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## LEGAL REGULATION OF THE ISLAMIC FINANCES: COMPARATIVE ANALYSIS OF THE LEGAL FRAMEWORK OF THE REPUBLIC OF KAZAKHSTAN, «ASTANA» INTERNATIONAL FINANCIAL CENTRE AND UNITED KINGDOM

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**Abstract.** *Islamic financing currently became one of the most rapidly developing industry representing moral alternative for the Muslim population in comparison with the contemporary financial sector of the west. The main difference of Islamic financing stems from the fact that it assumes more balanced distribution of the risks between all of the parties and prohibition of the usury or interest on behalf of the financial organizations. Despite the fact that Muslim population being the largest religious group in the Republic of Kazakhstan, the share of Islamic financing, including Islamic banking is insignificant in within the financial market of the state. The author comes to the conclusion that the Republic of Kazakhstan has prepared a sufficient regulatory framework for the development of the Islamic financing in the country. Moreover, the analysis suggests that with the emergence and development of the Astana International Financial Centre (AIFC) there is even more comprehensive and elaborate framework within a new common law legal system of the financial centre. However, through the analysis of the legislative system of the Republic of Kazakhstan and after conducting a comparative study with the acting law of the AIFC as well as with the legal regulation in the United Kingdom, the author concludes that there is still one apparent legal obstacle that hinders the development of the Islamic financing in the Republic of Kazakhstan.*

**Keywords:** *Islamic financing, Islamic banking, Astana International Financial Centre, AIFC.*

## ИСЛАМ ҚАРЖЫСЫН ҚҰҚЫҚТЫҚ РЕТТЕУ: ҚАЗАҚСТАН РЕСПУБЛИКАСЫ, «АСТАНА» ХАЛЫҚАРАЛЫҚ ҚАРЖЫ ОРТАЛЫҒЫ ЖӘНЕ ҰЛЫБРИТАНИЯНЫҢ ҚҰҚЫҚТЫҚ БАЗАСЫН САЛЫСТЫРМАЛЫ ТАЛДАУЫ

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**Аннотация.** *Әлемдегі екінші ең үлкен діни топ болғанымен, қазіргі таңда көптеген мұсылмандар исламдық қаржылық қызметтерге және қаржылық институттарға қол жеткізе алмауда. Ал исламдық қаржыландыру батыстың заманауи қаржы секторымен салыстырғанда мұсылман халқы үшін моральдық балама болып табылады. Сондағы исламдық қаржыландырудың қазіргі заманауи қаржы секторымен салыстырғандағы негізгі ерекшелігі бұл тәуекелдерді барлық тараптар арасында теңгерімді бөлуі және де қаржы институттар тарапынан өсімқорлыққа тыйым салуды көздейді. Ал егер біздің елге назар аударсақ, Қазақстан Республикасының халқының басым бөлігі мұсылмандар болып табылғанымен, көптеген отандастарымыз исламдық қаржы инструменттермен пайдалана алмауда. Қаржы мамандардың талдауына сәйкес, қазіргі уақытта исламдық қаржыландырудың, оның ішінде исламдық банкінгтің үлесі еліміздің қаржы нарығындағы үлесі шамалы болып табылады. Осы орайда автор елімізде исламдық қаржыландыру секторын дамыту үшін Қазақстан Республикасында жеткілікті нормативтік-құқықтық база дайындалған деген қорытындыға келеді. Оның үстіне, талдау «Астана» Халықаралық Қаржы Орталығының (АХҚО) пайда болуымен жаңа және де заманауи құқықтық жүйе қалып-*

тасты деген тұжырымға келеді. АХҚО заңнамасы негізінен Англия мен Уэльс құқығының заңнамасына, прецеденттеріне және жетекші әлемдік қаржы орталықтарының стандарттарына сәйкестендірілген болып табылады. Осылайша, еліміздің заңнамалық жүйесін талдай отырып және АХҚО қолданыстағы заңнамасымен ескеріп, автор бұл екі жүйені Ұлыбританиядағы исламдық қаржыландырудың құқықтық реттеумен салыстырмалы зерттеу жүргізді. Осы талдаудың негізінде автор Қазақстан Республикасында исламдық қаржыландырудың дамуына бөгет жасап тұрған бір анық заңдық кедергі бар деп қорытындылайды.

