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**Constitutional Status of the “Astana” International Financial Centre**

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**REFERENCES**

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Code of the Republic of Kazakhstan dated October 29, 2015 No. 375-V “Entrepreneurship Code of the Republic of Kazakhstan” (with amendments and additions as of 01/01/2024).

Decree of the President of the Republic of Kazakhstan dated December 31, 2015 No. 161 “On determining the boundaries of the territory of the Astana International Financial Centre” (as amended and supplemented as of April 17, 2023).

Decree of the President of the Republic of Kazakhstan dated October 26, 2017 No. 569 “On the translation of the Kazakh language alphabet from Cyrillic to Latin script” (as amended on February 19, 2018).

Law of the Kazakh SSR “On Free Economic Zones in the Kazakh SSR” dated November 30, 1990 No. 360-XII (amended in accordance with the Law of the Republic of Kazakhstan dated January 18, 1992; Decrees of the President of the Republic of Kazakhstan, having the force of law, dated October 30, 1995; dated November 5, 1995) (lost force).

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Federal Decree of the United Arab Emirates Number 15 for the year 2013 «Concerning Establishing a Financial Free Zone in the Emirates of Abu Dhabi».

Dubai Law No. 9 of 2014 in respect of Dubai International Financial Center.

Abu Dhabi Law No. 4 of 2013 on the Abu Dhabi Financial Center.

Federal Decree No. (15) of 2013 “Concerning Establishing a Financial Free Zone in the Emirates of Abu Dhabi”.

United Arab Emirate Law No 9 “In respect of the Dubai International Financial Center” of 2004

**SYMBOLS AND ABBREVIATIONS**

**AIFC** – Astana International Financial Centre;

**AIFC Authority** – Authority of the International Financial Centre Astana;

**AIX** – Astana International Exchange;

**AFSA** – Astana Financial Services Authority;

**ADGM** – Abu-Dhabi Global Market;

**CICC** – China International Commercial Court;

**CIS** – Commonwealth of Independent States;

**DIFC** – Dubai International Financial Centre;

**EEU** – Eurasian Economic Union;

**GFCI –** Global Financial Centre Index;

**IAC**– International Arbitration Centre;

**IComC** – international commercial court;

**IFC** – international financial centre;

**DIFC** – Dubai International Financial Centre;

**Kazakh SSR** – Kazakh Soviet Socialist Republic;

**MFC –** Moscow Financial Centre;

**QC** - Queen's Counsel;

**QFC** – Qatar Financial Centre;

**QICDRC** – Qatar International Court and Dispute Resolution Centre;

**RFCA** – Regional Financial Centre of Almaty city;

**SEZ** – Special Economic Zones;

**SEIZ** – Special Economic and Industrial Zones;

**Shanghai FTZ** – Shanghai Pilot Free Trade Zone;

**SICC** – Singapore International Commercial Court;

**UAE** – United Arab Emirates;

**USSR** – Union of Soviet Socialist Republics;

**WJP** – World Justice Project;

**INTRODUCTION**

**Relevance of the topic of dissertation research.** The Astana International Financial Centre (AIFC) was created as a modern type of special economic zone (SEZ) focused on attracting international financial organizations and businesses into the Central Asian region. The AIFC was modelled after similar SEZs that have emerged in two Gulf states, namely the United Arab Emirates (UAE) and Qatar. One of the main reasons for establishing the AIFC was the desire of the state leadership to become one of the most developed economies in the world. Hence, the creation of the AIFC was regarded as part of the policy aimed at achieving this goal, which suggests, as emphasized by the President of the Republic of Kazakhstan K. Tokayev, constructive dialogue “... with international financial institutions, transnational corporations and domestic business” [1].

Essentially, the creation of the AIFC was initiated in the “100 Concrete Steps to Implement Institutional Reforms” Nation’s Plan (hereinafter the Nation’s Plan). The Nation’s Plan included five steps that were directly related to the new financial centre and declared that the AIFC would be modelled on the Dubai International Financial Centre (DIFC). The rationale behind the choice of the DIFC was dictated by the fact that the economies of the two states resemble each other, since both Kazakhstan and the United Arab Emirates rely heavily on the sale of mineral resources such as oil and gas. Additionally, the DIFC became one of the globally recognized international financial centres (IFCs) within a short span of time due to the fact that it has its own special legal jurisdiction based on the English common law system, which differs from the legal regime in the UAE [2].

The main provisions regarding the AIFC were listed in step 70, where it was declared that the AIFC would have a special legal status consolidated within the Constitution of the Republic of Kazakhstan. This would include an independent commercial law system functioning on the basis of English law principles, a judicial corps consisting of foreign experts and a liberal tax regime. The AIFC would offer specialized services to the capital markets as well as Islamic finance services and use English as the official language, with the goal of becoming one of the top 20 financial centres of the world [3].

Hence, in order to implement the Nation’s Plan, the government decided to execute similar initiatives to ones the United Arab Emirates enacted during the creation of the DIFC. First of all, the state initiated a number of constitutional reforms so that in December of 2015, a constitutional statute was adopted which granted the AIFC its special legal status. Moreover, one year later the amendments to the Constitution of the Republic of Kazakhstan were introduced, specifying that a special legal regime in the financial sphere could be created within the capital city of Astana in accordance with the constitutional statute. So, the AIFC Constitutional Statute laid the foundation for the creation of the AIFC.

Moreover, if we compare the status of the AIFC with the status of other special economic zones in the Republic of Kazakhstan, then it becomes apparent that the AIFC is distinctly unique and has many more privileges than ordinary SEZs. For instance, the AIFC has a comprehensive corporate structure including the six bodies established by the AIFC Constitutional Statute, with the main body directly headed by the president of the Republic of Kazakhstan. Additionally, the AIFC bodies have a legislative delegation, which means that each body has the authority to adopt rules and regulations that are mandatory within the territory of the financial centre and which will comprise the substantial law of the AIFC. Finally, the AIFC has a jurisdiction that is distinct from the rest of the country, which is based on English common law with its own court and currently presided over exclusively by English judges. All of these factors made the creation of the AIFC an unprecedented step, since the Republic of Kazakhstan became the first country among the post-Soviet states to legislatively incorporate the principles of English common law within the specific territory of the capital of Astana. It is therefore necessary to conduct a theoretical analysis of the constitutional status of the Astana International Financial Centre as a territory with a special legal regime.

Correspondingly, it is crucial to scrutinize the experiences of the United Arab Emirates and Qatar, to understand the legal consequences of creating an SEZ with its own unique jurisdiction and court system that operates on the basis of English common law. Furthermore, this analysis had to consider not only the financial centres of the Middle East, but also a historical comparison with the similar financial centres and special economic zones China, Hong Kong and other jurisdictions.

Another important issue in this dissertation is the uniqueness of the legal system that the AIFC creates within the Republic of Kazakhstan. Since our country is a part of a civil law system, it is imperative to study the experience of other countries that have similar legal systems involving common and civil law and the subsequent challenges. It is important to note that the Republic of Kazakhstan is a unitary state and not a federation like the UAE. Thereby, it is crucial to examine the status of the AIFC as a territory with a special legal regime.

The relevance of the research is also supported by the emergence of the AIFC Court that is independent in its activities from the national justice system. The Constitution of the Republic of Kazakhstan does not permit the existence of “special” or “emergency” courts. Nevertheless, the AIFC Constitutional Statute specifies that the AIFC Court should be independent from the national judicial system and its decisions cannot be reviewed by the Supreme Court. Therefore, it is of paramount importance to consider the legal consequences for the existence of the independent AIFC Court.

Finally, the relevance of the thesis is based on the internal need to further develop legal scholarship in Kazakhstan. The progress of this juridical discipline can only advance through constant and systematic analysis of the developments in the legal system and by elaborating the nature of such changes. Hence, the constitutional and legal regulation of the AIFC is currently one of the most relevant topics for legal scholars in Kazakhstan.

**Scientific novelty.** For the first time in the legal literature and science the dissertation carries out a special, targeted and comprehensive analysis of all the most important aspects of the problems of the constitutional and legal status of the AIFC. The scientific novelty of the dissertation is determined by the following new results obtained in the work:

1. the author’s definition of the concept “constitutional status of the AIFC” was formulated for the first time;
2. the main stages of legal regulation of the activities of international financial centres have been established and scrutinized;
3. an analysis of the experience of the Regional Financial Centre of Almaty city (RFCA) and the Moscow Financial Centre (MFC) was carried out and, on this basis, recommendations were proposed for the effective development of an international financial centre in the Central Asian region;
4. for the first time in the legal literature, a comprehensive and holistic analysis of the constitutional foundations of the legal norms governing all structures of the AIFC bodies and their activities is given, including the territory, language and the substantive law of the centre, as well as the peculiarities of the currency, tax and visa regimes;
5. provisions were formulated defining the place and role of AIFC bodies in the system of state administration of the Republic of Kazakhstan;
6. provisions are argued that establishes the place and role of the AIFC Court in the system of other judicial bodies existing in the Republic of Kazakhstan;
7. problems and shortcomings in the field of legal regulation of the AIFC activities are identified and proposals are formulated for its improvement;

**Correlation of the thesis dissertation with other scientific researches.** The issues related to the constitutional status of different state agencies or state officials were thoroughly analyzed in the thesis dissertations and monographies of the following researchers - collection of candidate and doctoral dissertation topics in legal specialties approved by academic councils. // Almaty. Publisher: Norma-K. - 2003. - 144 p. Ukin S.K. Constitutional foundations of the legal status of the customs authorities of the Republic of Kazakhstan // Author's abstract. Almaty 2000. - 11 p. Doszhanov B.B. Constitutional and legal status of oralmans in the Republic of Kazakhstan // Author's abstract. - Almaty. – 2008. 8 p. Amirov N.K. Constitutional and legal status of the Senate of the Parliament of the Republic of Kazakhstan // Abstract. - Almaty. - 2000. - 20 p. Sabitova A.A. Status of foreign citizens: domestic and international legal aspects. // Abstract. Almaty. - 2001. - 7 p. Abilkairov M.R. Constitutional and legal status of a judge in the Republic of Kazakhstan // Author's abstract. – Publishing Center of the Kazakh Academic University. - Almaty. 2002. - 14 p. Arabaev A.A. Parliamentarism in Kyrgyzstan (Problems of theory and practice). // Altyn Tamga Publishing House. // Abstract. - Bishkek. 2008. - 23 p. Uteshova I.M. The market of banking services and the functioning of credit partnerships and organizations in the Republic of Kazakhstan: legal regulation. // Abstract. - Almaty. - 2009. - 16 p. Buribaev E.A. Theoretical problems of the constitutional and legal regulation of notarial activities and notaries (on the materials of the Republic of Kazakhstan and post-Soviet states) // Author's abstract. - Almaty. - 2010. - 14 p.

The issues related to the analysis of the modern types of special economic zones were reviewed in the scientific articles of the following contemporary scholars – Julien Chaisse, Georgios Dimitropoulos, Ilias Bantekas, Teresa Cheng, Thomas Farole, Gokhan Akinci, Douglas Z. Zeng, Panagiotis Delimatsis, Nicolas Zambrana-Tevar, Farkhad Karagusov, Maidan Suleimenov, Symbat Ukin, Diana Batyrbekova, Deborah R. Hensler, Damira Khatam, Irina Baskakova, Anikin, N. S., Balaboshina, A., Douglas, W. A., Goncharenko, M., Khomyakova, L., Klimachev, V., Krutovskaya, A., Moshenskiy, S., Irina Baskakova and others.

The analysis of the Court of the AIFC as well as similar international commercial courts were considered in the works of the following international researchers – Marta Requejo Isidro, Xandra Kramer, John Sorabji, Steven Chong, Pamela K. Bookman, Lance Ang, Burkhard Hess, Donald Earl Childress III, Horst Eidenmuller, Marieke Witkamp, William Blair, Stavros Brekoulakis, Georgios Dimitropoulos, Man Yip, Julien Chaisse, Xu Qian, Zhang Yongjian, Svetlana Moroz, Anselmo Reyes, Lord Woolf CH, Lyalya Tleulina, Altynay Mukhametkalikyzy, Nora Sausmikat, Daniel Sprick, Damien Horigan.

The issues related to the dual legal systems were analyzed in the works of the following legal scholars – Nizar A. Hamzeh, Katja Funken, Nir Kedar, Vernon Palmer, John Henry Merryman.

**The aim of the thesis dissertation.** The aim of the thesis dissertation is to conduct a comprehensive analysis of the constitutional status of the AIFC, which includes studying the fundamental problems relating to its constitutional and legal regulation, scrutinizing its legal system and its compatibility with the national system of the Republic of Kazakhstan, assessing the status of the AIFC Court and its place within the Kazakhstani justice system, analysing the bodies and activities of the AIFC and scrutinizing the details of the applicable law of the AIFC.

In order to accomplish the main purpose of the thesis, the following **objective** is planned:

1. studying the theoretical foundations and content of the concept of “constitutional status” and developing the author’s definition of the concept of “constitutional status of the AIFC”;
2. scrutinizing main stages of international experience in legal regulation of the activities of leading special economic zones in the financial sector and modern types of international commercial courts (IComCs);
3. analysing the legal status and the experience of the Regional Financial Center of Almaty city;
4. exploring the structure of the AIFC, its main bodies, and their functions;
5. determining the place and role of AIFC bodies in the system of government bodies of the Republic of Kazakhstan;
6. review of the activities of the AIFC Court and its results;
7. providing recommendations on the further development of the legal regulation of the AIFC, in particular on the integration of English common law into the legal system of the Republic of Kazakhstan, on issues relating to the “coexistence” of the state language (Kazakh), the officially used language (Russian) and English in the AIFC, and on the consideration features of the adoption of Islamic law for the purpose of developing Islamic finance;

**The object of the study** is the set of social relations that arise with regard to the constitutional status of the Astana International Financial Centre as a territory with a special legal regime.

**The subject matter of the study** is the substantive law of the AIFC, which includes the Constitution of the Republic of Kazakhstan and the AIFC Constitutional Statute, in addition to the AIFC acts and the decisions of the AIFC Court as well as other courts of international financial centres and the results of research by local and international scholars and practitioners.

**The following main provisions and conclusions of the dissertation research are submitted for the defense:**

1. The term “constitutional status” is clarified by establishing the meaning of the terms “legal status” and “status” accordingly. The constitutional status of the AIFC is a complex, multi-layered, constitutional and legal formation consisting of its constituent elements and structures. This is a system of constitutional statuses of AIFC bodies, its territory, substantive law, language, etc. integrated into each other. That is, the constitutional and legal status of the AIFC as an integral phenomenon includes, as its constituent parts and structural elements, the constitutional statuses of the AIFC bodies, the constitutional status of the AIFC territory, its legal system (including the constitutional statuses of English common law and Islamic law), constitutional statuses English, Kazakh and Russian languages, etc.

2. The AIFC is regarded as a modern type of special economic zone, but it is also considered, as the name suggests, an international financial centre. Therefore, an analysis of the historical development as well as the legal regulation of the most successful international financial centres has been conducted. The research suggests that there are four main stages in this process. Moreover, every stage of regulation has its corresponding method of regulation in each of the financial centres.

2.1. The first stage of legal regulation could be characterized as a “period of a prehistory”, when the big cities were considered by scholars as the prototypes of modern IFC. The large cities attracted the merchants from different areas and the trade relations were regulated by the customary law of the specific community (Sovetskaya Entsiklopediya 1984: 211). Therefore, at the initial stage there were no direct regulation of the IFC, rather there was a method of self-regulation based on the customary law.

2.2. The second stage starts with the adoption of the Magna Carta (the Great Charter of Rights) in 1215 and could be characterized as the time when the legal regulation of the large cities was “unsystematic” or “patternless”, since the central governments did not have an aim at developing cities as a trading or financial centres. However, at this period of time we can notice the development of modern types of contracts, such as “futures”, “forward contracts” and “derivative contracts” which later will be largely used by the financial institutions that will develop the international financial centres.

2.3. The third stage is marked with the emergence of two financial institutions – the stock markets and national or federal banks. So, the states started to recognize the potential of stock markets and the importance of central financial regulator in the form of the national banks to develop the economy and finance the budget. Hence, during the given period states used the “direct” method of legal regulation by adopting legal acts that directly regulated activities of the stock market and banks.

2.4. Finally, the fourth stage is the modern period of the development of modern financial centres which is now considered as a new type of special economic zones in the financial sphere. Basically, the analysis of SEZ’s such as Dubai International Financial Centre, Qatar Financial Centre (QFC), Abu Dhabi Global Market (ADGM), Shenzhen SEZ, Shanghai Pilot Free Trade Zone (Shanghai FTZ) as well as Hong Kong suggests that its constitutional regulation is highly effective in the development of the modern type of financial centres.

3. Prior to the creation of the AIFC, there was an attempt at creating the Regional Financial Centre of Almaty city. Similarly, the Moscow Financial Centre also did not achieve any noticeable results and was liquidated shortly after its launch. However, the experience of the RFCA was not scrutinized by the academic community and state officials also never investigated the negative outcomes of the financial centre. This thesis provides an analysis of the experience of both financial centres and the main reasons why the policies introduced in Almaty and Moscow led to the dissolution of these financial centres.

4. For the first time in the legal literature, the dissertation provides a thorough analysis of the constitutional foundations of the legal norms governing the purpose, objectives and principles of the AIFC’s activities, its territory, substantive law and language, participants of the AIFC, their activities and obligations, peculiarities of the currency, tax and visa regime, and also the organizational structure of the AIFC and its main bodies. The legal basis for the functions of such AIFC bodies as the Management Council and the Governor of the AIFC, AIFC Authority, Astana Financial Services Authority, the AIFC Court, and the International Arbitration Center were subjected to proper analysis.

5. An important thesis drawn from the analysis of the modern type of special economic zones such as the DIFC, QFC, ADGM and others, is that four essential policies should be introduced to develop a successful SEZ –constitutional regulation, organizational independence, legislative delegation and the implementation of English common law principles within the territory of the financial centre.

5.1. The first measure implemented by the Gulf states and the Republic of Kazakhstan, as well as China in one of their most successful SEZs in Shenzhen, was to carry out a constitutional reform that laid the foundation for the creation of the special legal regime within the respective territory.

5.2. The second was to create an organizational structure on the territory of the SEZ with a certain level of independence from the central government. The most comprehensive examples correspond to the financial centres in the Gulf states and the Republic of Kazakhstan. Moreover, one of the main bodies that exists within the mentioned SEZ is the court system, which is either fully independent or has a certain level of autonomy from the national justice system.

5.3. Thirdly, the administration of an SEZ should possess the authority to implement policies or, in other words, legislative initiative. Hence, through the adoption of regulations on the territory of the SEZ, a special legal regime is essentially created that differs from the rest of the country and that is aimed at attracting international investors through tax, currency and other incentives.

5.4. Finally, it is important to mention that in all of the mentioned cases the states either directly applied English common law as a substantive law of an SEZ territory or partially adopted its principles, as in Chinese SEZs.

6. The dissertation puts forward and substantiates a new view, which explains and clarifies the situation that has developed in the Republic of Kazakhstan in connection with the establishment of a previously unknown body involved in the “judicial review of disputes” - the AIFC Court. The essence of this view is as follows.

6.1. The AIFC Court is not a “special” or “emergency” court. It is one of the state bodies intended for “judicial consideration of disputes”, only for three categories of disputes arising on the territory of the centre and relating only to its activities.

6.2. The emergence of the AIFC Court caused a lot of controversy among the legal community of the Republic of Kazakhstan. The main issue was related to the fact that the AIFC Constitutional Statute established that the AIFC Court would be independent from the national justice system of the Republic of Kazakhstan in its activities. However, the Constitution of the Republic of Kazakhstan does not allow the existence of “special” or “emergency” courts that are outside the jurisdiction of the national judicial system. The analysis suggests that the AIFC Court should not be considered a “special” or “emergency” court, as proposed by some legal scholars. The AIFC Court also does not create supposed “duality” within the national judicial system, since it is not part of it, therefore its establishment does not contradict the Constitution of the Republic of Kazakhstan. It is well known that international investors will be attracted to the AIFC only if its court is outside the jurisdiction of the local judicial system, which is enshrined in the AIFC Constitutional Statute.

6.3. The AIFC itself is a modern type of SEZ, but one of its bodies, the AIFC Court, is also considered an example of the international commercial courts that proliferate throughout the European and Asian continents. However, despite being a unique type of common law judiciary within a civil law state, the activities of the AIFC Court have not received adequate attention from the local and international community. Within the framework of the research, an analysis has been conducted of the activities of the AIFC Court. Its decisions have been scrutinized, categorized and compared with the other modern types of IComCs.

7. The author not only states the existence of problems in the legal regulation of the AIFC, but at the same time suggests ways and prospects for their further development. The main ones are:

7.1. According to many local scholars, the insertion of English common law within the Republic of Kazakhstan created a supposed “duality” in the legal system within the state which is against the constitution. However, the international examples suggest that the existence of international financial centres is common among different type of jurisdictions and that it is possible to create a special legal regime within a country without causing legal discrepancies. Jurisdictions such as Louisiana, Quebec, Puerto Rico, Ireland and South Africa could all be used as models [4, p. 5]. Moreover, English common law is considered the world’s leading legal system and most developed countries as well as most successful international financial centres mainly operate under its jurisdiction.

7.2. Currently, more than 400 different AIFC acts have been adopted and only a limited number of them have been translated into Kazakh and Russian. The AIFC is not planning to provide official translations of the AIFC acts on its own initiative and will do so only in cases when the interested party demands a translation of the specific AIFC act. However, in previous instances, the translation of the legislative acts from Russian to Kazakh caused a large number of discrepancies. Therefore, it is suggested that the AIFC should provide the official translation of the AIFC acts for the general public so that there will be no contradictions or inconsistencies in their translation.

7.3. One of the main goals that was established in the AIFC Constitutional Statute was the development of Islamic financing. However, the analysis of international IFCs shows that one of the most effective tools to achieve this aim is to allow conventional banks to open Islamic windows. Despite the fact that the applicable law of the AIFC allows for this, the national legislation of the Republic of Kazakhstan nevertheless prohibits it and also does not allow local banks to use the AIFC jurisdiction to open Islamic windows throughout the territory of the state. Therefore, in order to boost the advancement of Islamic financing within the AIFC and in Kazakhstan, amendments should be introduced to the banking law of the Republic of Kazakhstan to legislatively allow local conventional banks to open Islamic windows.

7.4. Introducing amendments to the AIFC laws and changing the hierarchy of the AIFC acts, so that these will not contradict the constitution and the AIFC Constitutional Statute.

7.5. Clarifying the place of the AIFC Court’s interpretation within the hierarchy of the AIFC acts and specifying the circumstances when the AIFC Court has the authority to interpret the meaning of the AIFC acts.

7.6. Identifying the AIFC bodies that have the authority to demand the interpretation of the AIFC acts from the AIFC Court.

7.7. Defining the term “other common law jurisdictions” within the AIFC Constitutional Statute.

**Methodology**

Writing dissertation research requires the use of various types of methodology that can provide logical analysis, including monitoring legal texts. The research methods planned for this dissertation are characterized by the fact that they are generally the same in their goals, theoretical focus and methods of analysis of legal material. The methodological basis is also to be based on the works of Kazakhstani jurists and lawyers, as well as the fundamental knowledge in this area.

In addition to general scientific methods (inductive, deductive, imitation, etc.), it is planned to use a set of scientific methods to obtain an in-depth and comprehensive analysis of the questions asked, which includes:

* the monitoring method (qualitative research method), used for the process of collecting information, to determine the specific features of the object under study, to describe various legal situations and trends;
* the method of the dialectical method was used (qualitative methods), where research is carried out in specific legal situations, moreover it has great potential in order to track the processes of the functioning of the International Financial Centers. For or these purposes, the author completed a month-long internship in Astana at the “Astana” International Financial Center and made presentations at the conference «Astana Finance Days» held at the AIFC, received consultations from AIFC staff and gave consultations himself;
* historical approach (qualitative methods), in order to examine the historical development of the international financial centers;
* the method of comparative jurisprudence (qualitative research method), to determine the legal framework and the formation of adequate law enforcement practice of the AIFC, taking into account the experience of other countries, especially the UAE; this method expands the horizons of legal research by taking into account the positive and negative foreign experience and contributes to a balanced approach when formulating proposals for improving Kazakhstani legislation.

**The theoretical basis** of the thesis is based on the results of the leading international and local scholars and practitioners in the sphere of constitutional, international and comparative law, as well as articles published in prominent international journals.

**The normative basis** of the thesis is based on the Constitution of the Republic of Kazakhstan, The AIFC Constitutional Statute, Constitutional Statute on Judicial System and the Status of the Judges, AIFC Acts and other legislative and sub-legislative acts.

**Theoretical and practical significance of the results of the dissertation research**

The results of this doctoral dissertation, including its provisions and conclusions, have both theoretical and practical importance and could be used for the following purposes:

* conducting further research into problems regarding the legal regulation of the AIFC;
* regulating the activities of the AIFC during the process of further developing legislation;
* the daily operation of AIFC bodies;
* for developing the course “The Constitutional Status of the AIFC”, as well as for creating teaching aids and methodological recommendations on the subject matter of the doctoral dissertation.

