

## EMERGENCE OF A REGIONAL FINANCIAL CENTRE: THE ASTANA INTERNATIONAL FINANCIAL CENTRE (AIFC) COURTS AND INTERNATIONAL ARBITRATION CENTRE (AIAC)

Through the launch of the independent AIFC Courts and the AIAC, the Republic of Kazakhstan has made a significant step forward in the President's 100 Concrete Steps Plan to make Kazakhstan one of the world's 30 most-developed nations by 2050. Astana hopes to become a regional financial hub for Central Asia, the Caucasus, the Eurasian Economic Union, the Middle East, West China, Mongolia and Europe and create an attractive environment for foreign investors and businesses to operate.

The AIFC clearly hopes to emulate the success of the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) Courts, and the DIFC Courts have been a key partner in advising and assisting with the establishment of the AIFC Courts. In our view, the AIFC will be a promising alternative for dispute resolution for clients with business interests in this emerging economic region.

### OVERVIEW OF THE AIFC

The primary language of the AIFC is English and it operates within a special legal framework based upon the common law of England with the aim of attracting international business.

Article 2 of the Constitutional Statute dated 7 December 2015 (which sets out the legal framework for the establishment of the AIFC) provides that the aim of the AIFC is to "establish a leading international financial centre for financial services" in Astana.

The AIFC has five main bodies: (1) the AIFC Management Council, which is the top executive body and headed by the President; (2) the AIFC Authority, which is the main governing and operational body; (3) the Astana Financial Services Authority, which will develop and exercise regulation of the financial

#### Key issues:

- Overview of the AIFC
- The AIFC courts
- Who can use the AIFC courts?
- How will enforcement of AIFC Courts' judgments work?
- Arbitration
- Our view.

services industry and related activities; (4) the AIFC Courts; and (5) the AIAC. The AIFC is also complemented by the Astana International Exchange (AIX), which is a new stock exchange, backed by the Shanghai Stock Exchange and NASDAQ and with which Euroclear has recently agreed a memorandum of cooperation.

To attract investors and business, AIFC Bodies and Participants will be granted certain tax exemptions until 2066 (Article 6 of the Constitutional Statute) and citizens of various countries, including all 34 member states of the Organisation for Economic Co-operation, the United Arab Emirates and the Republic of Singapore who will be granted 30-day visa-free entry (Article 7 of the Constitutional Statute).

The governing law of the AIFC is a combination of: (1) the Constitutional Statute; (2) AIFC Acts based upon English common law principles; and (3) Kazakh law, to the extent that it is not inconsistent with the AIFC Acts. There are a number of AIFC Acts, which are similar to DIFC laws governing areas such as company law and contract law. The AIFC differs from its DIFC counterpart however in that its fallback legislation is Kazakh law, rather than English law, which will apply to any cases governed by AIFC law where AIFC Acts are otherwise silent on a given issue.

## **THE AIFC COURTS**

The AIFC Courts were formally established on 1 January 2018. The AIFC Courts are independent from the judicial system of Kazakhstan. The bench of the AIFC Courts comprises international judges with experience in common law jurisdictions and is headed by Lord Woolf, the former Lord Chief Justice of England and Wales. There is a Court of First Instance (including the Small Claims Court) and a Court of Appeal, with no further right to appeal beyond that level. The AIFC Courts have no jurisdiction over criminal matters.

The draft AIFC Court Regulations grant the AIFC Courts similar powers to other common law courts, including the ability to award interim measures, summary judgment, security for costs and allowing for evidence to be given by video link.

## **WHO CAN USE THE AIFC COURTS?**

The AIFC Courts have exclusive jurisdiction over disputes between: (1) AIFC Participants, AIFC Bodies and their employees; (2) disputes arising out of activities carried out within the AIFC; and (3) disputes referred to the AIFC by third parties (Article 13(4) of the Constitutional Statute). Parties can also "opt into" the AIFC jurisdiction in their contracts, as with the DIFC and ADGM Courts. The AIFC Courts will apply the governing law agreed by the parties to the extent that it is consistent with public order and public policy of Kazakhstan.

## **HOW WILL ENFORCEMENT OF AIFC COURTS' JUDGMENTS WORK?**

The Constitutional Statute provides that enforcement of AIFC judgments in the rest of Kazakhstan will be "in the same way, and on the same terms, as decisions of the courts of the Republic of Kazakhstan". The only requirement being that the judgment is translated into Kazakh or Russian. Whether this would allow enforcement of foreign judgments in Kazakhstan via the AIFC as a conduit jurisdiction remains to be seen. This is likely to be a major selling

point for the AIFC given the complex nature of the Kazakh court system and the difficulties with enforcement that might otherwise be encountered.

Kazakhstan is currently party to the Chisinau Convention, the Kiev Convention and the Moscow Agreement, which provide for mutual recognition and enforcement of judgments handed down by courts in various countries that were formerly USSR territories. Additionally, Kazakhstan has bilateral legal assistance treaties with certain countries such as the People's Republic of China and the United Arab Emirates. This potentially allows for the enforcement of AIFC Court judgments in these jurisdictions but, again, it remains to be seen how this will operate in practice. It will be interesting to see whether the AIFC Courts enter into their own memoranda of understanding with the courts of other common law jurisdictions, as the DIFC and ADGM Courts have done.

## **ARBITRATION**

The AIAC was also established on 1 January 2018 and parties can now choose the AIFC as the seat of their arbitration. The AIFC Arbitration Regulations 2017 are modelled on those of the DIFC, which in turn is based upon the UNCITRAL Model Law.

Whilst the New York Convention has not been ratified by Kazakhstan, the consensus from local lawyers in Kazakhstan arising from previous decisions of the Kazakh courts is that the Convention is binding on the Kazakh courts and arbitral awards have been enforced as such. This should allow for the enforcement of foreign arbitral awards in the AIFC. As AIAC arbitral awards are to be enforced in the same way as Kazakh awards, award creditors in theory should be able to enforce AIAC awards in Kazakhstan and abroad.

## **OUR VIEW**

The AIFC Courts are well equipped with international judges of the highest standing and strong foundational rules that should allow the AIFC to rise rapidly as a regional financial hub. The commitment by the AIFC to the principles of English common law will inspire confidence for potential investors in doing business in the AIFC and attract businesses to the AIFC.

The draft AIFC Court Regulations already show the strong influence of the DIFC regime. Overall, the AIFC's decision to instruct the DIFC Courts as a key advisor will be of great assistance to address teething issues as they arise.

There are some issues that need clarification, such as the readiness with which the AIFC Courts will defer to Kazakh law in the absence of AIFC law on an issue and the interplay between civil law (Kazakh) and common law principles. However, as the project has strong backing from the Kazakhstan President and the government these issues can hopefully be resolved quickly and without damaging the prospects of this exciting new jurisdiction.

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