**Түйін сөздер:** «Астана» Халықаралық Қаржы Орталығы, АХҚО, Исламдық қаржыландыру, исламдық банкинг.

## ПРАВОВОЕ РЕГУЛИРОВАНИЕ ИСЛАМСКИХ ФИНАНСОВ: СРАВНИТЕЛЬНЫЙ АНАЛИЗ ЗАКОНОДАТЕЛЬНОЙ БАЗЫ РЕСПУБЛИКИ КАЗАХСТАН, МЕЖДУНАРОДНОГО ФИНАНСОВОГО ЦЕНТРА «АСТАНА» И ВЕЛИКОБРИТАНИИ

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**Аннотация.** Несмотря на то, что ислам является второй по величине религиозной группой в мире, многие мусульмане сегодня не имеют доступа к финансовым услугам, которые отвечают требованиям шариата. В то же время, исламское финансирование в настоящее время стало одной из наиболее динамично развивающихся отраслей, представляющих моральную альтернативу для мусульманского населения. Главной особенностью исламского финансирования заключается в более сбалансированном распределении рисков между всеми сторонами и самое главное, запрете на ростовщичество или взимание процентов со стороны банковских и других финансовых институтов. Республика Казахстан является классическим примером того, что большинство населения страны являются мусульманами, однако доля исламского финансирования, включая исламский банкинг, на финансовом рынке страны незначительна. В связи с этим автор приходит к выводу о том, что в Республике Казахстан подготовлена достаточная нормативно-правовая база для развития сектора исламского финансирования. Более того, на данный момент в стране существует две правовые системы, регулирующие исламское финансирование, так как в 2018 году начал функционировать Международный Финансовый Центр «Астана» (МФЦА), территория, с особым правовым режимом, основанной на системе английского общего права. Тем не менее, путем анализа законодательной системы Республики Казахстан и действующего права МФЦА, а также после проведения сравнительного анализа с правовым регулированием исламского финансирования в Соединенном Королевстве, автор приходит к выводу о наличии правовой преграды, которая препятствует развитию исламского финансирования в стране.

**Ключевые слова:** Исламское финансирование, исламский банкинг, Международный Финансовый Центр «Астана», МФЦА.

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### Introduction

The Republic of Kazakhstan is a secular and democratic state; however, overwhelming majority of the population, more than 70%, describe themselves as Muslims<sup>1</sup>. Nevertheless, despite Islam being a substantial part of the life of

the people in Kazakhstan, the Islamic financing has an insignificant share in the financial and banking sector of the state. Therefore, most of the people in our country do not have an access to financial and banking services that comply with the Islamic religious standards. Therefore,

<sup>1</sup> Множество ограничений. Доклад о ситуации с религиозной свободой в Казахстане [Электронный ресурс] – Режим доступа: <https://rus.azattyq.org/a/31217287.html> (Дата обращения: 09.02.2023г.)



this article reviews the regulatory framework of the national legal system as well the acting law of the AIFC to analyze the impediments that exist in the legislation of the country that affects the development of the Islamic financing. Additionally, the author reviews the experience of the United Kingdom with an aim of conducting comparative analysis of the local Kazakhstani legislation and AIFC jurisdiction with another common law state which regards as one of the leading centres of the Islamic finances in the world.

### Literature review and methods

The main literature used during the writing of the given scientific article is the researches on the topic conducted by local and foreign scholars, as well as the analysis of the legislation of the Republic of Kazakhstan and the acting law of the Astana International Financial Centre. For the purposes of this research several different research methods have been used, including historical method, formal-logical, formal-judicial, dialectical, comparative-legal and others.