**Approbation of the research results**

1. Kenzhaliyev M. Perspectives of the Court of the Astana International Financial Centre: Potential to Transform the Central Asian Legal Landscape. Asian Journal of Comparative Law. Published online 2024. P. 1-20. doi:10.1017/asjcl.2023.37.
2. M.Z. Kenzhaliyev, Legal Regulation of International Financial Centers Comparative Analysis of International and Kazakhstani Experience // Vestnik KazNU (legal series);
3. M.Z. Kenzhaliyev, Latest Trends in the Development of Special Economic Zones: Legislative Delegation, Organizational Independence and Constitutional Regulation // Vestnik KazNU (legal series);
4. M.Z. Kenzhaliyev, Legal Regulation of the Islamic Finances: Comparative Analysis of the Legal Framework of the Republic of Kazakhstan, "Astana" International Financial Center and United Kingdom // Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan».

**The structure and scope of the dissertation research**

The work consists of introduction, four sections, including 14 subsections, conclusion and references.

**1 PLACE AND ROLE OF AIFC IN THE SYSTEM OF STATE ADMINISTRATION OF REPUBLIC OF KAZAKHSTAN**

***§1. The definition of the term “constitutional status” and its theoretical basis and content***

The representatives of the social science, including the Kazakh legal science, widely accept the concept, according to which the milestone of the human society is considered to be the period of “transformation of a primitive society to the generic organization of the public life” [5, c. 117]. The given period is marked with a “significant expansion of human consciousness” [5, c. 116], its transformation from “group consciousness” to the “individual consciousness”, in other words, the separation of the “individual consciousness” from the “group consciousness”. So, it is a period when a man mentally established himself “as a self-sufficient individual” and acquired for oneself the “freedom in thoughts” [5, c. 116-117].

The researchers of the theory of legal consciousness complies with the fact that emergence and development of legal consciousness inseparably related to the process of development of group consciousness, so far as legal consciousness is considered to be a part and the structural element of group consciousness [6, c. 156] [7, c. 305]. The genesis of an individual as a “thinking creature” turns him into a manufacturer of thoughts, ideas, concepts and categories. Moreover, with each new stage of development mankind updates its old theories, intellectually processes them and creates new concepts regarding “the world, the man, and the purpose of his existence” [8, c. 5].

The process of creating new scientific concepts in science generally and in the legal field particularly, is done by the specialized scientific community of the relevant scientific branches. So, the legal science, being part of the system of social science, uses the ideas, theories and concepts developed by social and humanitarian sciences. Hence, the theoretical foundation of the constitutional law is based not only on the achievements of legal science, but also on the system of social and humanitarian disciplines. Thus, during the consideration of the concept “constitutional status” we are using not only theoretical concepts developed by the jurisprudence, but we are also exploring the broader specter of the sphere of social sciences.

It is apparent, that the term “constitutional status” or “constitutional-legal status” is originated from the term “legal status”, while the latter is derived from the word “status”. Thus, it is reasonable to expand the meaning of the term “status” as a first step to shedding the light on the concept – “constitutional status”.

The research shows that the term “status” is derived from the Latin word “status” and means a “position” or a “state”, while the deeper meaning is – a “sustainable position”. So, the widely used saying “status quo” refers to the “existing state of affairs; state of affairs before the change” [9, c. 245].

Currently, the term “status” preserves its original meaning till the day, which is evidenced by the review of contemporary encyclopedic dictionaries. For instance, the Large Soviet Encyclopedia identifies the “status” as a “existing or current state, position” [10]. The similar definition is given by the explanatory dictionary, which indicates that the term “position” shall be understood as a «role of someone in public life, in the team, in the family» [11, c. 944]. In other words, the term “status” mainly refers to the social position of an individual. However, the author of the “Large Explanatory Dictionary of the Russian Language” states that meaning of the “status” could also be understood as a “set of rights and responsibilities of an individual and legal entity” [12]. The similar definition is provided in the encyclopedic definition of “Political Science”, which defines the “status” as a “current state of rights and obligations determining the legal position of the person, the government agency or international organization” [13, c. 363]. It is one of the few dictionaries which considers the term “status” from the legal perspective of rights and responsibilities of institutions.

Now, if we review the legal dictionaries, we shall notice that the term “status” is regarded as “a state or a position (hence the term legal position) of a state body, organization, association, official, individual (citizen) which is regulated by the legal act” [14]. Evidently, the legal science also equates the term “status” to the term “position”.

If we look through the English dictionaries, then we can observe the similar interpretation of the term “status”. For instance, Cambridge dictionary identifies it as “the official or legal position of a person or organization” [15]. While the Oxford dictionary determines the “status” as “the legal position of a person, group or country” [16]. Also, alongside with the mentioned definition, there is also another one, which is “the official classification given to a person, country, or organization, determining their rights or responsibilities” [17].

Now, if we analyze the phrase “legal status”, it is derived from an underlying word “status”. However, we should mention that it is used in a narrower sense, specifically, in the field of social relations, which is regulated by the legal norms. In this regard, the content of the concept “legal status” becomes an entirely “legal” domain, and it becomes the subject of study of the legal science.

Being part of the structural element within the system of legal science, the concept “legal status” is influenced by such fundamental categories as the law, state, legislation, equity, justice, human rights, freedom and etc. Based on the context of how such categories are conceived and interpreted within the framework of the official legal science of different states, accordingly, the concept “legal status” shall have its appropriate meaning or “content”. At the same time, “legal status” being part of the “private” and “sectoral” categories is influenced by the fundamental theoretical concepts of the legal science, which was noted by such distinguished legal scholars of Kazakhstan as Academician S.Z. Zimanov [18, c. 440], M.T. Baymakhanov [19, c. 78] [20, c. 3] S.S. Sartaev [21, c. 128-129], S.N. Sabikenov [22, c. 136-143] and others.

Generally, the concept of “legal status” has been studied extensively within the framework of juridical science. So, certain scholars distinguish “legal status” as a separate element of the legal system within the ambit of the theory of state and law. Specifically, S.A. Komarov considers the legal status as a “peculiar phenomenon”, which among the others forms a halo of the functioning system [23, c. 111-112].

Nevertheless, the essence of the “legal status” is deemed as a “set of subjective rights, legal obligations and legitimate interests of an individual or authorities of a state body, recognized by the Constitution or other regulatory legal acts and enshrined on such subjects or other subjects of law” [24, c. 163].

The analysis shows that definition of the “legal status” contained in the encyclopedic dictionaries fully resembles the legal definition of this concept. In both cases it is referred to as the legal status of the subject, established by the law.

As it was mentioned previously, each and every branch of the social science equates the definition of the term “status” to the term “state” or “position”. However, there is no common ground in the jurisprudence regarding this issue. The term “legal position” is often used instead of the term “legal status” as an interchangeable concept. Thus, some researchers consider these two terms as synonyms, arguing that “attempts to use these concepts as differing in content and meaning are inappropriate” [25, c. 23]. Nevertheless, other scholars hold an opposite view on the matter, claiming that “legal status is mainly associated with the stable status of the subject, while the legal position is considered as a constantly changing set of rights and obligations of an individual, due to its entry into different legal relations” [26, c. 7]. So, we can only acknowledge that currently there is no consensus of opinions among the scientists on the given issue.

Concurrently, the term “legal status” is also distinct from the term “legal regime”. Since the essence of the “legal regime” is to achieve a goal, for which the concept is aimed for. Such conclusion is made by several Russian legal scholars who studied this issue [27, c. 22-25] [28, c. 243]. Based on this assumption, they identify the “legal regime” as a special procedure for legal regulation, “which is characterized by a certain combination of legal means required to achieve relevant regulatory goals” [29, c. 37]. Hence, majority of researchers notes the necessity to make a difference between “legal status”, “legal position” and “legal regime” in order to prevent their offset. Despite this, certain scholars consider these concepts as identical and use them as similar and interchangeable categories [29, c. 38].

It is interesting to note that English as well as American legal literature does not explore extensively the term “legal status”. Most of the English and US dictionaries provide only one definition to “legal status” and define it as a “status defined by law” [30].

If we analyze the term “constitutional status” (or “constitutional-legal status”) we can state that it is widely used in all branched of jurisprudence, although, the constitutional science considers it as a special concept of its subject of study. It is also interesting to note that this concept also becomes a subject of study of legal philosophy. Hence, they consider constitutional regulation of social relations through the lenses of ideological views with regard to the rights and freedoms of an individual and a citizen. The relevance of such approach, according to one of the eminent representatives of modern Russian schools of legal philosophy – Nersesyants V.S., is justified by the fact that “legal fundamentals and law in general is concentrated form and within the human relations are represented primarily and ultimately – as a rights and freedoms of individual and citizen” [31, c. 374]. In justification of such “huma-centric legal understanding” [31, c. 374] he asserts that logic of such legal comprehension is just: the law is inconceivable without free individuals and without rights and freedoms of a man. Since law as a necessary form of freedom is possible and has significance in the presence of free and independent individuals – the subjects of law. So, the supra-individual concepts, such as legal entities (various associations, organizations, institutions, the state as a whole) and legal relations and the rule of law could be possible only when the individuals (natural persons) are free and possess legal capacity” [31, c. 376].

By making the philosophical analysis of constitutional rights and freedoms of an individual and a citizen the author comes to the conclusion regarding “general regulatory significance” [31, c. 378] of such norms, and the fact that they act as “generally binding legal standards and a constitutional requirement for the quality of official legislative documents and as a standard for the government, its branches and officials” [31, c. 378]. The importance of such analysis enables us to create a link between our subject matter, and make an inference that the essence of the “constitutional-legal status” encompasses ideological and general theoretical significance. At the same time, we should highlight that the author does not use the term “constitutional status”, but uses the term “legal status” as its synonym, and deem it as a “set of constitutionally enshrined rights and freedoms” [31, c. 378].

Generally, the concept of “constitutional status” is thoroughly and substantively examined within the framework of general theory of state and law. It is considered in terms of contemporary reality and within a system of conceptual system of theory of state and law. Thus, the research on the issues of the state and law addressed the “constitutional status” as a type of a legal status. In the most general terms, we can distinguish three main types of legal statuses: 1) constitutional (or general); 2) special; and 3) individual legal status. The constitutional status should be understood as “the status” of a person (physical or legal), enshrined in the constitution of the state” [24, p. 163]. In other words, the constitutional status is of particular importance for the state and society, as it is enshrined in the Constitution of the country. Whereas “special status” is most often associated with specific legal restrictions, for instance, for officials, including judges, prosecutors and others, whereas the individual status is inherent in every individual and is determined by age, gender, marital status, education, etc. [32]

The constitutional status has the most stable nature, since it is established within the Constitution of the state, whereas the “special and individual statuses are more dynamic and unstable” [33]. And since the Constitution has the highest legal force within the country it also establishes the grounds for the legal regulation of other subjects.

Now if we analyze the English and American legal literature, we can note that term “constitutional status” is widely used, however, there is no specific definition given to this term “constitutional-legal status”. Instead, the encyclopedic dictionaries only identify the word “constitutional” which is generally referred to as “allowed by or contained in a constitution” [34].

At the same time, the objective fact of Kazakhstani legal system is that provisions of Constitution have the highest legal force (Article 4 (2) of Constitution) and it is at the top of the hierarchy of normative-legal acts (Article 4 of the Law “On legal acts” from April 6, 2016). Accordingly, such a dominant position of the Constitution has a logical comprehension in a legal literature and was reflected in the content and system of the conceptual framework of legal science. The researchers paid deliberate attention to the social relations regulated by the Constitution and even distinguished them as a special type of social relations, called – “constitutional relations” or “legal-constitutional relations”. Hence, the social relations, which became an object of constitutional regulation was called as a “constitutional basis” of a specific sphere of the social life. While, in case the provisions of the Constitution regulated the rights and responsibilities of individuals or their place within a state, then such system of norms was called the “constitutional status of an individual” or “constitutional and legal status of a person” or “constitutional and legal status of citizen” and etc. Same is applied to the norms of the Constitution, which regulated the social relations related to the establishment and functioning of the state bodies and public associations. Accordingly, such provisions were referred to as a “constitutional basis” of a given state or public institution, or “constitutional legal statuses” of a specific association or organization. The researches on the given issue were previously carried out during the Soviet Union, and today, with its decay, continues in a Commonwealth of Independent States, including Republic of Kazakhstan [35, c. 144] [36, c. 11] [37, c. 8] [38, c. 20] [39, c. 7] [40, c. 14] [41, c. 23] [42, c. 16] [43, c. 14].

The analysis shows that scholars during the study of “constitutional status”, predominantly used a logical, or rather, a formal-logical approach. The authors primarily establish the phenomenon (phenomenon of “constitutional status”) as an objective reality of existing legal life and as a given fact of social-legal reality. Nonetheless, it is accepted that the “constitutional-legal status” is rooted within the concept of “legal status” while the latter is derived from the term “status”. Hence, the concept “legal status” is broader than the term “constitutional status”, in other words, it is considered as a part and a structural element of the notion “legal status”. Whereas “legal status” is a derivative of the concept “status” and constitutes the logical and structural element and a part of it [44, c. 144].

On one hand the comparative analysis of the term’s “status”, “legal status”, “legal regime” provides that “statuses shall be understood as a “status-quo”, meaning the natural state (position, or role) which corresponds to the current state of affairs. While, on the other hand, all of these terms represent manmade and artificial phenomena. They are logical casts of those relations, the creation and existence of which are associated with human intervention in a real process with his creative activity. They are specifically related to the law-making process which transforms as a result of the natural state of affairs (“status quo”) is transformed, and spontaneously forms relations converted into the rank of consciously ordered and controlled phenomena. Hence, the common denominator among those concepts is that they all reflect the process of “transformation” of existing natural state (“status-quo”) into the artificially regulated relations. Furthermore, the content of the given terms is in the same “plane” and there is a relation among those concepts; they have similar semantic meaning which makes them complementary to each other. Therefore, in practice those terms regarded as synonyms and used interchangeably.

However, the concept “constitutional-legal status” (or “constitutional status”) is distinct. Although, it is also considered to be an “artificial” concept of the legal science, nevertheless, given term distinguishes the hierarchical priority of specific social relations which it reflects. In other words, social relations which has “constitutional status” also has the highest legal force and receives corresponding state protection.

To sum up, we can identify several definitions of the “constitutional status”. First of all, such term is developed within the framework of the legal science to designate the legal concept the existence and functioning of which is guaranteed by the system of legal provisions which has the highest legal force within a state and protected by the force of state bodies.

Now if we consider the term “constitutional status” from the standpoint of social relations, it is apparent that “constitutional status” is a system of foundational and particularly important social relations. Such relations are officially recognized by the state and also could be called “constitutional relations” or “constitutionally regulated relations”, thus, such relations receive the highest degree of legal regulation (legal coverage) and protection through regulation by the norms that have the highest legal force in the state.

“Constitutional status” could also be defined from the perspective of legal positivism. In this case, it will be recognized as a system of legal norms which has the highest legal force in a country and which is dedicated to establish freedoms, rights and responsibilities of individuals and citizens.

Therefore, we can conclude that the constitutional status of the Astana International Financial Centre is a complex, multi-layered, constitutional and legal formation consisting of its constituent elements and structures. This is a system of constitutional statuses of AIFC bodies, its territory, law, language, etc. integrated into each other. That is, the constitutional status of the AIFC as an integral phenomenon includes, as its constituent parts and structural elements, the constitutional statuses of the AIFC bodies, the constitutional status of the AIFC territory, its legal system (including the constitutional statuses of English law and Islamic law), constitutional statuses English, Kazakh and Russian languages, etc.

At the same time, the core of the constitutional status of the AIFC is its concept, reflected in the form of definitions of the center, and which are enshrined in the relevant norms of the Constitution and the AIFC Constitutional Statute. Therefore, these constitutional provisions, which formulate the official definitions of the AIFC, reflect the regulator’s ideas about the most important and significant parameters of the AIFC and create a holistic concept of the financial centre.

Certainly, we are aware of the fact that the definition could not describe all, but only “essential features” of the studied subject. As well, the definition has the intrinsic deficiency of describing comprehensive and multi-structural concepts as “legal realities” as if they were simple and one dimensional [45, c. 71-73]. However, definitions also provide a “mental image” of the specific concept, thus, making it possible to distinguish it from similar concepts, which creates theoretical grounds for a systematic and extensive analysis of the given concept. We hope that provided definitions of “constitutional status” will create theoretical ground for the subsequent analysis of issues related to the constitutional status of the Astana International Financial Centre.

***§2. International experience and stages of legal regulation of international financial centres***

Currently, international financial centres play critically important role in a redistribution of international financial resources around the globe. However, the concept of cities as an IFC considered to be relatively modern in scientific community. Hence, one of the first scholars to study the economic role of large cities was Peter Hall with his work “The World Cities” published in 1966, and he “brought this powerful concept to widespread international attention” [46]. So, with the globalization of the modern world as well as the development of new technologies, the importance of international financial centres only increased, which was noted by Saskia Sassen in her work “The Global City: New York, London, Tokyo” published in 1991. Since then, the role of the technologies only increased which contributed to the rapid growth in numbers of various types of forms of IFC’s.

Apparently, the international financial centres have complex internal structure, different elements of which closely intertwined and is in constant interaction. Therefore, IFC’s have different dimensions, so that different scientific branches explore it from various perspectives. This is one of the reasons why “...today there is no clearly established definition of the concept of “international financial centre” in the academic literature and research of leading financial organizations” [47, c. 162].

Undeniable fact is that scientific study of IFC was done mainly by the economic scholars. While legal researchers try to use the achievements made by the economic and sociological science in their exploration of different aspects of IFC’s. At the same time, there is a clear distinction in the approach used by an economic and legal researcher in studying and analyzing IFC, including in determination of its definition.

Therefore, we can identify three different approaches for distinguishing the concept of “international financial centre”: 1) socio-geographic and socio-urbanistic; 2) economical and financial; and finally, 3) normative-regulatory (legal) concept. The representatives of first approach identifies spatial and geographical location of IFC as its main characteristic. Accordingly, they define IFC as a “global city” [48, c. 606] or as a “world city” [49, p. 256].

At the same time, the most extensive research of an IFC has been made within the framework of economic and financial disciplines. As a consequence, most of the definitions were developed within this approach. Apparently, the economic and financial scholars identify the “economic and financial intermediation” as the main feature of the IFC, which is aimed at the concentration of capital from all over the world and its further management and redistribution.

So, within economic and financial framework IFC is identified as a “banking centre and centre of financial institutions” [50, c. 164] as well as a “a set of financial institutions, markets, and organizations, professional communities” [51, c. 164], or as a place “where financial transactions, such as monetary payments, transfers, accumulation and exchange of financial capital or currency could be carried out” [52, p. 164].

In other words, most common definition of the IFC is a “centre of concentration of international capital and provision of large-scale international financial transactions” [53]. Similar definition is given by the Saskia Sassen [54, c. 159] in her works.

In addition, the definition of the financial center is also given by the International Monetary Fund, describing it as “any financial centre where offshore [financial] activity takes place” [55, p. 17]. Hence, the such financial centres have following distinctive features – internationally oriented business operations; favorable regulatory framework that also includes favorable employment and visa regimes; zero or very low tax incentives; offshore banking as an entrepôt business [55, p. 17].

Nevertheless, recently, many economists agree that there is a need to develop new definition of international financial centre which takes into the consideration the global nature of the IFC. For this purposes, A. Dolgova provides following interpretation of the IFC – “international financial centre is a global city which alongside with administrative, economic and cultural functions also carries financial intermediation function and becomes an important platform for the global financial system to attract and redistribute capital from around the world” [47, c. 169].

The final – third concept is developed by the legal science and distinct from the previous approaches in defining the IFC. If the socio-geographical concept identifies IFC as a specific geographical location, and economic-financial approach views it as a place for economic and financial activities, then juridical science determines IFC as a legal space or legal territory. Moreover, such legal territory exists as a “special legal regime”. Therefore, according to the legal approach, the IFC – is a special from of “legal space” (or “legal territory”) which exists as a “special legal regime in the financial sphere”. Given definition of the international financial centres is incorporated in the legislation of United Arab Emirates, Kazakhstan, Hong-Kong and other jurisdictions, which is devoted for the regulation of such financial institutions.

It is crucial to mention that some modern international financial centres are also considered to be a special economic zone, since their territories and their legal regimes are limited to the specific geographical areas. Hence, they fully comply with the definition of the International Bank for Reconstruction and Development and the World Bank, which states that an SEZ is a “demarcated geographic areas contained within a country’s national boundaries, where the rules of business are different from those that prevail in the national territory” [56].

Therefore, the financial centres of United Arab Emirates, Qatar and the Republic of Kazakhstan are hybrids between offshore financial centres and modern type of special economic zones [57, p. 124]. Hence, the terms international financial centre and special economic zones will be used interchangeably throughout the text.

So, we can sum up that overall analysis of the definition of IFC shows the “three-layer” structure of the IFC. In other words, its internal structure consists of three different “spaces” or “territories” – geographical, economical and legal. The empirical proof of such theory is based on the history of the IFC’s. It reveals that at the inception the international financial centres emerged as a territory were people inhabited and as it increased in size it became large cities. So, due to the development of local business and through cross-border trade, the residents of the cities accumulated and increased the total amount of financial capital, turning small villages into large cities, making them “economic territories”. Simultaneously, residents also involve into legal relations with each other. So, at the beginning they obtain their rights and responsibilities as a resident of such territories, subsequently, they become a direct participant of economic relations, including those relations, which lead to the emergence of cities as an international financial centre. From the legal perspective, at the inception, given rights and responsibilities are regulated by the norms of local customs and traditions. As the time passes and as the legal traditions develop and get more complex, they are evolving into the norms of the customary law. So, at the final stage they are regulated by the state and become sanctioned by the legislative body by getting incorporated into the legal system of national states. Hence, the people inhabiting “global cities” or “world cities” they become the subjects of both settlement relations as well as economic relations, underlying the emergence of the international financial centres. While the local customs and later existing legal system regularize the official legalization and legal protection of the IFC’s.

The conducted analysis suggests that the nature and the structure of the IFC, as a subject of scientific research, could be characterized from three different perspectives. It could be described as a concept which consist of three various components, which include – geographical, economical and legal elements. That is one of the main reasons why there are no unified and complex definition which is accepted by the various fields of science. Meaning that representatives of each branch differently comprehend the IFC, its nature, as well as its internal structure, hence, developing diverse definitions of it and giving preference to their own perspective.

To sum up, we can provide following definition of the IFC. International financial centre is an integrated in itself, three-dimensional structure (geographic, economic and legal), which concentrate within its boundaries large amount of domestic and international capital from different financial spheres.

So, the results of research made by three different fundamental sciences are synchronized within the idea of “three-dimensional structure” of the IFC. We can distinguish three main features which describes the most competitive and successful international financial centres around the globe:

1. From the standpoint of the geographical approach (or theory of “time zones”) IFC shall be connected to the system of “global continuous movement of capital and round-the-clock financial and banking services” [58, c. 98];
2. From the economic (macroeconomic) position (or theory of “geography of finance”) it is of significant importance to the IFC to be located in a state or region with a “rapid economic growth and with the highest growth rate of real GDP” [58, c. 92-93];
3. From the legal perspective it is assumed that most favorable legal conditions for IFC is created within the English common law system [58, c. 95].

It is also important to mention that there are other features of IFC, however, they are considered to be secondary and complementary, in comparison to the main characteristics of the IFC. However, the fundamental features, alongside with other criteria are mainly taken into account by the researchers and rating agencies during the evaluation of the IFC’s.

It is apparent, that economic literature primarily focused on the economic processes and principles, therefore the emergence and development of IFC is mainly related to the flow of local, regional and international capital, its concentration and its distribution within the boundaries of specific cities. So, it is important to highlight that according to economical approach, the state and its legislative function considered to be as one of the least important factors which influences the success of the IFC. For instance, Dolgova A. alongside with other economic scholars argue that “representative offices of national banks, stock exchanges, audit and consulting companies, government regulators play substantial role in the activities of the IFC” [47, c. 164].

Nevertheless, legal science has a different approach on studying the IFC and assessing the role of the national states and its legal systems for the development of IFC’s. Without disputing the natural economical processes and the pattern of its development, legal science proceeds from the premise of recognizing the priority of a conscious and purposeful legislative influence on behalf of the state on such processes. Since, the legislative regulation of the state provides necessary foundation to overcome undesirable confluence of economic processes on the activities of IFC, both within the country and on the scale of interstate relations (trade barriers, economic wars, crises and etc.).

Hence, it is important to recognize the role of the state and its legal system for the consistent development and long-term success of the cities as an international financial centre. Moreover, significance of legal regulation come into the foreground, since we can observe the emergence of different new features of international financial centres. For instance, starting from 2018 the Z/Yen started to make the new rankings called Global Green Finance Index, which is generally refers to the development of the green finances by the international financial centres and how effectively they are advancing in this direction [59]. In other words, from the perspective of legal science, the economic processes only create initial ground for the progress and expansion of the financial centres. While the eventual transformation of the financial centre into the regional, international and finally into global financial centre is only possible with the active participation and support of the state with its normative and legislative power.

