



Law of Astana International Financial Centre

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I. Introduction¹

Kazakhstan has sought to position itself as the “Dubai of Central Asia” since the advent of the so-called “Dubai model” over a decade ago, with its capital Astana figuring as a global financial hub connecting Western Europe with Eastern Asia and serving as a gateway to China.

In May 2015, President Nursultan Nazarbayev issued a decree pursuant to the “100 Concrete Steps Plan” (a national development plan intended to achieve the country’s admission to the top 30 developed countries by 2050) that established the Astana International Financial Centre (the “AIFC”) free economic zone for the purposes of cultivating foreign direct investment, developing the local capital markets and facilitating their integration into the international markets, and developing the local banking, insurance, and Islamic financing sectors.

The AIFC has entered into cooperation agreements with Visa, NASDAQ, and the Shanghai Stock Exchange in order to deploy state-of-the-art technology infrastructure that enables capital market, asset management, private banking, green finance, Islamic finance, and FinTech transactions. The AIFC will have its own stock exchange, which is intended to serve as the privatisation platform for state-owned enterprises held by the Kazakh sovereign wealth fund, Samruk Kazyna, and the national holding company, Baiterek, with auctioned companies including Kazakhstan’s national oil & gas company (KazMunaiGas), national energy company (Samruk-Energo), national atomic energy company (Kazatomprom), national railroad company (Kazakhstan Temir Zholy), and national postal company (KazPost).

The AIFC is intended to serve as a gateway to the Eurasian Economic Union (comprised of Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia), as well as the first port of call for China’s “Belt and Road Initiative” (the “BRI”), a multi-trillion dollar development project which aims to integrate the infrastructure and economies of Eurasia. Foreign investment appetite for local assets has been substantially whetted by the fact that Kazakhstan lies directly in the BRI’s geographic scope and

investment mandate, with the country positioned as a major beneficiary of, and transportation hub for, inbound and outbound Chinese commerce.

The Kazakh government and the National Bank of Kazakhstan have jointly adopted a development strategy for the AIFC which initially attracts the financial and technological expertise necessary to support the later phases of positioning the AIFC as a regional, and then an international, financial centre of choice by 2021.

The AIFC is located in the premises constructed for the EXPO-2017 International Specialized Exhibition, which was held in Astana from June to September 2017. The AIFC is scheduled to enter into operation in January 2018.

II. Overview of the AIFC Legal Framework

On December 7, 2015, the Constitutional Law “On Astana International Financial Centre” (the “AIFC Law”) was adopted, which defines the AIFC as a territory within the city of Astana, with limited borders and a special legal regime. The AIFC Law sets forth an independent legal framework based on the law of England and Wales and is drafted to complement the regulations of the Dubai International Financial Centre (the “DIFC”).

Pursuant to Article 9 of the AIFC Law, the AIFC will have four principal bodies:

- the AIFC Management Council (top executive body), headed by the President of Kazakhstan;
- the AIFC Authority (governing and operational body);
- the Astana Financial Services Authority (financial services regulator); and
- the AIFC Court.

According to Article 13 of the AIFC Law, the AIFC Court will be independent and separate from the judicial system of Kazakhstan and have exclusive jurisdiction over civil, employment, and financial disputes (though not over criminal or administrative offenses) arising between AIFC participants and/or the AIFC bodies. The AIFC Court will consist of the courts of first instance and the appellate courts.

The decisions of the appellate courts will be final and binding with no right of appeal to the regular Kazakh courts.

The AIFC Court will have the exclusive right of interpretation of AIFC law, and its courts' judicial determinations will be guided by AIFC Court precedent, the law of England and Wales, and the norms and standards of the leading global financial centres. The AIFC Court will maintain sitting courts on-site at the AIFC facilities, and its benches of English law-trained judges will conduct proceedings in English.

The AIFC will also host the International Arbitration Centre. Where AIFC participants contractually elect to resolve disputes extrajudicially pursuant to arbitration, AIFC International Arbitration Centre arbitrators will adjudicate the cases. Arbitral awards granted by the AIFC International Arbitration Centre will be recognised and enforced in accordance with Kazakh law. The AIFC International Arbitration Centre will be modelled on the DIFC-LCIA Arbitration Centre and will seek to incorporate international best practices.

