought by a party on an application without notice;

and its order does not mention costs, it will be considered to include an order for the applicant's costs in the case.

26.20 Any party affected by an order for costs under Rule 26.19 may apply at any time to vary the order.

26.21 The Court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

### **Court's powers in relation to misconduct**

- 26.22 The Court may, in connection with an immediate or detailed assessment, make an order under Rule 26.23 where:
- (1) a party or his legal representative fails to comply with a Rule, Practice Direction or Court order; or
  - (2) it appears to the Court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.
- 26.23 Where Rule 26.22 applies, the Court may:
- (1) disallow all or part of the costs which are being assessed; or
  - (2) order the party at fault or his legal representative to pay costs which he has caused any other party to incur.
- 26.24 Where:
- (1) the Court makes an order under Rule 26.23 against a legally represented party; and
  - (2) the party is not present when the order is made;
- the party's legal representative shall notify his client in writing of the order no later than 7 days after the legal representative receives notice of the order.
- 26.25 Before making an order under Rule 26.23 the Court shall give the party or legal representative in question a reasonable opportunity to give reasons why it should not make such an order.

### **Costs orders in favour of or against non-parties**

- 26.26 Where the Court is considering whether to exercise its power to make a costs order in favour of or against a person who is not a party to proceedings:
- (1) that person shall be added as a party to the proceedings for the purposes of costs only; and
  - (2) he shall be given a reasonable opportunity to attend a hearing at which the Court will consider the matter further.
- 26.27 Rule 26.26 does not apply where the Court is considering whether to make a wasted costs order.

### **Personal liability of legal representative for costs — Wasted costs orders**

- 26.28 The Court shall have power to disallow or, (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined.
- 26.29 The Court shall give the legal representative a reasonable opportunity to give reasons why it should not make such an order.
- 26.30 When the Court makes a wasted costs order, it shall:
- (1) specify the amount to be disallowed or paid; or

- (2) direct the Registrar to decide the amount of costs to be disallowed or paid.
- 26.31 The Court may direct that notice shall be given to the legal representative's client, in such manner as the Court may direct:
  - (1) of any hearing under Rule 26.29; or
  - (2) of any order made against his legal representative.
- 26.32 The Court may refer the question of wasted costs to the Registrar instead of making a wasted costs order.

### **Costs order in favour of a party represented pro bono**

- 26.33 Where a party ("the claiming party") is represented by a law firm acting pro bono, the law firm may apply for an order that the other party ("the paying party") make a payment in respect of the costs of legal services provided to the pro bono litigant at no charge ("a pro bono costs order"). The Court shall consider the application and assess the costs as if the claiming party were obliged to pay the fees of the law firm at the normal commercial rates charged by the law firm.
- 26.34 Where the Court makes a pro bono costs order, such costs shall be subject to immediate assessment.
- 26.35 Any costs payable pursuant to a pro bono costs order shall be paid into Court and applied in accordance with any relevant Practice Direction.

## **Part 27 Arbitration Claims**

### **SECTION I – ARBITRATION CLAIMS**

#### **Interpretation**

- 27.1 In this Part:
  - (1) 'the Arbitration Regulations' mean the AIFC Arbitration Regulations 2017;
  - (2) 'arbitration claim' means:
    - (a) any application to the Court under the Arbitration Regulations;
    - (b) any other application affecting:
      - (i) arbitration proceedings (whether started or not); or
      - (ii) an arbitration agreement.

#### **Starting the claim**

- 27.2 Except where Rule 27.3 or Rule 27.4 applies an arbitration claim shall be started by the issue of an arbitration claim form in accordance with the Abridged Procedure.
- 27.3 An application under Article 16 of the Arbitration Regulations to stay legal proceedings shall be made by application under Part 6 in the proceedings.

27.4 An application under Article 37 of the Arbitration Regulations to secure the attendance of a witness should be made in accordance with Part 18, Section VI.

### **Arbitration Claim Form**

27.5 An Arbitration Claim Form shall:

- (1) include a concise statement of the remedy claimed;
- (2) give details of any arbitration award challenged, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
- (3) show that any statutory requirements have been met;
- (4) specify under which Article of the Arbitration Regulations the claim is made;
- (5) identify against which (if any) defendants a Costs Order is sought; and
- (6) specify either:
  - (a) the persons on whom the Arbitration Claim Form will be served, stating their role in the arbitration and whether they are defendants; or
  - (b) that the claim is made without notice and the grounds relied on.