Whereas, the economic and financial literature describe the IFC as an economic or financial institute, the from the perspective of jurisprudence it is a legal institute. Since, through performing the legal function of the state and regulation of the activities of the IFC, it is transformed from the financial institute into the legal institute. So, such transformation allows IFC to quickly gain international recognition and develop at the faster pace. Therefore, the importance of the state and its regulatory function shall be recognized as one of the essential factors (alongside with economic, financial, social, territorial) influencing the growth and success of the IFC. Since, the state, by performing its regulatory functions creates a legal environment which positively influences on the overall activities of the IFC. Thus, there should be neither overestimation nor underestimation of the state and its regulatory function.

The main goal of the state regulation of the IFC is to legitimize its activities, in other words, not only recognize the existence of the IFC as legal subject but also regularization of all of its activities and the result of such activities. Hence, by adopting legislation which is aimed at the regulation of the IFC and its activities, state declares to all other legal subjects that IFC is a legitimate subject which has right and responsibilities according to the law.

Overall, the research shows that international financial centres require different type of legal regulation at the different stages of its historical development. There are a lot of scientific studies made on the history of the IFC, so we can observe that various scholars distinguish different historical milestones of the IFC’s. Some researchers identify XVII century [60, c. 160] [61, c. 116] [58, c. 92] as the emergence of the first international financial centres. While, there are other studies, which suggest that XIII century marks the countdown of the modern IFC history [62, c. 49]. As Krutovskaya A. states – “The transformation of the cities into the international financial centres started during the medieval, specifically in 1215”, asserting that Magna Carta was adopted at the given year [62, p. 49].

It is also important to note that in an attempt to identify the emergence of the IFC, most of the scholars links its development with the first stock exchanges which operated on the territory of various European cities. Without questioning such approach, we want to draw an attention to the fact that economic scholars overlook the prehistoric stage of the IFC, specifically, the period of time which preceded the actual date or event, which took place before the cities turn into the international financial centres [63, p. 132]. The prehistoric stage has an extreme importance for the understanding of the development of IFC’s and could not be separated or taken outside the framework of the timeline of the IFC. Therefore, the “pre-historic” stage of the IFC should be included into its historic evolution and development. Since the given period creates the necessary environment for the emergence of the first international financial centres. Therefore, general understanding and common principles developed by the economic scholars enables us to elaborate the historical process of legal regulation of the international financial centres.

**First stage** (from the ancient time – until the XIII century) – is the period of legal regulation prior to the emergence of IFC’s. This is the stage of traditional self-regulation of the social relations, in other words, when social relations were regulated by the common law, which existed on the specific territory of the state. So, it created necessary conditions and background for the activities of the financial institutions and markets. The existing law regulated and sanctioned the social demand for establishing international trade markets and financial centres and encouraged demand on their further development.

It is widely accepted that at the initial stages of historical development of nations, civilizations and states, the fundamental source of social regulation was – a custom. While the first historical source of the law (legal regulation) was – the customary law. So, we can infer those economic relations of the given stage, including monetary, financial and trade relations were based on the principles of the customary law. In other words, the customary law regulation was the basis for the public and official regulation of the institutions which was the first predecessors of the trade centres, which then transformed into the medieval stock exchanges and later, and then was incorporated and became an integral part of the modern international financial centres.

Thus, at the initial stages the IFC’s were primarily regulated by the provisions of the customary law as the basic form of the social regulation. It is also important to mention that customary law is still one of the existing and effective regulators of the IFC activities within the national frameworks (as a local customs) as well as at the international level (norms of the international customary law). The fact that customary law was one of the first forms of the normative regulator of the social relations makes it so unique and important. At the same time, customary law is accepted as a natural form of legal regulation due to the fact that it is based on the historical norms supported by the authority of the public opinion. Hence, customary law regarded as one of the most “transparent and natural” type of the social regulators, influencing people’s behavior as a “nature itself”. As a result, the participants of the customary law relations accept them not as an imperative provision imposed by an authority, but rather as a longstanding tradition and as a guidance to regulate social relations inherited from the ancestors. Such peculiarities of the customary law where the reasons why scholars did not identify them as one of the necessary prerequisites and condition for the development of the IFC, especially at the initial historical stages of the emergence of the international financial centres.

***Second stage*** (starts from the announcement of the Magna Carta in 1215 – until the beginning of the XVII century) – is the period of “spontaneous”, inconsistent and patternless state regulation of the IFC and its activities. Therefore, during this stage we can observe variety of different methods and approaches to regulate them, both at the international level as well as at the domestic level. One of the most common methods of regulation was the adoption of statutes by local executive bodies, starting from the acts of the governments and their departments, as well as with the adoption of orders by local city administration, such as city mayors and their subordinate institutions and their officials.

So, during this period, IFC was not regulated directly, but rather indirectly, since there was no specific goal to establish and develop international financial centre per se, hence, there were no general strategy for such purposes. While the most important issue was to provide the safety, consistency and permanence of economic, financial and monetary relations within the city. So, as the demand for the given necessities increased, the demand for a legal regulation rose as well. However, the states did not view legal regulation of economic activities as the primary objective, rather, it was part of the overall plan for the development of the cities and their infrastructure.

***Third stage*** (from the beginning of the XVII century until the middle of XX century) is characterized as the period of the regulation of first exchange markets. As it was mentioned previously, one of the substantial factors which influenced the development of the cities as an international financial centre was the emergence and rapid expansion of stock markets. Another distinctive feature is the fact that IFC’s and their activities was at the primary focus of the national states and their legislative functions. Respectively, the important issues related to the activities of the IFC became the subject of the discussion within the parliaments and other legislative bodies.

Hence, the rise of the Amsterdam which by the modern standards is recognized as the first international financial centre [64, p. 287], is facilitated by the Parliament of the Netherlands. In other words, the beginning of the Amsterdam as the IFC started with the adoption of the Charter of the Dutch East India Company on 20th March 1602 by the General States of Netherlands, which is the highest legislative body in Netherlands. So, the Dutch East India Company became the “first company to ever trade the shares at the stock market” [65, c. 234].

At the same time, the Amsterdam was not only pioneering the exchange market, but also, alongside with the establishing the first stock market, the Dutch Wisselbank considered by some researchers as the first Central Bank [66, p. 288]. The innovative approach for the regulation of international trade and stock market is regarded by many scholars as the primary reason why Amsterdam became the leading international financial centre during the XV-XVI century.

However, the example of Amsterdam was not left unnoticed by other European cities, and during the same period of time London also established its Central Bank and then launched London Stock Exchange in 1773 [67]. Step by step, London not only caught up Amsterdam but gradually started to surpass it as the leading international financial centre in Europe and in the world. While the driving force behind such fast development of the London is attributed to the establishment of the Central Bank and stock exchange as well as its effective legal regulation. For instance, Paul Kennedy claims that “the creation of the Bank of England in 1694 (at first as a wartime expedient) and the slightly later regularization of the national debt on the one hand and the flourishing of the stock exchange and growth of the “country banks” on the other boosted the supply of money available to both governments and businessmen” [68, p. 80]. Same factors were mentioned by the Adam Church, who stated that the “strength of the English public credit system, in turn, was supported by the Bank of England, which served as an efficient system through which long-term English sovereign debt could be traded and repaid, and guarantees of such debt obligations from Parliament, which were backed by Parliament’s power to raise additional taxes from a relatively vast domestic reserve of taxable wealth” [66, p. 301]. So, the strong Central Bank and effective exchange market were the main reasons of the rapid growth of the London as one of the leading international financial centres, which they manage to keep till the day.

Nevertheless, despite the status of the London as one of the largest IFC, currently, New York is recognized as the world’s leading global financial centre. So, as it was the case with the Amsterdam and London, the key contributors for the rise of the New York are considered to be the creation of Central Bank, stock exchange and its effective legal regulation. The famous New York Stock Exchange was established in 1792, although, officially it started to operate only in 1817 [69], while the Federal Reserve Bank of New York was created in 1914 [70]. So, alongside with an effective regularization of the financial market system, given factors largely contributed to the promotion of the New York as a global financial centre. Hence, according to Adam Church “on a fundamental level, the creation of the Federal Reserve System in 1913, and in particular the Federal Reserve Bank of New York, was a boon for New York, as the city’s financial institutions came to have the backing of a lender of last resort” [66, p. 301].

It is also important to mention that rise of the megapolis into the status of the international financial centre corresponded to the post second World War period. Once again, we have to mention the role of the state and its legislative function which facilitated the process of New York’s development. The federal state’s involvement into the legal regularization of the financial sphere started in the mid of 1930’s. This was mainly related to the devastating effect of the US great depression of 1929 which “had such a negative effect on the US due to the defective state regulation of the stock exchange market” [62, c. 670]. Thus, we can observe an importance of the state’s legislative function for an economic prosperity of the international financial centres. Thereby, the legal reforms initiated by the President Franklin D. Roosevelt was one of the significant reasons which boosted the rise of the New York city. The regularization process was aimed at the regulation of “the activities of banks and securities markets, which included – the Banking Act of 1933 (the so-called Glass-Steagall Act), the Securities Act of 1933, the Securities and Exchange Act 1934” [71, c. 670].

Overall, this period could be described as the time when states stimulated their legislative functions through the Parliaments, which resulted in the adoption of legal acts aimed at the regulation of the activities of the international financial centres (mainly the banking activities and stock exchange markets). Although, local governments and city authorities continued to adopt laws during this period as well. Nevertheless, this time their legislative activities were supposed to correspond the Parliaments work and should not contradict their acts.

***Fourth stage*** (from mid of XX century util the present day) of the legal regulation of the IFC activities – could be characterized as the period of its constitutional regulation. So, the chronology of the given stage formally starts from the time when countries adopted their first constitutions. However, the active phase of the given stage commenced when different states implemented constitutional regulation of the activities of international financial centres. For instance, Hong Kong is one of the notable cases, since according to the international analytical agency Z/Yen it is one of the largest financial centres and currently ranked as the fifth largest IFC [72] in the Global Financial Centre Index (hereinafter – GFCI). So, from the moment of its independence, Hong Kong thrived to become world’s biggest financial centre, and it was even enshrined in their Constitution. According to the Article 109 of the Hong Kong’s Constitution it is stated that – “The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre” [73].

Another example that we can take into the consideration is the international financial centres of the United Arab Emirates, which also has high rankings according to the Z/Yen GFCI (Dubai ranked at 19th place while Abu Dhabi at 38th out of total 114 international financial centres) [59]. The analysis of the UAE experience shows that on 10th January 2004 the Supreme Federal Council of UAE introduced amendments to the Constitution of the country. So, according to the Constitutional Amendment No (1) of 2004, the article 121 was amended by the following provision – “…the order and the manner of establishing Financial Free Zones and the boundaries within which they are exempted from having to apply rules and regulations of the Union” [74]. In other words, we can see that Supreme Federal Council prepared legislative basis for the establishment of the special independent jurisdiction (Financial Free Zones) on the territory with special legal regime.

Afterwards, on 27 March of 2004 the Federal Law No (8) of 2004 “Regarding The Financial Free Zones” (hereinafter – Federal Law) was adopted, which stated that “The Financial Free Zone: The Free Zone established in any of the Emirates of the State in which financial activities are carried on” [75]. So, the first international financial centre on the territory of the UAE was created on 27th June 2004, by the Federal Decree No (35), identifying that financial free zone – Dubai International Financial Centre shall be established in the Emirate of Dubai [76].

Nine years later, second international financial centre was created by the Federal Decree No (15) for the year 2013 “Concerning Establishing a Financial Free Zone in the Emirates of Abu Dhabi”. According to the Article 1 of the given Decree, it provided that “A financial free zone shall be established under the name “Abu Dhabi Global Market” [77].

Hence, we can observe that United Arab Emirates also introduced amendments to the Constitution of the state, to prepare legislative background for creation of the international financial centre. It is also important to mention that in UAE the international financial centres are directly referred as the “financial free zone”, similar to the “special economic zones” that exist in Kazakhstan.

So, in general, given period could be characterized as the time when the countries started to focus on the legal regularization of the various activities of the IFC’s and to regulate it with the adoption of the legal acts that has the highest legal force – as the Constitutional provisions or in the forms of the acts which has the Constitutional significance.

Such legislative measures are necessary in order to establish any type of international financial centre and also to ensure its future development and progress. Moreover, failure to fulfill given conditions may result in an adverse effect on the IFC, specifically it could cause the delay in the commencement of its activities, or even worse, the delay or cancellation of the results of its activities and other unfavorable outcomes. For instance, Douglas W. Arner claims that states shall take necessary measures to insure the long-term development of the IFC. He insists that one of the most significant steps “at the most basic level are the institutional underpinnings of governance and public order, property rights and their protection, contract enforcement and commercial dispute resolution, and human capital development. Without these, successful financial centres can fail (e.g., Amsterdam in the 18th century, Beirut in the 20th)” [78, p. 198].

We should also mention the case with Moscow Financial Centre. The idea to launch MFC first was discussed in 2008 as one of the strategic steps against the global economic and financial crisis of the same year [79, c. 1]. The Russian Federation’s leadership put high hopes on the project, however, till the day “it is still not fully realized” [80]. According to the Russian scholars, despite the efforts taken by the government for the “improvement of the infrastructure as well as the legislation, incentives are more likely to eliminate the most painful issues of the financial system than to create a clear system of incentives and a favorable investment climate” [79, c. 3]. So, the strategic and deliberate legal regulation of the IFC and its activities is a crucial factor for the implementation of such project as the creation of international financial centre.

Although, the trend of constitutional regularization does not mean that states should withdraw other forms and methods of management and regulation of the IFC’s and its activities. However, the international experience indicates that currently, constitutional legal regulation is one of the most effective approaches that states can take alongside with other measures of legal regulation which was used during the previous stages of IFC regulation.

***§3. The Emergence and Development of the AIFC as a special legal regime***

The Astana International Financial Centre represents the development of new stage of international financial centres not only in Kazakhstan but to the entire Central Asian region. Moreover, according to the economic scholars – the AIFC considered to be as the first true international financial centre on the territory of Eurasian Economic Union (EEU) [81, c. 110]. So, its emergence and evolution went through several important stages and we can even say that it has begun even before Kazakhstan became an independent republic. Generally, it went through a long path, from the being the first “special economic zone” in Kazakh Soviet Socialist Republic (hereinafter - Kazakh SSR) to the first Regional Financial Centre of Almaty city and then finally transformed to the international financial centre as we know it today.

Basically, we can conveniently differentiate the history of legal regulation of the financial centres in Kazakhstan into three main stages.

**First stage** (from 1990 till 2006) – could be classified as the “initial” stage of the creation of first financial centres in Kazakhstan and legislative regulation of it. Albeit, there were no exact financial centres on the territory of the post-communist country. Nevertheless, we can observe that during given period the necessary legal framework has been prepared, also the Kazakh state accumulated required legislative experience which was later used as the background for the first prototypes of international financial centres.

So, the first stage was the time when the initial process for the creation and legal regulation of the special economic zones started, which still exist on the territory of Kazakhstan. Generally, SEZ was not only the predecessors of the future financial centres in Kazakhstan but also its first “prototypes”. We can draw that conclusion from the analysis of the legislative definition of the term “special economic zones”. However, initially, the law identified it as not the “special economic zone” but “free economic zone”. So, the first legal act was adopted on 30th of November 1990 and was called the Law of Kazakh SSR № 360-XII “On free economic zones in the Kazakh SSR”. The “free economic zone” was identified in the Article 1 (1) of the given law as the “zone in Kazakh SSR which is specially designated ***territory*** with clearly defined administrative boundaries and with a ***special legal regime***, created in order to attract foreign capital, progressive foreign technology and management experience for the accelerated socio-economic development of the territory of the zone” [82]. In other words, we can see that legislator used the terms as the “***territory***” and “***special legal regime***” in order to describe and identify the free economic zone, which later will be used to define the regional and ultimately – the international financial centre in Kazakhstan.

Subsequently, the term “free economic zones” were renamed to the “special economic zones”, however, the laws that were adopted in 1996, 2007, 2011 and then in 2019 [83] [84] [85] [86] kept the similar definition of an SEZ.

So, currently, Article 1 (2) of the Law of the Republic of Kazakhstan from 3rd April 2019 “Regarding special economic and industrial zones” provide following definition – “SEZ is a part of the ***territory*** of the Republic of Kazakhstan with clearly defined borders, on which a ***special legal regime*** of a special economic zone applies for the implementation of priority type of activities” [87]. Although, there are slight amendments to the legislative definition of an SEZ, still, we can notice that it is basically defined as a “***territory***… where ***special legal regime***… applies”.

It is important to mention that currently there are different types of SEZ that exist on the territory of the Republic of Kazakhstan. As the experience show, financial centres emerge and function in Kazakhstan according to the specific patterns as one of the types of an SEZ. Currently, 13 special economic zones were established in different regions of Kazakhstan [88]. Although, for indetermined reasons, the financial centres, including AIFC, are not officially recognized as a type of SEZ and not included to the list of them. However, the international experience shows that some countries identify the international financial centres as an SEZ. For instance, as we mentioned in previous chapter, Dubai International Financial Centre which was used as the primary example by the Kazakhstan during the creation of AIFC, officially recognizes its financial centre as the “financial free zone”.

**Second stage** (from 2006 till 2015) – this is the time of the legal regulation of the first financial centre in Kazakhstan that was established in Almaty city and was called – “Regional Financial Centre of Almaty city” (RFCA). The initiative to create financial centre belong to the First President of the Republic of Kazakhstan – Nursultan Nazarbayev and was “initially announced by the “Yelbasy” (Leader of the Nation) during the meeting with the Association of the banks of the Kazakhstan in 1995, and later during his speech on the Congress of the Financiers of the Kazakhstan on November of 2004” [89]. So, on the March of 2006, the given initiative was reflected on the “Message of the President of the Republic of Kazakhstan N.A. Nazarbayev to the people of Kazakhstan – “Kazakhstan’s strategy of joining the world’s 50 most competitive countries” (hereinafter – the Message). The paragraph 1.10 of the Message stated that Almaty shall be developed as one of the main financial centres of the Central Asian region and the focus should be on creating favorable conditions for national financial institutions to become major providers of credit, insurance and other financial services for major regional business projects” [90]. In other words, the Message of the President established the foundation of new project – Regional Financial Centre of Almaty city. So, on June 5, 2006 the Law of the Republic of Kazakhstan № 145-III “Regarding Regional Financial Centre of Almaty city” was adopted. The very first article of the given law established that the RFCA “represents itself a ***special legal regime*** which regulates the relationship between the participants of the financial centre and interested parties which is aimed at the development of the financial market of the Republic of Kazakhstan” [91]. While the Article 12 (1) stated that “the trading platform of the stock exchange functioning at the ***territory*** of the city of Almaty” [91] shall be the platform of the financial centre. Once again, the financial centre was described as ***legal regime*** (but this time “special”) which operates at the specific ***territory***. In other words, we can observe a consistency in the way the legislator describes an SEZ and now the financial centre as well.

In order to establish the RFCA, it was decided to create the special Agency of the Republic of Kazakhstan for the regulation of activities of the Regional Financial Centre of Almaty city. Generally, as noted by A. Isaev – the government conducted a large-scale work for the implementation of the project, including legislative work on the regulation of the securities market and the RFCA itself [89]. “The rules establishing the functioning of the stock exchange as a non-profit organization were removed. The scope of activity of RFCA participants on conducting transactions on other stock exchanges has been expanded. The foreign professional brokers were allowed to participate in the stock exchange market of the RFCA” [89]. The government also attempted for the first time to create a special court in the financial sphere with the possibility of “conducting legal proceedings not only in state (Kazakh) and Russian languages, but also in English language” [89] to attract foreign investors.

Nevertheless, we can conclude that not all the tasks were completed and as the financial expert Murat Temirkhanov indicates, there were a set of specific reasons for the failure of the RFCA project. He asserts that the unfulfillment of the main provisions of the “Plan for the development of the RFCA till the year 2015” (hereinafter – RFCA Plan) affected severely to the effectiveness of the project as a whole. Hence, he identified following causes, such as:

* lack of a developed local securities market, without which it is impossible to attract foreign investors;
* lack of a developed market for government securities;
* lack of an effective mechanism for public-private partnership;
* failure to achieve indicators when bringing state-owned companies to the stock market (it was planned to place securities for USD 12 billion, while the real indicators were only USD 300 million);
* failure to achieve capitalization indicators of the corporate securities market (it was planned to achieve indicators of 70% of GDP for equity and 80% of GDP for debt capital, real indicators were at the level of 1% for both indicators);

Therefore, the goals and objectives to develop Regional Financial Centre of Almaty city according to the RFCA Plan was not fully executed. Step by step, RFCA went to a decline the amount of its activities also decreased. Subsequently, the Agency for the Regulation of Activities of RFCA was abolished by the Decree Number 25 of the President of the Republic of Kazakhstan from 12th April 2011, with the transfer of its responsibilities to the National Bank of the Republic of Kazakhstan [92]. Eventually, “by the fall of the same year the Agency for the Protection of the Competition terminated the activities of JSC “RFCA” [93].

Nevertheless, the ultimate failure of the RFCA did not affect the plans of the state to create an operating financial centre in Kazakhstan. So, in 2015 “as part of the election campaign, the President announced the idea to establish new financial centre” [94, c. 91]. On 20th May of 2015 the given idea was then reflected at the new state plan – “Nation’s Plan – The 100 concrete steps to implement five institutional reforms” [3]. It was established to create a new international financial centre, but this time in the capital of the Kazakhstan – Astana. It is important to note that almost five steps of the Nation’s Plan were dedicated to create new IFC (24 step and steps from 70 till 73).

Thus, the ***third stage*** for the legislative regulation of the financial centres in Kazakhstan started in 2015 and continuous till the day. Given stage – it is the period of the establishment and development of the “Astana International Financial Centre”. Albeit, the official opening of the centre was conducted only on 5th July, 2018 [81, c. 111]. It is worthwhile noting that the country’s leadership took into account the negative experience of the previous financial centre and “this time the project was much more ambitious, covered a larger number of areas of cooperation and required significant changes in legislation” [94, c. 91].

One of the important differences of the given period, in comparison to the previous stages, is that the AIFC and its activities now became the subject of constitutional regulation, while the “special economic zones” and RFCA were subject of ordinary legal regulation. In other words, new financial centre received a special legal status – constitutional status by adopting the Constitutional Statue on AIFC and later even by introducing amendments to the Constitution of the Republic of Kazakhstan. Given measures were directly mentioned in the 70th step of the Nation’s Plan [3].

Another distinctive feature of the AIFC is that this time the international experience for the regulation of international financial centres were taken into the consideration. As it was mentioned in previous chapter, the leadership of Kazakhstan studied international practice and decided to follow the path of United Arab Emirates. So, the 24th and 71st provisions of the Nation’s Plan explicitly stated to note the experience of Dubai for the creation of AIFC [3].

As a brief summary, the UAE also decided to introduce amendments to the Constitution of the state to establish Dubai International Financial Centre. However, it is important to note that DIFC was explicitly identified as a “financial free zone”, which is the analogue of the “special economic zones” in Kazakhstan. Another feature of the Dubai International Financial Centre which is similar to AIFC is that it is also legislatively regulated by the Federal State laws rather than ordinary Emirate (local) laws. Hence, the legal framework for the “financial free zones” were set by the Federal Law No (8) of 2004 “Regarding The Financial Free Zones” (hereinafter – Federal Law) adopted on 27 March of 2004. Another similarity is the fact that official language of the DIFC is English language. All mentioned factors were taken into the consideration by the leadership of Kazakhstan and were legislatively enshrined.

So, the main legal provisions regarding AIFC is regulated by the Constitutional Statute, and the legal definition of the Centre is established by the Article 1 (1). It states that the “Astana International Financial Centre means the ***territory*** within the City of Astana with precise borders determined by the President of the Republic of Kazakhstan where the ***special legal regime*** in the financial sphere established by this Constitutional Statute applies” [95]. Another words, we can notice, that characteristics such as the “territory” and “special legal regime” once again used to legally define the financial centre.

The Article 9 (1) of the Constitutional Statute identifies the following AIFC bodies – Management Council, Governor of the AIFC, AIFC Authority, Astana Financial Services Authority (AFSA), AIFC Court, International Arbitration Centre (IAC). The substantive law of the Centre is based on the Constitution of the Republic of Kazakhstan, The AIFC Constitutional Statute, as well as on the Acts, adopted by the AIFC bodies, that may be based on the legislation of the England and Wales as well as standards of leading international financial centres [95]. In addition to that, the English language is the official language of the AIFC and shall be used throughout the territory of the AIFC and in all areas regulated by the substantive law of the AIFC [95].

Although, the AIFC started to operate in 2018, nevertheless, currently, it is very difficult to assess its effectiveness, since there have been no scientific researches has been made AIFC and its activities, as well there is no definite public opinion regarding the financial centre. However, one of the tools that we can use to examine the AIFC is the index of the international analytical agency of Z/Yen organization. Starting from 2007 the Z/Yen publishes a report twice a year which contains the global rating of the international financial centres, which is called Global Financial Centres Index (GFCI). According to the given report, AIFC have been assessed in a period from 2018 till 2021 and within the specified period its index has increased from 548 points till 586 points, which could be considered as a steady progress. At the same time, in 2018 AIFC was at the 88th place in the GFCI rankings, however, at the first half of 2023 it is ranked at 60th place, which is the highest place among all of the Central Asian and Eastern European countries [59].