### Discussion

The rise of Islamic financing became one of the most perceptible trends in the financial industry throughout the globe by steadily increasing from 10 to 12% annually for the past decade<sup>2</sup>. One of the main reasons for such rapid development is the Muslim population that is the fastest growing religious group<sup>3</sup>. However, the Islamic financing, being a global trend, has reached only a number of 1% of the total assets of the global financial sphere<sup>4</sup> whereas Islamic banking accounts for only 6% of the global market share<sup>5</sup>.

Generally, Islamic finances traditionally has many specific features that is intrinsic to the Islamic culture. Nevertheless, one of main features that differs it from the modern financial industry is that it shall be in adherence with the religious law called “Shari’ah” [1, p. 120]. Hence, the basic pillar of the Shari’ah law is

prohibition of “riba” which is the interest or usury [2]. The religion of Islam denies the concept of usury on the premise that money has no value in itself. Rather, money shall be treated as a good or a product, therefore, it is prohibited to receive interest just for lending money to other people<sup>6</sup>. Hence, the traditional financial instruments such as loans could not specify the guaranteed amount of returns<sup>7</sup> but instead the Islamic financing is a type of “project investment” where both parties shall bear risks that result in the “equity participation” [3].

Now if we look at the development of the Islamic financing and its legal regulation in the Republic of Kazakhstan, then our state was the first among post-soviet countries to implement legislation in order to open the Islamic banks [4, p. 62]. The Kazakh International Commercial Bank Al-Baraka was established by the Decree No. 5 of the first president in 1992. Nevertheless, at that point of time there was no clear framework for the operation of the Islamic banking and the legal regulation was implemented only in 2009 by the adoption of the law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Organization and Activities of Islamic Banks and the Organization of Islamic Finance” (Law on Islamic Financing)<sup>8</sup>. Hence, the Law on Islamic Financing created necessary regulatory framework for the development of Islamic financing by supplementing several laws, including General and Special Parts of the Civil Code, Tax Code, Law “On banks and banking activities in the Republic of Kazakhstan” (Banking Law), Law “On the Securities Market”, Law “On Investment Funds”, Law “On Limited and Additional Liability Partnerships” and several other legislative acts.

Generally, the review of the Law on Islamic Financing shows that this act created a regulatory framework for the emergence of Islamic financing and especially Islamic banking. So, for the first time the concept of Islamic bank was introduced to the law

<sup>2</sup> Global Islamic Finance Development Center [Electronic resource] – Access mode: <https://www.worldbank.org/en/programs/global-islamic-finance-development-centre#2> (Access date: 15.01.2023).

<sup>3</sup> Islam: The world's fastest growing religion [Electronic resource] – Access mode: <https://www.bbc.com/news/av/world-39279631> (Access date: 5.01.2023)

<sup>4</sup> Исламское финансирование [Электронный ресурс] — Режим доступа: <https://aifc.kz/ru/islamic-finance/>;

<sup>5</sup> Ismail A. The Islamic Financial Services Industry Statistics // <https://www.qardus.com/news/the-islamic-financial-services-industry-statistics>. Access date: 15.03.2023.

<sup>6</sup> What is Islamic finance? [Electronic resource] – Access mode: <https://www.bankofengland.co.uk/knowledgebank/what-is-islamic-finance> (Access date: 15.03.2023).

<sup>7</sup> Там же.

<sup>8</sup> Исламские финансы в Казахстане. Развитие под эгидой МФЦА [Электронный ресурс] — Режим доступа: <https://plusworld.ru/journal/2021/plus-10-2021/islamskie-finansy-v-kazahstane-razvitiye-pod-egidoj-mftsa/> (Дата обращения: 23.01.2023).

where it stated that it is a second-tier bank, carrying out banking activities on the basis of a license from the authorized body<sup>9</sup>. Another provision of the Banking Law specified that Islamic Bank is not entitled to receive interest from lending money, to provide money for financing the trade of alcohol, tobacco products and weaponry. The Islamic banks also cannot finance gambling services and other activities that Islamic Council may prohibit<sup>10</sup>. Hence, the Islamic Council is the permanent body that shall supervise the activities of the Islamic Bank. The Banking Law also provided procedures for the local conventional banks to be reorganized into the Islamic banks.

