

## THE COURT OF ASTANA INTERNATIONAL FINANCIAL CENTER AND PUBLIC-LEGAL REGULATION MATTERS

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**Abstract.** To attract foreign investors, around 50 agreements on the promotion and mutual protection of investments has been concluded by the Republic of Kazakhstan, where the parties undertake to create favorable conditions on their territory. By the Decree of the President of the Republic of Kazakhstan of May 19, 2015, the «Astana» International Financial Center was established in the city of Astana, which has been operating since 2016. One of the main tasks of the «Astana» International Financial Center is to attract investment in the sphere of financial services of our country. In addition, with the involvement of excellent judges, and recognized lawyers the «Astana» International Financial Center Court and the International Arbitration Center were established. However, the «Astana» International Financial Center Court does not conduct administrative or criminal proceedings. At the same time, this court has exclusive competence to interpret the acts of the «Astana» International Financial Center. In this connection the question arises about the expediency of consideration of disputes with the state bodies within the framework of the Code of the Republic of Kazakhstan «Administrative Procedural Code of the Republic of Kazakhstan», where the sources of the law of the «Astana» International Financial Center include principles, norms, and precedents of the English law. Are local administrative courts sufficiently qualified to adjudicate disputes under the common law? This article will examine the structure of the «Astana» International Financial Center Court, its jurisdiction, and public-law relations under the current law of the «Astana» International Financial Center, the legislation of the Republic of Kazakhstan.

**Keywords:** The «Astana» International Financial Centre, AIFC, AIFC Court, International Arbitration Center (IAC), public law, foreign investor, foreign investment.

## СУД МЕЖДУНАРОДНОГО ФИНАНСОВОГО ЦЕНТРА "АСТАНА" И ВОПРОСЫ ГОСУДАРСТВЕННО-ПРАВОВОГО РЕГУЛИРОВАНИЯ

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**Аннотация.** Для привлечения иностранных инвесторов Казахстан заключил около 50 соглашений о поощрении и взаимной защите инвестиций, где стороны обязуются создать благоприятные условия на своей территории. Указом Президента Республики Казахстан от 19 мая 2015 года в городе Астана был создан Международный финансовый центр «Астана», который функционирует с 2016 года. Одной из основных задач Международного финансового центра «Астана» является привлечение инвестиций в сферу финансовых услуг нашей страны. Кроме того, с привлечением судей международного уровня и признанных юристов были созданы Суд Международного финансового центра «Астана» и Международный арбитражный центр. Однако суд Международного финансового центра «Астана» не ведет административные и уголовные дела. В то же время данный суд обладает исключительной компетенцией по толкованию актов Международного финансового центра «Астана». В связи с этим возникает вопрос о целесообразности рассмотрения споров с государственными органами в рамках Кодекса Республики Казахстан «Административно-процессуальный- кодекс Республики Казахстан», где к источникам права Международного финансового центра «Астана» относятся принципы, нормы,

прецеденты английского права. Обладают ли местные административные суды достаточной квалификацией для рассмотрения споров по общему праву? В данной статье будет рассмотрена структура суда Международного финансового центра «Астана», его юрисдикция, а также публично-правовые отношения по действующему законодательству Международного финансового центра "Астана", Республики Казахстан.

**Ключевые слова:** Международный финансовый центр «Астана», МФЦА, Суд МФЦА, Международный арбитражный центр (МАЦ), публичное право, иностранный инвестор, иностранные инвестиции.