So evidently, the AIFC is recognized by the global community as one of the international financial centres that exists in the world. Hence, it has the common features and characteristics that corresponds to all financial centres. Thus, the scientific definitions that was developed by the economic, geographic and legal science also applies to the Astana International Financial Centre. In other words, the “three-level” or “three-dimensional” structure that was described in the previous chapter is also intrinsic to AIFC. For instance, from the point of “geographical” approach the AIFC is placed on the territory of one of the biggest cities of Commonwealth of Independent States (CIS) and Central Asian region – the Astana city. From the “economical” perspective the AIFC is the centre for attracting national and international capital, as well as different businesses, financial organizations, qualified human resources and etc. From the “legal” standpoint it is a special legal territory which exists as a special legal regime in the financial sphere.

At the same time, AIFC is a unique phenomenon among the system of international financial centre, since it accumulates all the characteristics which is common to international financial centre. However, it also possesses special features that is intrinsic only to itself. Therefore, in order to explore its distinctive characteristics, it is required to conduct additional research to identify and classify its peculiarities. As the result of such research, it is expected to provide the scientific definition of the AIFC which shall include its general as well as distinctive features.

Currently, the legal definition of the AIFC not only accumulate its essential characteristics, but also include the history of legislative regulation of the financial centres in Kazakhstan and its activities. While the given history corresponds to the process of the creation and development of financial centres in our country and duplicates it. Therefore, we can identify three stages of the legal regulation of the financial centre in the Republic of Kazakhstan.

As it was mentioned previously, there are two legal definitions of the AIFC that is contained in the legislation of the Republic of Kazakhstan. First definition is given by the Constitution of the Republic of Kazakhstan, while the second is established by the AIFC Constitutional Statute.

According to the Constitutional definition, the AIFC is defined as “a special legal regime in the financial sphere established within the city of Astana” (Article 2 (3-1) of the Constitution). While the AIFC Constitutional Statute has a slightly different definition, which states that the “AIFC means the territory within the City of Astana with precise borders determined by the President of the Republic of Kazakhstan where the special legal regime in the financial sphere established by this Constitutional Statute applies” (par.1 art.1 The AIFC Constitutional Statute).

So, as we can see, the Constitutional definition of the AIFC emphasizes the fact, that AIFC is a “special legal regime in the financial sphere which has its own territory within the city of Astana”. In other words, from the perspective of the Constitution, the territory of the AIFC is not considered as the distinctive feature of the financial centre. Rather, the main characteristic of the AIFC is a “special legal regime in the financial sphere”. Therefore, the fact that given “special legal regime” has its own “territory” with precise borders within the city of Astana is a secondary feature which only supplements its main distinctive feature.

In our view, the AIFC Constitutional Statute does not contradict to the Constitution, rather it is based on it and corresponds to it. Thus, we can identify similar features that is used to define AIFC within different legislative acts, which are following:

* The AIFC is established on the basis of the Constitution of the Republic of Kazakhstan and its activities are regulated on the basis of the Constitution and the AIFC Constitutional Statute;
* The purpose of the AIFC is to form a leading international centre for financial services in Kazakhstan (Article 2 (1) of the Constitutional Statute);
* The President of the Republic of Kazakhstan organizes and directly participates in the activities of the AIFC, as well as controls its work (heads the AIFC Management Council, appoints and dismisses the Governor of the AIFC, the Chairman and Judge of the AIFC Court, determines the boundaries of the AIFC territory, etc.);
* The AIFC is a special legal regime in the financial sector;
* The AIFC has its own territory within the administrative territory of the city of Astana;
* English language is the official language of the AIFC;
* English law and “Islamic finance” law are part of the AIFC “effective law” system.

The specified characteristics considered to be as distinctive features of the AIFC as the subject of the scientific research. While the indication of such distinctive features provides the background to clarify scientific definition of an analyzed subject, since by constructing its definition, it is possible to establish “the essential distinctive features of the subject”.

By summing up, we can provide following “broad” and “narrow” scientific definitions of the AIFC. According to the “broader” definition, the Astana International Financial Centre – is a special legal regime in financial sphere which exist as the type of special economic zone within the City of Astana which is established by the Constitution and regulated by Constitutional Statute with an aim of forming international financial service centre, with an official English language and English and Islamic law as an “acting law”, general governance and control of which is exercised by the President of the Republic of Kazakhstan.

The “narrower” definition of the AIFC could be identified as following – AIFC is a special legal regime in financial sphere with an independent territory and existing as one of the forms of SEZ, with English and Islamic law as part of the legal architecture, and which is functioned under the supervision of the President of Kazakhstan.

Both of the “broad” and “narrow” definitions are complementary and they represent two approaches of one and the same definition of the AIFC. The difference is that “broader” definition endeavor to consolidate all the distinctive features of the AIFC, while preserving the full and comprehensive description of their features, given in the Constitution and the AIFC Constitutional Statute.

So, to sum up, we are adhering the Constitutional approach to define the AIFC. It seems to us that the regulator, which first adopted the AIFC Constitutional Statute in 2015 and then later introduced amendments to the Constitution in 2017, took into account that the definition of the AIFC given in the Constitutional Statute is faulty in terms of legislative technique and in the Constitution of the Republic of Kazakhstan has given more accurate definition of the AIFC. At the same time, during the formulation of the definition of the AIFC we also took into consideration the international practice for legally defining the international financial centres and special economic zones in other countries.

**2 MAIN FUNCTIONS AND APPLICABLE LAW OF THE AIFC**

***§1. General characteristics of purpose (aim), objectives and principles of AIFC***

In order to establish the general purpose, objectives and principles of the AIFC, it is important to initially clarify the meaning of each word separately. In other words, we have to elaborate the meaning of the terms – “purpose”, “objective” and “principles”. So that we create prerequisites for thorough and comprehensive analysis of the AIFC and its characteristics.

Generally, the word “purpose” has several meanings. For example, it is described in a dictionary as “the reason for which something exists or is done, made, used, etc.” [96]. At the same time, it could be used as a synonym to the word aim, target or goal; for instance, the Oxford dictionary expands it as “the intention, aim or function of something; the thing that something is supposed to achieve” [97]. Another word that has the similar meaning is the word “objective”, which is described by the Oxford dictionary as – “something that you are trying to achieve” [97].

However, we should mention that original language of the AIFC Constitutional Statute is Russian language. Accordingly, the legislator originally uses the term “цель” which was translated as the “purpose”. However, the more accurate translation of the word “цель” would be “aim”. Albeit, the term “purpose” is synonymous to the word “aim”, nevertheless, as it was mentioned before, it is mainly referring to the intention of someone or something, the reason for its existence. While the term “цель” could have also several meanings. First of all, according to the dictionary of Ushakov, the direct meaning of the word “цель” is a “target” and means “object, place to be shot or must be hit when shooting” [98], which is very similar to the direct meaning of the term “aim”. Thus, one of the interpretations of the word “aim” is “to position or direct (a firearm, ball, arrow, rocket, etc.) so that, on firing or release, the discharged projectile will hit a target or travel along a certain path” [99]. However, in our case, the legislator uses the term “цель” in a figurative sense as a “something they are striving for, what they intend to achieve, the end goal, the intention that must be realized” [100]. The similar interpretation is given by the dictionary of Ozhegov, who described it as a “the object of aspiration, what is needed, it is desirable to implement” [101]. Accordingly, the Oxford dictionary gives additional interpretation for the word “aim”, which is “to try or plan to achieve something” [102]. Therefore, we can conclude that more appropriate translation would be the word “aim”, rather than “purpose”, and we shall use the term “aim” as a direct translation of the word “цель” further in this chapter.

Now, the analysis of the term “objective” shows that it is a synonymous to the word “aim”. For instance, the Oxford dictionary describes the word “objective” as a “something that you are trying to achieve” [97]. Hence, it is apparent that both terms are identical in their meaning. At the same time, we should mention that the AIFC Constitutional Statute originally uses the term “задача”, which was translated as an “objective”. Correspondingly, it has very similar meaning. The dictionary of Ushakov states that “задача” shall be understood as a “something, which requires its implementation or resolution” [103]. While the Ozhegov's Explanatory Dictionary directly equates the term “objective” to “aim; or something that is necessary to implement, what needs to be achieved; assignment as an aim or goal assigned to someone” [104].

Although, both of the given terms have an identical meaning, nevertheless, it is important to highlight the difference in the meaning of the term “aim” as a “цель” and objective as a “задача”. The main point is that the word “aim” is generally used to describe the end result, in other words, it is a final limit of aspiration, the pursuit for which all the efforts and endeavors were directed to accomplish. Which is to say that “aim” is referred to a distant perspective and sometimes even with a boundless future. It is commonly characterized by more permanent nature, being the most significant part or in other words comprising the essence of a particular field of activity. So, the aim is considered as an essential or central part, being more important in relation to an objective. While the objective serves as an interim points or intermediate goals, becoming a means and instruments for achieving the general aim. Thus, the objective does not exist without an aim, so that aim determines subject matter and content of an objective. Therefore, it is important to take into consideration the priority of an aim with regards to the objective, and that the latter follows from the first and acts within the limits and within the framework of the set aim.

It is widely accepted, that fundamentally the core of an aim and the objectives of a human activity are driven by their interests. So, the necessity to satisfy those interest is that main intrinsic motive which encourages and induces people to accomplish their goals and to fulfill their aims. In this regard, the scholars noted the significance of studying the relations between the interests and goals, especially in the sphere of social relations, regulated by the law. Since, the “law is formed and shaped under the direct influence of the social interests, which in turn is served as the means for the realization of the given social interests, providing required protection of it within the society” [105, c. 26]. Therefore, many scientists convinced that the goals and aims represents the “understood” or “comprehended interests”. One of the forms of manifestation of such comprehension is the fact that interests require the legal protection. Especially those interests “which relates to the initial socio-economic conditions of human life, the prerequisites for the progress of the society” – as noted by the Shaikenov Nagashbai Amangalievich – “in jurisprudence those interests are institutionalized through “legal interests” and “human rights” [106, c. 9].

The law regulates and enshrines as a legal aims those interests which corresponds to the general human interests. While the legal system of national states is developing and enshrines the aims and objectives which corresponds to the interests of given states and their people.

Now if we analyze the last term – the “principles”, then we have to note that it is used in the AIFC Constitutional Statute as the word conjunction “principles of activity”. In the given case, same as in case with an “aim”, there are two different meaning of the word “principle”. First of all, it is used in science and can mean – “the fundamental basis for something (certain scientific system, theory, politics, instruments and etc.)” [107]. However, we are more interested in the second meaning of the word, which could be expanded as “a moral rule or a strong belief that influences your actions” [108]. Very similar interpretation is given in Russian dictionaries which states that “principle” is a “belief, conviction, point of view or rule of conduct” [109]. In other words, we can perceive the term “principle” as an internal (moral) guideline to rely on in order to make a decision. Accordingly, the principles of activity could be interpreted as a strong belief or as a fundamental rule of conduct, which is used as a guideline for the realization of certain activities.

In order to analyze the aims, objectives and principles of activity of AIFC, it is necessary to evaluate the AIFC Constitutional Statute, which contains the given provisions. As it has been noticed previously, the substantial factor in the development of the international financial centres considered to be the comprehensive legal regulation of the activities of the IFC. It is done for the purposes of its sustainability and effective functioning in the long-term perspective. The same principles are applicable to the Astana International Financial Centre, which has an aim of becoming the leading centre of financial services in Kazakhstan as well as in the Central Asian region.

Therefore, in order to achieve the results which is consistent to the primary aim, the necessary step would be to identify the specific and ambitious, but at the same time attainable aim. The given aim shall be the final destination the accomplishment of which shall identify the efficaciousness of all the efforts made.

So, the main goal of the Astana International Financial Centre identified by the Kazakh state’s leadership is enshrined in the AIFC Constitutional Statute. Alongside with the main goal, the Constitutional Statute also establishes the objectives and the principles of activity, as well as the overall regulation of the AIFC. Hence, the first article of the AIFC Constitutional Statute determines that main purpose of the AIFC is to establish a leading international centre [95].

It is essential to note that legislator does not specify the indicators for accomplishing the “purpose” of the AIFC. Instead, it only states that the “purpose” shall be “to establish a leading international centre for financial services”. Therefore, it might seem that ultimate goal of the centre is vague or imprecise, since, the law does not clarify the definition of the “leading international centre for financial services”. Nevertheless, the answer for that question could be found not in the law itself, but in the document, which actually laid the foundation for the creation of the AIFC – the Nation’s Plan. Hence, the paragraph 70 of the Plan specifies that “In the future, the financial hub of Kazakhstan should enter the 20 leading financial centres of the world” [3]. In other words, we can have an idea of the qualitative and especially quantitative reference point of what shall be understood as a “leading international centre for financial services”. However, it is only an assumption, and we do not insist that it is an ultimate goal of the AIFC, since, it is specified in the Nation’s Plan. Although, the Plan is supposed to be used as a guideline for the future development of the Kazakhstan, nevertheless, this document is not a normative legal act, which means that its implementation is not enshrined in the law, and it is not supported by the government and state apparatus, so, derogation from this document does not lead to a violation of the legislation of the Republic of Kazakhstan.

At the same time, we also should take into consideration the goal which is mentioned in the official web-site of the AIFC. Thus, it has a section “objectives”, however, it is translated as “цели”, which means “aims” or “goals”. So, there is a separate page called “Objectives” on the AIFC website and the given page identifies several objectives, among which we can identify certain objectives with specific benchmarks, which shall be accomplished by the AIFC. For instance, the site identifies that AIFC shall lead to the “privatisation of the country’s largest enterprises, which jointly account for 35% of its GDP” [110].

Nevertheless, we cannot consider the plan specified in the official web-site of an AIFC as a major goal, since, as in case with the Nation’s Plan, given goal is not specified in the normative legal acts, which means that it is not sanctioned by the government or its competent agencies. Although, we do not imply that such goal is not the priority for the state or that it shall be considered as a secondary goal. Rather, we attempt to highlight those goals mentioned in Nation’s Plan and official web-site of an AIFC viewed as a landmark or a reference point, which shall be used to implement the main goal established in the AIFC Constitutional Statute.

Aside from the goal, the Article 2 (2) of the AIFC Constitutional Statute also determines five major objectives, which is necessary to implement within the framework of the main goal. The law identifies following objectives – attracting investment into the national economy by creating favorable conditions for investments into the financial sphere; developing stock exchange market and its integration with the international financial markets; developing the insurance, banking, Islamic finance, electronic and other financial markets; developing the level of the provision of the financial and professional services based on the international leading practices; and finally gaining recognition of international level as the leading financial centre.

It is also important to mention, that the AIFC Constitutional Statute does not enshrine additional one objective. In our view, such objective is “strengthening the trust to the Republic of Kazakhstan as a legal and just state”. Given objective is implied as one of the major objectives, since it is one of the most crucial factors to attract international businesses and to strengthen the international reputation of our state.

At the given moment, it is very difficult to evaluate the overall effectiveness of the implementation of the main goal and objectives of the AIFC. However, one of the metrics that is used by the AIFC itself is the Global Financial Centre Index that is conducted by the London based company Z/Yen, which annually publishes the rankings of the largest international financial centres around the globe. Hence, in 2018 the AIFC was ranked at the 88th place, however, in 2023 it climbed to the ranked at 66th place [72], which is very good result.

Additionally, within the framework of the development of the AIFC, the stock exchange called – Astana International Exchange (AIX) was established in 2017. Currently, besides from the AIFC itself, it has following international companies as its shareholders – Goldman Sachs, Shanghai Stock Exchange, Chinese Silk Road Fund, and NASDAQ which provides the trading platform for AIX [111]. So, the main function of the AIX stock exchange is the development of a segment of the regional stock market, Islamic finance, the program of privatization of state assets of Kazakhstan, green finance, and other areas. Currently, by the official results of 2023 the AIX raised USD 2,4 billion from inception, the net trading turnover reached USD 582 million from the traders from 37 different jurisdictions [112].

It is important to note, that legislator, besides the goal and objectives of the AIFC, also identifies the principles of its activity. The given principles define the framework within which the AIFC and its bodies shall operate and implement its main goal and objectives. Hence, the Article 2 (3) of the AIFC Constitutional Statute determines following five principles of the AIFC, based on the efficiency of the AIFC participants in their activities, its transparency, integrity, professionalism as well as the application of best international standards and practices.

Also, the paragraph 4 of the given article establishes the basis for the regulation of the AIFC activities, which shall be carried out respecting the independence of the financial centre and its participants.

Generally, we can observe that a lot of efforts has been made to provide the independence of the AIFC to function effectively. This includes the existence of own separate territory within the Astana city; its own legal system based on the English common law; own official language – English language; independent court system and international arbitration centre with the judges attracted from United Kingdom; and special tax and visa regime.

All the mentioned steps are directed toward attracting international investment into Kazakhstan, so that AIFC was developed on the basis of the foremost international experience. As it has been mentioned previously, the most relevant experience was Dubai International Financial Centre. The DIFC possessed if not all but most of the mentioned characteristics of the AIFC. However, one of the most notable differences between two international financial centres is the fact that DIFC did not identified only one major goal and accompanying several objectives as the AIFC. Instead, the leadership of the UAE formulated several major objectives within DIFC laws.

Another difference is the fact that those objectives were enshrined not in the Federal Law (similar to the AIFC Constitutional Statute in our state), but in the local normative legal act. Hence, the article 4 of the Dubai Emirate Law #9 from the 2004 “In respect of the Dubai International Financial Centre” [113] establishes that “The Centre shall have, without limitation, the following objectives:

1. To be a financial centre in the Emirate, based on principles of efficiency, transparency and integrity with a view to making an effective contribution to the international financial services industry;
2. To promote the position of the Emirate as a leading international financial centre; and
3. To develop the economy of the Emirate.

We can mention that the neighboring Emirates – Abu-Dhabi regulates the activities of its international financial centre - Abu-Dhabi Global Market, in similar manner. As we can notice, the of the Emirate leadership adopted the Law of Abu-Dhabi Emirate #4 “Concerning Abu-Dhabi Global Market”. The article 3 of the given statute establishes similar objectives that include promotion of the Emirate as a global financial centre through the ADGM; to develop its national economy as well as the creation of favorable environment for the investors [114].

Another international example that we can take into consideration is the Special Administrative Region Hong Kong, which for the long period of time is among the most advanced international financial centres in the world. For instance, currently, the Hong Kong is listed at the 4th place among the top IFC’s according to the Global Financial Centre’s Index [115]. The notable fact is that Constitution of the Hong Kong explicitly identifies one of the main goals of the Government of the region. According to the article 109 of the Constitution of the Hong Kong – “The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre” [73].

Now if we look at the distinct from Kazakhstan, UAE and Hong Kong example, which is the Moscow Financial Centre. The Russian financial centre went through a different path of development and one of the significant differences is the fact that they did not identify the main goal of the IFC. Hence, many specialists characterize the general strategy of the financial centre which were implemented in Moscow as “invalid or incompetent” [79, c. 3]. The overall analysis of the normative acts which were adopted to establish MIFC shows that leadership of the Russian Federation did not formulate specific goals and objectives before the financial centre. Instead, all of the Presidential Decrees [116] [117] [118] which were adopted between 2010 and 2011 were directed at the regulation of the issues related to the creation of the advisory boards and working groups under the MFC, as well as its further update of its composition. Another legal act which regulated the activities of the financial centre was the “Plan of the measures for the creation of international financial centre in the Russian Federation”, which was approved by the Order of the Government from the July 11, 2009 No 911-p. However, it is apparent that given statute is merely a reference act and considers the development of the set of legal acts for the development of the financial sector in Russia. While the concrete steps for developing the Moscow Financial Centre is envisaged not in the legal act, but in the Road Map, as well as in the Concept for the creation of the international financial centre in the Russian Federation from the year 2009.

Thus, the analysis of international legislation as well as international practice regarding the regulation of IFC’s leads to the conclusion that creation of the international financial centre requires from the state the formulation of the specific goals and objectives for its establishment. Moreover, it is critically important to enshrine given specific goals and objectives into the legislative acts which will ensure its effective implementation on behalf of the country with its state apparatus.

***§2. The territory, applicable law and the language of the Astana International Financial Centre***

Basically, the legal definition of the Astana International Financial Centre is identified as a territory with a special legal regime in the financial sphere. Whereas the term “territory” comes from the Latin word “territorium” where the root word is a “terra” which translates as a land [119]. The philological analysis suggests, that the term territory did not change its original meaning of the land space. Hence, the explanatory dictionary expands that “territory” is the land space within specific boundaries [120]. Similarly, the geographical encyclopedia identifies this term as a “name of any part of the surface; it can refer to any taxon of the spatial hierarchy - area, city, district, etc. At the same time, this is an empirical expression of the abstract concept of space” [120]. Whereas the encyclopedic dictionary of Brockhaus and Efron the “territory” considered as one of the main characteristics of the state. “With the transition of peoples from nomadic to settled life, a certain territory is gradually established, which becomes the main basis for the development of the state. In view of this, many consider the territorial region to be the same basic feature of the state as the supreme power and the people. The boundaries of the territory establish the limits of the action of the supreme power and the norms issued by it” [120]. Thereby, mentioned dictionary highlights the role of the state and its legislative function in the determination of its boundaries.

Now the legal analysis of the territory suggest that this concept is mainly the subject of study of the international law and it is closely related to the legal regime that expands on the specific territory. For instance, one of the legal definitions identifies it as a “space with a specific legal regime – part of the globe (land, water areas, bowels, airspace), as well as outer space and celestial bodies” [121]. Correspondingly, depending on the legal regime, the territory could be divided into different types. In his works Batychko V.T. mentioned following types of the territories – state, mixed and international territories [122]. Out of the mentioned types of the territories, the state territory is the focus of our interest and it is defined as a “territory is within sovereignty of the state. It is included within the framework of state borders, the land and water surface, the airspace above it to the border with space, and the subsoil ...” [123, c. 784].

Now, the state territory of the Republic of Kazakhstan is regulated by the Constitution of the state. It is establishing that sovereignty of the country covers the entirety of its territory and ensures its integrity, inviolability, and inalienability. (Art. 2(2), Constitution of the Republic of Kazakhstan). So, the state territory also divided into administrative-territorial units that are defined by the legislative of the Republic of Kazakhstan (Art 2(3) Constitution of the Republic of Kazakhstan). Besides from the administrative-territorial division, a special legal regime could be created within the territory of the state, or territories with a special protection regime, which are mainly created for specific purposes. For instance, there are specially protected natural territories in Kazakhstan. According to the Law of the Republic of Kazakhstan dated July 7, 2006 No. 175-III “On Specially Protected Natural Territories”, Article 1 (3) it is established that land, water objects and air space above it as well as natural reserve funds are protected and special regime is envisaged by the law for its protection. However, the mentioned law identifies that specially protected natural territories do not have a special legal regime, but they have a special regime for the protection of these territories.

Also in Kazakhstan, there are special economic zones and industrial zones, which are regulated by the Law of the Republic of Kazakhstan dated April 3, 2019 No. 242-VI “On Special Economic and Industrial Zones” (hereinafter referred to as the Law on SEIZ). It is important to note here that industrial zones also do not have a special legal regime on their territory, and according to Article 1 (9) of the Law on SEIZ, it is defined as “... a territory provided with engineering and communication infrastructure, provided to private business entities for the placement and operation of business facilities. activities…” The purpose of creating an industrial zone is indicated in Article 9 (3) as “... infrastructural support for the development of entrepreneurship in the regions”.

In turn, the Article 1 (2) of the Law on SEIZ establishes that SEZ is a part of the territory of the state that has clearly defined borders; the special legal regime is applied on this territory for the execution of a priority activities. That is, of these three territories, only the territory of the FEZ has a special legal regime. Also, in accordance with Article 9 (1) of the Law on SEIZ “The Special Economic Zone is being created in order to accelerate the development of modern high-performance, competitive industries, the formation of a qualitatively new level of service provision, attraction of investments, the introduction of new technologies in economic sectors and regions, as well as increasing employment”.

As it was noted in the previous chapter, the Astana International Financial Centre is one of the varieties of the special economic zone, but this is not reflected in the legal definition of the AIFC. Accordingly, if we turn to a direct analysis of the financial centre and its territory, then its boundaries were determined in the Plan of the Nation in 2015. The paragraph 70 of the Plan established that AIFC will be located on the premises where Astana Expo 2017 exhibition was held. Which meant that two years prior to the exhibition of the Astana Expo 2017, it was planned to create international financial centre on the same facilities. So, in order to implement the Plan, the necessary legislative steps were taken and the Decree of the President of the Republic of Kazakhstan dated December 31, 2015 No. 161 “On determining the boundaries of the territory of the Astana International Financial Centre” (hereinafter referred to as the Decree of the President) was adopted. It is also interesting to note that territory of the AIFC was legally determined in the Presidential Decree one year prior to the adoption of the AIFC Constitutional Statute which established the legal basis for the creation of the financial centre.