The Law on Islamic Financing also introduced amendments to the Law on Securities Market and Tax Code of the Republic of Kazakhstan and identified the Islamic securities as a separate financial instrument which are Islamic lease certificates and Islamic participation certificates<sup>11</sup>. Hence, the Tax Code regulated the issues with the taxation of the profits from the use of different Islamic financial products.

Nevertheless, current legislative framework did not contribute to the perceptible development of the Islamic finances in the country. According to the research, in 2018 the Islamic banking comprised only 0,17% of the banking sector of the Republic of Kazakhstan<sup>12</sup>. In addition to that, only two banks are operating in Kazakhstan – Al Hilal Bank and Zaman-Bank<sup>13</sup>.

Hence, the creation of the Astana International Financial Centre in 2018 was seen by many experts as the next step in the process of the development of the Islamic financing<sup>14</sup>. The AIFC was created as the territory with a special legal regime within a capital city Astana based on the English common law system, mainly by the example of Dubai International Financial Centre [5, p. 29]. Although, many scholars were against the initiative to create a

legal enclave within the territory of the state [6] and also claimed that there is incompatibility of the common law and civil law systems [7, p. 51]. However, there are researchers who believe that common law is very close to the traditional Kazakh customary law and hence, more closer and even inherent to the legal consciousness of the Kazakh people [8, p. 87]. So, the Republic of Kazakhstan made an unprecedented step becoming the first country among post-Soviet states that created a territory with common law system [9, p. 140].

The AIFC has its own acting law that is distinct from the national legislation and it provides many exemptions and benefits for the potential international investors, including favorable tax policies and currency regulations.

The AIFC was created in accordance with the Constitutional Statute of the Republic of Kazakhstan dated December 7, 2015 No. 438-V ZRK “On Astana International Financial Centre” (The AIFC Constitutional Statute). The AIFC Constitutional Statute specified the main and sole purpose of the AIFC in the second article as “establishing a leading international centre for financial services”. Now, in order to achieve this goal, additional five objectives were identified, including the development of the Islamic finances within the AIFC (sub-paragraph 3, paragraph 2, article 2 of the The AIFC Constitutional Statute). Hence, with an aim of implementing the legislative purpose of the AIFC the special road map was prepared – “Islamic Finance Master Plan for the Republic of Kazakhstan 2020-2025” (Master Plan). Given Master Plan also specified another measurable goal, which is to increase Islamic financial assets in the Republic of Kazakhstan at least by up to 3-5% of total financial assets by 2025<sup>15</sup>. The Master Plan also identified additional nine goals that shall be developed in order to achieve the financial indicators<sup>16</sup>.

<sup>9</sup> Закон Республики Казахстан от 31 августа 1995 года № 2444 «О банках и банковской деятельности в Республике Казахстан». // [https://online.zakon.kz/Document/?doc\\_id=1003931](https://online.zakon.kz/Document/?doc_id=1003931). (дата обращения 27.02.2023)

<sup>10</sup> Там же.

<sup>11</sup> Закон Республики Казахстан от 2 июля 2003 года № 461-II «О рынке ценных бумаг». // [https://online.zakon.kz/Document/?doc\\_id=1041258](https://online.zakon.kz/Document/?doc_id=1041258). (дата обращения 21.02.2023).

<sup>12</sup> Глобальный рынок исламских финансов в стадии роста и достиг уже 2,2 триллиона долларов США, расширившись за год на 7% [Электронный ресурс] — Режим доступа: <http://finprom.kz/ru/article/globalnyj-rynok-islamskih-finansov-v-stadii-rosta-i-dostig-uzhe-22-trilliona-dollarov-ssha-rasshirivshis-za-god-na-7> (Дата обращения: 07.01.2023).

<sup>13</sup> Почему сектор исламских финансов недостаточно развит в Казахстане [Электронный ресурс] — Режим доступа: <https://kz.kursiv.media/2021-09-24/pochemu-sektor-islamskikh-finansov-nedostatochno-razvit-v-kazakhstane/> (Дата обращения: 07.02.2023).

