

ADVANTAGES OF AIFC JURISDICTION FOR BUSINESS COMMUNITY

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1.

GENERAL ADVANTAGES OF AIFC LAW

AIFC LAW: 4 KEY FACTORS



1
Quality set of norms and rules that are familiar and attractive to foreign investors

2
Conforms to the global trends of leading jurisdictions

3
AIFC Acts were developed on the basis of common law (the law of England and Wales) and comply with the standards of world's leading financial centres

4
Independent AIFC Court and the IAC, flexible approach to dispute resolution

Our key participants and issuers of the Astana International Exchange (AIX)



Ministry of Finance of the Republic of Kazakhstan



and other AIFC-registered companies and issuers of the AIX

FLEXIBILITY OF REGULATING CORPORATE ISSUES

- 1 no minimum share capital requirement for private companies
- 2 flexibility in maintaining a record of rights to company shares (opportunity to maintain a register of shareholders of private companies independently)
- 3 opportunity to issue different classes of shares
- 4 shareholders' pre-emption rights to purchase company shares do not apply (determined by shareholders themselves), the possibility of concluding a shareholder agreement
- 5 no strict regulation of transactions approval, which allows a company to consider these issues independently (i.e. by reflecting relevant terms in Articles of Association)
- 6 flexible approach for identifying the powers of governing bodies of private companies (open list, freedom to define them in Articles of Association)

OTHER ADVANTAGES OF AIFC LAW

Multiple forms of funds. The possibility of establishing trusts and foundations

- A choice of the organisational-legal form and the type of activity most suited to the business interests and objectives of an organisation
- The AIFC legislation on funds, trusts and foundations is also consistent with the universally recognised principles

Flexible conditions of transfer of incorporation to the AIFC territory

- An opportunity to re-domicile to the AIFC territory from any jurisdiction (if the laws of the jurisdiction authorise transfer of incorporation)
- No minimum investment requirement on the AIFC territory

The regulation of financial services by the Astana Financial Services Authority (AFSA) is:

- aligned with best international practices and standards (Basel, IOSCO, FATF, BIS, FinCEN, IAIS, etc.)
- based on the principles of proportionality – regulatory requirements for financial institutions are proportionate to their size, complexity and the level of risk

2.

ADVANTAGES OF ORGANISATIONAL- LEGAL FORMS OF AIFC LEGAL ENTITIES

ADVANTAGES OF ESTABLISHING A COMPANY IN THE ORGANISATIONAL-LEGAL FORM OF A PRIVATE COMPANY IN THE AIFC

WORLD'S SUCCESSFUL BUSINESS MODEL FOR MANY YEARS

Some of the most famous companies in the world are private companies, including Cargill and Ikea

EASE OF ESTABLISHMENT AND LOW COSTS

Registration through the Self-service Portal
Registration fee is 300 US dollars
No minimum share capital requirement. The initial capital may even be 1 US dollar

PRIVATE COMPANY IS ONE OF THE MOST PREFERABLE ORGANISATIONAL LEGAL FORMS FOR A COMPANY REGISTRATION IN THE AIFC

936 out of 1133 registered organisations in the AIFC are private companies (as of December 2021)

LIMITED LIABILITY OF SHAREHOLDERS

Shareholders cannot be held liable for the debts and obligations of a private company in the AIFC. Shareholders' liability does not exceed the amount of share capital already invested