Initially, the Decree of the President established the boundaries of the territory of the AIFC as only 25 hectares of land in the Esil district of the city of Astana [124]. However, in 2017, and then in 2019, changes were introduced to the Presidential Decree, and the territory of the AIFC was significantly increased from the original 25 hectares to 1632 hectares of land [124]. So, the boundaries of the financial centre are identified in paragraph 1 of the Appendix to the Decree of the President. In the same Appendix, the layout of the AIFC on the map of the city of Astana is also depicted.

In addition, paragraph 2 of the Annex to the Presidential Decree determines a boundary (with a total area of 25 hectares of land), on the territory where the Article 6 (8) of the AIFC Constitutional Statute is applied [124]. This paragraph defines the types of activities for the provision of which the AIFC bodies and participants are exempt from paying property tax and land tax for facilities located on the territory of the Centre [95].

Correspondingly, the territory of the AIFC determines the boundaries to which the special legal regime in the financial sector applies. However, before considering the legal regime of the Centre, it is necessary to establish in what legal framework the architecture of the AIFC exists.

Article 4 (1) of the Constitution establishes that legal system of the state is comprised of the Constitution and laws that corresponds to it, legislative acts, international treaties as well as normative resolutions of the Constitutional and Supreme Courts. Thus, we can see that the Constitution lays the legal foundations of the legal system that exists, and also determined those legal acts that regulate social relations in the Republic. In addition, the status of the Constitution itself as the Constitution is established in Article 4 (2), which states that “The Constitution shall have the highest juridical force and direct effect on the entire territory of the Republic”. It is also necessary to note the international treaties of the Republic, which have a special status in the country. Thus, paragraph 3 of this article also states that the norms of international treaties ratified by the Republic have priority over the national legislation of the country.

If we dwell on the definition of the concept of legislation, then it is established in the Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V “On legal acts” (hereinafter referred to as the Law on Legal Acts). Thus, in Article 1 (16) of the Law on Legal Acts, the legislation of the Republic of Kazakhstan is defined as – “... a set of regulatory legal acts adopted in the prescribed manner”. Accordingly, the system of national legislation of the country is based primarily on normative legal acts, which, according to Article 1 (25) of the Law on Legal Acts, are defined as - “... a written official document of the established form, adopted at a republican referendum or an authorized body that establishes the rules of law, modifying, supplementing, terminating or suspending their action.

Thus, we can conclude that the Astana International Financial Centre and its laws exist within the framework of the legal system of the Republic of Kazakhstan, established by the Constitution, international treaties ratified by the Republic and other regulatory legal acts of the country.

Now, the analysis of the “acting law” of the AIFC, then it is first of all enshrined in Article 4 of the AIFC Constitutional Statute. It establishes that the applicable law of the AIFC is based on

1) the Constitution;

2) The AIFC Constitutional Statute;

3) AIFC Acts; and

4) the national legislation of the country that shall be applicable to the relations not governed by the AIFC Constitutional Statute and AIFC Acts.

At the same time, it is important to take into account another concept, namely “Applicable Law”. So, according to Article 2 (7), section 7, of the Resolution of the AIFC Council, it is stated that “The Governor is guided by the AIFC’s Regulations (as defined in the Constitutional Statute), the Constitutional Statute and the Constitution of the Republic of Kazakhstan (the “Applicable Law”), decrees of the President of the Republic of Kazakhstan and international treaties of the Republic of Kazakhstan”. Thus, the term Applicable Law includes the Constitution of the Republic of Kazakhstan, the AIFC Constitutional Statute, as well as the Acts of the Centre. However, another question arises, namely, the need to introduce the concept of “Applicable Law”, whereas it was previously indicated that the AIFC Constitutional Statute already uses the concept of “acting law of the AIFC”.

Therefore, we can see that the concept of “acting law” is wider than “applicable law”, since in addition to the Constitution, the AIFC Constitutional Statute and the Acts of the Centre, it also includes the laws of the Republic of Kazakhstan. However, most likely these two terms are identical in the future, as part of the further development and improvement of AIFC law, it is necessary to use only the term “law in force”, in accordance with the AIFC Constitutional Statute.

It is also worth noting that the hierarchy of the AIFC laws are established in the AIFC Act, namely, in the AIFC Regulations No. 1 of December 20, 2017 "On the AIFC Acts" (Regulations on AIFC Acts). So, in Article 8 (1) of this Regulation, the following hierarchy of legal acts is established:

1. Article 2 (3-1) of the Constitution of the Republic of Kazakhstan; and
2. the Constitutional Statute; and
3. the Management Council Resolution on AIFC bodies; and
4. Regulations; and
5. Rules; and
6. other Acts of relevant AIFC bodies adopted to regulate specific issues.

It is interesting to note that Regulations on AIFC Acts establishes the hierarchy where not the entire Constitution of the Republic of Kazakhstan as a whole has the highest legal force, but only Article 2 (3-1) of the Constitution. Also, the Regulation does not indicate the place of international treaties in the hierarchy. However, according to Article 4 (4) of the AIFC Constitutional Statute, international treaties ratified by the Republic of Kazakhstan have priority over the norms established by the AIFC Constitutional Statute. Accordingly, international treaties have priority over the AIFC Acts.

So, the AIFC Acts generally has geared a pulpable interest from the Kazakhstani legal community and according the AIFC Constitutional Statute, the AIFC Act is an official document adopted by an AIFC body that regulates relations between different parties, such as AIFC participants, AIFC bodies, as well as the Employees of AIFC participants and AIFC bodies.

The analysis of the Regulations on the AIFC Acts shows that outside the Resolution of the AIFC Governing Council, there are three types of AIFC Acts including – AIFC Regulations, AIFC Rules and other Acts of the AIFC bodies. Also, from the analysis of Article 4 (1(2) of the AIFC Constitutional Statute, the following conclusions can be drawn. Firstly, it establishes that all Acts adopted by the AIFC bodies must not contradict the AIFC Constitutional Statute. That is, in addition to compliance with the Constitution of Kazakhstan, the AIFC Acts must also be in full compliance with the AIFC Constitutional Statute. Secondly, the AIFC bodies can adopt Acts only within the limits of the powers granted to them by the AIFC Constitutional Statute. Thus, the powers of each AIFC body are defined in Articles 9 to 14 of the AIFC Constitutional Statute. Thirdly, a feature of the substantive law is that the AIFC Acts can be based on two sources of law, the first is the norms and precedents of the law of England and Wales; second, these are the standards of leading global financial centres.

Therefore, we can see that the common law of England and Wales can be incorporated into the AIFC legal system. This practice is unprecedented for all countries of the former Soviet Union and Kazakhstan is the first country that, within a limited territory, legally introduces the English common law into its legal system.

However, it is important to note one important nuance. It would seem that in order to apply the principles of the common law of England and Wales in the AIFC its bodies should appropriately incorporate them into their Acts. Nevertheless, it is apparent that the scope of case law in the AIFC is much wider. This conclusion comes from the analysis of Article 13 (6) of the AIFC Constitutional Statute which establishes that when resolving disputes, the AIFC Court also can take into account the precedents of the AIFC Court as well as the judgments of other common law courts. In other words, the AIFC Court, by its decisions on specific disputes, can set a precedent that will have to be taken into account by judges in subsequent similar disputes. In addition, the AIFC Court may also take into account the decisions of the courts of other common law jurisdictions as a precedent. Thus, we can state that another source of AIFC law, which is not specified in Article 4 of the AIFC Constitutional Statute, is case law, namely the precedents of the Court of both the AIFC itself and the precedents of other jurisdictions of the common law system. Accordingly, by this provision, the AIFC Constitutional Statute introduced case law as a substantive law of the AIFC.

We can state that this issue is of particular interest in the legal community of the country, including within the Constitutional Council of the Republic of Kazakhstan. So, on May 20, 2021, a meeting of the Scientific Advisory Council under the Constitutional Council of the Republic of Kazakhstan was held on the topic “The constitutional and legal status of the Astana International Financial Centre and the practice of its implementation”. During the meeting of the SAC, the issue of the acting of the AIFC was discussed, and Doctor of Law E.B. Abdrasulov specifically raised the question regarding Article 13 (6) of the AIFC Constitutional Statute. Professor Abdrasulov was interested whether the norms of the Constitutional Statute is not contradicting to the national legislation of the Republic of Kazakhstan, since by resolving disputes, the AIFC Court can take into account the previous decision of the AIFC Court and also the decisions of courts of other common law jurisdictions that have entered into force. This question was answered by the Registrar and Chief of Staff of the AIFC Court, Christopher Campbell-Holt. He confirmed that, according to the AIFC Constitutional Statute, the AIFC Court can take into account and be guided by the decision of courts of other common law jurisdictions, and clarified that this is an international practice, and is actively used in international centres in the UAE and Qatar [125].

Nevertheless, despite the fact that such a practice can be widely used in other international financial centres, it is still necessary to more closely review and analyze the norms of Article 13 (6) of the AIFC Constitutional Statute. Firstly, although the AIFC Court may take into account the decisions of the courts of other “common law jurisdictions”, the question arises, which jurisdictions shall be considered as the “common law jurisdictions”, in other words, is there a specific list of such countries or jurisdictions? The fact is that the AIFC Constitutional Statute does not clearly define what “common law jurisdiction” is. Also, it is worth considering that in legal science there is no consensus on the definition of the “common law jurisdiction”, since at the moment, the classical division of the legal system into civil law and common law systems is still subject of scrutiny both by scientists of the CIS countries, as well as by Western jurists. Moreover, it is widely regarded that more than 100 countries of the world have a mixed legal system [126], respectively, if we take countries such as Scotland or the Republic of South Africa, or jurisdictions like Quebec in Canada or Louisiana in the USA, then they have a civil law and common law systems. So, the question would then arise, are they considered to be as a “common law jurisdictions”?

The second issue to be considered is that AIFC Court could take into consideration the decision of other “common law jurisdictions” and by that make create a precedent that shall have a priority of the national legislation of the Republic of Kazakhstan, and thereby create a precedent that can be taken into account in subsequent disputes by the Court AIFC. Therefore, it is apparent that the legislative wording of Article 13 (6) of the AIFC Constitutional Statute requires revision, since it is necessary to specify the list of countries and / or jurisdictions which considered to be a “common law jurisdictions”. This issue could be resolved by the AIFC Court itself, since the Article 13 (10) of the AIFC Constitutional Statute specifies that AIFC Court has an exclusive jurisdiction to interpret the AIFC Acts.

The third issue related to “the judgments of other common law jurisdictions” is that their place is not defined in the hierarchy of the AIFC Acts. Thus, it has already been noted that Article 8 (1) of the Regulations on the AIFC Acts establishes both the list and the hierarchy of the AIFC Acts. However, this list does not include decisions of the AIFC Court and courts of other common law jurisdictions. Thus, another question arises that if the AIFC Court decides to take into account the decision of one of these Courts that has entered into force, will it prevail over the acting of the AIFC, and in general, what is the place of these decisions in the hierarchy of the AIFC laws?

Generally, the analysis of the AIFC Constitutional Statute suggests that precedents shall be at the bottom of the list within the hierarchy of the AIFC substantive law, since the wording of the Article 13 (6) of the AIFC Constitutional Statute specifically established that AIFC Court is first of all “bound by the Acting Law of the AIFC” and then it “may also take into account” the case law. Therefore, the case law has a supplementary nature and shall not take priority of the AIFC laws and correspondingly shall not contradict to the national legislation of the Republic of Kazakhstan.

It is also important to consider the relations that can be regulated by the applicable laws of AIFC. Thus, in Article 4 (3(1) it is established that AIFC Acts can regulate five different types of relations, including civil, civil procedural and financial relations, administrative procedures and procurement procedures of goods, works and services by the AIFC bodies.

Evidently, the legislator has determined the range of relations that can be regulated by the AIFC Acts. However, in part two of this paragraph, it is established that the AIFC bodies may adopt Acts regulating relations outside of mentioned part one, only in cases expressly provided for by the AIFC Constitutional Statute. At the same time, in Article 4 (3 (3) it is indicated that, in order to ensure the national security of the Republic, the AIFC Acts may establish separate restrictions for the participants of the AIFC.

Also, in Article 4(2), it is determined that the procedures in relation to the development of the AIFC Acts shall be established by the AIFC Acts. This includes obtaining the approval of competent authorities, registration, commencement, publication, amendment, and termination, of AIFC Acts.

It is also important to note that all AIFC Acts are developed and adopted in English language, since according to Article 15 of the AIFC Constitutional Statute, the official language of the financial centre is English language. This is a legislative novelty both for Kazakhstani and for all CIS countries, since before the establishment of the Astana International Financial Centre, English did not have an official status neither in the Republic of Kazakhstan nor in any other country of the post-Soviet space.

However, the analysis of the status of the AIFC language must begin with the definition of the concept of language, since the language plays significant role within a society. Moreover, it is difficult to overestimate the role of language in the development of certain group of community, society and states. In this regard, a necessary condition for understanding the official status of the AIFC language is the understanding of the very concept of a “language”.

So, the term “language” means the way of communication between people. The Rosenthal's dictionary of linguistic terms defines that language is “a system of phonetic, lexical and grammatical means, which is an instrument for expressing thoughts, feelings, expressions of will and serving as the most important means of communication between people” [127].

However, due to having different geographical inhabitation, cultural differences and other reasons different nations developed their own languages. So, according to the international research centre for linguistic intelligence “Ethnologue”, at the moment, there are about 7,139 languages in the world that are spoken by different peoples of the world [128]. Nevertheless, according to their data, more than half of the world's population speaks only 23 languages [128]. Among these languages, English is the most widely spoken and used language in the world, with over 1,300 million speakers [129].

If we turn to the analysis of the status of languages in Kazakhstan, it is worth noting that representatives of different peoples live in the Republic, who speak different languages. At the same time, according to Article 7 (1) of the Constitution, the state language is the Kazakh language. The second paragraph of this article also states that, along with the Kazakh language, the Russian language is also officially used within the state institutions and local self-administrative bodies.

Thus, we can conclude that only two languages had an official status in our country. However, with the creation of Astana International Financial Centre in 2018, the English language has also received official status and has been legislatively enshrined within the territory of the AIFC and now used in all the areas of public relations regulated by the AIFC laws. This measure is dictated by the fact that at the moment, English is the most widespread language in the world, and also unofficially occupies the status of the language of international business. Also, all leading international financial centres widely use it. For instance, the financial centres of Dubai, Abu Dhabi, Qatar and other centres have also legislated English as the official language within their territories.

***§3. AIFC participants, their activities and obligations***

Astana International Financial Centre, being a territory with a special legal regime in the financial sector, provides an opportunity for its participants to carry out various financial activities and enjoy the benefits of the legal regime that applies to its territory. However, in order to conduct activities on the territory of the financial centre, the interested parties first need to obtain the status of the AIFC participant. So, prior to identifying the requirements for the AIFC participants, it is important to clarify the meaning of the term participant.

The Cambridge dictionary defines the word “participant” as “a person who takes part in or becomes involved in a particular activity” [130]. Very similar interpretation is given in the Russian dictionaries which also determine that participant is “someone, who takes part in certain activities” [131].

Now, if we look at the legislative definition of the term “participant” then it is given in the Entrepreneurship Code of the Republic of Kazakhstan. Evidently, the word participant can determine the participants in both property relations and participants in legal entities, business entities, participants in an SEZ, member states of the EEU, etc. [132].

Whereas, according to the Civil Code of the Republic of Kazakhstan, the term “participant” is directly related to the participant of a legal entity and is equated to the word – “founder” of the company. So, in Article 40 (3) of the Civil Code of the Republic of Kazakhstan, it is determined that “The founders of a legal entity cannot have any advantages over other participants in this legal entity who are not its founders, except as provided for by the legislative acts of the Republic of Kazakhstan”. Also, in the second paragraph of this article, it is established that “The founders of a legal entity may be the owners of property or bodies or persons authorized by them, and in cases specially provided for by legislative acts, other legal entities”. In other words, in the civil law of the Republic of Kazakhstan established that the “participant” is associated with a participant (founder) of a legal entity. Nevertheless, the substantive law of the AIFC differently interprets the term “participant”.

According to Article 1 (5) of the AIFC Constitutional Statute, only legal entities that are either registered in accordance with the AIFC laws or must be accredited by the AIFC can become AIFC participants. Hence, the AIFC participant is a legal entity that is either registered or recognized by the AIFC. So, the process of registration as an AIFC participant is regulated by the numerous AIFC Acts adopted by the AIFC bodies, including AIFC Rules and Regulations on General Partnership, Limited Partnership, Limited Liability Partnership, Companies, Non-Profit Incorporated Organisations, Special Purpose Company and Foundations.

Mentioned AIFC Acts regulate the establishment, registration, recognition and general activities of these types of legal entities. The AIFC Regulations establish a general provision regarding a particular legal entity, while the AIFC Rules establish direct requirements for registration or recognition as an AIFC participant. It is also worth noting that of these legal entities, only “Non-Profit Incorporated Organisations” and “Foundations” can be established only in the territory of the AIFC. Whereas other types of legal entities (Partnerships and Companies) can be established for the first time on the territory of the Centre, either as an already existing partnership or company, or it can be recognized in accordance with the AIFC Acts.

Hence, a legal entity that have received the status of an AIFC participant by registering new company or by recognizing existing legal entity can begin to carry out activities on the territory of the AIFC. So, before analyzing the types of activities that could be conducted on the AIFC territory, it is important to establish the meaning of the term “activity”. The Cambridge dictionary has several definitions, including “the work of a group or organization to achieve an aim” or “the doing of something, or something that you are doing, have done, or could do” [133]. Similar interpretation is given by the Russian Big Encyclopedic Dictionary, which states that activity is “a specific human form of attitude to the world around, the content of which is its expedient change in the interests of people; condition for the existence of society. Activity includes the goal, means, result and the process itself” [134]. Thus, we can summarize this concept as a certain activity of a person aimed at transforming his environment.

The analysis of the AIFC laws suggest that there are two stages of “approval” for the potential AIFC participants prior to starting the activities in the financial centre. First stage of approval is the obtaining the status of the AIFC participant which as previously mentioned is done by either establishing new legal entity within the AIFC or by going through the process of recognition of the existing company that was created in another jurisdiction. Whereas, the second stage is conducted through obtaining a license for a specific type of activities to be conducted in AIFC.

According to the AIFC General Rules No.FR0001 of 2017 (General Rules) there are four types of licenses issued by the AIFC. The participants can obtain one of the following licenses to become either:

1. An Authorised Firm;
2. An Authorised Market Institutions;
3. An Ancillary Servise Provider; or
4. A FinTech Lab Activities.

So, according to the Article 13 of the AIFC Financial Services Framework Regulations No. 18 of 2017 the “An Authorised Firm is a Centre participant which has been licensed by the Astana Financial Services Authority to carry on one or more Regulated Activities”. Accordingly, an Authorized Firm may carry out one or more types of “Regulated Activities”. The Schedule 1 to the AIFC General Rules states that there are 27 types of Regulated Activities, including: Investment activities as a principal or as an agent; Representation management; Managing Investments, Islamic Banking Business or Islamic finance; Takaful business, etc.

However, in addition to the Regulated Activities, there is also the concept of “activities carried on by way of business” (business activities). Accordingly, if a person carries out business activities, he is equated to participants carrying out a Regulated Activity. So, paragraph 1.1.9. of the AIFC General Rules establishes that a participant is carried out carrying out business activities if this Person:

1. engages in the activity in a manner which in itself constitutes the carrying on of a business;
2. holds himself out as willing and able to engage in that activity; or
3. regularly solicits other Persons to engage with him in transactions constituting that activity.

Correspondingly, in order to conduct most of the financial types of activities in the AIFC the participants are required to receive a license as an Authorised Firm.

The second type of license is granted to Authorized Market Organizations. According to Article 14 of the Financial Services Framework Regulation, an “Authorized Market Organization is a Centre Member that has received a license from the AIFC Committee to carry out one or more types of Market Activities”. Whereas article 1.2. The AIFC General Rules state that there are five types of Market Activities, including:

1. Operating an Exchange;
2. Operating a Clearing House;
3. Operating a Digital Asset Trading Facility;
4. Operating a Loan Crowdfunding Platform;
5. Operating an Investment Crowdfunding Platform.

It should be noted that the AIFC Acts also use the term Authorized Person. According to Article 15 of the Financial Services Framework Regulation, an “An Authorised Person is either an Authorised Firm or an Authorised Market Institution”. In other words, the holders of the first two types of licenses may also be referred to as Authorized Persons.

In addition to the AIFC participants the Non-AIFC Member also can participate in the financial activities. Thus, according to the Financial Services Framework Regulation there are two additional types of institutions – “Registered Market Organization of the AIFC Non-Member” and the “Registered Non-AIFC Member”. Article 89 (1) of these Regulations establishes that “A Person which operates an investment exchange, clearing house from a place of business in a jurisdiction other than the AIFC may apply to the AFSA for an order declaring it to be a Recognised Non-AIFC Investment Exchange or Recognised Non-AIFC Clearing House as appropriate (together “Recognised Non-AIFC Market Institutions”)”. In addition to that, the Article 90 of the Financial Services Framework Regulation, Recognised Non-AIFC Market Organizations can carry out investment activities or clearing activities in the AIFC without obtaining an additional license for this type of activity.

As for the Recognised Non-AIFC Member, according to Article 91 of the Financial Services Framework Regulation, these Persons must meet the following criteria to be recognized and conduct activities on the territory of the AIFC:

1. the applicant is licensed or otherwise authorised to trade on or use the facilities of an exchange or clearing house in a jurisdiction acceptable to the AFSA;
2. the applicant is regulated in respect of trading in such jurisdiction by a regulator to a standard satisfactory to the AFSA;
3. the law and practice under which the applicant is licensed or otherwise authorised is broadly equivalent to the AFSA’s regulatory regime as it applies to a Member;
4. when using the facilities of an Authorised Investment Exchange or Authorised Clearing House, the applicant does not exceed the scope of the activities it is authorised to carry on by those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated;
5. the applicant has agreed to cooperate with the AFSA and subject itself to such parts of the legal and regulatory framework administered by the AFSA as the AFSA may require.

The recognition requirements for Recognised Non-AIFC Member are regulated in accordance with the AIFC Recognition Rules No. FR0004 of 2017.

The third type of license is issued for the Ancillary Service Providers. In accordance with the Article 16 of the Financial Services Framework Regulation – “An Ancillary Service Provider is a Centre participant which has been licensed by the AFSA to carry on one or more Ancillary Services”. So, the Schedule 2 to the AIFC General Rules establishes a list of Ancillary Services that the Provider may perform. This Schedule defines the following five types of services:

1. Providing Legal Services;
2. Providing Audit Services;
3. Providing Accountancy Services;
4. Providing Consulting Services;
5. Providing Credit Rating Services.

So, the last type of license is called the FinTech Lab Activities, which is regulated in accordance to the AIFC Financial Technology Rules No. AFSA-F-PC-2019-0001 of 2019. Hence, in accordance to the paragraph 2.1.1. of the mentioned Rules, “The FinTech Lab is a regulatory environment within the AIFC that allows a Person to Test and/or Develop the FinTech Activities without being immediately subject to the full set of regulatory requirements under the Framework Regulations and Rules made thereunder”.

Thus, it is apparent that another that a “special legal environment” has been created on the territory of the AIFC for testing or developing new financial technologies that exists within the “special legal regime in the financial sphere”.

The analysis of types of FinTech Lab Activities suggests that then when carrying out such activities, the participants shall meet the Qualification Criteria. Hence, if the participants meet the Qualification Criteria’s they do not need to additionally obtain the first or second type of license and become an Authorized Person (Authorized Firm or Authorized Market Institutions). In other words, according to paragraph 1.4.1. of the AIFC General Rules, Persons testing or developing financial technologies are exempt from obtaining a license required for Authorized Persons (carrying out a Regulated Activity or a Market Activity). The eligibility criteria for fintech testing are set out in clause 2.2., whereas for fintech development the requirements are set out in clause 2.3. of the Financial Technologies Rules. Also, if financial technology is not included in the list of Regulated or Market Activities, then in accordance with subparagraph (b) and (c) of paragraph 1.4.1., the Financial Regulation Committee may issue a license for a new type of activity not provided for by the AIFC General Rules.

Accordingly, AIFC participants can operate on the territory of the AIFC after obtaining the required type of license. In order to maintain law and order in the territory of the AIFC, the participants may be liable if their activities harm others or violate the applicable law of the AIFC. In general, if we analyze the concept of the “obligation”, then the Cambridge dictionary identifies that it is – “the fact that you are obliged to do something; or something that a person feels morally or legally forced to do” [135]. Whereas the Russian Small Academic Dictionary defines it as – “a promise subject to indispensable fulfillment” [136]. A very similar interpretation exists both in the Explanatory Dictionary of Ozhegov, in which an obligation is understood as a “promise or agreement, most often carried out in writing, and putting the one who accepted it into the need to fulfill its conditions” [136].