<sup>14</sup> Эксперт по исламским финансам ответил на заявления Акишева [Электронный ресурс] — Режим доступа: <https://ism.kz/islamskie-banki-nahodyatsya-v-neravnyh-usloviyah-s-drugimi-fininstitutam-i-mnenie>. (Дата обращения: 17.03.2023).

<sup>15</sup> Мастер План по Исламскому Финансированию для Республики Казахстан 2020-2025 [Электронный ресурс] — Режим доступа: <https://aifc.kz/files/pages/721/documents/1/islamic-finance-master-plan-for-the-republic-of-kazakhstan-2020-2025.pdf> (Дата обращения: 27.03.2023).

<sup>16</sup> Там же.

So, currently six internal AIFC regulations, called the AIFC Acts, were adopted to develop Sharia'h based financing, including the AIFC Islamic Banking Business Prudential Rules No. FR0014 of 2017 (AIFC Islamic Banking Rules), the AIFC Islamic Finance Rules No. FR0013 of 2017, and finally the AIFC Takaful and Retakaful Prudential Rules No. FR0031 of 2018. In addition to three mentioned rules, one manual for the preparation of returns and two consultation papers to further enhance the legal regulation of the Islamic financing were prepared<sup>17</sup>.

In general, the analysis suggests that acting law of the AIFC provides more comprehensive regulatory framework for the development of Islamic financing in comparison to the legislation of the Republic of Kazakhstan. For instance, the acting law of the AIFC provides a greater variety of activities to be conducted within the AIFC. However, it is important to mention that regardless of the type of the activities, any company within the AIFC shall be authorized to do business. In addition to that, Authorised Firms also must receive a license for the specific types of activities to be carried out within the AIFC. Thereby, Authorized Firms, also called as the AIFC participants, can carry out Islamic financial businesses or Islamic banking businesses.

Now, general framework of the AIFC provides a favorable conditions for its participants. For instance, they are exempt from corporate income tax on income received from providing Islamic banking services until 1 January 2066<sup>18</sup>. Also, same organizations are exempt from property tax and land tax for facilities located in the territory of the AIFC, whereas, the employees of the mentioned participants are exempt from personal income tax to the same period of time<sup>19</sup>.

Moreover, the AIFC also provides favorable currency regulations. For instance, the monetary obligations within the territory of the state shall

be denominated in the national currency, except for the cases specified by the laws. Whereas, the AIFC participants may denominate and execute their monetary obligations in any currency agreed in their contracts<sup>20</sup>.

Additionally, the AIFC Islamic Banking Rules establishes that if an Authorised Firm is interested in the Islamic banking businesses, then it could operate as an Islamic bank, Islamic broker dealer and Islamic financing company<sup>21</sup>. These Authorized Firms shall follow the principles for the management of different types of risks, such as capital adequacy, credit risk and problem assets, concentration risks and others.

Apart from the Islamic banking businesses, an Authorised Firm can operate either as an Islamic Financial Institution, Islamic Investment Fund or as an Islamic Window<sup>22</sup>. So, the activities of the Islamic Financial Institutions as well as their constituent documents shall fully comply with the Shari'ah laws<sup>23</sup>. Hence, the provision of Islamic financing is described as providing financing in a Shari'ah-compliant manner by entering into any Islamic Financial Contract<sup>24</sup>. So, the types of Islamic Financial Contracts include such contracts as murabahah, salam, tawarruq, istisna and their variations and any other Islamic Financial Contract approved by the relevant Authorised Firm's Shari'ah Supervisory Board (SSB)<sup>25</sup>. The AIFC acting law also provides an extensive description of the responsibilities of the Shari'ah Supervisory Board, including the procedures for the appointing members of the SSB, policy in relation to SSB, its independence from the Islamic Financial Institution and its obligation to assist SSB, the information about SSB to be given to one of the bodies of the AIFC – Astana Financial Services Authority (AFSA) and etc<sup>26</sup>.

Additionally, the AIFC Act called AIFC Takaful and Retakaful Prudential Rules regulates the Islamic insurance business that is called "takaful". The AIFC Takaful and Retakaful

<sup>17</sup> AIFC Legal Framework [Electronic resource] – Access mode: <https://aifc.kz/en/legal-framework> (Access date: 05.03.2023).

