



Consultation Paper no.16

**Proposed Astana International
Financial Centre Intellectual Property
Regulations**

Introduction

Why are we issuing this Consultation Paper (CP)?

1. The Astana International Finance Center Authority (the “AIFC Authority”) has issued this Consultation Paper to seek suggestions from the market on the AIFC Intellectual Property Regulations 2024.

Who should read this CP?

2. The proposals in this paper will be of interest to current and potential AIFC participants, including businesses and legal entities involved in the creation, management, or protection of intellectual property. This includes innovators, entrepreneurs, legal professionals, startups, and enterprises operating within the Astana International Financial Centre (AIFC), as well as other stakeholders concerned with intellectual property rights and compliance within the AIFC framework.

What are the next steps?

3. We invite comments from interested stakeholders on the proposed framework. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper No.16 on the proposed AIFC Intellectual Property Regulations 2024” in the subject line. You may, if relevant, identify the organisation you represent when providing your comments. The AIFC Authority reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise. Comments supported by reasoning and evidence will be given more weight by the AIFC Authority.

4. The deadline for providing comments on the proposed framework is **3 October 2024**. Once we receive your comments, we shall consider if any refinements are required to this proposal.

5. AIFC Authority prefers to receive comments by email at legaldevelopmentdepartment@aifc.kz

The AIFC Authority reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. Comments supported by reasoning and evidence will be given more weight by the AIFC Authority.

Structure of this CP

Part I – Background;

Part II –Legislative Proposal;

Part III – Consultation questions;

Annex 1 - Draft AIFC Intellectual Property Regulations.

Part I: Background

1. The proposed draft of the AIFC Intellectual Property Regulations (the “Legislative Proposal”) aims to establish a comprehensive legal framework for structuring and enforcing commercial deals involving intellectual property (IP) rights within the jurisdiction of the AIFC, including those registered in the Republic of Kazakhstan.
2. The proposed framework aims to position the AIFC as a regional hub for creative entrepreneurship, offering advanced mechanisms for the protection of IP rights. By regulating IP rights, the framework aims to foster the development of creative financial and non-financial projects, including projects on coding and development of artificial intelligence (AI). Legal protection of IP encourages investment in research and development of creative projects, as inventors and creators are motivated to innovate, knowing their intellectual assets are protected and they can potentially profit from their inventions.
3. The framework aims to provide legal clarity and support for structuring commercial transactions involving IP rights, including providing clarity on registration and enforcement mechanisms within the AIFC jurisdiction, to enhance the security and reliability of IP transactions.
4. The regulations are expected to attract creative entrepreneurs to the AIFC by offering robust IP protection and advanced legal mechanisms.
5. The clear legal framework for IP rights will stimulate investment in creative financial and non-financial projects, driving innovation and technological advancement in the region.
6. The proposed AIFC Intellectual Property Regulations represent a significant step towards establishing the AIFC as a premier destination for IP-driven businesses and innovation. By providing a secure and efficient legal environment for IP transactions and enforcement, the AIFC can enhance its appeal to global entrepreneurs and investors, including in the fields of creative industries and artificial intelligence.

Part II: Legislative proposal

7. The Legislative Proposal aims to provide comprehensive legal protections and rights to creators and innovators, specifically within the AIFC. This robust framework is designed to attract authors and innovators by ensuring their intellectual property (IP) rights are effectively safeguarded.
8. The Legislative Proposal regulates Patents, Works, Trademarks and other forms of creations. The scope of the Legislative Proposal is aiming to setting up a balance of the interests of creators, innovators, Authors and consumers.
9. The adoption of the Legislative Proposal will determine the competence and powers of the Commissioner of the IP to administer the proposed framework and implementation of the proposed regulatory mechanisms on the protection of intellectual property in the AIFC, which will enable the AIFC to be a safe environment for creativity and innovation and enable AIFC Participants to protect their intellectual property rights within the AIFC according to the best international practice granted under the Acting Law of the AIFC.
10. The protection of intellectual property rights, especially Trademarks, Patents, Utility Certificates, Industrial Designs and Drawings, requires national regulatory formalities affording proof of the existence of such rights in the given country (registration).

11. In this regard, the Legislative Proposal must recognize the national laws and treaties ratified by the Republic of Kazakhstan concerning registration and enforcement of Patents, Utility Certificates, Industrial Designs and Drawings, Copyright, Trademarks, Trade Names and Trade Secrets.
12. The Legislative Proposal intends to ensure effective protection and enforcement of intellectual property rights that are registered and valid under National Laws. Such recognition means that all the recognized Patents and Utility Certificates are protected and enforceable in the AIFC.
13. As the Republic of Kazakhstan's intellectual property laws conform with the standards and requirements of international intellectual property treaties, the Legislative Proposal will not create any Intellectual Property registries within the AIFC but recognize such regulatory formalities (trademark registration, patent registration, design registrations, utility certificates) made with the governmental authorities and it is given full effect in the AIFC.
14. Meanwhile, the Legislative Proposal will take into account the best practices of foreign countries to ensure an appropriate system of legal protection of intellectual property, which will have a positive economic effect and will contribute to attracting foreign capital to the Republic of Kazakhstan.
15. The expected outcome of the implementation of the Legislative Proposal will be a substantial contribution to developing a regulatory framework that will allow various creators to benefit from carrying out its activities in the AIFC.

Part III: Questions in this consultation paper

- 1) The Legislative Proposal aims to balance the interests of creators, innovators, authors, and consumers. Do you think the current proposal effectively achieves this balance? What aspects could be improved?
- 2) Do you agree with the proposed competence and powers assigned to the Commissioner of IP to administer and implement the intellectual property framework within the AIFC? Are there any additional powers or responsibilities that should be considered?
- 3) Are there any improvements or changes would you recommend to further enhance the legal framework for intellectual property protection within the AIFC?
- 4) Are there any specific provisions or aspects of the Legislative Proposal that you strongly agree or disagree with? Please provide details and reasoning.



Annex 1 to the Consultation Paper No. 16

**AIFC INTELLECTUAL PROPERTY
REGULATIONS**

AIFC Regulations No. _ of 2024

PART 1: GENERAL

1. Name

These Regulations are the AIFC Intellectual Property Regulations 2024.

2. Date of enactment

These Regulations are enacted on the day they are adopted by the Governor.

3. Commencement

These Regulations commence on 1 January 2025.

4. Legislative authority

These Regulations are adopted by the Governor under article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

5. Application of these Regulations

- (1) These Regulations apply to AIFC Participants, AIFC Bodies, and their Employees.
- (2) These Regulations do not apply to any person not mentioned in subsection (1) unless that person has submitted to the jurisdiction of the AIFC in a manner relevant to the subject matter, for example by an agreement between that person and a person mentioned in subsection (1).
- (3) These Regulations do not establish any registry for intellectual property rights and any intellectual property rights registered in the Republic of Kazakhstan under applicable National Laws must be recognised as valid and enforceable under these Regulations.

6. Administration of these Regulations

These Regulations and any legislation made for the purpose of these Regulations are administered by the Commissioner of Intellectual Property.

7. Schedules

- (1) Schedule 1 contains:
 - (a) interpretative provisions which apply to these Regulations; and
 - (b) a list of defined terms used in these Regulations.
- (2) Schedule 2 contains a list of the National Laws, conventions, agreements and treaties considered under these Regulations.
- (3) Schedule 3 contains prescribed fines for contravention of these Regulations.

PART 2: PATENTS AND INDUSTRIAL DESIGNS

CHAPTER 1: GENERAL RULES ON PATENTS

8. Recognition of Patents registered in the Republic of Kazakhstan

A Patent for Industrial Property Subject Matter recognised as valid under the National Laws is recognised under these Regulations and is protected and enforceable in the AIFC.

9. Rights conferred by a Patent

- (1) A Patent, as the case may be, confers on its owner the following exclusive right to exclude others from exploiting the Invention, Utility Model in the AIFC, and where the subject matter of a Patent is:
 - (a) a product, such exploitation includes using, manufacturing, application, importing, storage, offering for sale, selling or and other introduction to the civil circulation of the product; or
 - (b) a process or method, the exploitation is the same as set out in section 9(1)(a) with respect to the process or method, in addition to the product obtained directly by that process or method.
- (2) The rights referred to in section 9(1) do not include acts relating to a product protected by a Patent after its first legal sale in Kazakhstan.

10. Acts of infringement

- (1) The following acts will be an infringement of a Patent in or from the AIFC if committed without the authority of its owner :
 - (a) exploiting in or from the AIFC, an Industrial Property Subject Matter protected by a Patent;
 - (b) using, manufacturing, selling, offering for sale in or from the AIFC, or importing into the AIFC, or possessing and storage in the AIFC, with the intention to trade, products or processes protected by a Patent, or products obtained using processes protected by a Patent;
 - (c) inducing another person to infringe a Patent in or from the AIFC, even if the inducer is located outside the AIFC; or
 - (d) cooperating with another party to an act of infringement of a Patent in or from the AIFC, even if the other party is located outside the AIFC.
- (2) A Patent is infringed if at least one of the independent construction of the claim granted under the Patent is infringed. Patent is also infringed if all features of the independent construction of the claim were found in infringing product.
- (3) A claim granted under a Patent is considered to be infringed even though the alleged infringing product, process or method does not fall within the literal scope of the patent claim but nonetheless equivalent to the feature of the claimed invention feature. The construction of the claim is made in light of the entire specifications and drawings of the Patent involved. The scope of legal protection of the Patent is determined by construction of the claim that includes description and drawings.
- (4) The exploit of Industrial Property Subject Matter is the use, manufacture, import, offer for sale, sale, and other introduction of the product for industrial or commercial purposes or storage for this purpose of a product containing Industrial Property Subject Matter, as well as the application of a protected method. The product is recognized as containing

Industrial Property Subject Matter, and the protected method is recognized as applicable if the product contains, and the method uses, each feature of the Invention, given in an independent construction of the claim, or an equivalent feature known as such in this field of technology on the date of commencement of use.