So, as we can see, the linguistic analysis of the concept of “obligations” first of all equates it with the term “promise” or an “agreement”. However, there is no doubt that the concept of “obligation” is primarily included in the subject of study of legal science, in particular civil law. So, Mayer, in his work “Russian Civil Law” pointed out that “obligation (*obligatio*) is a legal relationship in which one person has the right to act by another person. This legal relation is also called the right of demand or demand ... on the grounds that the person who owns the right to act of another has the right to subordinate this action to his dominance, that is, the right to demand that the action be performed” [137, c. 106]. In turn, Shershenevich noted that “under the name of obligation is understood such a legal relationship, from which the right of one person to a certain action of another specific person is revealed” [138, c. 266].

Thus, we can conclude that an obligation is a legal relationship in which the parties have the right to demand the performance (or refusal to perform) certain actions in the interests of each other.

Now, if we turn to the consideration of the obligations of the AIFC participants, then the main Act regulating legal obligations is the AIFC Regulations on Obligations No.16 of 2017. This Act establishes the responsibility of the participants in case of violation by them of the rights and legitimate interests of other persons. Thus, Article 12 (1) of the Regulations on Obligations provides that “…all Persons are entitled to sue, and are liable to be sued, in Actions under these Regulations”. At the same time, the Article 12 (2) establishes that “… a Person is not liable to be sued in an Action under these Regulations if the Person is under 18 years old at the time of the Person’s act or omission that, apart from this subsection, would give rise to a liability:

In general, the Regulation on Obligations implies the following obligations of the Persons:

1. Negligence;
2. Occupier’s liability;
3. Misrepresentation;
4. Deceit;
5. Economic torts;
6. Wrongful interference with property;
7. Obligations relating to insurance;
8. Obligations relating to bailment

At the same time, it is important to note that the AIFC Regulations on Obligations does not provide for all types of obligations, respectively, the obligations of the AIFC participants are not limited to above listed eight points. However, other types of obligations of the participants are provided for in various AIFC Acts, for example, the Financial Services Framework Regulations provide for the obligations of the participants for failure to provide reliable data when obtaining a license, whereas the Companies Regulations as well as Partnership Regulations provide for obligations to register or recognize legal entities and carry out activities in the AIFC. Thus, the AIFC participants must be guided by the substantive law of the AIFC in order to comply with all the requirements regarding obligations.

***§4. Peculiarities of currency regulation, tax and visa regime in the AIFC***

One of the main distinguishing features of international financial centres, which makes them attractive for international business, is that they provide various legal advantages and preferences for their participants that are not available in other jurisdictions. Thus, international financial centres can use a variety of tools to attract international capital flows into the domestic economy, especially those centres which are created in the form of special economic zones. In turn, the Astana International Financial Centre, being one of the special economic zones in the financial sphere uses similar mechanisms to create a legal environment that is attractive for international investors both in the Central Asian region and for investors from Europe, US and other parts of the world. It is worth noting that most of the leading SEZ provide their participants primarily with tax benefits, a simplified visa regime, as well as special currency regulation, which differs significantly from the regime that operates on the territory of these states.

So, one of the tools that used by an SEZ is the special regime of currency regulation. However, before analyzing the currency regulation measures in the AIFC, it is important to determine the features of currency regulation in the Republic of Kazakhstan, and before that, generally understand the term “currency”.

The word currency is of Italian origin – “valuta”, and according to Semyonov's etymological dictionary, it was originally used in two meanings – “cost” of something or as the word “coin” [139]. At the present stage, the term currency can be understood as a monetary unit in general, and a foreign monetary unit in particular. For instance, the Cambridge dictionary defines the “currency” as a “the money that is used in a particular country at a particular time” [140]. Now, if we look the Russian term “валюта”, then it has a similar meaning – “a monetary unit accepted by the state as a scale of values” [141]. A more detailed definition is contained in the Dictionary of Constitutional Law, which states that currency is “money in the form of banknotes, treasury notes, coins, circulating in the state and being legal tender” [142]. Ozhegov's explanatory dictionary also supplements this concept with the second meaning of this term, currency is “foreign money” [143].

Now, if we turn to the legal analysis of the Kazakhstani currency, then according to Article 127 of the Civil Code of the Republic, the monetary unit and legal tender is the “tenge” which is mandatory for acceptance throughout the country. As for the general regulation of currency and currency control, these issues are regulated by the Law “On currency regulation and currency control” (hereinafter - the Law on Currency Regulation). According Article 1 (2) of this Law, there is the concept of currency values, which includes seven types of values:

1. National currency;
2. Foreign currency;
3. Refined gold bullion;
4. Securities and payment documents denominated in foreign currency;
5. Securities and payment documents denominated in the national currency;
6. Non-par value securities issued by non-residents of the Republic of Kazakhstan;
7. Non-par value securities issued by residents of the Republic of Kazakhstan.

As noted earlier, the national currency in Kazakhstan is tenge, respectively, monetary obligations within a state must be expressed and executed in tenge, except for the cases provided for by the legislative acts of the Republic of Kazakhstan (part 282 (1(2)) Civil Code of the Republic of Kazakhstan). Whereas, according to Article 5 (1) of the AIFC Constitutional Statute, the peculiarity of the AIFC is that the monetary obligations of the AIFC participants are expressed and executed in the currency provided for by the agreement. In other words, there is no need for the AIFC participants to comply with the requirements of the Civil Code of the Republic of Kazakhstan and use only the national currency of the state. However, Article 5 (2) of the AIFC Constitutional Statute also establishes that participants shall execute their obligations in a currency identified by the Stock Exchange rules.

Now, the analysis of the concept of “currency regulation” shows that this is a set of legislative and administrative measures that are aimed at regulating both the national currency and international currency flows in the country. In other words, this is “... one of the forms of state regulation of international economic relations, expressed in the regulation of international settlements and the procedure for performing transactions with currency and other currency values” [144]. Thus, Article 3 (1) of the Law on currency regulation specifies that currency regulation of the country is based on the Constitution, legislative acts of the state as well as the regulatory acts of the currency regulation and control bodies. Whereas the main state body that ensures the development and implementation of the monetary policy of the state as well as conducting the currency regulation in the country is the National Bank.

At the same time, according to Article 5 (3) of the AIFC Constitutional Statute identifies that AIFC Acts that regulates currency transactions for the provision of financial services shall be developed by the agreement with the National Bank. In other words, the regulation of currency transactions in the territory of the AIFC is carried out both on the basis of the national legislation of the Kazakhstan and the AIFC Acts developed together with the National Bank of Kazakhstan.

Thus, in Article 5 of the AIFC Constitutional Statute specifies the requirements that shall be regulated by the AIFC Acts, in agreement with the National Bank. It includes the four requirements, such as the procedure for transferring information between National Bank and AIFC bodies; the provision of information about currency transactions by the AIFC participants; the terms and procedures for currency transactions during the provision of services in the AIFC; requirements and procedures for reporting the information, including the banks and banking organizations that provide services on behalf of the AIFC participants.

In addition to the listed regulatory features, the AIFC also provides certain benefits for its participants to carry out foreign exchange transactions on its territory. Thus, in accordance with Article 5 (4(1)) of the AIFC Constitutional Statute, in the event of foreign exchange transactions on the territory of the AIFC, the participants are exempted from compliance with the following requirements of the Law on Foreign Exchange Regulation – notification on the executed currency transactions; the assignment of an account number to foreign bank account; the registration of currency contracts, on the basis of or in pursuance of which capital flow transactions are carried out;

Also, in addition to benefits for conducting foreign exchange transactions, the AIFC has an advantage in a special tax regime on its territory. Therefore, article 6(1) of the AIFC Constitutional Statute states that tax regime within the AIFC is determined in accordance with the Code “On taxes and other obligatory payments to the budget” (Tax Code), the exceptions being the exemptions established by the Constitutional Statute itself. At the same time, if the AIFC tax regime is established by the Tax Code, then in accordance with the Article 6 (9) of the AIFC Constitutional Statute that procedures for tax administration of the AIFC bodies and AIFC participants by the government agencies and interaction with government agencies shall be carried out on the basis of the joint acts developed by the AIFC bodies and the state revenue authorities.

Now, of we turn to the analysis of the concept of tax, then according to Article 1 (55) of the Tax Code, these are “legislatively established by the state unilaterally mandatory cash payments to the budget, with the exception of cases provided for by this Code, made in certain amounts, bearing an irrevocable and gratuitous nature. Whereas the tax regime is defined in Article 1 (54) of the Tax Code as a norms of tax legislation that shall be applicable upon the taxpayers by calculating all of the tax liabilities payable to the budget.

So, in general, it is evident form the AIFC Constitutional Statute that persons operating in the territory of the financial centre can receive a number of tax benefits and advantages. Thus, according to Article 6 (3) of the Constitutional Statute, the Centre's participants until January 1, 2066 are exempt from paying corporate income tax on income received on the territory of the AIFC for the provision of 1) financial services and 2) ancillary services.

Hence the AIFC laws specify five types of financial services, which include the Islamic banking services; reinsurance and insurance brokerage services; investment management services for assets of investment funds, accounting and safekeeping services for investment funds, as well as services related to issuing, offering, trading, purchase and redemption of securities of investment funds; brokerage, dealer or underwriting services; and finally any other financial services determined by an AIFC Act, which is to be approved jointly by the AIFC, the central authorised body on state planning and the state authority responsible for collection of taxes and other obligatory payments to the budget.

Ancillary services are understood as: legal, auditing, accounting, consulting services provided to the AIFC bodies, as well as to the AIFC participants providing financial services.

In addition to the corporate taxes, according to Article 6 (8-2) of the AIFC Constitutional Statute, the financial services of the AIFC participants are exempt from value added tax.

Alongside with the AIFC participants, the AIFC bodies also receive tax exemptions. Thus, according to paragraph 8 of this article, AIFC participants and bodies providing financial and ancillary services are exempt from property tax and land tax for facilities located in the territory of the AIFC. Also, Article 6 (2) of the AIFC Constitutional Statute, it is established that until 1 January 2066, AIFC bodies and their organizations shall be exempted from corporate income tax, if they comply with the requirements established by the AIFC Acts.

In addition, benefits are also provided for foreign employees of the AIFC who, until January 1, 2066, are exempt from paying individual income tax on income from activities at the Centre under an employment contract concluded with a participant of the Centre providing financial or auxiliary services (Article 6 (6) the AIFC Constitutional Statute).

Last but not least, there are tax exemptions for individuals and legal entities from the payment of individual and corporate income tax. Article 6 (7) of the AIFC Constitutional Statute establishes the incomes that are not subject to the specified types of taxes. The list includes profits from the sale of securities, dividends from the trade of the securities and shares as well as the income from the outside of the country for the investment residents.

In addition to the special tax regime, the AIFC also introduces a simplified procedure for obtaining entry and exit permits for foreigners to carry out their activities on the territory of the AIFC or to hire foreigners by the participants and bodies of the AIFC. Thus, according to the Law of the Republic of Kazakhstan on Migration of the Population, the term visa means a mark on the passport of a migrant or the document replacing it, or a mark in the information system that was put by an authorized state body of the of an authorized state agency of the Republic of Kazakhstan that allows the migrant to enter into the territory of the country under the conditions established by the visa.

However, it is important to note that the visa regime for foreigners and stateless persons staying in the territory of the AIFC is regulated primarily by the AIFC Constitutional Statute. Thus, Article 7 (4) of this law, it is established that the conditions and procedure for entry into Kazakhstan and exit from its territory by foreigners and stateless persons to carry out activities are determined by the AIFC bodies together with the state bodies of the Republic of Kazakhstan. Also, foreigners and stateless persons, as well as members of their families, can obtain an entry visa valid for up to 5 years (Article 7 (1) of the AIFC Constitutional Statute). At the same time, Article 8 (1) establishes that the participants, as well as the AIFC bodies can hire a foreigners and stateless people without obtaining work permits. Moreover, in part two of the said paragraph, it is established that these persons are exempted from the obligation to obtain a preliminary permit for employment not only in the AIFC, but throughout the entire territory of the country.

At the same time, it is important to note that there are certain requirements for hiring foreign labor. So, the main requirement for involved persons is their high qualification. Article 8 (2) of the AIFC Constitutional Statute provides that the Astana Financial Services Authority determines the list of documents that confirm the high qualification of a foreigner or stateless person.

Also, AIFC participants and bodies must submit information about attracted foreigners and stateless persons to the AIFC Authority, since according to 8 (3) of the Constitutional Statute, the AIFC Authority must keep records of these persons. This information must then be submitted by the AIFC Authority to the authorised state body on migration matters. The composition of the information, the frequency and procedure for their provision are determined in accordance with the AIFC Rules No. 2 of 2018 “On Keeping Records on Foreign Labour Attracted by AIFC participants and AIFC bodies”.

Thus, the substantive law of the AIFC provides a number of legislative advantages for persons who wish to carry out activities on the territory of the financial centre, so, the participants and other persons can use the simplified visa regime to visit the Republic of Kazakhstan, carry out foreign exchange transactions, and also receive tax exemptions for doing business in the AIFC. All of these measures are elements of the integrity of the constitutional status of the AIFC, along with its other components such as territory, language, applicable law and the its bodies. In this regard, we can conclude that the structural elements of the AIFC altogether serve to achieve its main purpose, namely the purpose of establishing a leading international centre for financial services.

**3 ORGANIZATIONAL AND LEGAL STRUCTURE OF THE AIFC**

***§1. General Characteristics of the Structure and Main Bodies of the AIFC***

As we have already noted in previous chapters, the Astana International Financial Centre sets itself the accomplishment of many ambitious objectives. However, all these objectives serve to achieve only one main purpose of the AIFC that enshrined in the AIFC Constitutional Statute – to establish a leading international centre for financial services. Accordingly, in order to achieve this main purpose, it is necessary to create an organizational structure, in other words, the AIFC bodies, which will systematically and effectively implement the purpose set for them and its accompanying objectives.

In general, the concept of the “body” has several meanings, and can be used as a part of the body of a person or animal, however, in this case, the term “body” is used as a state body or state agency. So, the Cambridge English Dictionary identifies the main meaning of the term “body” as “the whole physical structure that forms a person or animal”, however, another meaning of the term is “a group of people who have joined together for a particular reason: a governing body or an advisory body” [145]. Whereas in Russian language, the term body is translated as “орган” which has also very similar meaning and could be understood either as a body of a human being or animal or, according to the explanatory dictionary of Efremova it is defined as – “a state or public institution that is part of a certain management system and has the appropriate functions” [146]. This word is revealed in the same way in the dictionary of the Russian language Kuznetsov [147] and in the Small Academic Dictionary [148].

Now if we turn to the analysis of the legal interpretation of the term “body”, then it is evident that legislator also uses this term in the sense of “state institution” or “state body”. Thus, Article 3 (2) of the Constitution established that people can exercise their power directly either through the elections or national referendum. People can also delegate the execution of their power to the state agencies. Hence, paragraph 3 of this article determines that state agencies shall act on behalf of the state only within the limits of the delegated authorities. It can also be noted that the Parliament is the highest representative body exercising legislative power; in turn, the Government is a collegial body and heads the system of executive bodies; The Supreme Court is the highest judicial body, while local state AIFC Authority is carried out by local representative and executive bodies.

All this suggests to the fact that the legislator inextricably links the concept of body with state institutions. However, it can also be used in other meanings, in particular, as public and other bodies.

At the same time, the analysis of the successful and similar financial free zones, such as DIFC and ADGM in United Arab Emirates, QFC in Qatar, as well as Shenzhen and Shanghai SEZ suggest that there are two important characteristics that inherent to the bodies of mentioned organizations – the organizational independence and the legislative authority and its constitutional regulation.

So, we will start from the consideration of the Chinese experience, since it is widely regarded that the term special economic zone was officially used in China first [149, p. 223]. In July of 1979 the “Open Door Policy” was adopted by the Third Plenum of the 11th Congress of the Communist Party of China [149, p. 223]. This initiative laid the foundation for the creation for one of the most successful zones in China – Shenzhen SEZ [150, p. 2].

So, within a short period of time the rural village with population of 20,000 people transformed into a city with 14 million people population and the GDP increasing up to 100 folds within 30 years [151]. This led to the creation of several other SEZ including the Shanghai Pilot Free Trade Zone in 2013 [152, p. 1]. So, the analysis of the most successful Chinese SEZ demonstrates that three mentioned initiatives played crucial role in the development of the Chinese economy through SEZ’s [153, p. 4]. First of all, Chinese leadership recognized that flexibility and certain level of ***organizational independence*** is off key importance for the development of an SEZ [150, p. 4], therefore, it was decided that administration of the newly created SEZ shall be managed not by the central government, but instead the administration of an SEZ was vested to the local governments of the corresponding provinces itself [154, p. 210]. Similarly, the Shanghai FTZ was also governed on the local level, since the Regulations of Shanghai FTZ from 2014 (FTZ Regulations) established that the reforms shall be implemented by the Municipal People’s Government which instead delegates this functions to the local administration, referred to as the “Administrative Committee” [155].

If we turn to the experience of the Gulf states, we can observe that it has similar traits, but its own peculiarities as well. The DIFC, ADGM and QFC has also ***organizational independence***, but they also possess more elaborate internal structure with the clear division of its bodies according to their legislative functions. Hence, the legislation of the UAE and Qatar provides for the administrative as well as financial independence of the financial centres from the government bodies [158]. So, the DIFC and ADGM has very similar internal structure, that consists of the Higher Board of Directors chaired by the President in DIFC [156] [157], and Board of Directors headed by the Chairman in ADGM [114]. There are also a body that overviews the implementation of the main strategic policies – the Authority, financial services regulator which is responsible for the registration and licensing of the new companies and finally there are two dispute resolution bodies – a court and international arbitration centre [156] [157] [158].

The organizational independence could not be fully implemented without the authority to establish own rules and create special legal regime to attract foreign investors [154, p. 2]. So, for the given purposes, the ***legislative delegation*** is of critical importance. In case of the Shenzhen SEZ and Shanghai FTZ it was one of the first instances when the central government granted the authority to the local municipalities to adopt their own rules for the regulation of an SEZ [152, p. 6]. However, this process took almost a decade and was divided in two different stages [153, p. 5]. At the first stage, Shenzhen SEZ Administration initiated the process by submitting almost 200 different draft regulations to the province which it was subordinated – Guandong Province. However, only 19 of the regulations were adopted during this time [150, p. 2]. So, the protraction of the process convinced the Shenzhen SEZ Administration to demand the legislative autonomy. Hence, in 1992 the Standing Committee of the National People’s Congress granted the right for the provincial people’s congresses and their standing committees to adopt regulations in the sphere of economy within the boundaries of an SEZ and later throughout the territory of the Shenzhen city, which was an unprecedented step that facilitated the swift development of the Shenzhen SEZ [150, p. 5].

Now, the financial centres of the Gulf states have even greater administrative and ***legislative authority*** in comparison to the Chinese counterparts. In addition to that, leadership of UAE and Qatar also created special legal regime within the boundaries of the financial centres, so that it would create the most favorable conditions for the international business. For these purposes, it was decided to implement the English common law system that could facilitate the swift development of the economy [159, p. 2] [160, p. 316].

So, the bodies of the DIFC, ADGM and QFC has the rights to adopts its own rules and regulations. For instance, the Board of Directors in DIFC and ADGM has the authority to issue own regulations, as well as the President of the DIFC and the Chairman of the ADGM (Dubai Law No. 9 of 2014 in respect of DIFC and Abu Dhabi Law No. 4 of 2013, Concerning ADGM).

The Qatar Financial Centre has a lesser degree of autonomy when it comes to the adoption of internal rules. The reason for that could be linked with the peculiar corporate structure of the QFC that governed by the Board of Directors which is headed by the Chairman. So, the QFC Chairman is simultaneously holding the position of the Minister of Economy and Finance of the Qatar and therefore all the bodies of the QFC are subordinated to him directly. Hence, in accordance with the QFC Law No. 2 of 2009, bodies of the QFC, including QFC Authority, Regulatory Authority, Regulatory Tribunal and the Civil and Commercial Court has the authority to prepared the draft of the Regulations which then shall be submitted to the Chairman of the QFC Authority.

Finally, the international experience shows that it is necessary to conduct ***constitutional reforms*** that creates legal framework to provide an SEZ with the organizational independence and legislative delegation. However, in case of the China it took two decades to initiate the constitutional reforms that regularized the constitutional status of an SEZ’s. One of the issues with SEZ was related to the fact that according to the Articles 10 and 11 of the Legislation Law of the People’s Republic of China (Legislation Law), the legislative delegation should have specific scope, purpose and most importantly time limit [161, p. 30]. However, in case with the Shenzhen SEZ it was operating since 1980 and this time was labelled as a “benign unconstitutionality”, since the economic reforms within the state left far behind the legal reforms [162, p. 277]. Hence, by the time when the Shanghai FTZ was created the Chinese leadership decided to conduct constitutional reforms and amended the Legislation Law, which is part of the Constitutional law and created legal background for an SEZ operation [150, p. 29].

Now if we turn to the Qatar, it is interesting to note that the reforms were not conducted to create the QFC, nevertheless, in one year prior to the creation of the financial centre that Qatar leadership conducted constitutional reforms and even adopted new constitution of the state, which preceded the emergence of the QFC. Therefore, constitutional reforms and the adoption of the new Constitution of the Qatar coincided with the creation of the Qatar Financial Center [161, p. 30].

Finally, as we have mentioned earlier, the experience of the UAE is very similar to our state. The leadership of the Gulf country decided to conduct the constitutional reforms prior to the creation of the DIFC and introduced amendments to the Constitution back in 2004. The article 121 of the Constitution was changed as follows: ‘...the order and the manner of establishing Financial Free Zones and the boundaries within which they are exempted from having to apply rules and regulations of the Union”. Hence, the legal foundation was laid to create first financial centre in the Dubai and later in Abu-Dhabi.

Now, if we go directly to the consideration of the AIFC bodies, then its structure is established in the AIFC Constitutional Statute and also additionally established in the Resolution of the AIFC Management Council on the Structure of the AIFC bodies (Resolution of the Management Council). Article 1 of this Resolution establishes that the AIFC Management Council has three aims – creation of the most favorable environment for the development of the AIFC and favorable environment for the participants to conduct business and to ensure the coordination of the activities of the AIFC bodies and state agencies.

In other words, the powers of the AIFC bodies are defined both in the AIFC Constitutional Statute and in the Resolution of the Management Council. In addition to the competence of the AIFC bodies, these two legal acts also regulate the organization and procedure for monitoring and supervising the activities of the Centre participants (Article 9 (3) of the AIFC Constitutional Statute).

Accordingly, if we go directly to the analysis of the AIFC bodies, then, as in Article 9 of the AIFC Constitutional Statute and in paragraph 1 of the Resolution of the Management Council, the following six AIFC bodies are defined:

1. The Management Council;
2. The Governor;
3. The Astana Financial Services Authority (the AFSA);
4. The AIFC Authority;
5. The AIFC Courts;
6. the Astana International Arbitration Centre (the IAC).

In order for the AIFC bodies to be able to effectively carry out their daily activities, Article 9 (2) of the AIFC Constitutional Statute establishes that the AIFC bodies are independent in their activities within the limits of the powers granted to them by the Constitutional Statute and the AIFC Acts. Also, paragraph 4 of this article states that the Governor of the AIFC in conjunction with the state agency shall adopt the joint act that establishes the procedures for exercising control over the efficient use of the republican budget allocated to the financial centre.

If we turn to the consideration of the general characteristics of the AIFC bodies, then the main strategic direction of the development of the AIFC is carried out by the Management Council of the Centre. Therefore, it is established that Council shall be a permanent collegial body headed by the President of the state (Article 10 (1) AIFC Constitutional Statute). Whereas the second paragraph of this article establishes that Management Council has a primary objective to identify the strategic direction for the development of the financial centre as well as creating favorable conditions for an AIFC to become the leading international centre of financial services. So, as noted earlier, the AIFC Constitutional Statute defines only one purpose of the AIFC and five corresponding objectives. Therefore, we see that the main and only purpose of the AIFC, namely, to establish a leading international centre for financial services is assigned as the main purpose to the AIFC Management Council.

It is also worth considering that other powers of the Management Council are defined both in the AIFC Constitutional Statute and in the Decree of the President on Approval of the Statute on the AIFC Management Council and its Composition (hereinafter – Decree on Management Council).

As mentioned earlier, according to Article 7 of the Decree on Management Council, the Chairman of the Council is the President of the Republic of Kazakhstan, whereas the Prime Minister of the state is his deputy. In general, it can be noted that the Council has very broad powers, being the body that determines the structure of the AIFC bodies itself (Article 5 (8) of the Decree on Management Council). So, for example, according to Article 10-1 (1) of the Constitutional Statute, the AIFC Authority, which is appointed and dismissed directly by the President of the Republic, is the AIFC Governor. Accordingly, the powers of the Governor are determined by the Council, in accordance with paragraph 2 of this article.

