

# Astana International Financial Centre's law — what is it about?



**KAZAKHSTAN**

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Modeled on the Dubai International Financial Centre, the Astana International Financial Centre (AIFC) was officially launched on the 5<sup>th</sup> July this year, established with the aim of bridging the gap between the world's major financial centers and a regional gateway for capital and investments.

One of the core pillars of the AIFC is Islamic finance, as it aims to become an Islamic finance hub not only for Kazakhstan, but for the whole of Central Asia, the Eurasian Economic Union, the Caucasus, West China and Mongolia.

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To date, already more than 50 companies have registered as participants in the AIFC, including a representative office of the China Development Bank. Multiple IPOs, in particular of national companies Kazakhtelekom, Kazatomprom and AirAstana, are scheduled for the next few years on the stock exchange of the AIFC, the Astana International Exchange (AIX). Placement of a debut sovereign Sukuk facility is also expected to take place on the AIX's platform by the end of 2018.

The AIFC has its own laws and regulations and even its own court and facility for arbitration (in effect, a 'one country, two systems' arrangement has been introduced despite the fact that Kazakhstan is a unitary state). The AIFC's court is headed by the former lord chief justice, Lord Woolf, and judgments issued

by this court will be directly enforceable in Kazakhstan.

The key feature and siren call of the AIFC is, therefore, a new jurisdiction based on, apparently, English law principles, as English law is familiar and convenient for investors. The question is, however, whether the AIFC is indeed a new common law jurisdiction, not to mention what are the sources of AIFC law.

In accordance with Article 4.1 of the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre dated the 7<sup>th</sup> December 2015, "the Acting Law of the AIFC is based on the Constitution of the Republic of Kazakhstan and consists of:

- 1) this Constitutional Statute, and
- 2) AIFC Acts, which are not inconsistent with this Constitutional Statute and which may be based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centers, adopted by the AIFC bodies in the exercise of the powers given by this Constitutional Statute, and
- 3) the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by this Constitutional Statute and AIFC Acts".

It seems, therefore, the AIFC is a new civil law and not common law jurisdiction, because the AIFC's court lacks authority to act if there is no statute (ie a court precedent is not a source of law in the AIFC).

Moreover, unlike DIFC law, the AIFC's fallback legislation is Kazakh law, rather than English law, which will apply to any cases governed by AIFC law where AIFC legal Acts are otherwise silent on a given issue.

Because the correlation between AIFC legal Acts and Kazakh legislation is yet to be seen and tested, the concern is that the AIFC will be yet just one more of many of the Kazakhstan government's premier but half-finished projects aimed at diversifying the national economy and improving the country's position in the global market. ☺

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