### **Service**

27.6 An Arbitration Claim Form shall be served by the claimant.

27.7 Unless:

- (1) the Court orders otherwise; or
- (2) the Arbitration Claim Form seeks enforcement or recognition of an award under Part 3 of the Arbitration Regulations

an Arbitration Claim Form shall be served on the defendant within 30 days from the date of issue.

27.8 The claimant shall file a Certificate of Service within 7 days of serving the Arbitration Claim Form.

### **Notice**

27.9 Where an arbitration claim is made under Article 22(3) (challenging an Arbitrator), Article 23(1) (terminating an Arbitrator's mandate) or Article 42(5) of the Arbitration Regulations (determination of fees and expenses payable to the arbitral tribunal), each Arbitrator shall be a defendant.

27.10 Where notice shall be given to an Arbitrator or any other person it may be given by sending him a copy of —

- (1) the Arbitration Claim Form; and
- (2) any written evidence in support.

- 27.11 Save where Rule 27.12 applies, where a party makes an Arbitration Claim, each of the other parties to the arbitration shall be made a defendant to the Arbitration Claim.
- 27.12 Where a party makes an Arbitration Claim for recognition or enforcement of an award under Part 3 of the Arbitration Regulations:
- (1) only the party against whom such an order is sought need be made a defendant to the Arbitration Claim; and
  - (2) the Arbitration Claim may be made without notice.

### **Representations by an arbitrator**

- 27.13 Where an Arbitrator is sent a copy of an Arbitration Claim Form (including an Arbitration Claim Form sent under Rule 27.10), that arbitrator may:
- (1) apply to be made defendant; or
  - (2) apply to make representations to the Court under Rule 27.14.
- 27.14 An application under Rule 27.13(1) to be made a defendant:
- (1) shall be served on the Arbitral Tribunal; but
  - (2) need not be served on any other party.
- 27.15 An Arbitrator may make representations by filing written evidence or in writing to the Court.
- 27.16 Any Arbitrator filing written evidence or making representations to the Court may not be called to give oral evidence without the permission of the Court.

### **Supply of documents from Court records**

- 27.17 An Arbitration Claim Form may only be inspected with the permission of the Court.

### **Case progression**

- 27.18 Part 16 does not apply.
- 27.19 The claimant should apply for a hearing date as soon as possible after issuing an Arbitration Claim Form.
- 27.20 Where a claimant in an arbitration claim seeks to rely on written evidence, a copy of that evidence shall be filed and served with the Arbitration Claim Form.
- 27.21 A defendant who wishes to rely on evidence before the Court shall file and serve his written evidence within 21 days after the date by which he was required to acknowledge service.
- 27.22 A claimant who wishes to rely on evidence in reply to written evidence filed under Rule 27.21 shall file and serve his written evidence within 7 days after service of the defendant's evidence.

### **Hearings**

- 27.23 The Court may order that an arbitration claim be heard either in public or in private.

27.24 The general rule is that arbitration claims are to be heard in private. The Court may order those proceedings to be heard in open court —

- (1) on the application of any party; or
- (2) if, in any particular case, the court is satisfied that those proceedings ought to be heard in open court.

27.25 The Court may direct that any judgment in respect of any arbitration claim be published and that the judgment be redacted or anonymised to conceal any matter.

### **Stay or dismissal of legal proceedings**

27.26 An application notice seeking a stay or dismissal of legal proceedings under Article 16 of the Arbitration Regulations shall be served on all parties to those proceedings.

27.27 Where a question arises as to whether:

- (1) an arbitration agreement has been concluded; or
- (2) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement;

the Court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

### **Challenging an Arbitrator**

27.28 An application to challenge an Arbitrator under Article 22(3) of the Arbitration Regulations shall be made within 30 days after receipt of notice of the ruling by the Arbitral Tribunal rejecting the party's challenge.

### **Applications to determine the jurisdiction of the Arbitral Tribunal**

27.29 An arbitration claim for the determination of a preliminary question as to the substantive jurisdiction of the Arbitral Tribunal under Article 26(3) of the Arbitration Regulations shall be made within 30 days after receipt of notice of the ruling by the Arbitral Tribunal as a preliminary question that it has jurisdiction.

### **Interim measures**

27.30 An application to the Court to enforce an interim measure made by an Arbitral Tribunal or for an order from the Court issuing an interim measure under Article 27 of the Arbitration Regulations shall be made in an Arbitration Claim Form in accordance with Part 15.