- (5) The marking on a product, or any promotion relating thereto, indicates in a manner that may mislead the public in believing that a person holds a Patent with respect thereto, when in effect it is not the case.

11. Protection of Patent

- (1) Protection of the Patent may be implemented through:
 - (a) recognition of rights;
 - (b) restoration of the situation that existed before the violation of the right;
 - (c) the suppression of actions that violate the right or create a threat of its violation;
 - (d) compensation for losses, including lost profits; and
 - (e) recovery of income received by the violator as a result of violation of Patent.
- (2) The amount of the compensation indicated in section 11 (1) (d) and (e) may be calculated based on gross profit and income of the infringer received during the violation of the Patent.

12. Acts of exploitation that would not constitute infringement

- (1) A Person has the right to exploit an Invention, Utility Model, product, process or method, if in good faith, the person initiated an act of exploitation, or has made effective and serious preparations to initiate an act of exploitation before to the priority date of a Patent within the Republic of Kazakhstan without the right to expand the scope of such exploit.
- (2) A Person's to continue with an act of exploitation in the AIFC under section 12(1) will remain until:
 - (a) any products produced or acquired by that person in the Republic of Kazakhstan prior to the grant of the relevant Patent, are sold, or otherwise exhausted; or
 - (b) until any machine used prior to the grant of the relevant Patent or Utility Certificate to execute any such patented process is expired,provided that such right is a personal right and cannot be assigned or transferred to another person.
- (3) A Person may pursue an act of exploitation in the AIFC if:
 - (a) it is done privately for personal, family, household, or other non-entrepreneurial purposes which are not commercial; or
 - (b) it is done for scientific research or experimental purposes relating to the subject matter of the Industrial Property Subject Matter and which are not commercial; or
 - (c) it is done for the exploitation of Industrial Property Subject Matter in the construction or operation of vehicles (sea, river, air, land and space) of other countries, provided that these means are temporarily or accidentally located on the territory of the Republic of Kazakhstan and are used for the needs of the vehicle. Vehicles may belong to individuals or legal entities of countries granting

the same rights to owners of vehicles of the Republic of Kazakhstan; or

- (d) it is done under emergency circumstances (natural disasters, catastrophes, major accidents) with immediate notification to the Patent owner; or
 - (e) it is done under emergency cases, one-time manufacture of medicines in a pharmacy with a physician's prescription.
- (4) In the event of an invalidity defence being raised in infringement proceedings, the alleged infringer of a Patent will bear the burden of proof in respect of such invalidity and the court will have the discretion to suspend the infringement proceedings until an order in respect thereof is pronounced by the competent court.

13. Reversal of burden of proof

- (1) Where the subject-matter of a Patent is a process for manufacturing a product and the owner of the Patent is unable through reasonable efforts to determine if such process was actually used in the manufacturing of the product, the burden of proving that the product is not manufactured by the process that is the subject of the Patent will move to the alleged infringer of the Patent in any infringement proceedings in the AIFC.
- (2) In considering whether a person has discharged the burden imposed by section 13(1), it will not be required to disclose any Trade Secret if it would be unreasonable to do so in the circumstances.

14. Patent ownership in employment relationship

- (1) If an Industrial Property Subject Matter is made within the scope of employment by an employee pursuant to an employment contract the employer will be the owner of the Invention, unless agreed otherwise between the employer and employee in writing.
- (2) An Industrial Property Subject Matter is deemed to be made within the scope of employment under section 14(1) if:
 - (a) the Industrial Property Subject Matter was made in the course of the normal duties of the employee, or in the course of duties falling outside the employee's normal duties, but specifically assigned to the employee, and the circumstances in either case were such that an Industrial Property Subject Matter might reasonably be expected to result from the carrying out such duties; or
 - (b) the Industrial Property Subject Matter was made in the course of the duties of the employee and, at the time of making the Industrial Property Subject Matter, because of the nature of his duties and the particular responsibilities arising from the nature of his duties he had an obligation to act in the best further interests of the employer.
- (3) Unless otherwise agreed upon between the relevant parties in writing, if an Industrial Property Subject Matter falls outside an employee's scope of employment but relates to an employer's business or professional domain and has been conceived by the employee using primarily the employer's resources such as know-how, documents, tools, premises, instruments, equipment and other facilities of the employer, the Industrial Property Subject Matter may belong to the employer, however the employee may be entitled to a fair compensation agreed between the employee and employer in which his remuneration, the economic value of the Industrial Property Subject Matter and the benefits that the employer may gain through the Invention must be taken into consideration.
- (4) In the event if an Industrial Property Subject Matter is not related to the business of an employer an Industrial Property Subject Matter may belong to the employee whereby

employer has the right to gratuitous license for the term of the protection of the Invention.

- (5) An employee must notify an employer of creation of an Industrial Property Subject Matter as soon as practicable by way of a written report including all the technical details of the invented subject matter. If the employer is not interested in using, patenting, protecting as know-how the Industrial Property Subject Matter that it is so notified of, it may in its sole discretion, assign all right, title and interest in the Industrial Property Subject Matter to the employee instead of paying the employee compensation for the Industrial Property Subject Matter if required under this section, that may be determined separately and not included in the salary of the employee.
- (6) If an employer does not make an election of its interest in an Industrial Property Subject Matter that it was notified of pursuant to section 13(4) through a written notice to the employee before the end of the employee's employment contract, the employer is deemed to have made an election to keep the Industrial Property Subject Matter and either party may apply to the competent court to determine the compensation due to the employee for the Industrial Property Subject Matter, unless otherwise agreed between the parties.
- (7) Any Industrial Property Subject Matter made by an employee outside the scope of sections 14(1) to 14(3) must belong to the employee.
- (8) For purposes of this section 14:
 - (a) an employer and employee relationship must either involve work in the AIFC, or be subject to AIFC Law, to invoke any right, privilege, remedy or obligation under this section; and
 - (b) reference to an employee includes a worker employed by an employer by way of any type of work-for-hire arrangement.

15. Rights to an Industrial Property Subject Matter

- (1) Subject to the provisions of section 14, the rights to an Industrial Property Subject Matter will belong to the inventor thereof or his legal successor.
- (2) Where an Industrial Property Subject Matter is a combined creative effort of two or more persons, the rights in the Industrial Property Subject Matter will, unless otherwise agreed in writing, be shared equally between them or their legal successors, provided that a person will not benefit from the provisions of this section unless he has contributed to at least one inventive concept of the Industrial Property Subject Matter under at least one of the claims of the Patent.

CHAPTER 2: GENERAL RULES ON INDUSTRIAL DESIGNS

16. Recognition of Industrial Designs registered in the Republic of Kazakhstan

An Industrial Design recognised under the National Laws is recognised as valid for the purposes of these Regulations and is protected and enforceable in the AIFC.

17. Rights conferred by an Industrial Designs

- (1) An Industrial Design, as the case may be, confers on its grantee the exclusive right to exclude others from:
 - (a) using the Industrial Design in manufacturing any product;
 - (b) using, selling, or offering for sale any product relating to the Industrial Design;

- (c) importing any product using an Industrial Design; or
 - (d) possessing an Industrial Design with intention to use, or offer for sale, or sell the same.
- (2) The rights referred to in section 17(1) will be restricted to acts that are undertaken for industrial or commercial purposes and will not extend to acts relating to a protected product after its first authorized sale in Kazakhstan.

18. Application of sections related to Patents on Industrial Designs

The provisions of sections 11 to 15 of these Regulations apply to an Industrial Design and any references therein to a Patent will be deemed to refer to an Industrial Design, as the case may, for purposes of this section 18.

PART 3: COPYRIGHT

CHAPTER 1: GENERAL RULES ON COPYRIGHT

19. Recognition of copyright under the National Laws

Notwithstanding section 20, a Work recognised as subject to copyright protection under the National Copyright Law is recognised as valid for purposes of these Regulations and is protected and enforceable in the AIFC.