<sup>18</sup> Конституционный Закон Республики Казахстан от 7 декабря 2015 года № 438-V «О Международном финансовом центре «Астана» // [https://online.zakon.kz/Document/?doc\\_id=39635390](https://online.zakon.kz/Document/?doc_id=39635390) (дата обращения - 03.03.2023).

<sup>19</sup> Там же.

<sup>20</sup> Там же.

<sup>21</sup> AIFC Islamic Banking Business Prudential Rules No. FR0014 of 2017 // [https://aifc.kz/files/legals/130/file/ibb\\_v2\\_fr00014\\_11.05.2020.pdf](https://aifc.kz/files/legals/130/file/ibb_v2_fr00014_11.05.2020.pdf). (Access date: 18.01.2023)

<sup>22</sup> AIFC Islamic Finance Rules No. FR0013 of 2017 // [https://aifc.kz/files/legals/132/file/ifr\\_v1\\_fr0013\\_10.12.2017.pdf](https://aifc.kz/files/legals/132/file/ifr_v1_fr0013_10.12.2017.pdf). (Access date: 18.01.2023)

<sup>23</sup> Там же

<sup>24</sup> AIFC General Rules No. FR0001 of 2017 // [https://aifc.kz/files/legals/430/file/gen\\_v11\\_fr0001\\_12.12.2021.pdf](https://aifc.kz/files/legals/430/file/gen_v11_fr0001_12.12.2021.pdf). (Access date: 17.02.2023)

<sup>25</sup> AIFC Islamic Finance Rules No. FR0013 of 2017 // [https://aifc.kz/files/legals/132/file/ifr\\_v1\\_fr0013\\_10.12.2017.pdf](https://aifc.kz/files/legals/132/file/ifr_v1_fr0013_10.12.2017.pdf). (Access date: 18.01.2023)

<sup>26</sup> AIFC Islamic Finance Rules No. FR0013 of 2017 // [https://aifc.kz/files/legals/132/file/ifr\\_v1\\_fr0013\\_10.12.2017.pdf](https://aifc.kz/files/legals/132/file/ifr_v1_fr0013_10.12.2017.pdf). (Access date: 18.01.2023)

Prudential Rules set the main principles for takaful businesses. These AIFC Acts provides general regulatory framework for the Islamic insurance businesses by identifying the takaful contracts, the obligations of the Takaful operators, the risks associated as well as the restrictions imposed by the regulations.

Finally, the Islamic Window is also an Authorised Firm that is other than Islamic Financial Institutions and which conducts Islamic Financial Business as a part of its business operations<sup>27</sup>. Basically, Islamic windows are proven to be as an extremely effective tool in the enhancement of the Shari'ah based finances. Nevertheless, despite the fact that acting law of the AIFC permits the opening of the Islamic windows, the national legislation of the Republic of Kazakhstan does not enable traditional banks to open such windows in the country. Although, some scholars asserts that substantive law of the AIFC is applicable not only within the territory of the financial centre but throughout the territory of the Republic of Kazakhstan [10, p. 45], nevertheless, the Kazakhstani banks cannot use the regulatory framework of the AIFC to open Islamic windows, since the AIFC participants can create Islamic windows only if the local jurisdiction of the bank allows to open such windows<sup>28</sup>. However, as we have established, the Banking Law of the Republic of Kazakhstan does not permit the opening of any kind of Islamic windows, thus, creating a barrier for the development of Islamic finances in Kazakhstan.

Now, if we look at the international experience for the development of the Islamic financing, then it seems appropriate to consider the United Kingdom as a prime example, since London become the largest Islamic financial centre not only within Europe but also currently ranking 9th largest in the world in terms of the valuation of the financial assets<sup>29</sup>. The main reason for not taking into consideration similar financial centres that exist in Gulf states, such as Dubai International Financial Centre or Qatar Financial Centre is

that these hubs exist within the Islamic states and within Shari'ah legal systems, therefore they did not have to develop and implement a special regulation for the Islamic financing within their territories.