27.31 An application to enforce an interim measure made by an Arbitral Tribunal will not be granted unless the applicant files written evidence showing that the application is made with the written permission of the Arbitral Tribunal.

### **Court assistance in taking evidence**

- 27.32 An Arbitral Tribunal or a party to arbitral proceedings being conducted in the AIFC who wishes to rely on Article 37 of the Arbitration Regulations to secure the attendance of a witness shall apply for a witness summons in accordance with Part 18, Section VI.
- 27.33 A witness summons will not be issued on the application of a party to arbitral proceedings unless the applicant files written evidence showing that the application is made with the approval of the tribunal.
- 27.34 Any other application made under Article 37 of the Arbitration Regulations for the assistance of the Court in taking evidence shall be made in an Arbitration Claim Form.

#### **Applications to set aside an award**

- 27.35 An application under Article 44 of the Arbitration Regulations to set aside an arbitral award shall be made:
- (1) within 3 months from the date on which the party making the application received the award; or
  - (2) if a request had been made under Article 43 of the Arbitration Regulations, within 3 months from the date on which that request was disposed of by the Arbitral Tribunal; or
  - (3) within such longer period as the parties to the arbitration agree in writing.
- 27.36 Where a party applies to set aside an arbitral award, the arbitration claim form shall state:
- (1) the grounds under Article 43(2) of the Arbitration Regulations on which the party alleges that the award should be set aside; and
  - (2) whether the Arbitral Tribunal requests that the setting aside proceedings be suspended under Article 43(4) of the Arbitration Regulations in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as may eliminate the grounds for setting aside.
- 27.37 The written evidence in support of the application shall set out any evidence relied on by the party for the purpose of satisfying the Court:
- (1) of the matters referred to in Article 43(2) of the Arbitration Regulations; and
  - (2) that the award should be set aside.
- 27.38 The written evidence filed by the respondent to the application shall:
- (1) state the grounds on which the Respondent opposes the award being set aside;

- (2) state whether the Respondent requests that the setting aside proceedings be suspended under Article 43(4) of the Arbitration Regulations in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as may eliminate the grounds for setting aside; and
- (3) set out any evidence relied on by him relating to the matters mentioned in Article 43(2) of the Arbitration Regulations.

## **Appeals**

27.39 No appeal lies from a decision of the Court under Articles 20(3), 20(4), 20(5), 22(3), 23(1), 24(2) or 26(3) of the Arbitration Regulations.

## **SECTION II – RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS**

27.40 An application under Article 44(1) of the Arbitration Regulations to enforce an award or under Article 45 of the Arbitration Regulations for recognition of an award may be made without notice in an Arbitration Claim Form.

27.41 The application shall be supported by written evidence:

- (1) exhibiting:
  - (a) the original award; and
  - (b) the original arbitration agreement;  
or copies of those documents certified in accordance with Article 44(3) of the Arbitration Regulations;
- (2) (if the award or agreement is not made in English), producing a translation of the award or agreement certified in accordance with Article 44(3) of the Arbitration Regulations;
- (3) stating the name and the usual or last known place of residence or business of the parties or, if a party is a body corporate, its registered or principal address;
- (4) (in the case of an application to enforce an award) stating either:
  - (a) that the award has not been complied with; or
  - (b) the extent to which it has not been complied with at the date of the application.

27.42 A draft order in both English and Kazakh or Russian shall accompany the application unless the Court orders otherwise.

27.43 The Order enforcing or recognising the award shall be served on the defendant, unless the Court orders otherwise.

27.44 Within 14 days after service of an Order made without notice or within such other period as the Court may set:

- (1) the defendant may apply to set aside the Order; and
- (2) the award shall not be enforced until after:
  - (a) the end of that period; or