## «АСТАНА» ХАЛЫҚАРАЛЫҚ ҚАРЖЫ ОРТАЛЫҒЫНЫҢ СОТЫ ЖӘНЕ МЕМЛЕКЕТТІК-ҚҰҚЫҚТЫҚ РЕТТЕУ МӘСЕЛЕЛЕРІ

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**Аннотация.** Шетелдік инвесторларды тарту мақсатында Қазақстан Инвестицияларды көтермелеу және өзара қорғау туралы 50-ге жуық келісім жасасты, онда тараптар өз аумағында қолайлы жағдайлар жасауға міндеттенеді. Қазақстан Республикасы Президентінің 2015 жылғы 19 мамырдағы Жарлығымен Астана қаласында 2016 жылдан бері жұмыс істеп келе жатқан "Астана" халықаралық қаржы орталығы құрылды. "Астана" халықаралық қаржы орталығының негізгі міндеттерінің бірі еліміздің қаржы қызметтері саласына инвестициялар тарту болып табылады. Бұдан басқа, халықаралық деңгейдегі судьялар мен танылған заңгерлерді тарта отырып, "Астана" халықаралық қаржы орталығының соты мен Халықаралық төрелік орталығы құрылды. Алайда "Астана" халықаралық қаржы орталығының соты әкімшілік немесе қылмыстық істерді жүргізбейді. Сонымен қатар, бұл сот "Астана" халықаралық қаржы орталығының актілерін түсіндіру бойынша айрықша құзыретке ие. Осыған байланысты "Қазақстан Республикасының Әкімшілік-іс жүргізу кодексі" Қазақстан Республикасы кодексінің шеңберінде мемлекеттік органдармен дауларды қараудың орындылығы туралы мәселе туындайды, мұнда "Астана" халықаралық қаржы орталығының құқық көздеріне ағылшын құқығының қағидаттары, нормалары, прецеденттері жатады. Жергілікті әкімшілік соттар жалпы заң бойынша дауларды қарау үшін жеткілікті біліктілікке ие ме? Осы мақалада "Астана" халықаралық қаржы орталығы сотының құрылымы, оның құзіреті, сондай-ақ "Астана" халықаралық қаржы орталығы, Қазақстан Республикасының қолданыстағы заңнамасы бойынша жария-құқықтық қатынастар қаралатын болады.

**Түйін сөздер:** "Астана" халықаралық қаржы орталығы, АХҚО, АХҚО соты, Халықаралық төрелік орталығы (ХТО), жария құқық, шетелдік инвестор, шетелдік инвестициялар.

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### Introduction

The Republic of Kazakhstan being a party to bilateral agreements on the promotion and mutual protection of investments by its national legislation has created favorable conditions for foreign investors by creating the "Astana" International Financial Center (AIFC). The AIFC territory defined within the city of Astana

and area is 1632 hectares<sup>1</sup>.

The bodies of the AIFC are the Management Council, the Manager, the Administration, the Financial Services Regulatory Committee, the AIFC Court (hereafter - Court), and the International Arbitration Center<sup>2</sup>.

English is the formal language of the AIFC acts, record keeping, and proceedings.

<sup>1</sup> УКАЗ ПРЕЗИДЕНТА РЕСПУБЛИКИ КАЗАХСТАН «О Международном финансовом центре «Астана» от 19 мая 2015 года, № 24 [Electronic resource] <https://clck.ru/32bems> (date of access: 16.10.2023).

<sup>2</sup> КОНСТИТУЦИОННЫЙ ЗАКОН РЕСПУБЛИКИ КАЗАХСТАН «О Международном финансовом центре «Астана» от 7 декабря 2015 года, № 438-V [Electronic resource] [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=327;-50#pos=327;-50](https://online.zakon.kz/Document/?doc_id=39635390&pos=327;-50#pos=327;-50) (date of access: 16.10.2023).

For foreign investors in Kazakhstan, AIFC provides opportunities for legal entities, to be represented in the forms of General partnerships, Limited partnerships, foundations, Limited Liability partnerships Investment companies, Special Purpose companies, Public companies, Private companies, and Non-profit Incorporated organizations<sup>3</sup>.

Foreign entities may be represented at AIFC as a Recognized Company, a Recognized Limited Partnership, a Recognized General Partnership, or a Recognized Limited Liability Partnership<sup>4</sup>.

In addition, foreign entities permitted by law to be redomiciled, may be relocated from one jurisdiction to the rule of the AIFC.

The AIFC is the special territorial unity that creates opportunities for foreign investors to act based on their experiences from leading financial centers such as Singapore, Dubai, London, Hong Kong, and New York<sup>5</sup>.

The structure of AIFC consists of the Astana International Exchange (AIX), The AIFC Green Finance Centre (GFC), The AIFC Tech Hub, The Astana Financial Services Authority (AFSA), the International Arbitration Center, the AIFC Court, etc<sup>6</sup>.

The scope of the study of this article covers the AIFC Court.