Generally, we can observe that most of the regulatory policies that were introduced in the United Kingdom were similar to the AIFC. For instance, one of the first measures applied in the UK was to transfer the supervising of the financial market, including the Islamic financing, from the central bank – Bank of England to the Financial Services Authority (FSA)<sup>30</sup>. Similarly, the regulation of the financial market within the AIFC is conducted by one of the AIFC body – Astana Financial Services Authority; however, National Bank of the Republic of Kazakhstan still retain certain authorities to develop the internal rules that regulate the issues regarding the currency regulation<sup>31</sup>.

In addition to that, UK authorities also introduced tax incentives, although, not as comprehensive as in AIFC. So, the tax legislation was amended to remove certain barriers, particularly in 2003, the double land tax was abolished which was previously imposed in the form of levy on Islamic mortgages [11, p. 38].

Nevertheless, the main difference between Republic of Kazakhstan is that United Kingdom legislatively allowed traditional banks to open Islamic windows for their Muslim clients. [12, p. 7]. Since the Muslim community steadily increases throughout the Europe and especially in the UK<sup>32</sup>, the given step was proven to be crucial for the development of the Islamic finances [13, p. 183] and significantly contributed to its enhancement in the United Kingdom [14].

## Results

Despite creating favorable conditions within the AIFC, it is worth to mention that only two Islamic financing organizations were established in AIFC since 2018; one is a Qatari company – Al Rayan Investment LLC, whilst the second is a local company – Al Saqr Finance<sup>33</sup>. Moreover,

<sup>27</sup> AIFC Islamic Finance Rules No. FR0013 of 2017 // [https://aifc.kz/files/legals/132/file/ifr\\_v1\\_fr0013\\_10.12.2017.pdf](https://aifc.kz/files/legals/132/file/ifr_v1_fr0013_10.12.2017.pdf). (Access date: 18.01.2023)

<sup>28</sup> Islamic Finance Master Plan for the Republic of Kazakhstan 2020-2025. [Electronic resource] – Access mode: <https://aifc.kz/files/pages/721/documents/1/islamic-finance-master-plan-for-the-republic-of-kazakhstan-2020-2025.pdf> (Access date: 15.03.2023).

<sup>29</sup> Исламские финансы в Великобритании, интернет ресурс 2025 [Электронный ресурс] — Режим доступа: <http://tarb.ru/upload/iblock/91c/исламские%20финансы%20в%20Великобритании.pdf> (Дата обращения: 21.01.2023).

<sup>30</sup> Там же.

<sup>31</sup> Конституционный Закон Республики Казахстан от 7 декабря 2015 года № 438-V «О Международном финансовом центре «Астана» // [https://online.zakon.kz/Document/?doc\\_id=39635390](https://online.zakon.kz/Document/?doc_id=39635390) (дата обращения - 03.03.2023).

<sup>32</sup> Europe's Growing Muslim Population [Electronic resource] – Access mode: <https://www.pewresearch.org/religion/2017/11/29/europes-growing-muslim-population/> (Access date: 19.01.2023).

<sup>33</sup> Почему сектор исламских финансов недостаточно развит в Казахстане 2025 [Электронный ресурс] — Режим доступа: <https://kz.kursiv.media/2021-09-24/pochemu-sektor-islamskikh-finansov-nedostatochno-razvit-v-kazakhstane/> (Дата об-

the research shows that the overall assets of the Islamic banks have reached only 87 billion tenge, or 0,25% of the total assets of the banking sector in 2021<sup>34</sup>. This is a 0,09% increase in comparison to the year 2017<sup>35</sup>, prior to the establishment of the AIFC.