An analysis of the AIFC Acts shows that if the Management Council is focused on the strategic development of the AIFC, then the activities of the Governor are more focused on the daily management of the AIFC. In other words, if the Management Council is focused on the implementation of the main purpose of the financial centre established by the AIFC Constitutional Statute, then the Governor is responsible for the implementation of other objectives within the framework of this purpose, which is expressly provided for by the Resolution of the Management Council. Thus, three main functions of the Governor can be noted, according to the Resolution of the Management Council. First is the coordination of the harmonious interaction of the AIFC bodies and its officials; second is representing the interests of the AIFC in relations with state agencies and other organizations, including representatives of foreign countries; third is the adoption of the AIFC Acts in the form of regulatory provisions. The specified functions of the Governor indicate that only one of the five objective is assigned to him, namely, “achieving international recognition as a financial centre” (Article 2 (2(5) of the AIFC Constitutional Statute).

Accordingly, if the Governor is an individual, then the third AIFC body is a legal entity, namely the Joint Stock Company “Authority of the International Financial Centre “Astana”. According to Article 11 of the AIFC Constitutional Statute, the AIFC Authority is a non-profit organization created by the National Bank of the Republic of Kazakhstan. The main function of this body is to provide support for the activities of other AIFC bodies, their organizations and the AIFC participants, as well as their employees. According to paragraph 22 of the Resolution of the Management Council, the AIFC Authority ensures the provision of support for the activities of these entities through consultation, providing information and other services both on a paid and free basis. Also, within the limits of the powers presented, the AIFC Authority can represent their interests. The AIFC Authority also has its own budget, which is formed from the funds of the republican budget.

As a non-profit joint-stock company the AIFC Authority has three bodies – General Meeting of the Shareholders, the Board of Directors and the Management Board. So, according to paragraph 24 of the Resolution of the Management Council, the highest governance body of the AIFC Authority is the General Meeting of Shareholders. Whereas, the management body of the AIFC Authority is the Board of Directors, while the management of current activities is carried out by the Management Board, which is headed by the Chairman of the Board.

The main objective of the AIFC Authority to attract investments to the national economy of the state by creating favorable environment for the investors. Accordingly, the paragraph 23 of the Resolution of the Management Council establishes that AIFC Authority shall provide organizational support to the AIFC bodies and participants, as well as their employees. Whereas the AIFC body that regulates financial services and related activities is the Astana Financial Services Authority. So, the AFSA is also a legal entity that has its own budget, formed from the funds of the republican budget (Article 12 (2) of the AIFC Constitutional Statute).

According to Article 12 (3) of the AIFC Constitutional Statute, there are six main functions of the AFSA, which include the development and later the adoption of the drafts of the AIFC Acts that relates to the regulation of the financial services; AFSA registers the AIFC participants and also conducts the recognition and licensing; keep register of the AIFC participants and exercises supervision over the participants and other powers determined by the AIFC laws.

Based on the analysis of the function of the AFSA, it is assumed that this body is responsible for the implementation of three of the five tasks established by the AIFC Constitutional Statute – firstly is developing the stock exchange market of the state and its integration with the international markets; developing financial markets, including insurance, banking, Islamic banking, financial technologies and electronic commerce markets; and finally the development of the financial and professional services based on international best practice.

The disputes on the territory of the financial centre are resolved by another AIFC body – the AIFC Court. So, the dispute resolution centre is an independent AIFC body and in accordance with the AIFC Constitutional Statute the AIFC Court is not part of the Kazakhstani judicial system. Also, according to paragraph 33 of the Resolution of the Management Council, the activities of the Centre Court are carried out by the AIFC Authority within the framework of a separate budget of the AIFC Courts, approved as part of the budget of the AIFC Authority.

In addition to that, it is important to note that the AIFC Court does not carry out criminal and administrative proceedings, and according to Article 13 (4) of the AIFC Constitutional Statute, it has exclusive jurisdiction over three types of disputes. Firstly, it is the disputes between AIFC participants, AIFC bodies and their expatriate Employees; secondly, the disputes that arise out of conducting business within the territory of the financial centre and which is governed by the substantive law of the AIFC; and finally, it is the disputes that were transferred directly to the AIFC Court by the agreement of the parties.

As for the structure of the AIFC Court, it consists of two instances – the Court of First Instance and the Court of Appeal. It is also worth noting that the President of the Republic of Kazakhstan has broad powers in relation to the AIFC Court, so that he directly appoints and dismisses all of the judges of the AIFC Court on the recommendation of the Governor of the AIFC.

Also, in addition to the AIFC Court, there is also another dispute resolution body which is the Astana International Arbitration Centre. According to paragraph 39 of the Resolution of the Management Council, the Astana International Arbitration Centre is out-of-court dispute resolution body of the AIFC with its own arbitration rules. Whereas Article 14 (1) of the Constitutional Statute establishes that a dispute can be considered in an arbitration centre if there is an arbitration agreement between the parties. Also, it is worth noting that according to paragraph 4 of this article, “Awards of arbitration courts in the Republic of Kazakhstan are to be recognised and enforced in the territory of the AIFC in accordance with legislation of the Republic of Kazakhstan”. In other words, the participants in the arbitration may enforce the decision of the International Arbitration Centre on a general basis, in accordance with the Law of the Republic of Kazakhstan dated April 8, 2016 No. 488-V “On Arbitration”.

Although the AIFC Court and the Astana International Arbitration Centre do not carry out any specific objective established in the AIFC Constitutional Statute, however, these AIFC bodies assist in attracting investments to the economy of the Republic of Kazakhstan by creating an attractive environment for investing in the financial services sector, and also contribute to the acquisition of an international recognition of the AIFC as a financial centre, which corresponds to two tasks established in the AIFC Constitutional Statute.

Therefore, we can observe that during the creation of the Astana International Financial Centre the leadership of the country took into account the most successful international experience with regards to the corporate structure and legislative authority of the bodies of the financial centres. However, we can also note once again that Dubai International Financial Centre was the prime example, so the leadership of the Republic of Kazakhstan took into account the best international experiences in the creation and regulation of the international financial centre, in order to achieve the main purpose and objectives of the AIFC, which are provided for by the legal framework of the financial centre.

***§2. Managing Council and the Governor of the AIFC***

The Astana International Financial Centre has six main bodies that exist to implement its sole purpose as well as its five objectives associated with its goal. So, in this chapter, we will examine two AIFC bodies, its supreme governing body – the Management Council, as well as the AIFC Governor (Governor). Both of these bodies determine the effective implementation of the purpose and objectives of the AIFC.

First of all, we will analyze the Management Council, meaning of the term “council”, as well as the role and functions of the Management Council. So, the Cambridge dictionary identifies the term “council” as “a group of people elected or chosen to make decisions or give advice on a particular subject, to represent a particular group of people, or to run a particular organization” [163]. Similarly, the term “совет” in Russian language has identical meaning and identified as “an administrative or advisory collegial body at any institution, organization, etc.” [164].

It is in this sense that this term is mostly used in the national legislation of the Republic of Kazakhstan. The Constitution of the country establishes two councils – the Constitutional Council and the Security Council. Both of these institutions are collegiate bodies. Article 1 of the Constitutional Statute of the Republic of Kazakhstan dated December 29, 1995 No. 2737 “On the Constitutional Council of the Republic of Kazakhstan” establishes that the Constitutional Council is a state body “...ensuring the supremacy of the Constitution of the Republic of Kazakhstan throughout the republic...”. Whereas, according to Article 1 (1) of the Law on the Security Council of the Republic of Kazakhstan, the Security Council is a constitutional body formed by the President of the Republic of Kazakhstan and coordinating the implementation of a unified state policy in the field of national security and defense Republic of Kazakhstan in order to maintain internal political stability, protect the constitutional order, state independence, territorial integrity and national interests of Kazakhstan in the international arena.

Accordingly, if we turn to the consideration of the legal architecture of the AIFC, then the main acts regulating the activities of the Management Council are the AIFC Constitutional Statute, as well as Decree of the President of the Republic of Kazakhstan No. 160 on the Astana International Financial Centre Management Council (hereinafter – the Decree on Management Council). Thus, according to Article 10 (1) of the AIFC Constitutional Statute, the Management Council is a permanent collegial body chaired by the President of the country. Identical provision is established in paragraph 1 of the Decree on Management Council regarding the chairmanship of the President. In addition to that, paragraph 7 of this Decree provides that the Deputy Chairman of the Council is the Prime Minister of the Republic of Kazakhstan. Thus, we can see that the incumbent President of the Republic heads the Council, and also exercises direct strategic leadership of the Centre through the Council.

In addition to the President and the Prime Minister of the country, it can be noted that at the moment, 10 more people are members of the Council. Thus, according to the Decree on Management Council, it consists of:

1. Minister of National Economy;
2. Minister of Finance;
3. Chairman of the National Bank;
4. AIFC Governor;
5. Dr. Bandar М. Н. Hajjar;
6. Julie Monaco.
7. Arkadiy Volozh;
8. Herman Gref;
9. Dr. Jacob A. Frenkel;
10. Sir Suma Chakrabarti;

The specified composition of the Council is approved by the President of the country, in accordance with Article 10 (4) of the AIFC Constitutional Statute.

An analysis of the activity of the supreme body of the AIFC shows that the Managing Council has two primary objectives. According to the Article 10 (2) of the AIFC Constitutional Statute “The primary objectives of the Council are to determine strategic directions for the development of the AIFC and to foster the development of favourable conditions for establishing the AIFC as a leading international centre of financial services”. As we can see, the second task of the Council is fully consistent with the main purpose of the AIFC itself in accordance with Article 2 (1) of the AIFC Constitutional Statute – establishing a leading international centre for financial services. Thus, we can conclude that it is the Management Council that is responsible for the implementation of the main and only purpose of the Astana International Financial Centre.

To achieve this purpose, the Management Council is endowed with extensive powers and functions. Thus, the AIFC Constitutional Statute identifies that the Council shall determine the strategy for the development of the AIFC; approve its annual reports; adopt Acts on matters that is within its competence; determine the structure of the AIFC bodies as well as establishing other AIFC bodies; appoint the management of the AFSA and to exercise other powers given by the applicable law of the AIFC.

In addition to these powers, the Decree on Management Council also identifies the powers of the Management Council and mostly duplicate the powers that is specified within the AIFC Constitutional Statute. However, the Decree also establishes additional authorities, such as determining the powers of general meetings of the shareholders of the AIFC Authority and its other bodies; determining the composition of the AIFC Court; determining the basis for the creation and functioning of the International Arbitration Centre.

Also, in accordance with paragraph 6 of the Decree on Management Council, the Centre Management Council has the following rights to carry out its tasks for the development of recommendations and proposals; cooperation with the state agencies invite and consider their representations, request and consider their submissions, and consult with them; discuss relevant issues with the entrepreneurs and to organize temporary and permanent expert and working groups.

Accordingly, in order to exercise the above powers, functions and rights, the Decree on Management Council provides for the organization of the activities of the Council to manage the AIFC. In order to hold a meeting of the Council, there is a “Working Body” of the Management Council. According to paragraph 16 of the Decree on Management Council, the Working Body performs the following functions: collecting suggestions from the state agencies and other interested organizations for the Council’s considerations; preparing the draft agenda, documents and draft minutes of the Council meetings; monitoring the execution of the Council’s decisions; requesting necessary information from the state agencies and others.

Thus, the Working Body of the Council carries out the necessary preparatory work for the meeting. Whereas organizational matters, the holding of the meeting itself are regulated in accordance with paragraphs 7-15 of the Decree on Management Council. Thus, the meetings of the Council are headed by its chairman, that is, the President of the Republic of Kazakhstan, and in the absence or on behalf of the Chairman, by his deputy – the Prime Minister of the state. Also, the President appoints the Secretary of the Council to conduct the meeting. And in order for the meeting to be valid, it is necessary that at least two thirds of the total number of members of the Council be present. Accordingly, members of the Council must attend meetings in person, as meetings are held without the right to substitute. The meetings themselves are held at least twice a year. However, they may be held more frequently, or, if necessary, by decision of the Chairman of the Council, extraordinary meetings may be held, including in an online format, via audio and video conferences. In order to take decisions on certain issues on the agenda, a simple majority of votes of the total number of members present at the meeting is required. If the votes of the participants are equally divided, the Chairman’s vote is decisive. At the same time, a member of the Council who disagrees with the decision may express his or her dissenting opinion on this issue. Based on the results of the meeting, the Council's decision is documented in the minutes of the meeting.

**The second body of the AIFC**, which also has very important functions, is the Governor. This Body is regulated primarily by the AIFC Constitutional Statute, however, the main provisions regarding the rights, duties and functions of the Governor are established in the Resolutions of the AIFC Management Council of the Astana International Financial Centre dated May 26, 2016 No 20-27 / 1814 “The Structure of the Bodies of the Astana International Financial Centre” (Resolution of the Council). According to Article 1 (2) of the said Resolution, “The Governor of the AIFC is an AIFC body, who is appointed and dismissed by the President of Kazakhstan under Article 10-1 of the Constitutional Statute”. Currently, the Governor of the AIFC is Renat Bekturov [165].

In general, the analysis of the AIFC laws show that main objective of the AIFC Governor is the formation, functioning and successful development of the AIFC (Article 1 (4) of the Resolution of the Council). However, if we compare the task of the Governor with the tasks of the AIFC itself, then its main function is established in Article 3 (9 (1) of the Resolution of the Council, which stipulates that the Governor shall coordinate harmonious interaction of the AIFC bodies and its officials to achieve the AIFC 's objectives. To carry out its activities, the Governor, like all other bodies of the AIFC, Governor operates independently of other state bodies and officials and the powers that Governor exercises are conferred upon him/her by the Council, to which the Governor is accountable (Article 2(5) Resolution of the Council). Accordingly, the only body to which the Governor is accountable is the Management Council. This accountability is expressed in the fact that, according to Article 2 (6) of the Resolution of the Council, the Council may cancel the Acts, instructions and orders that were issued by the Governor in the course of performing his functions and official duties.

In addition to being accountable to the Management Council, the Governor is also required to carry out his activities in accordance with the substantive law of the AIFC. Thus, in Article 2 (7) establishes that Governor is guided by the AIFC laws. Thus, being an individual, the Governor has personal responsibility for the proper execution of his/her objectives and functions, and the implementation of competencies granted to him/her (Article 6 (15) of the Resolution of the Council). This provision means that, according to Article 2 (8) of the Resolution of the Council, the Governor, as an AIFC Authority, the Governor is subject to the jurisdiction of the AIFC’s Courts.

If we turn to the analysis of the function of the Governor, then it is established in the third article of the Resolution of the Council, which provides that the Governor shall coordinate the harmonious interaction of the AIFC bodies and its officials. In addition to that, AIFC Governor shall adopt AIFC Acts within the scope of his authority. These acts shall regulate civil relations, civil procedural relations; financial relations; administrative and procurement procedures by the AIFC bodies for goods, works and services.

To perform these functions, the Governor may form his office by appointing and dismissing the employees of the office, who are accountable in their activities only to him (Article 4 of the Resolution of the Council). Also, in addition to the office, the Governor, according to Article 5 of the Decree, has the authority “... to form steering committees, commissions and other boards, with the involvement of representatives of the AIFC bodies”.

These legislative powers and functions of the Managing Council and the Governor are very important tools for achieving the purpose and objectives of the AIFC. At the same time, it is also necessary to take into account the international experience in regulating the activities of the supreme governing bodies, and the similar role of Governors in international organizations. So, in the previous chapter, we found that the country's leadership largely took into account the experience of the United Arab Emirates when creating the AIFC. Accordingly, the analysis of the experience of UAE is most relevant. However, it is also necessary to look at other examples, therefore, we shall examine the path of development of Qatar and Chinese special economic zones.

Now, if we examine the Chinese experience, then we can notice that organizational independence of the Shenzhen SEZ was one of the cornerstones of its future success. From the inception of the Shenzhen SEZ, it was clear to the administration of the zone that it is critically important to gain certain level of autonomy, since it was very difficult to implement new policies and strategies with constant approval from the central government. So, at that time the management of Shenzhen SEZ was conducted by the Guandong province, which in turn was subordinated to the government of the People’s Republic of China [154, p. 210]. Hence, in July of 1979 the Third Plenum of the 11th Congress of the Chinese Communist Party adopted special Open Door Policy in order to implement “flexible measures” in the economic sphere in Fujian and Guandong areas, where Shenzhen SEZ was located [166, p. 223]. So, the new policy included three strategies – to upgrade the Shenzhen Administration from the county level to the prefectural level; the creation of Provincial Committees to increase the autonomy of the Shenzhen SEZ Administration; and finally, to upgrade the Shenzhen from the province status to the City and providing the authority of economic management [150, p.4]. Hence, the actual implementation of the reforms was vested with an SEZ administration referred as “Administrative Committee” that is responsible for the management of an SEZ affairs as well as “drawing up the relevant administrative management system” [155].

One of the final measures that was adopted by the China is the creation of the international commercial court that shall operate on the principles of the international standards and provide protection of the interests for the international investors. Hence, the China International Commercial Court (CICC) was created in 2018 in the cities of Xian as well as Shenzhen [167]. Despite the fact that CICC was created very similar to other international commercial courts that currently proliferated throughout the Asian and European continent, the main difference of the CICC from the Gulf state counterparts is that it does not operate on the basis of the common law and it is not fully independent from the central government. Moreover, the CICC is part of the national judicial architecture and it is one of the first cases when the dispute resolution centre located outside the actual territory of an SEZ [168, p. 6-7].

Now if we turn to the experience of the United Arab Emirates, then it has much greater level of independence in comparison to the Chinese SEZ’s that allows them to operate autonomously from the central government. Both financial free zones – DIFC and AGDM has similar organizational structure and their administrative and financial autonomy is legislatively enshrined in the UAE Law No 9 of 2004 and Federal Decree No. 15 of 2013. Nevertheless, it is important to understand that international financial centres are not fully independent, since they are created by the UAE state and their legal status could be changed or they could be terminated by the decision of the central government [169, p. 220].

Generally, there are six different bodies in DIFC and ADGM, which includes the Higher Board of Directors that is chaired by the President in the DIFC [113] and Board of Directors headed by the Chairman in ADGM [114]. Hence, the Board of Directors is established as the highest body within both financial centres and the Chairman or President has an authority for supervising the activities of this body as well as harmonious coordination of the activities of other bodies. In addition to the board, there are several bodies called authorities, like DIFC Authority and the Global Market Authority that has a responsibility to consider and adopt strategic policies within the financial centre. The DIFC also has a Dubai Financial Services Authority, the body which regulates different financial activities of the companies, such as banking, insurance, financial markets and brokerage services. Whereas the ADGM has Global Market Registration Bureau that is responsible for the licensing and registration of businesses within the free zone.

Lastly, both IFC has two different dispute resolution centre’s such as international commercial court and international arbitration centre. As it was mentioned previously, the DIFC and ADGM courts operate on the principles of the English common law and quickly gained prominence as the leading dispute resolution centres within the region.

It is also important to mention that organizational independence of the UAE financial centres also supported by their legislative initiative. This means that both DIFC and ADGM has an authority to draft and adopt own rules and regulations to create favorable legal environment for the businesses and international investors. Although, their legislative autonomy has a specific scope and limited to the adoption of the rules within financial sphere.

Another state from the Persian Gulf Qatar has a very similar structure of an SEZ to the neighboring UAE. Qatar Financial Centre Law No. 7 of 2005 (QFC Law) establishes several bodies, including the QFC Authority that conducts the administration of the financial centre and has its independent legal personality and full capacity to operate within the scope identified by the law. Hence, the QFC Authority itself is managed by the Board of Directors which in turn headed by the Chairman and other directors of no more than nine people (Article 3, QFC Law). However, as it has been mentioned previously, one of the main differences between UAE and Qatar IFC is that Chairman of the latter is a Minister of Economy and Finance of Qatar state.

The Companies Registration Office is the body that is responsible for the registration of the companies within the financial centre. The third body is also providing licensing of the financial institutions and it’s called Regulatory Authority. This body manages the supervising and licensing of banks, financial and insurance companies in an SEZ.

Finally, there is an international dispute resolution centres – Qatar International Court and Dispute Resolution Centre (QICDRC) that also operates on the basis of the English common law principles [170].

Thus, we can once again note that the country's leadership took into account international experience and, moreover, tried to apply the best practices in relation to the management of the Astana International Financial Centre.

***§3. AIFC Authority and Astana Financial Services Authority***

To analyze the AIFC Authority and the Astana Financial Services Authority it is important to conduct a preliminary linguistic and legislative analysis of the term “Authority”. So, if we turn to the Cambridge dictionary, then the term “authority” is defined in two different meanings. First is “the moral or legal right or ability to control” whereas the second implies for “a group of people with official responsibility for a particular area of activity” [171]. The second term is relevant in case with both of the AIFC bodies, AIFC Authority and the Astana Financial Services Authority. However, it is important to mention that in Russian language, these two bodies have different names. The AIFC Authority is called “Администрация” whereas, the Astana Financial Services Authority is called “Комитет по регулированию финансовых услуг”. Nevertheless, in both cases the terms “Администрация” and “Комитет” has a similar meaning. So, the explanatory dictionary identifies the term “Администрация” as “a system of executive and administrative authorities that carry out management functions in the state” [172]. Whereas the Encyclopedic Dictionary of Constitutional Law gives it a broader definition: “a collective concept that denotes the governing bodies of any economic unit, the state as a whole, a certain territory, as well as a state body or apparatus under a certain official” [173]. Thus, we can see that the word “Администрация” is strongly associated with the state, namely with the name of public authorities, endowed with certain powers.

The analysis of the current legislation of the Republic of Kazakhstan shows that the term “administration” is strongly associated with the Presidential Administration. According to Article 1 (1) of the Decree of the President on approval of the Regulations on the Administration of the President of the Republic of Kazakhstan, the President’s Administration is a body formed by the President and directly subordinate and accountable to him. Whereas in paragraph 3 of this article it is established that the Administration shall be corporate entity in the form of a state institution.

The analysis of the AIFC Authority suggests that this body has a separate corporate personality. Article 11 (1) of the AIFC Constitutional Statute determines that the AIFC Authority is a non-profit organisation established by the National Bank of the Republic of Kazakhstan. So, the AIFC Authority shall provide support to the activities of the other AIFC bodies and their organisations as well as the AIFC participants and their employees, and represents their interests to the extent of its competence. Thus, the Authority was established in 2015 in accordance with the AIFC Constitutional Statute and in accordance with the Depositary of Financial Reporting of the Ministry of Finance of the Republic of Kazakhstan, the Joint Stock Company “Authority of the “Astana” International Financial Centre” was registered on December 28, 2015.

So, in Article 1 (22) of the Resolution of the Management Council for the AIFC Management of 2016 “On the Structure of the bodies of the Astana International Financial Centre” (Resolution of the AIFC Council) establishes that support of the activities of the AIFC bodies, their organisations, the AIFC participants as well as their employees is also provided through provision of consultancy, information and other services both on a paid and free basis. Also, paragraph 23 of the said Resolution states that the AIFC Authority aims to provide organizational support for the AIFC bodies, the AIFC participants and their employees.

The AIFC Authority has an extensive list of responsibilities and their main functions are to provide advisory support to the AIFC Management Council. For instance, in accordance with the AIFC Constitutional Statute, the AIFC Authority, alongside the AFSA shall provide the Council with advice on the development strategy of the AIFC, also provide report on the execution of the approved strategy as well as annual report on other activities of the AIFC. It is very important to mention that AIFC annual and mid-term budgets are prepared by the AIFC Authority and then approved by the Council. The AIFC Authority shall also provide the draft resolutions for the Council’s approval and also adopt other AIFC Acts within the scope of its authority. Finally, the AIFC Authority provide support for the AIFC participants, AIFC bodies and their employees to obtain visas and attracts international specialists.

If we pay attention to the internal structure of the AIFC Authority, then since it is a non-profit joint-stock company, the supreme governing body is the general meeting of shareholders (Article 2 (24) of the Resolution of the Management Council), the governing body is the Board of Directors (Article 3 (25) of the Resolution of the AIFC Council), while the management of day-to-day activities is carried out by the Management Board (Article 4 (28) of the Resolution of the AIFC Council). At the same time, it is very important to note the role of the AIFC Management Council in relation to all bodies of the AIFC Authority. Thus, according to Article 11 (3 (2) of the AIFC Constitutional Statute, the powers of the AIFC Authority management, including shareholders, Board of Directors and the Management Board, their appointment and their remuneration are determined by the Management Council.

According to the Charter of the AIFC Authority, approved by the decision of the sole founder, dated December 25, 2015 No. 1, the sole founder and shareholder of the AIFC Authority is the National Bank of the Republic of Kazakhstan. However, it is the rights of the sole shareholder are exercised not by the National Bank, but by the Ministry of Finance of the Republic of Kazakhstan. Thus, according to clause 1 of Act No. 135 of the National Bank dated March 18, 2017 “on the acceptance - transfer of the rights of ownership and use of a block of shares of JSC AIFC Authority” (hereinafter referred to as the Act), “... the Ministry accepts the rights of ownership and use of a block of shares of JSC AIFC Authority in the amount 21,600 ordinary shares for the total amount of KZT 3,905,000,000 (hereinafter referred to as the block of shares)”. Also, according to paragraph 3 of this Act, “the transferred rights of possession and use include the right to manage the Company and exercise all the rights of the sole shareholder of the Company”.