The Court of the AIFC is not part of the judicial system, but complements the judicial system of the Republic of Kazakhstan, is independent and impartial in its work, the judges are appointed by the President of the Republic of Kazakhstan on the recommendation of the Manager of the AIFC, for a period of 5 years, where the term of stay cannot exceed the attainment of 80 years by the judges<sup>7</sup>.

The mission of the Court and International Arbitration Center according to the Chief Justice of the Court is to become the center of commercial dispute resolution in the region, which can also stimulate to attract foreign capital to the Republic of Kazakhstan [1, p. 8].

As follows from the Rules of Procedure of the Court - the Government of the Republic of Kazakhstan, the Administration of the AIFC,

and any other person or organization have no right to interfere with the exercise of judicial functions or judgments of the Chief Justice of the Court or the judges of the Court<sup>8</sup>.

The Court consists of a trial court and an appellate court; the trial court also includes the Small Claims Court ("SCC")<sup>9</sup>.

Judges may be persons at least 40 years of age, in good standing, with considerable knowledge of common law and experience as a judge, qualified as a lawyer in the common law system, and fluent in English<sup>10</sup>.

Judges of the SCC may be persons at least 30 years of age, in good standing, with substantial experience as a judge and understanding of the common law, a qualified common law jurist, and a perfect command of the English language<sup>11</sup>.

The purpose of this article is to consider the structure of the AIFC, which identifies possible issues that may face by residents of the center, to avoid potential negative experiences in disputes with the state authorities of the Republic of Kazakhstan.

### Materials and methods

Since AIFC has been operating, there is virtually no question raised by the author about the interaction of AIFC residents with the state authorities of the Republic of Kazakhstan based on local courts.

At the same time the analysis of the legal framework regulating the activities of the AIFC, literature, websites of legal advisors on the activities of the AIFC, and statements of officials of the Republic of Kazakhstan, according to the author, indicate the potential risks for the AIFC residents/foreign investors carrying out their activities on the principles of common law.

The President of the Republic of Kazakhstan has stated that prospective foreign investors will meet standards, practices, procedures, identical to other major financial centers around the world. Experienced foreign judges known for their impartiality and integrity are also a guarantee for the property of potential international capital<sup>12</sup>.

<sup>3</sup> Что нужно знать перед открытием бизнеса [Electronic resource] <https://clck.ru/32hVTy> (date of access: 16.10.2023).

<sup>4</sup> Ibid.

<sup>5</sup> About AIFC [Electronic resource] <https://aifc.kz/en/about-us> (date of access: 16.10.2023)

<sup>6</sup> Ibid.

<sup>7</sup> AIFC COURT REGULATIONS, RESOLUTION OF THE AIFC MANAGEMENT COUNCIL [Electronic resource] <https://aifc.kz/files/legals/68/file/3.-legislation-aifc-court-regulations-2017.pdf> (date of access: 16.10.2023).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> МФЦА ДОЛЖЕН СТАТЬ СИНОНИМОМ НАДЕЖНОЙ ФИНАНСОВОЙ ПЛАТФОРМЫ – ПРЕЗИДЕНТ [Electronic

The normative basis of the study is the Decree of the President of the Republic of Kazakhstan "On the International Financial Center "Astana", the Constitutional Law of the Republic of Kazakhstan "On the International Financial Center "Astana", the Presidential Decree "On determining the boundaries of the International Financial Center "Astana", "AIFC Court Rules", the Civil Code of the Republic of Kazakhstan, the Administrative Procedural Code, the Decree of the Government of the Republic of Kazakhstan "On Approval of the Investment Concept of the Republic of Kazakhstan till 2026".

The methodology of the research is an empirical method, special literature, and legal acts of Kazakhstan studied, during which the method of deduction was used, where the possible connection of investment attractiveness of AIFC/Republic of Kazakhstan with the negative practice of AIFC residents in local courts on disputes with state bodies is seen.

### Results. Discussion

AIFC Court Judge Sir Jack Beatson emphasized in an April 24, 2018 lecture that common law judges selected after acquiring a large amount of practical legal experience, this experience equips them with knowledge and comprehension of the challenges faced by businesses and the necessity of reflecting those demands in commercial and financial legislation. Their knowledge of acceptable and undesirable work behaviors aided by experience. Additionally, practical experience has a significant role in how well English common law adapts to the fast-evolving practical and commercial realities<sup>13</sup>.