- (b) any application made by the defendant within that period has been finally disposed of.
- 27.45 An Order made without notice shall contain a statement of
  - (1) the right to make an application to set the Order aside; and
  - (2) the restrictions on enforcement under Rule 27.44(2).
- 27.46 An application under Rule 27.44(1) shall:
  - (1) be made in accordance with Part 6;
  - (2) set out the grounds under Article 46(1) of the Arbitration Regulations on which the applicant alleges that the Order should be set aside;
  - (3) set out any grounds under Article 46(2) of the Arbitration Regulations on which the applicant alleges that the decision to set aside the Order should be adjourned;
  - (4) be accompanied by written evidence setting out any evidence relied on by the party for the purpose of satisfying the Court:
    - (a) of the matters referred to in Article 46 of the Arbitration Regulations; and
    - (b) that the Order should be set aside.
- 27.47 If the Respondent to the application wishes to rely on evidence in reply to written evidence filed under Rule 27.46(4) he shall file and serve his written evidence within 7 days after service of the Applicant's evidence.
- 27.48 The written evidence filed by the Respondent to the application shall:
  - (1) state the grounds on which the Respondent opposes the recognition or enforcement of the award being set aside; and
  - (2) set out any evidence relied on by him relating to:
    - (a) the matters referred to in Article 46(1) of the Arbitration Regulations; and
    - (b) the provision by the applicant of appropriate security in accordance with Article 46(2) of the Arbitration Regulations.
- 27.49 After conclusion of the period referred to Rule 27.44(2), in relation to any award in respect of which the Court has made an Order enforcing the award:
  - (1) the award may be enforced within the Republic of Kazakhstan in the same manner as a Judgment or Order of the Court to the same effect; and
  - (2) the Court may enter Judgment in the terms of the award.

### **Interest on Awards**

- 27.50 Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he shall file a statement giving the following particulars:
  - (1) whether simple or compound interest was awarded;

- (2) the date from which interest was awarded;
- (3) where rests were provided for, specifying them;
- (4) the rate of interest awarded; and
- (5) a calculation showing:
  - (a) the total amount claimed up to the date of the statement; and
  - (b) any sum which will become due on a daily basis.

27.51 A statement under Rule 27.50 shall be filed whenever the amount of interest has to be quantified for the purpose of:

- (1) obtaining a Judgment or Order under Rule 27.49; or
- (2) enforcing such a Judgment or Order.

## **Part 28 The Small Claims Court**

28.1 This Part:

- (1) sets out the special procedure for dealing with claims (“small claims”) which are issued in or have been transferred to the Small Claims Court (“the SCC”); and
- (2) limits the amount of costs that can be recovered in respect of a small claim.

28.2 The SCC will hear and determine claims within the jurisdiction of the Court:

- (1) where the amount of the claim or the value of the subject matter of the claim does not exceed USD 150,000;
- (2) where the amount of the claim or the value of the subject matter of the claim does not exceed USD 300,000 and all parties to the claim elect in writing that it be heard by the SCC;
- (3) where the claim relates to the employment or former employment of a party and all parties elect in writing that it be heard by the SCC; and
- (4) such other claims as may be ordered or directed by the Chief Justice to be heard by the SCC from time to time.

28.3 Where a claimant issues multiple claims against the same defendant, the SCC Judge may, where appropriate, treat those claims as a single consolidated claim for the purposes of deciding whether the amount in dispute exceeds the limits of the SCC’s jurisdiction.

28.4 Reference in this Part to “claims” shall include reference to counterclaims, save that, where a counterclaim would not otherwise be within the SCC’s jurisdiction, a SCC Judge may direct that the proceedings be transferred to the Court of First Instance

### **Re-allocation**

28.5 The Court may order that a small claim be transferred to the Court of First Instance.

### **SCC Judge's power to grant a final remedy**

28.6 A SCC Judge may grant any final remedy in relation to a small claim which a Judge of the Court of First Instance could grant if the proceedings were before that Court.

### **Extent to which other Parts apply**

28.7 The following provisions of these Rules shall apply to small claims except to the extent that a Rule limits such application or the SCC Judge orders otherwise:

- (1) Part 1 to Part 3;
- (2) Part 5 (service of documents);
- (3) Part 6 (making applications)
- (4) Part 8 (disputing jurisdiction);
- (5) Part 10 (admissions);
- (6) Rules 18.1 and 18.6 (power to control evidence);
- (7) Rules 19.3 to 19.9 (experts— overriding duty to the court and power to restrict expert evidence) and Rules 19.18 to 19.22 (single joint experts);
- (8) Rules 21.1 to 21.13 (discontinuance);
- (9) Part 23 (judgments and orders);
- (10) Rules 26.9 and 26.10 (costs in the SCC); and
- (11) Part 29 to Part 30.

### **Commencement of a small claim**

28.8 A small claim shall be started by a Small Claim Form.

28.9 The claimant shall set out in or attach to the Small Claim Form a statement summarising the remedy sought and the claimant's reasons for claiming that he is entitled to that remedy. The claimant shall include on the face of the Claim Form a statement of the monetary value of the small claim.

28.10 The claimant shall include in the Claim Form the name and email address for service and residential address of the claimant and (if known) the defendant. Where the claimant or defendant is not an individual, the claimant shall state the address where they carry on business.