III. Benefits of AIFC Participants

The AIFC free economic zone will offer a number of financial and administrative inducements to its participants and their owners and employees, including:

- 50-year corporate tax holiday (until January 1, 2066) on income from financial and professional services provided in the AIFC;
- 50-year tax holiday (until January 1, 2066) on capital gains from sales of securities traded on the AIFC's stock exchange;
- 50-year individual income tax holiday (until January 1, 2066) on dividend income from sales of securities traded on the AIFC's stock exchange and from sales of shares in the AIFC participants;

- 30-day visa-free entry to Kazakhstan for citizens of 35 OECD country-members (including the US, UK, Canada, France, Germany, Switzerland, and the Netherlands) and citizens of the UAE, Malaysia, Singapore, Monaco, and other countries specified from time to time by Kazakhstan;
- five-year entry visa for foreign employees (and their family members) of the AIFC and AIFC participants;
- work permit exemption for foreign employees of the AIFC and AIFC participants;
- "one-stop shop" facility within the AIFC for visa issuance and registration of AIFC participants;
- exemption from property and land taxes for AIFC participants;
- the AIFC Court will be separate and independent from the court system of Kazakhstan and operate on the basis of the law of England and Wales;
- the AIFC will have its own arbitration centre in the form of the AIFC International Arbitration Centre;
- AIFC participants may conduct and settle their transactions in any currency they choose without regard to the FX restrictions set forth in the Kazakh domestic currency law;
- English will be used as the working language of the AIFC;
- AIFC participants may enter into transactions in the English, Kazakh, and/or Russian languages; and
- the proceedings in the AIFC Court will be conducted in English, unless the parties choose Russian or Kazakh as the language of their court proceeding.

As of today, the rules regarding the formation and registration of AIFC participants and the broader compliance requirements of AIFC participation remain subject to finalisation and adoption. It is anticipated that these elements of the AIFC framework will be based on those of the DIFC and other international financial centres to ensure efficiency and familiarity for international stakeholders.

IV. Conclusion

Establishment of the AIFC represents a substantial step toward realising Kazakhstan’s “100 Concrete Steps Plan” of long-term socio-economic development and the gradual diversification of the economy away from oil and gas wealth.

The AIFC is designed to be a technological and cultural catalyst for transforming Astana into an international financial hub that delivers a wide range of financial services to market participants throughout Eurasia and globally.

By effectively reducing market risk by importing internationally recognised commercial law precedent and best practices under the AIFC Court and International Arbitration Centre, Kazakhstan is simultaneously attempting to attract foreign direct investment, accelerate integration of the Kazakh markets into the global financial system, deploy enabling best-in-class financial technology platforms, achieve knowledge transfers sufficient to build up its skilled labour base, and capitalise on its geographic proximity to Chinese demand.

Central Asia is currently home to no other Dubai-equivalent financial centre: Kazakhstan has a first-mover advantage. As such, the animating principles and underlying rationale of the AIFC appear to be sound, and the ultimate success or failure of the project likely will depend on a few key variables: the degree of sustained political will in-country to implement in practice what the AIFC promises in theory; the BRI’s ultimate unifying effect on the infrastructure and economies of Eurasia and degree to which Astana becomes the Chinese stepping-off point; and the eventual materialisation of demand for a Central Asian financial hub that better permits the global markets to follow the sun.

Endnotes

1. The views provided herein are for general discussion and education purposes only and not attributable to any particular situation, individual, client, or otherwise.



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Colby leads Moore & Van Allen’s Investment Management practice and has experience with all aspects of structuring, documenting, offering, and operating U.S. and offshore investment funds, particularly private equity funds, hedge funds, real estate funds, and funds of funds.

Prior to joining the firm, he was a principal at WhiteHill Capital, an emerging markets investment advisory firm with a focus on Russia and Central Asia, particularly Kazakhstan. Previously, he was a senior funds attorney with an international law firm and represented investment management clients while alternately based in the firm’s New York, London, Paris, Milan, Muscat, Almaty, and Astana (Kazakhstan) offices.



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Saniya is a recognised expert in the fields of PPP, project finance, and construction. Saniya also advises on finance, infrastructure, traditional energy, and renewable energy projects. She regularly supports government agencies, financial institutions, and investors/developers in the energy sector projects, including legislation shaping, deal structuring, and project financing. She also advises on the development of EPC contracts, supply contracts, and other agreements, as well as on the issues of tariff and anti-monopoly regulations. Saniya regularly assists clients with attracting investments and establishing joint ventures.

She is recommended by Chambers Global, Legal 500, and IFLR1000 as one of the best lawyers in Kazakhstan.

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