The SCC hears and resolves claims where the amount does not exceed \$150,000, where the parties have agreed in writing to refer the dispute to the SCC the amount does not

exceed \$300,000, where the claim involves an employment relationship where the parties have agreed in writing to refer the dispute to the SCC, other claims as determined by the Chief Justice of the Court<sup>14</sup>.

The Court guided in its judgements by AIFC rules, Court decisions that have entered into force in similar disputes, and may consider decisions of common law courts<sup>15</sup>.

At the same time enforcement of the judgements of the Court, the appeal Court are binding for all and executed in the same manner as the judgements of the courts of the Republic of Kazakhstan<sup>16</sup>.

Sir Jack Beatson in his lecture also mentioned on the priority of precedent, where common law judges' decisions serve as binding precedents, enabling parties and counsel to predict disputes' outcomes<sup>17</sup>.

At the same time, author would like to note that Kazakhstan courts resolve cases within the limits of the plaintiff's claims<sup>18</sup>, which worsens the position of defendants, who required representing their interests in the courts without predicting the result of a dispute, where courts guided by inner conviction, conscience, in addition to the law. In its activity, the AIFC Court guided by the Rules of the Court, which are based on the principles and norms of the common law, as well as on the standards of the world known financial centers<sup>19</sup>.

In this connection, Sir Jack Beatson has stressed, «Section 13(5) of the Constitutional Act provides that the law in force must be based on the principles and rules of English common law and the standards of the world's leading financial centers. Paragraph 29 (3) of the AIFC Court Act provides that the Court will be guided by its own decisions on relevant issues and final decisions in other common law jurisdictions. Thus, the Court has similarities with other institutions that can be characterized as an

*resource*] - [https://www.akorda.kz/ru/events/akorda\\_news/akorda\\_other\\_events/glava-gosudarstva-prinyal-uchastie-v-ceremonii-prinyatiya-prisyagi-predsdatelem-suda-mezhdunarodnogo-finansovogo-centra-astana](https://www.akorda.kz/ru/events/akorda_news/akorda_other_events/glava-gosudarstva-prinyal-uchastie-v-ceremonii-prinyatiya-prisyagi-predsdatelem-suda-mezhdunarodnogo-finansovogo-centra-astana) (date of access: 25.04.2023).

<sup>13</sup> Лекция в Верховном суде Республики Казахстан от 24 апреля 2018 года, Сэр Джек Битсон, судья Суда МФЦА «Суд МФЦА и методика общего права по разрешению коммерческих споров и проблем, возникающих из регулятивных решений» [Electronic resource] <https://clck.ru/32h3NR> (date of access: 16.10.2023).

<sup>14</sup> AIFC Court Rules 2018 [Electronic resource] <https://aifc.kz/legal-framework/aifc-court/> (date of access: 16.10.2023).

<sup>15</sup> КОНСТИТУЦИОННЫЙ ЗАКОН РЕСПУБЛИКИ КАЗАХСТАН «О Международном финансовом центре «Астана» от 7 декабря 2015 года, № 438-V [Electronic resource] [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=327;-50#pos=327;-50](https://online.zakon.kz/Document/?doc_id=39635390&pos=327;-50#pos=327;-50) (date of access: 16.10.2023).

<sup>16</sup> Ibid.

<sup>17</sup> Лекция в Верховном суде Республики Казахстан от 24 апреля 2018 года, Сэр Джек Битсон, судья Суда МФЦА «Суд МФЦА и методика общего права по разрешению коммерческих споров и проблем, возникающих из регулятивных решений» [Electronic resource] <https://clck.ru/32h3NR> (date of access: 16.10.2023).

<sup>18</sup> Кодекс Республики Казахстан от 31 октября 2015 года № 377-V «Гражданский процессуальный кодекс Республики Казахстан» [Electronic resource] - <https://adilet.zan.kz/rus/docs/K1500000377#z225> (date of access: 16.10.2023).