ASSET PROTECTION

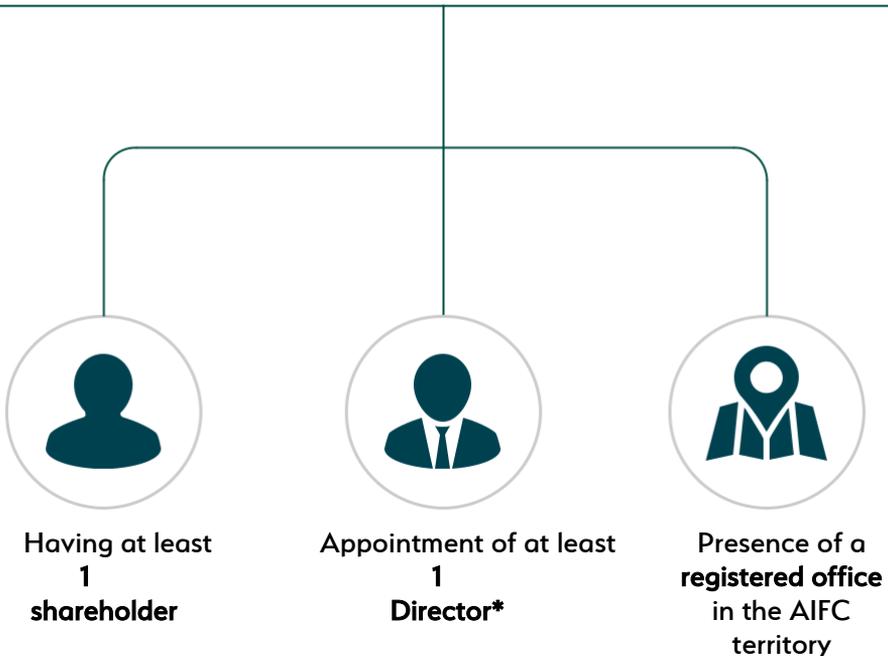
Registration of a private company brings various benefits, such as asset protection and other financial benefits

MINIMISED REGULATORY BURDEN

FLEXIBLE CORPORATE GOVERNANCE STRUCTURE

MINIMUM REQUIREMENTS FOR A PRIVATE COMPANY

BASIC REQUIREMENTS OF AIFC LEGISLATION FOR A PRIVATE COMPANY



* The Director must meet a number of criteria (for example, must not be disqualified or declared bankrupt)

SPECIAL PURPOSE COMPANY (SPC)

Special Purpose Company is a company created for a specific project (also known as SPV or SPE). SPCs in the AIFC are incorporated to arrange specific structured financial transactions (including Islamic finance transactions), in particular, securitisation



ADVANTAGES OF CREATING SPC IN THE AIFC:

- I. Limited liability
- II. No minimum share capital requirements
- III. No requirement to rent office in the AIFC, which allows reducing monetary, time and other costs. Also, SPC is not required to conduct principal business activity in the AIFC
- IV. No requirement for holding an annual meeting of shareholders
- V. No restrictions on foreign ownership
- VI. No requirement to file annual reporting (annual return) with the Registrar of Companies and audit accounts*

USE OF SPC IN THE AIFC FOR DOING BUSINESS

- The acquisition, possession or disposal of any asset (tangible or intangible)
- Obtaining any type of financing (banking operations or capital markets), providing any type of collateral for its assets, providing any compensation or similar support to the benefit of its shareholder(s) or any of its subsidiaries, or entering into any type of hedging agreement
- Financing of the Initiator or another SPC
- Acting a trustee or agent for any participant in the Transaction
- Other activities approved by the Registrar of Companies in writing

*Except as provided in section 7.1 and section 9.1.2 of the AIFC Special Purpose Company Rules

EXAMPLE OF USING SPC IN THE AIFC

German Bank A aims to increase the liquidity of its assets (credit claims rights) while protecting its assets from risks

Purpose: securitisation

Practical implementation in the AIFC: The German Bank A forms a pool of assets for securitisation and transfers them to SPC established in the AIFC. In turn, the SPC finances the acquisition of assets received by issuing securities (secured by future cash flows from these assets) and by offering them to investors in the capital market

Result:

- SPC assets that provide payments for securities acquired by investors are protected from bankruptcy risks of the German Bank A.
- Exemption from requirements on:
 - provision of an annual reporting, audit reporting to the Registrar of Companies
 - holding an annual meeting of shareholders
- cost-saving and resource-saving due to the absence of the need to rent an office in the AIFC
- an opportunity to conduct transactions outside the AIFC

TRANSFER OF INCORPORATION

WHAT IS IT?