Hence, we can see that the goal established in the AIFC Master Plan to reach at least 3-5% of total financial assets of the Republic of Kazakhstan by 2025 seems very unlikely. Although, a comparative analysis that has been conducted with the United Kingdom suggests that the legal regulation of the Islamic financing within the AIFC correspond to the leading international practices. The given conclusion is also supported by the practicing lawyers<sup>36</sup> as well as the academic community that asserts that Shari'ah based financing has indeed a very favorable regulatory framework for the future enhancement [15, p. 71]. Nevertheless, it is apparent that in order to give a strong boost for the development of Islamic financing, the national legislation shall allow the conventional banks to open Islamic windows. The analysis suggests that Islamic banks cannot fulfill the demand of the overall population, however the customers of the existing traditional banks can highly benefit from a less expensive banking and other financial services that could be provided by Islamic windows [16]. Moreover, the studies conducted by the researchers suggested that countries such as Malaysia, Algeria and United Kingdom experienced a rapid development of the Islamic financial industry as soon as the conventional banks were legislatively allowed to open Islamic windows [13, p. 183].

Therefore, we can draw the conclusion that development of the Islamic financing could be further enhanced by the amending the legislation on banking activities and by permitting conventional banks to open Islamic windows for the general population as an alternative to the traditional banking services. Since the overwhelming majority of the population are clients of the traditional banks, the opening of the Islamic windows by the conventional

banks potentially could have an instant effect. For instance, it is estimated that 1,6 million of the population of the Republic of Kazakhstan are practicing Muslims who pray five times a day<sup>37</sup>. Taking into consideration mentioned figures, local financial analysts are convinced that at the moment at least 1,5 million citizens of the country could become the users of Islamic financial products<sup>38</sup>.

### Conclusion

To sum up, we can conclude that there are two separate regulatory legal frameworks that exist for the Islamic financing in the Republic of Kazakhstan. One is the general national legislative system and the second is the new English common law system of the AIFC that provides even more comprehensive framework and more privileges for the Islamic financial institutions through tax, currency and other incentives. Moreover, the comparative analysis with the United Kingdom suggests that jurisdiction of the AIFC clearly meets the international standards for the regulation of the Islamic finances. Nevertheless, despite having two separate legal systems that regulate Sharia'h based finances, its current state of development is far behind the projected growth rates. So, one of the main obstacles that has been identified is the prohibition for the local banks to open Islamic windows which are one of the main factors that can have an immediate impact and instantaneously attract over a million of citizens to use Islamic financial products. Hence, the state shall reevaluate its approach towards prohibition of Islamic windows and shall consider the legislative permission for the conventional banks to open Islamic windows if it plans to give an actual boost for the development of Islamic finances in the Republic of Kazakhstan and to create the leading international financial centre in the Central Asian region.

ращения: 11.03.2023).

<sup>34</sup> Там же.

<sup>35</sup> Глобальный рынок исламских финансов в стадии роста и достиг уже 2,2 триллиона долларов США, расширившись за год на 7% [Электронный ресурс] — Режим доступа: <http://finprom.kz/ru/article/globalnyj-rynok-islamskih-finansov-v-stadii-rosta-i-dostig-uzhe-22-trilliona-dollarov-ssha-rasshirivshis-za-god-na-7> (Дата обращения: 11.01.2023).

<sup>36</sup> Исламское финансирование в Республике Казахстан [Электронный ресурс] — Режим доступа: [https://gratanet.com/laravel-filemanager/files/3/1\\_Rus\\_islamic%20finance.pdf](https://gratanet.com/laravel-filemanager/files/3/1_Rus_islamic%20finance.pdf) (Дата обращения: 19.02.2023).

<sup>37</sup> Как развивается исламский банкинг в Казахстане и что ему мешает [Электронный ресурс] — Режим доступа: [https://tengrinews.kz/kazakhstan\\_news/razvivaetsya-islamskiy-banking-kazahstane-cto-meshaet-494239/](https://tengrinews.kz/kazakhstan_news/razvivaetsya-islamskiy-banking-kazahstane-cto-meshaet-494239/) (Дата обращения: 17.01.2023).

<sup>38</sup> Более 1,5 млн казахстанцев могли бы стать клиентами исламских банков – Jusan Analytics [Электронный ресурс] — Режим доступа: <https://ism.kz/bole-1-5-mln-kazahstancsev-mogli-by-stat-klientami-islamskih-bankov--jusan-analytics> (Дата обращения: 27.03.2023).

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