<sup>19</sup> КОНСТИТУЦИОННЫЙ ЗАКОН РЕСПУБЛИКИ КАЗАХСТАН «О Международном финансовом центре «Астана» от 7 декабря 2015 года, № 438-V [Electronic resource] [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=327;-50#pos=327;-50](https://online.zakon.kz/Document/?doc_id=39635390&pos=327;-50#pos=327;-50) (date of access: 16.10.2023).

established transnational dispute resolution system, such as the Dubai International Financial Centre Court and the Singapore International Commercial Court. Such courts are also part of a complementary collaboration between litigation-based dispute resolution and arbitration-based dispute resolution»<sup>20</sup>.

Therefore, the advantages of English law in dispute resolution are axiomatic, given that developed international financial centers use the principles of common law familiar to foreign investors.

Lord Woolf also mentioned advantages of Court for foreign investors «Having an English-speaking common law court as well as the existing civil law jurisdiction of the Republic of Kazakhstan domestic courts will build confidence in investors. This will appeal to capital markets. Investors will be provided with the legal certainty and a judicial system with which they are familiar» [1, p. 8].

This conclusion was also confirmed in the lecture on April 24, 2018, where it was noted that «the attractiveness of English common law and its judges among the international business community for the past 100 years is also confirmed by the number of companies and individuals who in particular have no or little connection with England, nevertheless decide to litigate or arbitrate in London.

Thus, in 2015, seventy percent of the work of the London Commercial Court had nothing to do with England, except for the terms of the applicable choice of law and choice of jurisdiction agreements. For the year ended July 2017, 71% of the claims in the London Admiralty and Commercial Courts were international claims»<sup>21</sup>.

Another feature of English disputes is strong, incorruptible, and impartial courts that provide a fair and predictable dispute resolution process that builds business confidence, supports international trade and is an incentive to attract international investment<sup>22</sup>.

However, the Court have exclusive

jurisdiction over the consideration and resolution of disputes arising between participants in the Center, the Center's bodies, and/or their foreign employee, the consideration and resolution of disputes relating to any operation carried out in the Center and under the right of the Center, and the consideration and resolution of disputes submitted to the Court of the Center by agreement<sup>23</sup>.

The Court has exclusive jurisdiction to interpret the acts of the AIFC, in a cases and shall not engage in criminal or administrative proceedings<sup>24</sup>.

In this regard, the question arises, how a foreign investor, implement its activities at AIFC and will carry out a dispute with the state authorities?

Author Richard A. Posner in his book, the Problems of Jurisprudence mentioned, «there seem to be profound difference between common law and statute law, the fundamental difference being precisely that between a conceptual systems on the one hand and a textual system on the other». [2, p. 247]

By the norms of the Code of the Republic of Kazakhstan "Administrative Procedural Code of the Republic of Kazakhstan" (APC), the code regulates relations related to administrative procedures of state bodies, the procedure of administrative proceedings, where the participants are state bodies, administrative bodies, officials, individuals, and legal entities<sup>25</sup>.

Also in administrative proceedings, the norms of the Civil Procedure Code of the Republic of Kazakhstan (CPC) are applied, where succession is carried out according to the Civil Code of the Republic of Kazakhstan (CC)<sup>26</sup>.

In addition, representation in administrative proceedings carried out under the CPC, which differs significantly from the requirements for legal representatives within the jurisdiction of the AIFC<sup>27</sup>.

From the above, it follows that a foreign investor carrying out its activities within the jurisdiction of AIFC, under the acts of AIFC, the

<sup>20</sup> Лекция в Верховном суде Республики Казахстан от 24 апреля 2018 года, Сэр Джек Битсон, судья Суда МФЦА «Суд МФЦА и методика общего права по разрешению коммерческих споров и проблем, возникающих из регулятивных решений» [Electronic resource] <https://clck.ru/32h3NR> (date of access: 16.10.2023).

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> КОНСТИТУЦИОННЫЙ ЗАКОН РЕСПУБЛИКИ КАЗАХСТАН «О Международном финансовом центре «Астана» от 7 декабря 2015 года, № 438-V [Electronic resource] [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=327;-50#pos=327;-50](https://online.zakon.kz/Document/?doc_id=39635390&pos=327;-50#pos=327;-50)(date of access: 16.10.2023).

<sup>24</sup> Ibid.