28.11 The SCC will serve the claim form on the defendant, unless otherwise directed by the Registry.

### **Responding to a small claim**

28.12 Within 14 days after he is served with a Small Claim Form, a defendant shall:

- (1) Admit the claim by filing and serving on the claimant an admission in accordance with Part 10;
- (2) File a Small Claim Defence to the claim setting out:

- (a) which parts of the claim are admitted;
  - (b) which parts are denied and his reasons for denying those parts;  
and
  - (c) the details of any counterclaim; or
- (3) Make an application to dispute the jurisdiction of the SCC in accordance with Part 6

and in every case shall provide an email address for service and state his residential address. Where the defendant is not an individual, he shall state the address at which he carries on business.

- 28.13 Where the defendant admits the claim in accordance with Rule 28.12(1), the SCC shall issue an order giving judgment on the claim.
- 28.14 Where the defendant files and serves an application to dispute the jurisdiction in accordance with Rule 28.12(3), the application will be heard by a SCC Judge in accordance with Part 6.

### **Consultation**

- 28.15 After the defendant has filed and served a Small Claim Defence in accordance with Rule 28.12(2), or after the time for filing such a statement has passed, the parties may request and the Court may fix a time and place for the parties to attend for a consultation.
- 28.16 Any such request should be made within 7 days of the service of the Small Claim Defence or the time for such service, whichever is earlier.
- 28.17 The purpose of the consultation will be to allow the parties to attempt to resolve their dispute by agreement.
- 28.18 A consultation may be conducted by the Registrar or by a person appointed by the Registrar for that purpose.
- 28.19 The SCC will attempt to fix any consultation on a date on which both parties are able to attend.
- 28.20 Any full-time officer or employee of a corporate party may represent a corporate party at the consultation.
- 28.21 Unless the Court directs otherwise, the consultation shall take place in private.
- 28.22 If the claim is settled at the consultation, the person conducting the consultation will record the terms of the settlement in writing. The written record of the settlement will be referred to an SCC Judge, who will issue a consent order, recording the terms of the settlement.
- 28.23 If the claim is not settled at the consultation, the Court may either:
- (1) fix a date for a further consultation; or
  - (2) make arrangements for the hearing of the claim in accordance with Rules 28.24 to 28.27 below.

### **Preparation for the hearing**

28.24 If no consultation is fixed by the Court or if the claim is not settled at the consultation, the Court will give directions for the preparation of the small claim for trial.

28.25 The Court may:

- (1) fix a date for the final hearing of the small claim;
- (2) inform the parties of the time allowed for the final hearing;
- (3) require the parties to give further information about their case; and
- (4) order each party to file and serve on every other party statements of any witness or copies of any further documents on which they intend to rely at the hearing.

28.26 A party may ask the Court to give particular directions about the conduct of the case.

28.27 No expert may give evidence, whether written or oral, at a hearing without the Court's permission.

### **Conduct of the hearing**

28.28 The SCC Judge may adopt any method of proceeding at a hearing that he considers to be fair.

### **Hearings will be informal**

28.29 The strict rules of evidence do not apply.

28.30 The SCC Judge may take evidence on affirmation but is not required to do so.

28.31 The SCC Judge may limit cross-examination.

28.32 Any full-time officer or employee of a corporate party may represent a corporate party at the hearing.

28.33 The SCC will take a minute of or otherwise record by such means as the SCC Judge considers appropriate any hearing that takes place at the SCC. A party may obtain a copy of that minute or other recording on payment of the proper charges specified by the SCC.

28.34 The SCC Judge shall give reasons for his decision.

28.35 The SCC Judge may give reasons for his judgment as briefly and simply as the nature of the case requires.

### **Non-attendance of parties at a final hearing**

28.36 If a claimant does not attend the hearing, the SCC may strike out the claim.

28.37 If a defendant does not attend the hearing and the claimant does attend the hearing, the SCC may decide the claim on the basis of the evidence of the claimant alone.

28.38 If neither party attends the hearing, the SCC may strike out the claim and any defence and counterclaim.

### **Disposal without a hearing**

28.39 The SCC may deal with the claim without a hearing.

### **Setting Judgment aside and re-hearing**

28.40 A party who was not present at the hearing of the claim may apply for an order that a Judgment under this Part shall be set aside and the claim re-heard.

28.41 A party who applies for an order setting aside a Judgment under Rule 28.40 shall make the application not more than 7 days after the day on which notice of the Judgment was served on him.