- The process by which a company transfers its registration from one jurisdiction to another
- Transforming your company into the AIFC participant
- Company receives a certificate of continuation (sections 152-153 of the AIFC Companies Regulations 2017 and rule 5.2 of the AIFC Companies Rules 2017)

WHY IS IT WORTH CONSIDERING?

- Allows to fully continue the business - portfolio, credit ratings and reputation remain unchanged
- Access to attractive AIFC tax and corporate regimes
- A transfer of all legal rights and obligations to the AIFC entity – the assignment is not required

BENEFITS:

- No need to establish a new legal entity
- No need to transfer rights and obligations under existing contracts
- Access to low-cost capital through the use of the AIX and management companies in the AIFC territory

EXAMPLE OF TRANSFER OF INCORPORATION TO AIFC

Kazakh Investment Abroad Ltd., a company registered in the Netherlands Antilles with Kazakhstani business ownership, decides to transfer its incorporation and benefit from the AIFC platform.

Purpose: to facilitate the transfer of the company registration

Practical implementation in the AIFC:

In this case, Kazakh Investment Abroad Ltd. enjoys the following benefits of re-domiciliation to the AIFC:

- Obtaining the status of the AIFC participant and a resident of the Republic of Kazakhstan
- An opportunity to use the AIFC privileges including access to management companies and capital markets
- Preservation of obligations and contracts of Kazakh Investment Abroad Ltd.
- An opportunity to maintain the organisational-legal form and name of Kazakh Investment Abroad Ltd.
- An opportunity of preserving license for regulated activities

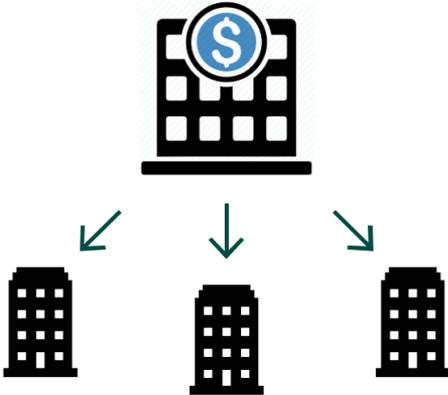
3.

**ESTABLISHING
A HOLDING COMPANY**



HOLDINGS

A Holding Company is a company created to hold controlling stakes in other companies to control and manage their activities. The most suitable organisational-legal form for holding activities in the AIFC is a private company.



BUSINESS OPPORTUNITIES

- Structuring asset ownership
- Structuring an inheritance
- Restructuring a business
- Tax optimisation
- Acquisition of new companies and assets

ADVANTAGES OF ESTABLISHING HOLDING COMPANY IN THE AIFC:

- **An opportunity to apply AIFC law**
- **Protection of holding company assets**
- **Favourable tax regime**

An exemption from payment of PIT and CIT on income in the form of dividends, increase in value upon sale of shares/stakes in the authorised capital of legal entities – the AIFC participants

- **Holding activity at the AIFC does not require obtaining a license from the AFSA**
- **An opportunity of transfer of incorporation of a company from a foreign jurisdiction to the AIFC to restructure asset ownership**

EXAMPLE OF USING HOLDING COMPANY IN THE AIFC

Russian investor is considering the possibility of structuring his business

Purpose: to structure business in a foreign jurisdiction

Practical implementation in the AIFC: establishment of a holding company in the AIFC

Result:

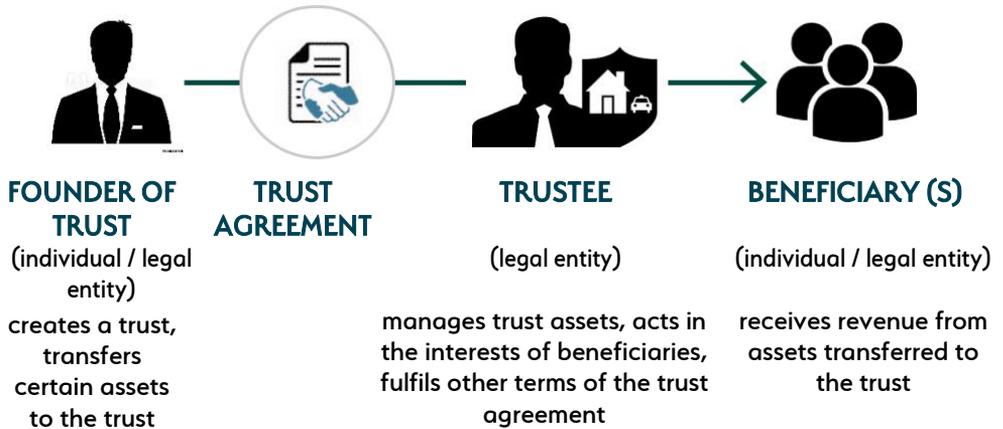
- Asset transfer to the AIFC holding company
- Assets of the Russian investor are protected
- Exemption from payment of PIT and CIT on income in the form of dividends, profits from the sale of shares/stakes in the capital of legal entities – the AIFC participants

4.

ESTABLISHING A TRUST



TRUSTS



The AIFC Trust Regulations 2019 regulate fundamental issues necessary for the full functioning of trusts:

- fiduciary duties of a trustee
- conflict of interests in trustee activities
- trustee liability for violation of his/her duties
- conditions for exemption from trustee liability
- conditions of trustee liability insurance coverage

ADVANTAGES IN THE AIFC:

- Appointment of trustee during the life of the testator
- Existence of a contractual relationship
- Trustee possesses property as a legal owner of the property and separates trust property from its own assets
- Transfer of property free of charge and its replenishment at any time both by the founders of the structure and by any third parties
- Possibility to enshrine in a trust agreement the procedure for changing trust documentation
- Legal regulation consistent with fundamental principles of common law

BUSINESS OPPORTUNITIES

- Assets protection
- Transfer of assets by inheritance

*Provision of trust services is a regulated activity.

EXAMPLE OF USING TRUSTS IN THE AIFC

Purpose: rational capital increase for financing future projects

Practical implementation in the AIFC: an opportunity of transferring property rights into a trust acting in the interests of a person

Necessary actions:

- Assign a trustee
- Transfer property to a trust
- Enter into a trust agreement with the trustee – determine the powers of the trustee and identify beneficiaries

Results:

- Transfer of property to professional management, while the Person can control his financial contribution and assets
- Trustee possesses a property as a legal owner of the property and separates trust property from its own assets
- Assets protection - when a lawsuit is brought against a person, his money will be safe, as it will not be considered his property

5.

TAX PREFERENCES



TAX EXEMPTIONS FOR AIFC PARTICIPANTS ON INCOME RECEIVED FROM PROVIDING FINANCIAL AND ANCILLARY SERVICES IN THE AIFC TERRITORY

CIT AND VAT EXEMPTIONS ON INCOME FROM PROVIDING FINANCIAL SERVICES:

- ▶ Islamic banking services
- ▶ reinsurance and insurance brokerage services
- ▶ investment management services for assets of investment funds
- ▶ brokerage, dealer or underwriting services
- ▶ any other financial services defined by the Joint Order of the AIFC, Ministry of Finance and Ministry of National Economy*

CIT EXEMPTIONS ON INCOME FROM PROVIDING ANCILLARY SERVICES:

- ▶ legal
 - ▶ audit
 - ▶ accounting
 - ▶ consulting
- services provided to the AIFC bodies and AIFC participants that provide financial services stipulated in the *Constitutional Statute on AIFC*



until 1 January 2066

AIFC participants that provide financial and ancillary services, *prescribed by the Constitutional Statute on AIFC*, are exempt from **property tax** and **land tax** for facilities located in the AIFC territory