<sup>25</sup> КОДЕКС РЕСПУБЛИКИ КАЗАХСТАН от 29 июня 2020 года № 350-VI «АДМИНИСТРАТИВНЫЙ ПРОЦЕДУРНО-ПРОЦЕССУАЛЬНЫЙ КОДЕКС РЕСПУБЛИКИ КАЗАХСТАН» [Electronic resource] <https://clck.ru/32hYjo> (date of access: 16.10.2023)

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

working language of which is English, disputes with the state bodies will be carried out, guided by the APC, CPC, CC, internal documents of state bodies.

The above-stated in the author's opinion opposite to the Concept of an investment policy of the Republic of Kazakhstan until 2026, approved by the Government Decree of July 15, 2022, where investment policy aims to create favorable conditions for foreign and internal investors, focusing on modernization, structural transformations, and steady economic growth, while promoting high quality of life. This involves considering raw material potential, competencies, and economic efficiency<sup>28</sup>.

In addition, under such circumstances, there are contradictions with the principles of bilateral agreements on the promotion and mutual protection of investments, where one of the main goals is to create favorable conditions for foreign investors.

For example, AIFC residents are exempt from paying corporate income tax, an individual tax on income defined by the Constitution of the Republic of Kazakhstan, the Constitutional Law on the AIFC, the preferential tax regime of which is valid until January 1, 2066<sup>29</sup>.

According to the joint order of the AIFC No. 48 of December 22, 2017, and the State Revenue Committee of the Ministry of Finance No. 596 of December 29, 2017, the rules of tax administration and interaction between state revenue authorities and AIFC participants on taxation issues were approved, which provided for the features of appealing the results of a tax audit<sup>30</sup>.

In such a case, certain inconveniences arise for a foreign investor when conducting cases on the AIFC platform, since in addition to judicial proceedings in commercial disputes, the investor needs clear, expected ways of protection based on common law, especially with the state bodies of the Republic of Kazakhstan.

In contrary Dubai International Financial Centre Court (DIFC) «deal exclusively with all cases and claims arising out of the DIFC and its operations and any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions»<sup>31</sup>. The only limit for DIFC it cannot consider criminal cases.

In this regard, taking into account the special legal regime of the AIFC, the author considers it advisable, by analogy with the Singapore International Commercial Court at the Supreme Court of the Republic of Kazakhstan, to create a division to resolve disputes of AIFC residents with the state bodies of the Republic of Kazakhstan. At the same time, it is necessary to attract candidates with good character, considerable knowledge of common law and experience as a judge, a qualified lawyer in the system of common law, with a perfect command of English, who will be able to carry out their activities under the rules of "Ad hoc" to the court of the special court<sup>32</sup>.

In addition, when a dispute is referred to a specialized court, state authorities will also be able to initiate claims against AIFC residents for violations of AIFC acts.

This requirement was also stipulated by the Decree of the President of the Republic of Kazakhstan, where the Government was instructed to submit a draft law to the Majilis of Parliament before January 1, 2015, which provides for the creation of a financial court in the AIFC with the involvement of foreign judges when considering disputes, including the right to consider investment disputes<sup>33</sup>.

At the same time, only the Specialized Interdistrict Administrative Court of the capital considers the claims of investors, appeals against administrative acts, and administrative

<sup>28</sup> Постановление Правительства Республики Казахстан от 15 июля 2022 года № 482 «Об утверждении Концепции инвестиционной политики Республики Казахстан до 2026 года» [Electronic resource] [https://online.zakon.kz/Document/?doc\\_id=34889573&pos=5;-109#pos=5;-109](https://online.zakon.kz/Document/?doc_id=34889573&pos=5;-109#pos=5;-109) (date of access: 16.10.2023).

<sup>29</sup> КОНСТИТУЦИОННЫЙ ЗАКОН РЕСПУБЛИКИ КАЗАХСТАН «О Международном финансовом центре «Астана» от 7 декабря 2015 года, № 438-V [Electronic resource] [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=327;-50#pos=327;-50](https://online.zakon.kz/Document/?doc_id=39635390&pos=327;-50#pos=327;-50) (date of access: 16.10.2023).