20. Works protected by copyright

- (1) Copyright protection in the AIFC under these Regulations will be granted to an original Work of authorship fixed to a tangible medium.
- (2) The protection granted by these Regulations will extend to Authors and Related Rights Holders.
- (3) The following Works are specifically protected by Copyright:
 - (a) books, booklets, articles and other literature;
 - (b) computer software and applications whether in source code or machine language, Databases, graphic user interfaces and similar Works;
 - (c) lectures, speeches, sermons and similar Works;
 - (d) plays, musicals and pantomimes, works of choreography;
 - (e) dramatic, and musical-dramatic works, musicals, whether or not accompanied by dialogue;
 - (f) audio work, video work and audio-visual work;
 - (g) architectural work, architectural plans and drawings;
 - (h) Work involving drawing, painting, sculpting, etching, lithography, screen printing, relief and intaglio prints and other similar Works of fine art;
 - (i) photographic Works;
 - (j) Works of applied art and plastic art;
 - (k) charts, maps, plans, 3-D modelling for geographical and topographical applications and architectural designs, illustrations; and
 - (l) screenplays;
 - (m) collections (encyclopedias, anthologies, databases) and other composite works;
 - (n) Derivative Works, subject to the protection afforded to the Works upon which they are based. In order to be protectable, the consent of the original Works Author or right holder must be obtained. Derivative Works must be protectable regardless of whether the original Works are protected.
- (4) The following Works are specifically protected by the Related Rights regardless of purpose, content, and dignity, as well as the way and form of their expression:

- (a) productions;
 - (b) performances;
 - (c) phonograms;
 - (d) broadcasts and cable broadcasting.
- (5) The protection provided by this section 20 will extend to the title of a Work such as script, characters, images of the environment, dialogues and etc. (if created, as well as the creative concept devised for broadcasting material.

21. Works that are not protected by copyright

- (1) Copyright does not protect ideas, procedures, methods of doing business, mathematical algorithms and basic principles and facts but only the expression thereof.
- (2) Copyright protection in the AIFC does not extend to any of the following:
- (a) official documents, whatever the source or language, such as provisions of law, regulations, decisions, international conventions, court judgments, arbitrators' awards and decisions issued by administrative committees in relation to court matters;
 - (b) news of current events and issues that are strictly media coverage;
 - (c) state symbols and signs (flags, coats of arms, orders, banknotes and other state symbols and signs);
 - (d) messages about events and facts of an informational nature; and
 - (e) Works that have fallen in the public domain due to the lapse of copyright protection.

provided that any of the foregoing is eligible for protection if there is an innovative element in the way in which it is compiled or arranged, or in the effort involved in creating the Work, in which case copyright protection will extend to the compilation, arrangement or creative effort involved. The aforementioned will apply to Databases.

CHAPTER 2: AUTHORSHIP

22. Authorship

- (1) Without prejudice to the rights of an Author of an original Work, the following persons will be considered Authors and will enjoy protection of their Works for purposes of these Regulations:
- (a) a person who translates Work into another language, converts it from one form of literature, art or science into another form, summarises it, alters it, amends it, illustrates it, comments on it, catalogues it or performs any other action which makes the Work appear in a new form, subject to section 22(2);
 - (b) Authors of encyclopaedias, collections, compiled data and compilations which are granted protections by virtue of these Regulations.
- (2) Any modification of a Work by translation or conversion will constitute grounds for a copyright infringement in the AIFC if the translator, or the person converting it from one form to another, fails to receive consent of the Author or right holder of a Work for

such translation or conversion and indicate the source of the underlying Work, or the Author of the original Work considers the translation or conversion as a distortion or mutilation of the original Work.

- (3) If a Work is published anonymously, or published under a pseudonym, the publisher will be presumed to be empowered by the Author to exercise the rights provided for in these Regulations, unless the Author has appointed another agent or revealed his identity and his capacity.

23. First ownership of copyright

Subject to section 24, the Author of a Work is the first owner of any copyright in it.

24. Copyright ownership in employment relationships

- (1) If an employee creates a Work within the scope of employment pursuant to an employment contract or the employee uses the experience, information, instruments or materials of an employer in creating such Work and the Work is related to the business of an employer the copyright in the Work will be owned by the employer. In the event if the created Work is not related to the business of an employer the copyright in the Work will be owned by the employee whereby employer has the right to gratuitous license for the term of the protection of the Work.
- (2) If a Work is created by an employee that is not related to the business of an employer, and the employee is not using the experience, information, instruments or materials of the employer, copyright in such Work will vest in the employee.
- (3) A Work is deemed to be created within the scope of employment under section 24(1) if:
 - (a) the Work was created in the course of the normal duties of the employee indicated in his functional instruction or in the course of duties falling outside the employee's normal duties, but specifically assigned to the employee, and the circumstances in either case were such that the Work might reasonably be expected to result from the carrying out such duties; or
 - (b) the Work was created in the course of the duties of the employee and, at the time of creating the Work, because of the nature of his duties and the particular responsibilities arising from the nature of his duties he had an obligation to further the interests of the employer.
- (4) An employer and employee may agree to treat copyright in Work created during an employment relationship differently than stated in this section 24, provided that they do so in writing.
- (5) For purposes of this section 24:
 - (a) an employer and employee relationship must either involve work in or from the AIFC or be subject to Acting Law of the AIFC, to invoke any right, privilege, remedy or obligation under these Regulations; and
 - (b) reference to an employee will include a worker employed by an employer by way of any type of work-for-hire arrangement.

25. Work of Joint Authorship

- (1) In a Work of Joint Authorship, each contributor will be considered an Author in equal parts with each other Authors of the Work, unless otherwise agreed between them in writing.

- (2) An Author in a Work of Joint Authorship may not separately exercise his rights as Author of a Work, without the written consent of all other Authors of the Work.

26. Authors of Audio-Visual Work, audio Work and visual Work

- (1) Where a Work is derived from an original Work, the following persons will be considered as Author of a new Work in the AIFC:
 - (a) an Author of a scenario in the new Work;
 - (b) a person who makes an adaptation of a literary Work in the new Work;
 - (c) the Author of dialogue in the new Work.

27. Moral Rights of Authors

- (1) The Author will enjoy perpetual and inalienable moral rights to a Work. Author's moral rights cannot be transferred to his heirs after Author's death. Heirs have only the right to protect Author's moral rights.
- (2) The Authors moral rights include the right to:
 - (a) publish the Work for the first time and determine the date of publication and manner in which it is published;
 - (b) be credited as the Author of the Work;
 - (c) object to derogatory treatment of a Work including modification of the copyright therein, distortion, misrepresentation, or any other amendments to the Work which may harm the reputation of the Author; and
 - (d) withdraw a Work from circulation in the case of any development or circumstance that would justify the withdrawal, in which case, the Author must be obliged to fairly compensate any person who suffered damages including lost profits from exercising this right.
- (3) For the purpose of section 27(1)(c), the "derogatory treatment" of a Work includes any addition to, deletion from or alteration to, or adaptation of a Work, provided that if any such treatment takes place in the translation of a Work, the Author will not have the right to prevent it, unless:
 - (a) the translator neglected to refer to the location of any such change; or
 - (b) the translation causes damage to the reputation of the Author or distorts the contents of the Work.

28. Economic Rights of Authors

An Author, his legal successors or the copyright holder will have the exclusive economic rights to exploit a Work, through any means, including:

- (a) the licensing of the use of the Work;
- (b) copying, reproduction, electronic loading and storage of the Work;
- (c) any form of representation, broadcasting or re-broadcasting, communication to the public, making available to the public, public display, public performance, translation, adaptation, modification, alteration, leasing, lending of the Work;

- (d) importing copies of the Work for distribution purposes, including copies made with the permission of the Author or other copyright holder;
- (e) fixation of their unfixed Works; or
- (f) any form of publication of the Work, including providing access thereto through a computer or information networks, communication networks or any other means.

CHAPTER 3: CO-AUTHORSHIP AND COLLECTIVE WORK

29. Works of Co-Authorship

- (1) In a Work of Co-Authorship, each Co-Author will have the right to independently exploit the economic rights in his part, without prejudice to the rights of other Co-Authors to do the same, unless otherwise agreed between them in writing.
- (2) Any Co-Author has the right to initiate legal proceedings in case of infringement of copyright of a Co-Authored Work.
- (3) Where a Co-Author dies without leaving a legal successor, such a Co-Author's share in the rights to the Work will devolve proportionally to the remaining Co-Authors, or their legal successors, unless otherwise agreed between them in writing prior to the death of such a Co-Author.

30. Collective Work

- (1) A person who supervises and materially contributes to the creation of a Collective Work has exclusive moral rights and economic rights over the Work under these Regulations, unless agreed otherwise in writing with all other relevant persons involved.
- (2) If a Work is directed by a person, contracted for by a person, or created for the benefit of a person, the economic rights in the Work will under these Regulations vest in the person who directed, contracted for, or for whose benefit the Work was created, unless agreed otherwise in writing with the other relevant persons involved.

31. Co-Authors of Audio-Visual Work, audio Work and visual Work

- (1) The following persons will be considered as Co-Authors of Audio-Visual Work, audio Work or visual Work in the AIFC:
 - (a) an Author of a scenario or written idea for a program;
 - (b) a person adapting an existing literary Work for an Audio-Visual production;
 - (c) an Author of dialogue;
 - (d) production designer;
 - (e) a composer of music composed specifically for the Work; and
 - (f) a director who materially contributes to the making of the Work.
- (2) The Author of a literary portion or a musical portion of a Work will have the right to separately publish his Work in a manner other than the Work in which he is a Co-Author is published, unless otherwise agreed in writing between the relevant persons.
- (3) Where a Co-Author of an Audio-Visual Work, an audio Work, or a visual Work fails to complete his part of a Work, the other Co-Authors of the Work may not be prevented

from using the completed portion of his part of the Work, without prejudice to his rights of him being a Co-Author of the completed part of the Work so used by the other Co-Authors.

