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The Astana International Financial Centre: AIFC Court and International Arbitration Centre Legal Systems to be based on English Common Law

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The President of the Republic of Kazakhstan (President) signed the constitutional law “On the Astana International Financial Centre” (Law) on 7 December 2015, which provides a legal framework for the establishment and operation of the Astana International Financial Centre (AIFC). The launch of the AIFC is part of the President’s “100 Concrete Steps” Plan of the Nation (Plan) to bring Kazakhstan into the world’s 30 most developed countries by 2050.¹⁾ The Plan will implement five institutional reforms aimed at creating a favourable and attractive environment for foreign investment and the provision of financial services in accordance with global best practice.

The AIFC is scheduled to begin operations on 1 January 2018, and will position itself as a major financial hub for Central Asia, the Caucasus Republics, Eurasian Economic Union, the Middle East and Europe. It aims to become one of the top 10 Asian financial centres by 2025.

This blog article seeks to provide some background on the functions of the AIFC, and to give an overview of the legal system governing the AIFC in particular the creation and development of the AIFC Court and the AIFC International Arbitration Centre (International Arbitration Centre).

FEATURES OF THE AIFC

The objectives of the AIFC include the creation of an attractive environment for investment in the financial services industry, the development of the securities market, the insurance market, banking services and Islamic financing market in Kazakhstan as well as the development of financial and professional services based on best international practices.

The AIFC will introduce a preferential tax regime, where members of the AIFC will be exempt from corporate income tax, property and land taxes until 1 January 2066.(Article 6 of the Law) Citizens of countries of the OECD, Singapore, Malaysia, the UAE and Monaco as well as other countries identified by the Kazakhstan government will also have visa-free entry to the country for a period of 30 days.(Article 7(5) of the Law)

The AIFC will comprise of the following five main bodies:

- 1) AIFC Management Council;
- 2) AIFC Authority;
- 3) Astana Financial Services Authority;

- 4) AIFC Courts; and
- 5) Arbitration Centre.

AIFC Management Council

The AIFC Management Council is the top executive body and will be headed by the President. Its key task will be to determine the development strategy of the AIFC.(Article 11(1) of the Law)

AIFC Authority

The AIFC Authority is the main governing and operational body and is created as a joint stock company.

Astana Financial Services Authority

This institution will develop and exercise regulation of the financial services and financial services-related activities at the AIFC.

On a related note, the Astana International Exchange (AIX) – AIFC’s international stock exchange and the main platform for the initial public offering of Kazakhstan’s major companies – is targeted to launch in the fourth quarter of 2017.²⁾ NASDAQ has been selected to implement the AIX trading platform,³⁾ and the Shanghai Stock Exchange will be taking a 25% stake in AIX.⁴⁾

The key functions and powers of each governing body are further set out in Articles 10 to 14 of the Law.

LEGAL SYSTEM AND LANGUAGE OF THE AIFC

The governing law of the AIFC will be based on the Constitution of Kazakhstan and will have a special legal regime, consisting of the Law and its own independent judicial system and jurisdiction which will be based on English common law and standards of leading international financial centres. The current law of Kazakhstan will also apply to the extent it does not conflict with the Law or Acts of the AIFC.(Article 4(1) of the Law)

It is expected that the AIFC legal system will have similarities with the principles and standards of the Dubai International Financial Centre (DIFC) in Dubai.⁵⁾ However, it should be noted that rules of ratified international treaties will prevail over those set out in the Law.(Article 4(4) of the Law)

The official language of the AIFC has been designated to be English (Article 15 of the Law), and all legislation of the AIFC will be drafted and adopted in the English language.

Acts of the AIFC for the purpose of implementing the Law should be developed and adopted by the AIFC bodies within two years from the entry into force of the Law i.e., no later than 19 December 2017.(Article 21 of the Law)

THE AIFC COURT AND INTERNATIONAL ARBITRATION CENTRE

The AIFC Court and International Arbitration Centre are set up to deal with investment disputes within the AIFC.

Rt. Hon Lord Woolf, the former chief judge for England and Wales, is advising on the establishment of both institutions, with a planned launch date of 2018.⁶⁾ The DIFC Court in Dubai is also a key partner in advising and assisting with the establishment of the AIFC Court system.⁷⁾

AIFC Court

The AIFC Court will be an independent court external to the judicial system of Kazakhstan.(Article 13(1) of the Law) This will be a two-tier court system consisting of the Court of First Instance and the Court of Appeal, and will be made up of international judges with previous experience in common law jurisdiction countries. The AIFC Court will have exclusive jurisdiction over disputes between AIFC participants, AIFC bodies and their employees, disputes relating to operations conducted in AIFC or subjected to AIFC laws, and disputes directed to AIFC Court by third parties.(Article 13(4) of the Law) It will not have jurisdiction over criminal and administrative proceedings (Article 13(4) of the Law), including criminal or administrative offences committed in the territory of the AIFC. The AIFC Court will also have exclusive jurisdiction to interpret the acts of the AIFC.(Article 13(10) of the Law)

Decisions of the AIFC Court will be final, with no right to appeal and binding on all individuals and legal entities.(Article 13(7) of the Law) Enforcement of the AIFC Court decisions will be in accordance with the normal court enforcement procedures in Kazakhstan.(Article 13(8) of the Law)

International Arbitration Centre

The International Arbitration Centre will be established within the AIFC, and this will offer an alternative dispute resolution option for AIFC participants and other investors.

The International Arbitration Centre will adjudicate disputes in cases where there is an arbitration agreement between the parties. Foreign arbitrators are expected to sit in these tribunals. The procedure for the recognition and enforcement of decisions of the International Arbitration Centre will follow that of the process set out for the recognition and enforcement of arbitral decisions made by arbitration courts in Kazakhstan.(Article 14(3) of the Law)

Court proceedings will be conducted in English (Article 19 of the Law), and legislations will also be built on English common law and enacted by the AIFC Court and International Arbitration Centre.

CONCLUSION

The commitment of the AIFC to operating under the principles of English common law has been met with support and interest from investors and legal representatives alike, and this will advance Kazakhstan as an attractive financial centre for business that upholds internationally recognised standards. The establishment of the AIFC Court and International Arbitration Centre based on English law with independent judicial system and jurisdiction, foreign qualified judges and arbitrators will further promote transparency and affirm the impartiality of the courts and tribunals as trusted institutions for the resolution of investment disputes.

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