28.42 The SCC may grant an application under Rule 28.40 if the applicant:

- (1) had a good reason for not attending the hearing; and
- (2) has a real prospect of success at the hearing.

28.43 If a Judgment is set aside:

- (1) the SCC shall fix a new hearing for the claim; and
- (2) the hearing may take place immediately after the hearing of the application to set the Judgment aside and may be dealt with by the SCC Judge who set aside the Judgment.

28.44 A party may not apply to set aside a Judgment under Rule 28.40 if the SCC dealt with the claim without a hearing under Rule 28.39.

### **Claim re-allocated from the SCC to the Court of First Instance**

28.45 Where a claim is transferred from the SCC to the Court of First Instance, Rules 26.9 and 26.10 (costs in the SCC) will cease to apply from the date of the order transferring the claim.

### **Enforcement**

28.46 An Order of the SCC shall have the same status as an Order of the Court of First Instance and may be enforced in accordance with the procedures set out in Part 30.

## **Part 29 Appeals**

29.1 The Rules in this Part apply to appeals:

- (1) to the Court of Appeal from the Court of First Instance; and
- (2) to the Court of First Instance from the Small Claims Court or pursuant to the Court Regulations, Article 26(5).

29.2 In this Part:

- (1) 'appeal Court' means the Court to which an appeal is made;
- (2) 'lower Court' means the Court, tribunal or other person or body from whose decision an appeal is brought;
- (3) unless the use or context otherwise requires, 'decision' means an order or direction or, where a matter is to be disposed of otherwise than by order or direction, the pronouncement of the disposal;

- (4) 'appellant' means a person who brings or seeks to bring an appeal;
- (5) 'respondent' means:
  - (a) a person other than the appellant who was a party to the proceedings in the lower Court and who is affected by the appeal; and
  - (b) a person who is permitted by the appeal Court to be a party to the appeal; and
- (6) 'appeal notice' means an appellant's or respondent's notice.

29.3 This Part is subject to any Rule, enactment or Practice Direction which sets out further provisions with regard to any particular category of appeal.

### **Stay**

29.4 Unless the appeal Court or the lower Court orders otherwise, an appeal shall not operate as a stay of any decision of the lower Court.

### **Permission to appeal**

29.5 An appellant or respondent requires permission to appeal, except where the appeal is against a contempt order.

29.6 Permission to appeal may be given where the lower Court or the appeal Court considers that:

- (1) the appeal would have a real prospect of success; or
- (2) there is some other compelling reason why the appeal should be heard.

### **Conditions for allowing an appeal**

29.7 The appeal Court will allow an appeal from a decision of the lower Court where the decision of the lower Court was:

- (1) wrong; or
- (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.

### **Appellant's Application for Permission**

29.8 An appellant's application for permission to appeal may be made:

- (1) orally to the lower Court at any hearing at which the decision to be appealed was handed down; or
- (2) to the appeal Court in an appellant's notice.

29.9 Where the lower Court refuses permission to appeal, a further application for permission to appeal may be made to the appeal Court in an appellant's notice.

### **Time for appeal**

29.10 The appellant shall file the appellant's notice as referred to in Rule 29.8(2):

- (1) within such period as may be directed by the lower Court; or

- (2) where the lower Court makes no such direction, within 21 days after the date of the decision.

29.11 The parties may not agree to extend the time for appeal.

29.12 Where the time for appeal has expired, the appellant shall file the appellant's notice and include therein –

- (1) an application for an extension of time; and
- (2) a statement of the reason for the delay and the steps taken prior to the application being made.

### **Respondent's submissions**

29.13 A respondent may make written submissions in opposition to an application for permission to appeal.

29.14 A respondent wishing to make submissions in opposition to permission to appeal shall file and serve the submissions:

- (1) within 21 days of the service upon him of the appellant's notice; or
- (2) in the event that the grounds of appeal and/or skeleton argument are filed within 21 days of the date of the appellant's notice pursuant to Rule 29.25, within 21 days of the service upon him of the appellant's grounds of appeal and/or skeleton argument.

### **Decision of the application for permission**

29.15 An application for permission to appeal made to the appeal Court in an appellant's notice may not be decided by the Judge against whose decision permission to appeal is sought.

29.16 An application for permission to appeal not made orally to the lower Court at the hearing will be determined on paper, except as provided for by Rule 29.17.

29.17 The judge considering the application on paper may direct that the application be determined at an oral hearing, and shall so direct if the judge is of the opinion that the application cannot be fairly determined on paper without an oral hearing.