- (4) Throughout the period of the agreed exploitation of an Audio-Visual Work, and audio Work or a visual Work, the Record Producer or the Producer of Audio Visual will represent the Authors of the Work, and their legal successors, in any agreement for the exploitation of the Work, without prejudice to the rights of the Authors of the quoted or adapted literary or musical parts of the Work and, unless otherwise agreed in writing between the relevant persons, the Producer will be considered as the publisher of the Work and will enjoy a publisher's rights with respect to the Work and copies thereof within the limits of its permitted commercial exploitation.

CHAPTER 4: RELATED RIGHTS

32. Related Right Holder - Performing Artists

Without prejudice to the rights of an Author of an original Work, a performer who conveys to the public a Work of others, whether or not this performance is by singing, playing a musical instrument, rhythm, recital, photography, drawing, movement, steps or any other method may be considered as Related Right Holder and will enjoy protection of their Works for purposes of these Regulations.

33. Moral Rights of Performing Artists

- (1) A Performing Artist and, where applicable, may enjoy perpetual and inalienable moral rights to:
 - (a) have his performances, whether live or recorded, attributed to him; and
 - (b) prevent any modification, distortion, misrepresentation or amendment of his Work that would negatively affect the honour or reputation of the Performing Artist.
- (2) Moral Rights of Performing Artists cannot be transferred to his heirs after Performing Artists' death. Heirs have only the right to protect Moral Rights of Performing Artists.

34. Economic Rights of Producers of Sound Recording

A Record Producer may enjoy the following exclusive economic rights in respect thereof:

- (a) to prevent any exploitation of the Sound Recording in any manner, without the Record Producer's prior written authorisation, which exploitation will include (without limitation) reproduction, distribution, importation, exportation, renting, broadcasting, or making them available to the public through computers or any other means; and
- (b) to make the Sound Recording available to the public by wire or wireless means or through computers, software or any other means.

35. Economic Rights of Broadcasting Organisations

A Broadcasting Organisation may enjoy the following exclusive economic rights in the AIFC:

- (a) to authorise the exploitation of its Works, programs and recordings; and
- (b) to prevent any Public Broadcasting of its Works, programs and recordings without their prior written authorisation, of their television recordings, including, in particular, fixation by way of recording, reproduction, distribution, importation, exportation, sale, rental, re-broadcasting or communicating such Works to the public through any means,

including the removal or destruction of any technical protection of such programs by coding or other means.

36. Economic Rights of Performing Artists

- (1) A Performing Artist may enjoy the following exclusive economic rights in the AIFC:
 - (a) the right to broadcast non-fixed performances and communicate it to the public;
 - (b) the right to fix performances in any form of recording;
 - (c) the right to reproduce a performance fixed in any form of recording;
 - (d) the right to making available to the public of the Sound Recording through sale or other transfer of ownership; and
 - (e) the right to commercial renting of the Sound Recording with the participation of the Performing Artist. This right, when concluding agreement on Sound Recording passes to the Producer of the Sound Recording. In such case, the Performing Artist retains the right to remuneration for renting copies of such Sound Recording.
- (2) Any other person will be prohibited from recording, by any means, the live performance of a Performing Artist, or renting out the same, with the intention of receiving commercial consideration for it, whether directly or indirectly, or broadcasting the performance of a Performing Artist or presenting it in any form, unless the consent of the Performing Artist is obtained.

CHAPTER 5: TRANSFER OF COPYRIGHT AND OTHER ISSUES

37. Lease of software

Software may be leased in the AIFC only if the software itself is intrinsically intended to be leased.

38. Assignment of Copyright

- (1) An Author, copyright holder or a Related Right Holder may agree to assign to another person, in whole or in part, his economic rights in a Work under these Regulations, provided that any such assignment must be made in writing and include reference to the right which is to be assigned.
- (2) An Author, copyright holder or Related Right Holder will retain ownership of all residual rights which he has not expressly assigned under section 38(1).

39. Licence of Copyright

- (1) An Author, copyright holder or Related Right Holder in the AIFC may grant a licence to another person to use, in whole or in part, the economic rights in a Work.
- (2) A licence granted under section 39(1) may be exclusive, by which the Author, copyright holder or Related Right Holder grants the licensee in writing to the exclusion of others to exercise one or more of its economic rights. At the same time, the Author, copyright holder or Related Right Holder do not reserve the right to use the Work. A licence whether exclusive or not must be made in writing and includes reference to the right, which is to be licenced, the duration of the licence, the consideration or reference that the license is free of charge and place of the licence.

- (3) Subject to section 39(1), a licence of economic rights in connection with a computer software, an application or a Database can be in accordance with a licensing agreement that is either affixed to or appears on the software, application or Database;
- (a) on the material object in which the software, application or Database is embodied; or
 - (b) in a pop-up screen when the software, application or Database is loaded or stored,
- and the purchaser or user of the software, application or Database will be bound by the terms of such licence agreement.
- (4) The copyright holder or the Related Right Holder may exercise all residual rights which he has not expressly licenced under this section 39.

40. Disposal of original copy of a Work

- (1) Subject to section 40(2), no disposal by an Author, in any form whatsoever, of an original copy of his Work in the AIFC will operate to transfer any of his economic rights in respect thereof, unless agreed otherwise between the relevant persons.
- (2) A person to whom the ownership of a copy of Work has transferred will not be bound to enable the Author to reproduce, communicate or display such copy, except on the basis of a prior agreement.

41. Disposal of future Work

Any disposal by an Author of the total body of his future Works will be void under these Regulations.

42. Duration of Copyright

- (1) The economic rights of an Author under these Regulations will be protected for the duration of his life plus 70 years starting from the first day of the calendar year following his death.
- (2) The economic rights of Authors in a Work of Joint Authorship will be protected for the duration of all their lives plus 70 years starting from the first day of the calendar year following the death of the last surviving Author.
- (3) The economic rights of Authors in a Collective Work, with the exception of Authors of Works of applied art, will:
- (a) if the Collective Work is created under the direction of a juristic person, be protected for a period of 70 years starting from the first day of the calendar year following the year in which the Work was published for the first time; or
 - (b) if the Work is created under the direction of a natural person, be protected for the duration of his life plus 70 years starting from the first day of the calendar year following his death.
- (4) The economic rights in respect of Work that is published for the first time will expire 70 years after the death of the Author, starting from the first day of the calendar year following the year in which the Work was published for the first time.
- (5) The economic rights in respect of Work that is published anonymously, or under a pseudonym, will be protected for a period of 70 years starting from the first day of the

calendar year following the year in which the work was published for the first time, provided that if the Author of the Work becomes known, the protection period will be calculated in accordance section 42(1).

- (6) The economic rights of an Author of a Work of applied art will expire after 25 years starting from the first day of the calendar year following the year in which the Work was published for the first time.
- (7) Where a protection period is required to be calculated under this section from the date on which Work was first published, the period will be calculated from the date of first publication, regardless of any subsequent re-publication of such Work, unless the Author materially revised the work on re-publication to the extent that it can be considered a new Work.
- (8) Where Work consists of parts or volumes that were issued separately, each part or volume will be treated as a separate Work for the purpose of calculating the protection period under this section.
- (9) The economic rights of Performing Artists will be protected for a period of 70 years calculated from the first day of the calendar year following the year in which the performance took place and if such performance is fixed in any form of recording, the protection period will be calculated from the end of the year in which such fixation took place.
- (10) The economic rights of a Record Producer of a phonogram will be protected for 70 years calculated from the first day of the year following the year in which the recording was published or made, if it was not published.
- (11) The rights of a Broadcasting Organisation will be protected for a period of 20 years calculated from the first day of the year following the year in which the material was first broadcast.

43. Acts permitted in relation to copyrighted Work

- (1) Without prejudice to the moral rights of an Author under these Regulations an Author may not, after the publication of a Work, prevent any person from carrying out any of the following:
 - (a) to perform the Work in family context or student gathering within an educational institution, to the extent that no direct or indirect financial remuneration is obtained;
 - (b) to make a single copy of the Work for that person's exclusive personal use, provided that such a copy must not hamper the normal exploitation of the Work nor cause undue prejudice to the legitimate interests of the Author or a copyright holder;
 - (c) to make a single copy of a computer program for archiving purposes or to replace a lost, destroyed or invalid original copy of the computer program, provided that the single copy of the computer program must be destroyed upon expiration of the right to use the computer program;
 - (d) to adapt a computer program, even if such adaptation exceeds what is necessary for the use of the computer program, provided that:
 - (i) the adaptation remains within the limits of the purpose for which consent for use of the computer program was initially granted; and
 - (ii) the adapted copy of the computer program must be destroyed upon

expiration of the right to use the computer program;

- (e) to analyse a Work, or make excerpts or quotations therefrom, for the purpose of criticism, discussion or information provided that the source and the name of the Author are quoted when doing so;
 - (f) to reproduce parts of a Work for use in legal or administrative proceedings, to the extent required by such proceedings, provided that the source and the name of the Author are quoted when doing so;
 - (g) to reproduce extracts from a Work, for teaching purposes in educational institutions, provided that such reproduction is:
 - (i) within reasonable limits and does not go beyond its educational purpose; and
 - (ii) the name of the Author and the title of the Work are mentioned on each copy whenever possible and practical;
 - (h) to perform a Work, play a Sound Recording, or to show an Audio Visual Work before an audience consisting of teachers, students and others at an educational institution, provided that it is made:
 - (i) by a teacher or students in the course of the educational activities of the institution; or
 - (ii) at the educational institution by any person for teaching purposes;
 - (i) to make a single copy of the Work, through an intermediary, with no intention of direct or indirect financial gain, and provided that:
 - (i) where the reproduced Work is a published article, a short Work or an extract of a Work, or where the aim of reproduction is to satisfy the needs of a natural person, the copy will be used only for study or research purposes, and that a single copy is made on each occasion when doing so;
 - (ii) where the reproduction is made with the aim of preserving the original copy, or to replace a lost, destroyed or invalid copy and it was impossible to obtain a substitute copy under reasonable circumstances; and
 - (iii) where it is a reproduction of a Work during a digital transmission of the Work, or in the course of a process of reception of a digitally stored Work, within the normal operation of the device used by an authorised person.
- (2) Notwithstanding section 43(1), an Author, or his legal successor may, after the publication of a Work, prevent third parties from carrying out any of the following acts without his authorisation:
- (a) reproduction or copying a Work of fine, applied or plastic art, unless it is displayed in a public place, or is an architectural Work, if the reproduction of a Work is not the main goal;
 - (b) reproduction or copying of all or a substantial part of the notes of a musical Work; and
 - (c) reproduction or copying of all or a substantial part of a Database or computer program.