<sup>30</sup> СОВМЕСТНЫЙ ПРИКАЗ «Об утверждении Правил налогового администрирования и взаимодействия органов государственных доходов с органами и участниками Международного финансового центра «Астана» по вопросам налогообложения» [Electronic resource] <https://aifc.kz/files/legals/119/file3/028-0-0-3-2-3-0420-8o-8-2708459ab28o.pdf> (date of access: 16.10.2023).

<sup>31</sup> Dubai International Financial Centre Court [Electronic resource] <https://www.difccourts.ae/opt> (date of access: 16.10.2023)

<sup>32</sup> Указ Президента Республики Казахстан от 31 декабря 2015 года № 161 «Об определении границ территории Международного финансового центра "Астана"» [Electronic resource] <https://bestprofi.com/document/671390950?2&isScroll=true> (date of access: 16.10.2023).

<sup>33</sup> Ibid

actions (inaction) of administrative bodies, and officials<sup>34</sup>.

In addition, the author of the article believes that litigation in administrative courts with AIFC residents will lead to the fact that the judges will be overloaded with lawsuits on grounds far from the local legal system, based on the acts in English, which may lead to decisions not consistent with the expectations of foreign investors.

Given the above, the author concludes that disputes between state bodies of the Republic of Kazakhstan and residents of the AIFC should be considered in a specialized court under the Supreme Court of the Republic of Kazakhstan, with the principles of common law and the acts of the AIFC.

### Conclusion

Creation of favorable conditions, encouragement and protection of investments, mechanisms of compensation for damages and losses during nationalization, and expropriation are important tools to attract foreign investors stipulated by the model agreements on the promotion and mutual protection of investments.

When establishing the «Astana» International Financial Center a lot of financial and human resources were invested, including attracting foreign investment.

Tools for the establishment of legal entities clear to foreign investors were adapted to the needs of investors, and branches of foreign legal entities were represented with the possibility of smooth transfer from one jurisdiction to the jurisdiction of the AIFC.

Since the establishment of the AIFC bodies, the competent state bodies of the Republic of Kazakhstan have been working systematically to attract foreign capital, which has resulted in more than 1,600 registered companies in the AIFC jurisdiction<sup>35</sup>.

Chairman of the AIFC Legal Advisory

Council mentioned that «AIFC's unique legal regime, which includes relevant and up to date English common law principles and precedents as well as the best practice of leading global financial centers, and its structure and advantageous position in the region» [3, p. 165].

Thus in author's opinion, Kazakhstan should take into the account the experience of Dubai International Financial Centre, which played significant «role in upgrading the regional standards of financial institutions and operations» [4, p. 175] that positively effects for inflow of foreign direct investments and Dubai becomes one of the leading center for investment opportunities.

However, despite the influx of foreign investors and the special legal regime of the AIFC, there are risks associated with disputes with state authorities in the courts of the Republic of Kazakhstan, where legal entities in the common law jurisdiction will have to conduct disputes within the Romano-Germanic legal system.

In this regard, with the negative experience of foreign investors with the state courts, there is a high probability of the outflow of foreign capital using the instrument of re-domiciliation from the jurisdiction of AIFC to other common law jurisdictions.

To avoid issues with AIFC residents, it is necessary to establish a specialized court with judges of relevant qualification, who will be able to consider disputes taking into account the special legal status of AIFC residents, and under such circumstances, this court will have exclusive competence to resolve such disputes.

For the above-mentioned purposes, it is also necessary to stipulate in the legislation of the Republic of Kazakhstan the obligation of the state bodies to address disputes related to the residents of the AIFC only to the specialized court, including disputes over actions of the above-mentioned legal entities.

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<sup>34</sup> КОДЕКС РЕСПУБЛИКИ КАЗАХСТАН от 29 июня 2020 года № 350-VI «АДМИНИСТРАТИВНЫЙ ПРОЦЕДУРНО-ПРОЦЕССУАЛЬНЫЙ КОДЕКС РЕСПУБЛИКИ КАЗАХСТАН» [Electronic resource] <https://clck.ru/32hYjo> (date of access: 16.10.2023)

<sup>35</sup> Публичный реестр компаний, зарегистрированных в МФЦА *Publichnyy reyestr kompanii, zaregistrirovannoy v MFTSA* [Electronic resource] <https://publicreg.myafsa.com/> (date of access: 16.10.2023)