29.18 The lower Court or the appeal Court may direct the filing of further submissions by the appellant or any respondent.

29.19 If permission to appeal is granted without an oral hearing, the parties will be notified of that decision.

29.20 If permission to appeal is refused without an oral hearing, the parties will be notified of that decision and brief reasons for it.

### **Limited permission**

29.21 An order giving permission to appeal may:

- (1) limit the issues to be heard; and
- (2) be made subject to conditions.

- 29.22 Where the lower Court or the appeal Court gives permission to appeal on some issues only, it will:
- (1) refuse permission to appeal on any remaining issues; or
  - (2) reserve the question of permission to appeal on any remaining issues to the Court hearing the appeal.

### **Appellant's notice**

- 29.23 An appellant's notice shall be filed in all cases other than an application for permission to appeal made orally as referred to in Rule 29.8(1).
- 29.24 Subject to Rule 29.25, an appellant's notice shall:
- (1) set out the grounds of appeal relied on and
  - (2) include or be accompanied by a skeleton argument.
- 29.25 Where it is impracticable to comply with Rule 29.24, a statement of the grounds of appeal and the skeleton argument shall be filed within 21 days of filing the appellant's notice.
- 29.26 Unless the Court otherwise orders, the appellant shall serve on each respondent –
- (1) a sealed copy of the appellant's notice;
  - (2) copies of any statement of the grounds of appeal and any skeleton argument; and
  - (3) copies of any other documents required to be filed pursuant to a Practice Direction
- as soon as practicable and in any event within 7 days after they are filed.
- 29.27 The appellant shall, as soon as practicable, file a certificate of service of the documents referred to in Rule 29.26.

### **Applications**

- 29.28 An application to be made to the appeal Court for a remedy incidental to the appeal may be included in the appellant's notice or respondent's notice or made in a Part 6 application notice.

### **Respondent's notice**

- 29.29 A respondent may file and serve a respondent's notice –
- (1) applying for permission to appeal; or
  - (2) asking the appeal Court to uphold the decision of the lower Court for reasons different from or additional to those given by the lower Court.
- 29.30 The rules in relation to applying for permission to appeal in an appellant's notice and decision of the application apply to an application for permission to appeal in a respondent's notice as if the respondent were the appellant.

- 29.31 A respondent who wishes only to request that the appeal Court upholds the decision of the lower Court for reasons different from or additional to those given by the lower Court does not appeal and does not require permission to appeal.
- 29.32 If the respondent does not file a respondent's notice, he will not be entitled, except with the permission of the Court, to rely on any reason not relied on in the lower Court.

### **Time for respondent's notice**

- 29.33 A respondent's notice shall be filed within:
- (1) such period as may be directed by the Court; or
  - (2) where the Court makes no such direction, 21 days after:
    - (a) where permission to appeal is not required, the date the respondent is served with the appellant's notice or (if served later) skeleton argument;
    - (b) in all other cases –
      - (i) the date the respondent receives a copy of the order giving permission to appeal; or
      - (ii) the date the respondent receives notification that the application for permission to appeal and the appeal itself are to be heard together.
- 29.34 Rule 29.12 (extension of time for appeal) applies to a respondent and a respondent's notice. Accordingly, where an extension of time is required the extension shall be requested in the respondent's notice and the reasons why the respondent failed to act within the specified time shall be included.
- 29.35 The respondent shall file a skeleton argument in all cases where he proposes to address arguments to the Court. The respondent's skeleton argument may be included within a respondent's notice.
- 29.36 Unless the Court orders otherwise a respondent's notice shall be served on the appellant and any other respondent:
- (1) as soon as practicable; and
  - (2) in any event not later than 7 days;  
after it is filed.
- 29.37 A respondent who:
- (1) files a respondent's notice; but
  - (2) does not include his grounds of appeal and skeleton argument within that notice;
- may file his grounds of appeal and skeleton argument accompanying the notice but in any event shall file his skeleton argument within 21 days of filing the notice.

- 29.38 A respondent who does not file a respondent's notice but who files a skeleton argument shall file that skeleton argument no later than 28 days after:
- (1) where permission to appeal is not required, the date the respondent is served with the appellant's notice or (if served later) skeleton argument;
  - (2) in all other cases –
    - (a) the date the respondent receives a copy of the order giving permission to appeal; or
    - (b) the date the respondent receives notification that the application for permission to appeal and the appeal itself are to be heard together.