- (3) Without prejudice to the moral rights of an Author under these Regulations, the Author or his legal successor may not prevent newspapers, periodicals or Broadcasting Organisations, in as much as justified by their aims, from doing the following:
- (a) publishing excerpts from a Work which were legally made available to the public, and his published articles on topical issues of concern to the public opinion, unless the Author has prohibited such publication when publishing the Work, and provided that the source, the name of the Author and the title of the Work were mentioned;
 - (b) publishing speeches, lectures, opinions or statements delivered in public sessions of the parliament, legislative or administrative bodies or scientific, literary, artistic, political, social or religious meetings, including statements delivered during public court proceedings, provided that the Author, or his legal successors, will have the right to make collections of such Works, for which he may be entitled to claim authorship; or
 - (c) publication of extracts of an audio, visual or an Audio Visual Work made available to the public in the course of covering current events, provided that Author, or his legal successors, will retain the exclusive right to compile any of those Works into volumes attributed to him.
- (4) The restrictions on economic rights of the Author provided in this section also applies to a Related Rights Holder.

44. Collection societies

- (1) A copyright holder or Related Right Holder may allow his copyright and related rights pursuant to this section to a collection society to:
- (a) manage such rights; or
 - (b) licence other persons to exercise those rights.
- (2) Contracts concluded with a collection society pursuant to section 44(1) may be considered as part of civil and commercial transactions in the AIFC.
- (3) A collection society is not permitted to discriminate as to whom a licence for the exploitation of a Work may be granted to.
- (4) A collection society must not be considered as discriminatory when granting a licence to a person for a reduced fee where the Work is to be used:
- (a) at a public event featuring a live show by Performing Artists; or
 - (b) in connection with an educational or cultural event that does not generate any direct or indirect income.
- (5) A collection society must:
- (a) obtain an accreditation/ authorisation from the Ministry.
 - (b) keep a register of its members containing details of:
 - (i) their capacity; and
 - (ii) any work for which they have contracted with the collection society, and the details of the type of work provided, the duration thereof and the agreed price;

- (c) notify the Ministry of any change in the details of its register;
- (d) comply with all relevant decisions issued by the Ministry;
- (e) comply with National Copyright Law and all relevant legislation of Kazakhstan.

CHAPTER 6: COPYRIGHT INFRINGEMENTS

45. Prohibited Acts

- (1) The following is prohibited in the AIFC and any person doing business or operating in or from the AIFC that fails to comply with this section subject to a fine:
 - (a) selling, renting or putting in circulation under any form, a Work protected under these Regulations, without prior written authorisation from the Author, copyright holder or a Related Right Holder;
 - (b) knowingly copying, selling, offering for sale, circulating or renting out, a Work protected under these Regulations;
 - (c) knowingly imitating, selling, offering for sale or circulating, renting out or exporting Work published in a foreign country;
 - (d) disseminating, through computer networks, the Internet, information networks, communication networks and other means of technology, a Work protected under these Regulations, without prior written authorisation from the Author or a Related Right Holder;
 - (e) manufacturing, assembling or importing for the purpose of sale or renting any device, tool or implement especially designed or made to circumvent a technical means of protection, such as encryption, used by an Author or a Related Right Holder;
 - (f) removing, neutralising or disabling any technical protection device used by an Author or a Related Right Holder; or
 - (g) infringing any moral right, economic right, copyright or related rights provided for in these Regulations.

46. Protection of copyright

- (1) Protection of the copyright may be implemented through:
 - (a) recognition of rights;
 - (b) restoration of the situation that existed before the violation of the right;
 - (c) the suppression of actions that violate the right or create a threat of its violation;
 - (d) compensation for losses, including lost profits; and
 - (e) recovery of income received by the violator as a result of violation of Copyright and Related Rights.
- (2) The amount of the compensation indicated in section 46 (1)(d) and (e) will be calculated based on gross profit and income of the infringer received during the violation.

PART 4: TRADEMARKS AND TRADE NAMES

CHAPTER 1: GENERAL RULES ON TRADEMARKS

47. Recognition of Trademarks Registered in the Republic of Kazakhstan

A Trademark registered under the National Trademark Law and international conventions of the Republic of Kazakhstan is recognised for purposes of these Regulations and is valid and enforceable in the AIFC.

48. Marks that cannot be protected

Unless it was registered as a Trademark under the National Trademark Law, the following will not be recognised in the AIFC as a Trademark, or any part thereof:

- (a) a mark which is not distinctive;
- (b) a mark consisting of a generic name used in relation to goods, products or services;
- (c) a mark that contains one or more familiar drawings or common pictures of goods;
- (d) a mark that is contrary to the public order or morality of the Republic of Kazakhstan;
- (e) a mark containing the insignia of the Republic of Kazakhstan, any governmental body in the Republic of Kazakhstan, flags and other symbols pertaining to the Republic of Kazakhstan (or any administrative unit thereof), national or international organisations (or any agencies thereof), or any foreign country except with the authorisation of those parties, as well as any imitation of such insignia, flags or symbols;
- (f) a symbol of the Red Crescent or the Red Cross, or any other similar symbol or mark which is an imitation thereof;
- (g) a mark which is identical or similar to a symbol of a purely religious nature;
- (h) a geographical name, where the use thereof may cause confusion as to the origin or source of the goods or services;
- (i) a name, surname, photograph or emblem of a third party, unless his, or his legal successors', prior consent has been obtained.
- (j) a mark containing a title of honour, where the person applying for registration cannot prove that he is lawfully entitled to its use;
- (k) a mark which may mislead the public or which is identical or confusingly similar to a mark or marks of another party, even though not registered, or which contains false information as to the origin or the source of products or services, or about their other characteristics, as well as a mark containing an imaginary, imitated or forged trade name;
- (l) a mark owned by a person with whom it is illegal to deal with under National Laws or the Acting Law of the AIFC.
- (m) a mark which, if used for certain classes of products or services, would diminish the value of other products or services distinguished by such mark;
- (n) a mark containing the word or expression: "Patent", "Patented", "registered", "registered Design", "copyright" or "Imitation is forgery" or similar words and expressions;
- (o) a mark containing national and foreign decorations, coins and paper currency; or

- (p) a mark that constitutes a translation or imitation of a well-known mark or the main part thereof or other previously registered mark, where the registration would confuse consumers as to the identity or origin of the goods or services that are distinguished by the mark or similar goods or services.

49. Well-known trademarks

- (1) Although not registered as a Trademark in the Republic of Kazakhstan, a well-known trademark of international reputation that surpasses the country of its origin and acquires fame in a relevant sector among consumers in the Republic of Kazakhstan will enjoy protection under these Regulations in the AIFC.
- (2) In determining whether a trademark is well-known for purposes of section 49(1), any of the following may be taken into account:
 - (a) the degree of public knowledge or recognition in a relevant sector;
 - (b) the duration, extent and geographical area of use;
 - (c) the duration, extent and geographical area of any promotion of the goods or services to which the trademark applies;
 - (d) the duration and geographical area of any registrations, or any applications for registrations, to the extent that they reflect use or recognition of the trademark;
 - (e) the record of successful enforcement of rights in the trademark, in particular, the extent to which the trademark was recognised as well known by competent authorities; or
 - (f) the commercial value associated with the trademark.
- (3) No person may use a mark that is identical or confusingly similar to a well-known trademark in the AIFC.
- (4) The owner of a well-known trademark will have the right to prevent any party from using in the AIFC identical or confusingly similar marks, to distinguish goods or services that are not identical to those in respect of which, the well-known trademark is registered, if:
 - (a) the use of the mark indicates a possible connection between goods or services and the owner of the well-known trademark; and
 - (b) the interests of the owner of the well-known trademark are likely to be damaged by such use.
- (5) The owner of a well-known trademark has the right, to prevent another person's commercial use of a mark or trade name in the AIFC, if such use began after a well-known trademark has become well-known and the use of the mark or trade name causes dilution of the distinctive quality of the well-known trademark.

50. Rights of Trademark owner

The exclusive rights conferred to the owner of a Trademark in the Republic of Kazakhstan is to exclude others from the import, export, use, sale, offer for sale, advertising, transit, distribution or use in any manner of goods or services distinguished by an identical or confusingly similar Trademark with respect to homogenous goods and (or) services and will be recognised and enforced as such under these Regulations.