Foreign nationals who are employees of an AIFC participant that provides financial and ancillary services *stipulated in the Constitutional Statute on AIFC* are exempt from **PIT** on income from activities in the AIFC under the employment contracts with the AIFC participant

* Please see the Joint Order of the Governor of the AIFC, Minister of Finance of the Republic of Kazakhstan, and Minister of National Economy of the Republic of Kazakhstan "On approving the List of financial services provided by participants of the Astana International Financial Centre, the income from which is exempt from payment of corporate income tax, value added tax" available at: <https://aifc.kz/legal-framework/tax-administration/>

CIT AND PIT EXEMPTIONS ON INCOME RECEIVED FROM INVESTMENTS IN THE AIFC



Until January 1, 2066



legal entities are exempt
from corporate income
tax



individuals are
exempt from
personal income
tax

Profits from the sale of

- securities listed, on the day of their sale, on the official list of the stock exchange
- shares or stakes in the capital of AIFC participants that are legal persons registered under the Acting Law of the AIFC

Dividends from

- securities listed, on the day of their accrual, on the official list of the stock exchange
- shares or stakes in the capital of AIFC participants that are legal persons registered under the Acting Law of the AIFC

Interest from

- securities listed, on the day of their accrual, on the official list of the stock exchange

6.

CURRENCY REGULATION



ADVANTAGES OF AIFC CURRENCY REGULATION REGIME

➤ **Access of AIFC participants to financial market of Kazakhstan**

AIFC participants may provide 21 financial (banking and payment services, insurance, investment services) and professional services (legal, audit, accounting services) * to the residents of Kazakhstan.

➤ **Transactions of AIFC participants may be conducted:**

CURRENCY TRANSACTIONS IN THE AIFC		
Currency relations	Allowed activities*	Currency transactions
AIFC participants – AIFC participants	any (regulated – non- regulated)	through STB – in any currency through AIFC banks – only in foreign currency
AIFC participants – Non-Residents		
AIFC participants – Residents	non-regulated + Consulting, Credit rating	through STB – in national currency
	regulated (Schedules 2,3 of the AIFC Rules)	through STB – in any currency through AIFC banks – only in foreign currency

* Please see the AIFC Rules on Currency Regulation and Provision of Information on Currency Transactions in the AIFC dated 10 November 2021 as adopted by the Governor with the agreement of the National Bank of Republic of Kazakhstan and the Agency of the Republic of Kazakhstan for Regulation and Development of Financial Market.

7.

SETTLEMENT AND RESOLUTION OF DISPUTES



ADVANTAGES



- ▶ The first commercial common law court in the region
- ▶ The AIFC Court – an independent judiciary
- ▶ The AIFC court considers disputes not only between the AIFC participants but also between any individuals and legal entities with the consent of the parties
- ▶ AIFC Court Regulations and Rules are based on the principles and provisions of English common law
- ▶ The AIFC judges have extensive experience in resolving commercial and civil disputes in common law jurisdictions
- ▶ E-JUSTICE, e-filing system, enables parties to file cases electronically from anywhere around the world
- ▶ Until 2021, fees for filing applications, administering and holding hearings were cancelled



- ▶ The IAC provides an independent, cost-effective and expeditious alternative to litigation, acting in accordance with the best international standards
- ▶ The language of proceedings is determined by the parties
- ▶ Administering the arbitration process in accordance with the IAC Arbitration and Mediation Rules/ UNCITRAL Arbitration Rules/ special arbitration rules
- ▶ The IAC considers disputes between any legal entities with the consent of the parties
- ▶ 41 arbitrators with experience in resolving commercial and civil disputes, 25 arbitrators may act as mediators
- ▶ The IAC services on administering the arbitration process
- ▶ Until 2021, arbitration fees for filing applications, administering and holding hearings were cancelled

8.