29.39 The respondent shall:

- (1) serve his skeleton argument on:
  - (a) the appellant; and
  - (b) any other respondentat the same time as he files it at the Court; and
- (2) file a certificate of service.

#### **Amendment of appeal notice**

29.40 An appeal notice may not be amended without the permission of the appeal Court.

#### **Striking out appeal notices and setting aside or imposing conditions on permission to appeal**

29.41 The appeal Court may:

- (1) strike out the whole or part of an appeal notice;
- (2) set aside permission to appeal in whole or in part;
- (3) impose or vary conditions upon which an appeal may be brought.

#### **Powers on appeal**

29.42 On hearing an appeal from a decision of the lower Court, the appeal Court may:

- (1) affirm, vary or set aside the decision appealed;
- (2) make or give any order that could have been made or given by the lower Court;
- (3) attach terms or conditions to an order it makes;
- (4) make a declaration of facts;
- (5) remit proceedings to the lower Court, subject to any directions the appeal Court considers appropriate; or
- (6) make any other order that the appeal Court considers appropriate or just.

29.43 The appeal Court may exercise its powers in relation to the whole or part of an order of the lower Court.

### **Hearings of appeals**

- 29.44 Every appeal will be limited to a review of the decision of the lower Court unless:
- (1) the Court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing;
  - (2) any other Rule or enactment requires a re-hearing.
- 29.45 At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal Court gives permission.

### **Evidence on appeal**

- 29.46 Unless it orders otherwise, the appeal Court will not receive:
- (1) oral evidence; or
  - (2) evidence which was not before the lower Court.

### **Non-disclosure of certain offers**

- 29.47 The fact that an offer has been made under Part 20, Section I shall not be disclosed to any Judge of the appeal Court who is to hear or determine:
- (1) an application for permission to appeal; or
  - (2) an appeal;
- until all questions (other than costs) have been determined.
- 29.48 Rule 29.47 does not apply if the offer is relevant to the substance of the appeal.

### **No second appeal**

- 29.49 No appeal lies from the decision of the Court of First Instance on an appeal from the Small Claims Court or pursuant to the Court Regulations, Article 26(5).

## **Part 30 Enforcement**

- 30.1 This Part contains rules which provide:
- (1) For a party to obtain an order (an “Execution Order”) to enforce a judgment or order of the Court within the Republic of Kazakhstan; and
  - (2) For certification of a judgment or order of the Court for enforcement outside the Republic of Kazakhstan.

### **SECTION I – ENFORCEMENT ORDERS**

#### **Applying for an Execution Order**

- 30.2 A party in whose favour a judgment or order is made for the payment of money or the delivery of goods (the ‘judgment creditor’) may apply to the Court for an Execution Order.
- 30.3 An application for an Execution Order may be made without notice.

- 30.4 An application for an Execution Order will ordinarily be determined by an Enforcement Judge of the Court.
- 30.5 The Court will arrange for a translation into the Kazakh or Russian language of the judgment or order which is to be enforced, in accordance with the Constitutional Statute, Article 13(8).
- 30.6 The applicant shall pay any applicable fee for such translation and the Court may refuse to issue the Execution Order until the applicant has paid the fee.
- 30.7 Practice Directions may specify the mechanisms of enforcement which may be provided for in an Enforcement Order and the procedure for applying for each such remedy.
- 30.8 The Court may deal with an application for an Execution Order without a hearing.
- 30.9 An Execution Order in respect of a judgment or order requiring a party to pay money to the judgment creditor shall specify the amount of money due to the judgment creditor under the judgment or order, including interest (if any).

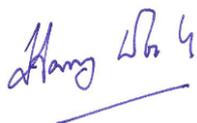
#### **Costs**

- 30.10 An Execution Order in respect of any judgment or order may require a party against whom it is made to pay the judgment creditor's reasonable costs of obtaining the Execution Order.

#### **SECTION II – ENFORCEMENT OF AIFC JUDGMENTS OR ORDERS OUTSIDE THE REPUBLIC OF KAZAKHSTAN**

- 30.11 Any party seeking to enforce a judgment or order of the Court outside the Republic of Kazakhstan may apply for a certified copy of the judgment or order to be issued by the Court.
- 30.12 An application under Rule 30.11 may be made without notice.

Approved by the Chief Justice of the AIFC Court in accordance with Article 30 of the AIFC Court Regulations 2017:



The Rt. Hon. The Lord Woolf CH,  
Chief Justice, AIFC Court

1 January 2018