51. Licence

- (1) The owner of a Trademark may, by a written instrument, grant a licence to any person to use the Trademark for all or part of the goods or services in respect of which the Trademark is registered.
- (2) The owner of a Trademark may also use it contemporaneously with the licensee, unless otherwise agreed in writing.
- (3) A licensee of a Trademark may not assign its rights to any other party, or grant a sub-licence in respect thereof, unless expressly allowed by the terms of the licence agreement.
- (4) Any act of a licensee in contravention to the grants of a licence agreement constitutes a Trademark infringement under these Regulations.
- (5) Unless the licence agreement provides otherwise, a licensee of a Trademark is entitled to take infringement proceedings in respect of any matter which affects the licensee's interests.
- (6) If a Trademark owner refuses to act in accordance with a request by a licensee, under section 51(5), or fails to do so within 2 months of being called upon to do so, the licensee may bring such proceedings in his own name, as if he were the registered owner of the Trademark.

CHAPTER 2: TRADEMARK INFRINGEMENTS

52. Prohibited Acts that would constitute infringement

- (1) The following acts will be considered infringement in relation to Trademarks in the AIFC:
 - (a) counterfeiting or imitating a registered Trademark, or a well-known Trademark, with the intent or effect of misleading the public;
 - (b) unlawfully using a registered Trademark, or well-known Trademark, of another person without such person's consent;
 - (c) unlawfully using a Trademark that is confusingly similar to a registered Trademark with the intent to, or effect of, causing confusion and misleading the public;
 - (d) falsely claiming that a mark is registered as a Trademark, or a well-known Trademark, or making any statement with the intent or the effect of leading others to such conclusion.
- (2) In the event of an invalidity or cancellation defence raised in an infringement proceeding, and subject to clear and solid grounds for such defence, the infringement

proceedings may be suspended, if the defendant submitted evidence that an action to cancel the subject Trademark registration was filed before the competent court. In such event, the infringement proceeding may be suspended until an order is issued by the competent court in the cancellation claim. If the defendant failed to initiate action before the competent court for cancellation of the subject Trademark, the infringement proceeding will continue.

53. Acts that are not prohibited in relation to Trademarks

A registered Trademark, or a well-known Trademark, is not infringed in the AIFC if it is used:

- (a) to indicate the intended purpose of the goods or a service related thereto, provided that such use is necessary and in good faith;
- (b) in news reporting, news commentary or parody; or
- (c) by another person in comparative commercial advertising or promotion to identify competing goods or services, provided that such use is in good faith and in accordance to honest practices in commerce.

CHAPTER 3: TRADE NAMES

54. Trade Names

A Trade Name of a person registered, incorporated, licenced or permitted to operate in the AIFC must be in compliance with the provisions of the Legislation Administered by the AIFC Companies Registrar.

55. Conflicts between Trademarks and Trade Names

The Commissioner of Intellectual Property has the right to issue a directive to resolve any conflict between a Trade Name registered in the AIFC and a Trademark, or a well-known Trademark, which is likely to damage the interests of a person, cause confusion or mislead the public.

PART 5: TRADE SECRETS

56. General Conditions for Trade Secrets

A Trade Secret will be protected under these Regulations when it meets each of the following criteria:

- (a) the information derives actual or potential economic value from not being generally known to other persons who may obtain economic value from its disclosure or use; and
- (b) the person lawfully in control of the information has taken reasonable measures to keep the information a secret.

57. Rights of Trade Secrets Owner

- (1) The owner of a Trade Secret will at all times:
 - (a) be deemed to be the person lawfully in control of the Trade Secret, subject to section 57(2); and
 - (b) have the right to licence, transfer, share, or assign lawful control of the Trade Secret to any person in return for a consideration or otherwise.
- (2) A person lawfully in control of the Trade Secret is every person having the right of its disclosure, use and storage.
- (3) A person lawfully in control of a Trade Secret has the right to prevent any person from misappropriation of the Trade Secret, and will have the right to claim compensation for any damage caused due to misappropriation thereof by any person.

58. Misappropriation of Trade Secrets

The following acts constitutes misappropriation of a Trade Secret and prohibited under these Regulations:

- (a) the acquisition of a Trade Secret by Improper Means;
- (b) the disclosure or use of a Trade Secret by a person who used Improper Means to acquire knowledge of the Trade Secret;
- (c) the acquisition, disclosure or use of a Trade Secret by a person who at the relevant time knows, or ought to have known, that the knowledge of the Trade Secret was:
 - (i) derived from or through a person who had utilised Improper Means to acquire it;
 - (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (iii) derived from or through a person who owed a duty, towards the person lawfully in control of the Trade Secret, to maintain its secrecy or limit its use.
- (d) the disclosure or use of a Trade Secret by a person who knows, or ought to have known, that it was a Trade Secret and that knowledge of it had been acquired by accident or by mistake.

59. Acts that are not considered misappropriation of Trade Secrets

The following acts does not constitute an act of misappropriation of a Trade Secret:

- (a) the discovery, acquisition or use of information from public sources, or known and available information;
- (b) the discovery, acquisition or use of information as a result of scientific research, innovation, invention, development, modification and improvement exerted by persons independent of the person lawfully in control of the Trade Secret;
- (c) the discovery of information pursuant to a licence, transfer, sharing, or assignment of the information; or
- (d) the discovery of information through reverse engineering.

PART 6: COMMISSIONER OF INTELLECTUAL PROPERTY

CHAPTER 1: CONSTITUTION, POWERS AND FUNCTIONS OF THE COMMISSIONER

60. Appointment of the Commissioner of Intellectual Property

- (1) The Governor appoints a person to be the Commissioner of Intellectual Property who is appropriately experienced and qualified.
- (2) The Governor consults with the AIFC Authority Board of Directors prior to appointing, re-appointing or removal of the Commissioner of Intellectual Property.
- (3) The Commissioner of Intellectual Property is appointed for a specified period of time not exceeding 3 years, and may be re-appointed provided that such period may not extend beyond the day when the Commissioner of Intellectual Property turns 75 years of age.

61. Removal of the Commissioner of Intellectual Property

The Commissioner of Intellectual Property may be removed from office by written notice issued by the Governor for reasons of inability, incapacity or misbehaviour.

62. Resignation of the Commissioner of Intellectual Property

The Commissioner of Intellectual Property may at any time resign as the Commissioner of Intellectual Property by giving 3 months written notice addressed to the Governor.

63. Powers, Functions and Objectives of the Commissioner of Intellectual Property

- (1) The Commissioner of Intellectual Property has such powers, duties and functions as conferred on him under these Regulations and any Rules made under these Regulations and may exercise such powers and perform such functions in pursuit of the objectives of these Regulations and the Rules.
- (2) In performing his functions and exercising his powers, the Commissioner of Intellectual Property pursues the following objectives:
 - (a) to promote greater awareness and public understanding of intellectual property and the requirements of these Regulations and the Rules in the AIFC; and
 - (b) to promote good practices and observance of the requirements of these Regulations and the Rules by the registered entities in the AIFC.
- (3) Without limiting the generality of section 63(1), such powers and functions of the Commissioner of Intellectual Property includes:
 - (a) receiving and deciding on all complaints or disputes filed in connection with these Regulations in the AIFC, and imposing fines for non-compliance with these Regulations and any related Rules;
 - (b) coordinating with the authorities of the Republic of Kazakhstan on facilitating and promoting protection of intellectual property rights for AIFC persons;
 - (c) preparing or causing to be prepared in a timely and efficient manner:
 - (i) draft Rules;
 - (ii) draft standards or codes of practice; and

- (iii) guidance; reasonably required to enable him to perform his statutory functions;
 - (d) submitting such draft Rules, draft standards, and draft codes of practice to the AIFC Authority Board of Directors for approval and advising it of any guidance that is issued;
 - (e) making recommendations to the AIFC Authority Board of Directors with respect to fees, procedures and executive regulations for the Commissioner of Intellectual Property, which the AIFC Authority Board of Directors may promulgate;
 - (f) employing and appointing persons on such terms as he considers appropriate to assist him in the exercise of his powers and performance of his functions;
 - (g) where he considers it appropriate to do so, delegating any of his functions and powers; as may more efficiently and effectively be performed by officers and employees of the Commissioner of Intellectual Property, and with the approval of the AIFC Authority Board of Directors, either generally or in relation to any particular matter, to any other person.
 - (h) prescribing forms to be used for any of the purposes of these Regulations or any legislation administered by the Commissioner of Intellectual Property;
 - (i) acquiring, holding and disposing of property of any description;
 - (j) making contracts and other agreements;
 - (k) with the prior consent of the Governor and Board of Directors of the AIFC Authority, borrowing monies and providing security for such borrowings;
 - (l) exercising and performing such other powers and functions as may be delegated to the Commissioner of Intellectual Property by the Board of Directors of the AIFC Authority pursuant to the provisions of these Regulations; and
 - (m) assisting in complying with the Republic of Kazakhstan' obligations under any international treaty or other agreement to which the Republic of Kazakhstan is a party through the exercise of his powers and functions.
- (4) The Commissioner of Intellectual Property has power to do whatever he deems necessary, for or in connection with, or reasonably incidental to, the performance of his functions.
- (5) In exercising his powers and performing his functions, the Commissioner of Intellectual Property acts in an independent matter.