**COMPARATIVE ANALYSIS OF
THE AIFC LEGAL REGIME WITH
OTHER JURISDICTIONS**

THE AIFC LEGAL REGIME

as compared to the most popular jurisdictions, including Cyprus, Luxembourg, UAE, Singapore, in order to identify the key advantages of the AIFC

DUBAI

- ✓ Allows for 100% foreign participation
- ✓ Activities based on English law
- ✓ Has certain exceptions in respect to application of UAE legislation

CYPRUS

- ✓ Speed of creation
- ✓ Reasonable cost of creation
- ✓ Flexibility of corporate governance

LUXEMBOURG

- ✓ A clarity of legal requirement to the structure
- ✓ Duration of the existence of legislation on funds
- ✓ Stability of jurisdiction

SINGAPORE

- ✓ Establishment and maintenance of funds is quite expensive
- ✓ Requires presence in the jurisdiction
Strict requirements for investors

AIFC

- Allows to ensure 100% foreign participation
- Activities based on English Law
- Speed of creation
- Reasonable cost of creation
- Clarity of legal requirement to the structure

9.

**AIFC KEY ORGANISATIONS
FACILITATING BUSINESS
DEVELOPMENT**

AIFC KEY ORGANISATIONS FACILITATING BUSINESS DEVELOPMENT (1/2)



Astana International Exchange was established to develop a deep and liquid capital market in Kazakhstan and in the Central Asian region by providing clear and favourable conditions for attracting local and foreign investors as well as creating a platform to finance the growth of private businesses and the economy as a whole.



AIFC Tech Hub aims at developing a more diverse and knowledgeable fintech space in Kazakhstan and the region with a pipeline of opportunities for venture capital funds and financial institutions.



AIFC Business Connect aims to spur direct investment into the region, complementing the work of Kazakh Invest. Business Connect will address the needs of and meet the expectations of the international business community.



The AIFC Expat Centre acts as a 'one stop shop' for over 500 government services. The centre provides expats and their families assistance with visa-related services, tax payments, police registration, consultations on healthcare, children's education, transport, and accommodation, among others.

AIFC KEY ORGANISATIONS FACILITATING BUSINESS DEVELOPMENT (2/2)



Direct Investment Fund “Kazakhstan Investment Development Fund (KIDF)” and Managing Company attract investments on the principle of co-investing in breakthrough projects in the manufacturing sector.



The AIFC Green Finance Centre is created to enable the development of green finance in Kazakhstan and Central Asia. The Centre provides initial assistance to potential issuers, investors and market players on preparations for the issuance of green bonds on the AIX.



Bureau for Continuing Professional Development (BCPD Ltd.) provides international professional certification preparatory courses and implements the best international practices to develop human capital and create pool of local professionals with international recognition for the AIFC eco system and beyond.



The AIFC Academy of Law aims to familiarise the legal community with the AIFC’s legal system. It organises educational and informational events, and publishes material to raise awareness of the AIFC and its jurisdiction.



10.

**AIFC PARTICIPANTS
PROVIDING LEGAL
SERVICES**

AIFC PARTICIPANTS PROVIDING LEGAL SERVICES



The register of ancillary services providers is available at <https://publicreg.myafsa.com/>

Disclaimer: This document is designed to assist actual and potential AIFC participants to familiarise themselves with the benefits of the AIFC jurisdiction provided to the AIFC participants ('Participants'). This document does not constitute legal advice and should not be acted upon as if advice had been given. If there is any inconsistency between any statement in this document and the relevant AIFC Regulations and Rules or associated Guidance, the AIFC Regulations, AIFC Rules and Guidance shall prevail. Participants should, where they consider it necessary, obtain their own legal advice in relation to their specific situations.

This document does not cover each and every aspect of the AIFC Regulations and Rules. It covers the main benefits of the AIFC jurisdiction for the business community. In case we become aware of new or changing issues, we will amend the document as appropriate.