64. Power to adopt rules etc.

- (1) The AIFC Authority Board of Directors, after consultation with the Commissioner of Intellectual Property, may make Rules under these Regulations in respect of:
 - (a) any matters related to the application of these Regulations; and
 - (b) as proposed by the Commissioner of Intellectual Property under section 64(2).]
- (2) The Commissioner of Intellectual Property may propose Regulations to the AIFC Authority Board of Directors in respect of any matter that facilitates the administration and application of these Regulations or furthers the purposes of the Regulations,

including but not limited to:

- (a) the development and publication of information to AIFC entities and their employees concerning the application and interpretation of the Regulations and Rules;
 - (b) procedures for initiating and filing complaints;
 - (c) procedures for issuance of decisions in complaints;
 - (d) fines;
 - (e) fees; and
 - (f) forms, procedures and requirements under these Regulations.
- (3) Where the AIFC Authority Board of Directors issues a standard or code of practice, it may incorporate such a standard or code into the Rules by reference and in such circumstances, except to the extent that the Rules otherwise provide, a person who is subject to the provisions of any such standard or code must comply with such provisions as if they were provisions of the Rules.

CHAPTER 2: COMMISSIONER OF INTELLECTUAL PROPERTY FUNDING

65. Funding

- (1) In respect of each financial year of the Commissioner of Intellectual Property, the AIFC Authority will ensure that there is a provision of sufficient financial resources to enable the Commissioner of Intellectual Property to adequately perform its functions and exercise its powers in accordance with the Regulations and Rules.
- (2) The AIFC Authority Board of Directors may make Rules requiring the payment to the Commissioner of Intellectual Property of such fees as may be prescribed in respect of the performance by the Commissioner of Intellectual Property of such functions under these Regulations as may be specified in the Rules; including fees for filing application to act on disputes in accordance with these Regulations.
- (3) The Commissioner of Intellectual Property may charge a fee for any services provided by the Commissioner of Intellectual Property.
- (4) Where a fee is provided for or charged under section 65(3) for the performance of an act or duty by the Commissioner of Intellectual Property, no action need be taken by the Commissioner of Intellectual Property until the fee is paid.

66. Annual Report

- (1) As soon as practicable after 1 January in each year, the Commissioner of Intellectual Property delivers to the Governor, a report on the management of the administrative affairs of the Commissioner of Intellectual Property, for the previous year.
- (2) Such report must give a true and fair view of the state of its regulatory operations in the AIFC, and financial statements of the Commissioner of Intellectual Property, as at the end of the relevant financial year.

PART 7: REMEDIES AND SANCTIONS

67. Directions

- (1) If the Commissioner of Intellectual Property is satisfied, after duly conducting all reasonable and necessary inspections and investigations that a person has violated or is in violation of any of the provisions of these Regulations and without prejudice to any more severe punishment stipulated under any other law, he may issue a direction with any of the following measures:
 - (a) order the violator to refrain from the violation and carry out all necessary acts to abide by the Regulations;
 - (b) request the AIFC Registrar of Companies to temporarily suspend the activity of the relevant AIFC Participant in violation of these Regulations;
 - (c) order confiscation of all materials, goods, tools, machines, equipment, signs, advertisements related to the violation and order the transfer/storage and/or destruction of the same at the expense of the violator; or
 - (d) impose a fine of not less than U.S. \$5,000 and not more than U.S. \$50,000 in accordance with Schedule 3.
- (2) In the event of repetition of any infringement, the Commissioner of Intellectual Property may request the AIFC Registrar of Companies to strike off the AIFC Participant, and/or impose up to double the fines stipulated in Schedule 3.
- (3) The Commissioner of Intellectual Property must carry out, as a minimum, due process by means of undertaking all the reasonable and necessary inspections and investigations to be adequately satisfied to establish the contravention with the Regulations or Rules made for the purposes of these Regulations.
- (4) A direction issued under section 67(1) must be in writing and must contain:
 - (a) a statement of the contravention of the Regulations or Rules which the Commissioner of Intellectual Property is satisfied is being or has been committed detailing the legal provisions relied on by the Commissioner of Intellectual Property in reaching its decision.; and
 - (b) a statement to the effect that the aggrieved party may seek a review by the Court of the decision of the Commissioner of Intellectual Property to issue the direction.
- (5) If the violator failed to comply with the direction, the Commissioner of Intellectual Property may apply to the Court for one or more of the following orders;
 - (a) an order directing the violator to comply with the direction or any provision of the Regulations or Rules or of any legislation administered by the Commissioner of Intellectual Property relevant to the issue of the direction;
 - (b) an order directing the violator to pay any costs incurred by the Commissioner of Intellectual property or other person relating to the issue of the direction by the Commissioner of Intellectual property or the contravention of such Regulations or legislation relevant to the issue of the direction; or
 - (c) any other order that the Court considers appropriate.

68. Actions with the Court

- (1) [Notwithstanding the provision of 67 of these Regulations] any injured party due to the violation of these Regulations have the right to resort to the Court to seek injunctions and damages.
- (2) In assessing the damages for infringement, the Court may take into consideration the loss, including future loss that is established with a reasonable degree of certainty; the value of the subject intellectual property right infringed and the loss of an opportunity in proportion to the probability of its occurrence.
- (3) Actions filed under this Part of these Regulations must be brought no more than 6 years after the misappropriation is discovered or reasonably have been discovered by the incurred party.

69. Non-Conflict with Court

- (1) The Commissioner of Intellectual Property has jurisdiction over implementation and execution of these Regulations and any legislation issued for the purpose of these Regulations with respect to administrative penalties. Decisions issued by the Commissioner of Intellectual Property may be appealed to the AIFC Court 21 days from date of notification to the concerned parties, failing which the decisions become final and enforceable.
- (2) The AIFC Court has jurisdiction to issue injunction orders and to award damages resulting from the violation of these Regulations.

SCHEDULE 1: INTERPRETATION

1. Definitions for these Regulations

In these Regulations, unless the contrary intention appears:

Acting Law of the AIFC has the meaning given by article 4 of the Constitutional Statute.

Acting Law of Kazakhstan means a set of regulatory legal acts adopted by Kazakhstani public authorities in the established manner.

AFSA means the Astana Financial Services Authority.

AIFC means the Astana International Financial Centre.

AIFC Authority means the Astana International Financial Centre Authority.

AIFC Bodies has the meaning given by article 9 of the Constitutional Statute and the document entitled *The Structure of the Bodies of the Astana International Financial Centre* adopted by the Management Council on 26 May 2016.

AIFC Participants has the meaning given by article 1(5) of the Constitutional Statute.

Audio-visual Work means a work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied. Such works include, among others, TV programmes, films and video games.

Author means the person who creates a Work or whose name appears on the Work or to whom the Work is attributed at the time of publication, unless proven otherwise. An author may also be a person who publishes a Work anonymously or under a pseudonym or by any other means provided there is no doubt as to the identity of the author. In the case of doubt, the publisher or producer of the Work, as a natural person or corporate entity, may exercise the rights of the author on his behalf until such time as the identity of the author is established.

Broadcasting Organization means an entity that carries out radio or television Broadcasting or radio and television Broadcasting.

Broadcasting means wireless Broadcasting over radio, television, or both, of a Work, performance or sound recording or a live or recorded program, to the public. This includes secondary transmission and satellite Broadcasting.

Co-Author means an Author contributing to a Work of Co-Authorship.

Collective Work means a work created by more than one Author under the direction of a person or corporate entity who/which would oversee the publication of the Work in his/its name. The Authors would individually contribute to the common goal envisioned by that person such that it would be impossible to separate or allocate any distinction to the Work of each Author.

Collection Society means a society authorised by the Ministry pursuant to the Law of the Republic of Kazakhstan dated 10 June 1996 On Copyright and the related rights and the Order of the Minister of Justice of the Republic of Kazakhstan dated 27 August 2009 № 117 On approval of the form of the accreditation certificate of the organisation managing property rights on a collective basis, and which provides management of copyright and neighboring rights on behalf of its holders.

Constitutional Statute means Constitutional Statute of the Republic of Kazakhstan dated 7

December 2015 entitled *On the Astana International Financial Centre*.

Court means the Astana International Financial Centre Court.

Database means a collection of independent works, data or other materials, which are arranged in a systematic or methodical way, and are individually accessible by electronic or other means.

Derivative Work means a work which is built upon an underlying Work provided that its arrangement or presentation makes an original contribution in the process of transforming the underlying Work in order to be entitled to a new and separate copyright.

Drawing means a design made up of a combination of visual elements (artistic form).

Governor means the Governor of the Astana International Financial Centre.

Hallmarks means engraved marks.

Industrial Design means any innovative three-dimensional shape that can be used in industry or craft and in respect of which the Ministry has issued a deed of protection.

Industrial Drawing means any innovative creation of lines and colors which generate a product that can be used in any industry or craft and in respect of which the Ministry has issued a deed of protection.

Industrial Property Subject Matter means Invention and Utility model.

Invention means any innovative idea relating to a product, a method of manufacture, or an application of a known method of manufacture leading to a practical solution to a technological problem.

Improper Means has the meaning that includes fraud, forgery, theft, bribery, misrepresentation, breach or inducement of a breach of a legal or contractual duty to maintain secrecy, or espionage through electronic or other means.

Management Council means the Management Council of the Astana International Financial Centre.

Management Council Resolution on AIFC Bodies means The Structure of the Bodies of the Astana International Financial Centre, adopted by resolution of the Management Council on 26 May 2016, as amended by resolution of the Management Council, The Amendments and supplementations to the Structure of the Bodies of the Astana International Financial Centre, adopted on 9 October 2017.

Ministry means Ministry of Justice of the Republic of Kazakhstan.

Patent means a right pursuant to issuance of the deed of protection granted for an invention by the Ministry.

Person means a person or corporate entity.

Performing Artists means actors, singers, musicians, dancers and other persons who deliver a speech, sing, play (music) or give any kind of performance in the context of a literary or artistic work or otherwise which is protected under these Regulations or is public property.

Producer of Audio Visual Work means a person or corporate entity who/which provides the means necessary to accomplish an audiovisual Work and assumes the responsibility of accomplishing the Work.

Publication means presenting to the public a Work, Sound Recording, Broadcast or

any performance, however this is done.

Public Performance means a performance conducted before an audience such as a stage play a presentation or performance of an artistic work, a display of audio or visual work, a musical performance, or a recital. The performance could be either live or recorded.

Public Broadcasting means wireless or non-wireless transmission of a Work, sound recording or broadcast to public outside of a normal circle of family and its social acquaintances capable of receiving the transmission by broadcasting alone beyond the place from which it is sent, whether they receive it in the same place or in separate places and at the same time or at different times.

Regulations means the AIFC Intellectual Property Regulations 2024.

Reproduction means making one or more copies of a Work, sound recording, broadcast material or performance of any description or means including Work loaded and stored electronically both permanently and temporarily, whatever the method or device used to carry out the reproduction.

Rules means rules adopted by the Board of Directors of the AIFC Authority under section 61 (Power to adopt rules etc.).

Related Rights Holders means performing artists, producers of sound recordings, broadcasting organisations as defined in the Regulations.

Record Producer means a natural person or corporate entity who/ which does a first time recording for a performing artist or records other audio material.

Sound Recordings means works that result from the fixation of a series of sounds making up a specific performance, regardless of the method of fixation and the nature of the material objects in which they are embodied. This includes fixing audio with video to create an audiovisual work absent contrary agreement.

Schedule means a schedule to the Regulations.

Symbol means a single visual entity.

Trademark means any signs or combination of signs or names, words, signatures, letters, numbers, Drawings, Symbols, addresses, Hallmarks, stamps, pictures, vignettes, notices, packages, colour or combination of colours, or any other mark or combination of marks having a distinctive form and used or intended to be used to distinguish goods, products or services. Sound and smell can be considered as trademarks.

Trade Name means every name used in trade to designate particular business and registered with the competent authority.

Trade Secret means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, programs, devices, formulas, designs, prototypes, methods, techniques, processes, procedures, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialised physically, electronically, graphically, photographically, or in writing.

Utility Model means a right pursuant to the issuance of the deed of protection granted for an invention by Ministry where such inventions do not involve an inventive step sufficient for the grant of deed of patent.

Work means any original work in the areas of literature, arts or science, whatever its description, form of conveyance and expression, significance or purpose

Work of Joint Authorship means a Work where more than 1 person contributes in the creation of a Work in such a manner that it is impossible to distinguish the contribution of each person in the Work.

Work of Co- Authorship means a Work where more than 1 person contributes in the production of a Work, where the contribution of each person belongs to a different category of production or art.

SCHEDULE 2: NATIONAL LAWS

- (1) These Regulations have been drafted taking into consideration:
- (a) Civil Code of the Republic of Kazakhstan (Special part).
 - (b) Patent law of the Republic of Kazakhstan.
 - (c) The Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Appellations of Origin of Goods".
 - (d) The Law of the Republic of Kazakhstan "On the Legal Protection of Integrated Circuit Topologies".
 - (e) The Law "On Complex Business License" (franchising)
 - (f) The Law of the Republic of Kazakhstan "On the Protection of Selection Achievements".
 - (g) The Law "On approval of the Rules for registration of the transfer of the exclusive right, the granting of the right to use a trademark in the State Register of Trademarks".
 - (h) The Order of the Minister of Justice of the Republic of Kazakhstan "On approval of the Rules for registration of the transfer of the exclusive right, the granting of the right to use industrial property, open or compulsory license in relevant state registers"
 - (i) The Order of the Minister of Justice of the Republic of Kazakhstan "On approval of the Rules for registration of the transfer of the exclusive right, the granting of the right to use a selection achievement, open or compulsory license in the State Register of Selection Achievements.
 - (j) The Order of the Minister of Justice of the Republic of Kazakhstan "On approval of the Rules for registration of the transfer of the exclusive right, the granting of the right to use topologies in the State Register of Integrated Circuit Topologies"
 - (k) On the ratification of the Agreement on Common Principles of Regulation in the Field of Protection and Protection of Intellectual Property Rights.
 - (l) On the accession of the Republic of Kazakhstan to the Berne Convention for the Protection of Literary and Artistic Works.
 - (m) On approval of the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Azerbaijan on cooperation in the field of copyright and related rights protection.
 - (n) On the ratification of the International Convention on the Protection of the Rights of Performers, Producers of Phonograms and Broadcasting Organizations.
 - (o) Paris Convention for the Protection of Industrial Property.
 - (p) Madrid Agreement on the International Registration of Marks.
 - (q) On the accession of the Republic of Kazakhstan to the Treaty of the World Intellectual Property Organization on Performances and Phonograms.
 - (r) Annex 1c agreement on trade-related aspects of intellectual property rights.

SCHEDULE 3 FINES

Section	Contravention	Maximum Fine (U.S.)
10(1)(a)	exploiting in or from the AIFC, for industrial or commercial purposes, an Industrial Property Subject Matter protected by a Patent	\$35,000
10(1)(b)	using, manufacturing, selling, offering for sale in or from the AIFC, or importing into the AIFC, or possessing and storage in the AIFC, with the intention to trade, products or processes protected by a Patent, or products obtained using processes protected by a Patent.	\$35,000
10(1)(c)	inducing another person to infringe a Patent in or from the AIFC, even if the inducer is located outside the AIFC	\$20,000
10(1)(d)	cooperating with another party to an act of infringement of a Patent in or from the AIFC, even if the other party is located outside the AIFC	\$20,000
10(5)	Marking on products, or any promotions thereto, any indication that may mislead the public in believing that a person holds a Patent, Utility Certificate or Industrial Design thereto, when in effect he does not.	\$10,000
45(1)(a)	Selling, renting or putting in circulation in any form, a Work protected by copyright under these Regulations, without a prior written authorisation from the Author, copyright holder or the Related Right Holder.	\$25,000
45(1)(b)	Knowingly copying, selling, offering for sale, circulation or rental, a Work protected by copyright under these Regulations.	\$25,000
45(1)(c)	Knowingly imitating within the AIFC, selling, offering for sale or circulation, renting or exporting Work published in a foreign country.	\$25,000
45(1)(d)	Disseminating through computer networks, Internet, information networks, communication networks and other means of technology of a Work protected under these Regulations without a prior written authorisation from the Author or the owner of the related right.	\$40,000
45(1)(e)	Manufacturing, assembling or importing for the purpose of sale or rent any device, tool or implement especially designed or made to circumvent technical protection means, such as encryption or the like, used by the Author or the owner of the related right.	\$40,000
45(1)(f)	Removing, neutralising or disabling, in bad faith, any technical protection device used by the Author or the owner of the related rights.	\$40,000
45(1)(g)	Infringing any moral right, copyright or related rights provided for in these Regulations.	\$20,000
49(3)	Using a well-known Trademark without authorisation of the owner of the well-known Trademark.	\$15,000
51(4)	Using a Trademark that may cause dilution to a well-known Trademark.	\$15,000
41(4)	Use of a Trademark by licensee in contravention to a licence agreement.	\$30,000
52(1)(a)	Counterfeiting or imitating a well-known Trademark or a registered Trademark with the intent or effect of misleading the public.	\$30,000
52(1)(b)	Unlawfully using a registered Trademark of another party without such party's consent.	\$25,000
52(1)(c)	Unlawfully using a Trademark that is confusingly similar to a registered Trademark with the intent to or effect of causing confusion and misleading the public.	\$25,000
52(1)(d)	Falsely claiming that a Trademark is registered or making any statement with the intent or the effect of leading others to such conclusion.	\$5,000

54	Failure to display the Trade Name as per the Regulations requirement.	\$5,000
55	Failing to comply with order to change a Trade Name due to a conflict with a Trademark	\$10,000
58(a)	Acquisition of a Trade Secret of another by a person who knows or has reason to know that the Trade Secret was acquired by Improper Means.	\$15,000
58(b)	Disclosure or use of a Trade Secret of another by a person who used Improper Means to acquire knowledge of the Trade Secret.	\$20,000
58(c)	Disclosure or use of a Trade Secret of another by a person who at the time of disclosure or use knew or had reason to know that his knowledge of the Trade Secret was: <ul style="list-style-type: none"> (i) derived from or through a person who had utilised Improper Means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or; (iii) derived from or through a person who owed a duty, towards the person lawfully in control of such Trade Secret, to maintain its secrecy or limit its use. 	\$30,000
58(d)	Disclosure or use of a Trade Secret of another by a person who before a material change of his/her position, knew or had reason to know that it was a Trade Secret and that knowledge of it had been acquired by accident or mistake.	\$25,000