An analysis of the substantive law of the AIFC shows that, according to Article 2 (24) of the Resolution of the Management Council, the Management Council, the General Meeting of Shareholders has extensive powers, including:

1) introduction of the amendments to the AIFC Authority Charter or the approval of a new one;

2) approving the Corporate Governance Code of the AIFC Authority;

3) increasing the number of authorized shares;

4) hiring the Board of Directors and determining their remuneration;

5) hiring auditing organization; and

6) approving annual financial statements of the AIFC.

Whereas, according to Article 3 (27) of the Resolution of the Management Council, the AIFC Council, the Board of Directors has the following functions – approving the business strategy and the priority directions of activity of the AIFC Authority; conducting annual and extraordinary general meetings of shareholders; making the decisions on issuance of the shares and identifying its price; preliminary approval of the AIFC annual financial statements.

According to Article 3 (25) of the Resolution of the AIFC Council, the Board of Directors are the governing body of the AIFC Authority and their numbers shall not be less than three directors. Also, the AIFC official website states that the Board of Directors of the AIFC Authority consists of 9 (nine) members, 5 (five) of which are independent directors. Thus, the Chairman is Kairat Kelimbetov, the members are Yernur Rysmagambetov, Kuat Kozhakhmetov, Kuanyshbek Yessekeyev, while the independent non-executive directors are Rumil Taufikov, Dr. Antonio Riera, Ulf Wokurka, Prasad Bhamre, Prof. Alexander Van De Putte [174]. In addition to that, Article 3 (27) of the Resolution of the Management Council establishes that the Board of Directors has powers that coincide with the powers established in the Law of the Republic of Kazakhstan on Joint Stock Companies, such as approval of a work strategy, approval of priority areas of activity, convening annual and extraordinary general meetings of shareholders and etc.

The Board, exercising day-to-day management of activities, in accordance with Article 4 (30) of the Resolution of the Management Council, “The Management Board is entitled to make decisions on any issues of the activities of the AIFC Authority, not stipulated by the Applicable Law and the Charter of the AIFC Authority to be within the competence of other bodies and officials of the AIFC Authority”.

The official website of the AIFC indicates that the Management Board consists of 8 (eight) members, including the Chairman of the Management Board – Yernur Rysmagambetov, as well as the First Deputy – Kairat Aitekenov, two Deputy Chairmen – Kairat Kaliyev and Nurzhan Kosbaev, Chief Economist – Baurzhan Bektemirov, Chief International Officer – Nurlan Dutbayev, Manager Director – Enlik Raimbekova and the Head of the Office of the Chairman of the Management Board – Assiya Karibay [175].

Also, in order to carry out its activities, the AIFC Authority has its own budget, which, according to the article 11 (2) of the AIFC Constitutional Statute, is derived from the funds of the republican budget from the fees and payments contributed by the AIFC participants or other sources, not prohibited by the AIFC laws. Therefore, Article 1 (4) of the Budget Code, the target transfers are identified as a gratuitous and non-refundable payments from the republican budget to a non-profit organization that provides conditions for the activities of bodies and their organizations, as well as participants in the international financial centre, solely for the acquisition of long-term assets, ensuring and financing the activities of bodies and their organizations. Also, in accordance with Appendix 1 to the Law on the Republican Budget for 2021-2023, the amount allocated from the Republican Budget for 2021 in the form of a targeted transfer to JSC “Authority of the “Astana” International Financial Centre” is 11,820,830,000 tenge. This amount was reduced for the next two years; thus, for 2022, a targeted transfer in the amount of 9,966,242,000 tenge is provided, while for 2023 this amount was reduced to 9,150,000 tenge. One of the reasons for this decision may be the speech of the Chairman of the AIFC Management Council, the President of the Republic of Kazakhstan, Kassym-Jomart Tokayev, who stated during the meeting of the Management Council that “... the centre should become self-sufficient. The state cannot always support, it's time to head for financial payback” [176].

Also, the AIFC Authority may create reserves from savings and the procedures and conditions for the creation of reserves, as well as their use, shall be determined by the AIFC Acts (Article 11 (2 (2) of the AIFC Constitutional Statute).

***Astana Financial Services Authority***

Another AIFC body that is created to regulate the financial services on the territory of the AIFC is the Astana Financial Services Authority. The AFSA is also established as a legal entity and is responsible for the regulation of financial services and related activities in the AIFC (Article 12 (1) the AIFC Constitutional Statute). The official website AIFC stipulates that the AFSA was established on January 1, 2018 [177].

It is interesting to note that according to this AIFC law, the AFSA is a legal entity established in the form of a regulatory body (paragraph 16 of the Resolution of the Management Council). In other words, the form of a legal entity is indicated here – “regulatory body”. However, this wording is a mistake, and the developers of this Act should introduce amendments and indicate that the AFSA is not a legal entity created in the form of a “regulatory body”, but is a legal entity that performs the functions of a regulatory body. The reason for introducing such amendments is that neither national legislation of the Kazakhstan, nor the substantial law of the AIFC provides for the creation of the legal entity in the form of the “regulatory body”.

According to paragraph 17 of the Resolution of the Management Council, the AFSA, like all AIFC bodies, within the powers granted to it, is independent of other AIFC bodies, state bodies, organizations, officials and citizens, except that the AFSA is accountable to the Council. This provision is enshrined in paragraph 21 of the Resolution of the Management Council, which says that Charter of the AFSA, approved by the Council, shall identify the main objectives, functions, rights and responsibilities of the AFSA.

If we pay attention to the internal structure of the AFSA, then according to paragraph 19 of the Resolution of the Management Council, the highest body is the Board of Directors, which is headed by the Chairman of the Board of Directors, appointed and dismissed by the AIFC Council. Also, according to paragraph 20 of this Resolution, “Members of the Board of Directors of the AFSA, other than the Chairman of the Board of Directors of the AFSA, shall be appointed by the Council or the Governor. All members of the Board of Directors of the AFSA shall be dismissed by the Council”.

At the moment, the AIFC official website states that the Board of Directors of the AFSA also consists of 8 (eight) members. The Chairman of the Board of Directors is Mark Holtzman and his Deputy is Angela Knight. There are also four non-executive independent members of the Board, including – Dr. Akash Deep, Daniel Heller, Gregory Tanzer, Masood Ahmed, and two non-executive members of the Board –Mukhtar Bubeev and Aizhan Zhantayeva [178].

The Executive Body of the AFSA consists of four (4) members, these are the General Executive Officer – Nurkhat Kushinov, Deputy CEO, Chief Regulatory Officer – Gareth Ling, Chief Legal Officer – Ishaq Burney, Chief Operations Officer – Assel Bazhbenova [179].

Article 12 (3) of the AIFC Constitutional Statute establishes that the main functions of the AFSA include:

1) to develop draft AIFC Acts relating to the regulation of financial services and related activities in the AIFC, make the drafts available for public consultation, and present the drafts to the body responsible for adopting them as AIFC Acts;

2) to adopt Acts, in the form of regulatory provisions, on matters related to the regulation of financial services and related activities in the AIFC;

3) to conduct the registration, recognition and Licensing of AIFC participants;

4) to keep registers of AIFC participants;

5) to exercise control and supervision over the activities of AIFC participants and take appropriate measures in relation to them;

6) to exercise other powers determined by resolutions of the Council.

Like the AIFC Authority, the AFSA has its own budget, which is according the AIFC Constitutional Statute is derived from the republican budget of the state and also from the fees and payments contributed by AIFC participants.

***§4. AIFC Court and the International Arbitration Centre***

In this chapter we will review the last two AIFC bodies established by the AIFC Constitutional Statute – AIFC Court and the International Arbitration Centre. These two bodies are responsible for the resolution of disputes in the territory of the AIFC.

Basically, the AIFC Court is one of the prime examples of the new trend of international commercial courts that proliferated throughout the Europe and Asia in the last two decades. Although, it is important to mention that these courts are not international in nature, rather they are local courts that focused on the settlement of the disputes with international component [180, p. 229]. They also share another similar feature, for instance, they operate on the English common law principles or similar international standards, also, they use English as a primary language or as a secondary language that could be used to solve the cases and they also are very technologically advances, using contemporary technology to conduct hearings [180, p. 230]. So, we have already mentioned the international commercial courts that exists within financial centres of Qatar and UAE as well as Chinese CICC. However, there many other states that recently created international commercial courts or chambers, including Germany, Belgium, the Netherlands, Switzerland, France, Singapore and others [181, p 215].

Now, if we turn to the analysis of the AIFC Court, in accordance with Article 13 (2) of the AIFC Constitutional Statute, the AIFC Court shall be independent in its activities and also shall not be part of the justice system of the state. This provision is very important, as it provides a guarantee to the foreign AIFC participants that they are immune from the jurisdiction of the local courts of the Republic of Kazakhstan. However, the peculiarities of the status of the AIFC Court will be discussed later in this chapter.

As for the structure of the AIFC Court, according to the Resolution of the Management Council of December 5, 2017 “On AIFC Court Regulations” (hereinafter referred to as the AIFC Court Regulations) AIFC Court is as an independent legal entity in the AIFC which consists of two tiers. The first tier is called Court of First Instance which also includes a specialist division called Small Claims Court, as well as the second tier called Court of Appeal. Both tiers together referred as the AIFC Court.

As for the appointment of a judges, according to Article 13 (3-1) of the AIFC Constitutional Statute, the Governor shall propose candidates to the President of the state who shall appoint the Chief Justice and other judges of the AIFC Court. Currently, the Chief Justice of the AIFC Court is Lord Burnett of Maldon, whereas the Registrar and Chief Executive is Christopher Campbell-Holt [182]. Also, ten judges have been appointed to the AIFC Court - Sir Rupert Jackson, Sir Jack Beatson FBA, Sir Stephen Richards, Lord Faulks QC (Queen's Counsel), Andrew Spinks QC, Thomas Montagu-Smith QC, Charles Banner QC, Patricia Edwards, Josephine Higgs KC and Saima Hanif KC [182]. So, as we can observe, the justices of the AIFC Court are fully composed from the professionals of the United Kingdom.

Now the applicable law of the AIFC Court it established in the paragraph 35 of the Resolution of the Management Council dated May 26, 2016 No 20-27 / 1814 On the “The Structure of the bodies of the Astana International Financial Centre” (hereinafter referred to as the Resolution of the AIFC Council) – “The AIFC Courts in their activities are guided by the Applicable Law”. In the previous chapter, the relationship between the concepts of “applicable law” and “acting law of the AIFC” was considered. Respectively, these two concepts are used as identical and interchangeable. The Article 13 (6) of the AIFC Constitutional Statute establishes that AIFC Court shall be bound by the substantive law of the AIFC, however, the AIFC Court can also take into consideration its own precedents as well as final judgments of other common law courts. The issue of AIFC case law was also discussed in the previous chapter, so this matter will not be further considered under this paragraph. Also, according to paragraph 36 of the Resolution of the AIFC Council, the AIFC Court have an exclusive power to establish the scope of its jurisdiction. In other words, before considering each new case, the AIFC Court independently establishes its jurisdiction in relation to a particular dispute.

Now with regard to the jurisdiction of the AIFC Court, then according to Article 13 (1) of the AIFC Constitutional Statute, it is established that judicial settlement of disputes specified by Article 13 (4) of the AIFC Constitutional Statute shall be undertaken exclusively by the AIFC Court. According to Article 34 of the Resolution of the AIFC Council, all of the AIFC bodies are subject to the jurisdiction of the AIFC's Courts also in accordance with Article 13 (4) of the Constitutional Statute. Whereas, the AIFC Court is not subject to the powers on any AIFC bodies. In addition to that it is specified that purpose of the AIFC Court is to protect the rights, freedoms and legal interests of the parties and to ensure that the substantive law of the AIFC is implemented.

At the same time, the specified norm of the AIFC Constitutional Statute establishes the powers of the AIFC Court in relation to those disputes that can be considered by the Court. Thus, this provision establishes the scope of the exclusive jurisdiction of the AIFC Court, which can adjudicate disputes between AIFC participants, AIFC bodies and its expatriate employees; disputes that arise out of the conducting activities within the AIFC and governed by its laws; and finally disputes transferred by the agreement of the parties to the AIFC Court.

Thus, Article 26 (2) of the AIFC Court Regulations establishes that the term “dispute” means civil or commercial disputes arising from transactions, contracts, arrangements or incidences. Also, paragraph 3 of this article provides that the reference to “transferred to the Court by agreement of the parties” shall be applicable to the parties that are not AIFC participants, but who decided to “opt in” to the jurisdiction of the AIFC Court by the agreement prior or post-dispute.

In addition, the AIFC Court Regulations expand the jurisdiction of the Court in Article 26 (1D), establishing that the Court has exclusive jurisdiction over the “the interpretation of AIFC Acts”. This provision is also duplicated both in the AIFC Constitutional Statute (Article 13 (10), and in the AIFC Regulations No. 1 of December 20, 2017 “On the AIFC Acts” (Regulations on AIFC Acts) (Article 38). At the same time, neither in the AIFC Constitutional Statute, nor in any of the current AIFC Acts, the following issues are not fully disclosed with regard to the interpretation of the norms of the AIFC Acts:

1. rules for the interpretation of the norms of the AIFC Acts;
2. instances when AIFC Court may or is obliged to interpret the provisions of the AIFC Acts;
3. which subjects may apply for interpretation of the norms of the AIFC Acts, as well as;
4. in what form the norms of the AIFC Acts should be interpreted - in the form of the AIFC Acts (Regulations or Rules) or in form of the court decisions on specific disputes.

One of the possible solutions of the matter is to use the experience of the DIFC. For instance, the Dubai Law No.12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre clearly specifies the instances when the DIFC Court is obligated to provide official interpretation of the substantive law of the financial centre. Hence, the Article 5B states that each and every body of the DIFC has an authority to request the interpretation of any article of the DIFC laws and regulations and that such interpretation shall have the same authority as the interpreted legislation. Therefore, it clearly sets the instances which body can address the request for the interpretation of the DIFC laws as well as the place of such interpretation within the legal architecture of the financial centre.

Therefore, AIFC Court or other bodies such as Management Council and AIFC Governor shall pay attention to these issues and address them within the AIFC Acts.

According to Article 13 (7) of the AIFC Constitutional Statute the decisions of the AIFC Court of Appeal shall be binding on all natural and legal persons and final and are not subject for the appeal. Also, according to paragraph 8 of the said article establishes that decisions of the AIFC Court shall be enforced on the territory of the Kazakhstan on the same grounds as the decisions of the local courts.

The review of the AIFC Courts operation shows that from the time of inception the AIFC Court has issued 101 decisions [183], first case being heard only in 2019, 11 decisions in 2021, 15 decision year later, 27 cases were heard in 2022 and 46 judgments have been issued during the 2023 [183].

So, the shows that out of total 101 cases 26 were contractual claims, 23 of them were the enforcement of the arbitral and mediation awards, 15 cases were labor disputes, 7 cases were the corporate disputes related to the mergers and amalgamations, whereas remaining 10 cases were discontinued due to lack of jurisdiction. The remaining cases were appeal decisions in disputes between the same parties

However, out of all of the cases, 4 disputes are of particular interest to our research and the reason is that these cases involved the state agencies against private businesses. So, the first case was heard in 2021 when the private company Success K LLP filed a lawsuit against the Ministry of Health of the Republic of Kazakhstan for the recognition and enforcement of the decision of the AIFC International Arbitration Centre [184]. At the same time, the defendant demanded that the arbitration clause be declared invalid on the basis of the Law on Arbitration of the Republic of Kazakhstan and the Law on State Property, since there was no consent on behalf of the Ministry of Finance to conclude an arbitration agreement, as it is stipulated by the laws. However, the AIFC Court dismissed the claim on the grounds that the IAC Arbitration Rules were applicable. Thus, after considering the dispute, the AIFC Court decided to reject the Application of the Ministry of Health and instead recognized the arbitration award for the payment of approximately 75 million tenge.

The second and third cases concerned disputes between the same parties, a private company - Cengiz Inshaat Sanayi ve Tijaret A.S. (JSC Chengiz) v. Committee for Roads of the Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan (Ministry of Industry). At first instance, the plaintiff demanded payment from the Defendant for the construction work performed by him [185]. So, after consideration, the AIFC Court ordered the defendant, the Ministry of Industry and Trade, to pay the plaintiff a total of 1,335,170,366 tenge.

Whereas. in the second case between the same parties, the same plaintiff, Chengiz JSC, sought enforcement of an arbitration award against the Ministry of Industry in the amount of almost 460 million tenge including the cons of arbitration in the amount of USD 20,000.

The last case involved the Ministry of Healthcare of the Republic of Kazakhstan against the Fir 800 Limited Liability Company and it was the enforcement of the arbitration award against the state agency. The AIFC Court made a decision that Ministry of Healthcare shall pay the USD 27,747, including arbitrator’s fees of USD 1,000 and legal costs of USD 1,800 [186].

Hence, we can note that in all of the disputes involving state bodies, the AIFC Court ruled in favor of the private companies. Thus, these four cases seem to set important precedents and sending a signal for the international investors with regard to the impartiality of the AIFC Court. This is especially vital in comparison with the national judiciary, which is undergoing an important reform, however, despite some positive trends in the development, much remains to be done to fundamentally change the current situation [187].

Now, if we turn to the consideration of international experience, it is apparent that the AIFC Court is very similar to the Court of the Dubai International Financial Centre as well as the Court of Abu Dhabi Global Market. First of all, it is important that the Acts regulating the activities of the three Courts are very similar to each other not only in their internal structure, but also in language, as well as in the very logic of the entire text of the Act. Thus, the activities of the DIFC Court are regulated in accordance with the DIFC Court Law No. 10 of 2004. The DIFC has the same structure as the AIFC, which consists of the Small Claims Court, the Court of First Instance and the Court of Appeal (Article 7 of DIFC Court Law). In addition to this, the DIFC Court has identical jurisdiction to consider only commercial disputes on the territory of the financial centre between the Establishments (similar to AIFC participants) and the DIFC bodies (Article 19). Also, the DIFC Court is guided by a similar “Governing Law”, which is established in Article 30 of the Law on the DIFC Court.

Another financial centre in the UAE, Abu Dhabi Global Market, has a very similar structure. Thus, the activities of the ADGM Court are regulated in accordance with the internal act of the financial centre – ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (ADGM Courts Regulations) [188]. This Regulation establishes a similar structure of the Court, which consists of the Court of Appeal and the Court of First Instance (which is divided into three divisions) (Article 1 (2) of the ADGM Courts Regulations). It also provides for similar jurisdiction of the Court of First Instance (Article 16) and the Court of Appeal (art. 12).

Particular attention should also be paid to disputes that were considered in the courts of the DIFC and ADGM, respectively. As mentioned earlier, the DIFC Court has existed since 2004 with the adoption of the DIFC Court Law, however, on the official website, court cases have been counted only since 2007. Thus, according to the official website of the DIFC Court, for the period from 2007 to 2023, the DIFC Court considered almost 4000 disputes [189]. Whereas in the first three years of work 156 cases were considered, in 2007 only 13 disputes [190], in 15 disputes in 2008 [191], and 128 disputes in 2009 [192]. However, in the past three years DIFC Court resolves approximately 500 cases per year.

As for the ADGM Court, its activities began in 2015 in accordance with the Regulations on the Courts of the ADGM. So, on the official website of the ADGM, it is established that the first dispute was considered in 2017 and since then more than 800 litigations have been considered so far [193]. If we compare the first three years of the work of the ADGM Court, it can be noted that 37 decisions were made, in 2017 7 decisions were made, in 2018 14, and in 2019 16 decisions [193]. Thus, we can see that the Courts of ADGM and DIFC were able to quickly attract the attention and earn the trust of foreign investors, which is yet to be done by the AIFC Court.

The second aspect that we would like to draw attention to is the global rating of the judiciary and judicial justice of the Republic of Kazakhstan. In order to understand the policy and the goals of the country's leadership to follow the example of the UAE in establishing the AIFC in general, and the AIFC Court in particular, it is also worth analyzing the state of the judicial system in the Republic of Kazakhstan and how it is assessed by the global community. The World Justice Project (WJP) is an independent, multidisciplinary organization working to raise awareness and stimulate action to advance the rule of law around the world. This organization has existed since 2006 and publishes the Rule of Law Index of the countries around the world, which evaluates 128 countries of the world [194]. A review of this index for 2023 shows that almost all countries traditionally belonging to the common system of law or to the Anglo-Saxon system of law occupy a leading position in this index [195]. So, New Zealand takes 7th place, Republic of Ireland - 10th, Canada - 12th, Australia - 13th, Great Britain – 15th, Singapore - 17th, Hong Kong – 22nd, USA - 26th place [195]. It is interesting to note that the United Arab Emirates also ranks high at 37th place in this index.

Whereas the post-Soviet countries are located only in the second part of this index. The leader among these countries is the Republic of Kazakhstan, occupying 65th place, Ukraine at 74th, Uzbekistan - 85th, Belarus - 97th, Kyrgyzstan - 99th and Russia at 101st place [195].

Thus, the success of the financial centres in the emirates of Dubai and Abu Dhabi, as well as the global Rule of law index shows that the decision to integrate the common system of law of England and Wales in the AIFC as like a justifiable and reasonable decision.

Nevertheless, despite the apparent necessity for the development of the judicial system, the status of the AIFC Court remains an ambiguous issue. Many prominent legal scholars and experts of the Republic of Kazakhstan expressed criticism of the AIFC in general, and the AIFC Court in particular. So, the articles published by Arman Shaikenov [196] as well as another his publication written alongside with his brother Valikhan Shaikenov [197], article by Academician Maidan Kuntuarovich Suleimenov [198] and Professor Farhad Karagusov [199] about the AIFC Court, were very critical towards the creation of the AIFC. One of the criticisms was related to the fact that AIFC Court is independent in its activities and not included into the judicial architecture of the state. Moreover, some scholars pointed that AIFC Court could be considered as a ‘special’ or ‘emergency’ court [197]. However, the Constitution of the country establishes that creation of the special and emergency courts is prohibited under any name [200]. Thus, it has been claimed that status of the AIFC Court contradicts to the Constitution of the Republic of Kazakhstan [197]. However, after the revision of the Kazakhstani legislation, it is apparent that AIFC Court could not be considered neither as ‘emergency’ nor as a ‘special’ court. This conclusion is based on the analysis of the Normative Resolution of the Constitutional Council which is currently reformed into the Constitutional Court. So, the Article 1 (6) of the Normative Resolution of the Constitutional Council 2006 “On the official interpretation of paragraph 4 of Article 75 of the Constitution of the Republic of Kazakhstan” establishes that ‘emergency courts’ are revolutionary tribunals and military revolutionary and military field courts, etc., which were special judicial or quasi-judicial bodies, created under the conditions of a totalitarian regime, as a rule, in connection with specific events of a political nature. Whereas the ‘special courts’, conversely, have one of the have following features: they are created and regulated by special regulatory acts and not by the Constitution or constitutional statutes; their administration is exempt from the general order of the legal proceedings, which creates conditions for the infringement of constitutional rights and the freedoms of man and citizen and finally, their creation violates the principle of the division of state power into legislative, executive and judicial branches, which result in the dependence of special courts on the bodies of the executive branch.

Therefore, due to the fact that AIFC Court is established by the Constitution and the AIFC Constitutional Statute it does not fit into the description of the ‘special’ or ‘emergency’ court. The AIFC Court is also regulated by the Constitutional Statute on Judicial System and Status of the Judges of the Republic of Kazakhstan. Moreover, the AIFC Court is fully independent from the executive branch of the country and it also does not directly infringe the constitutional rights and freedoms of the citizens of the country.

The second resolution centre operating in the AIFC is the International Arbitration Centre. Article 14 of the AIFC Constitutional Statute establishes that the “The International Arbitration Centre hears disputes on the basis of an arbitration agreement between the parties”. Also, the second paragraph of this article provides that the International Arbitration Centre shall be established and operate according to the Resolution of the Council on the International Arbitration Centre. Thus, paragraph 48 of the Resolution of the AIFC Governing Council dated December 5, 2017 “On the International Arbitration Centre” (hereinafter referred to as the “AIFC Arbitration Rules”) states that “An International Arbitration Centre shall be established as an independent legal entity in the AIFC territory pursuant to the AIFC Constitutional Statute, and shall be called the International Arbitration Centre. Hence, the IAC shall be expeditious alternative to the AIFC Court that resolve civil and commercial disputes. Currently, the IAC Chair is Barbara Domann QC [201].

The goal of the IAC is set out in paragraph 40 of the Resolution of the Management Council as becoming the leading international alternative dispute resolution centre.

In addition, the AIFC Constitutional Statute provides for the procedure for implementing the decisions of the IAC both on the territory of the AIFC and on the territory of the Republic of Kazakhstan.

The Article 14 (3) of the AIFC Constitutional Statute establishes that decisions of the IAC shall be recognized and executed of the same grounds as the arbitration awards that were issued by the Kazakhstani arbitration institutions.

Currently, according to the AIFC official website, 41 (forty-one) international arbitrators and mediators are registered in the IAC registry [202]. In addition to that, there are also information regarding the current results of the IAC. The report that has been provided by the official website of the AIFC suggests that in the period starting from 2018 to July 2, 2021, 39 arbitration decisions and 482 agreements on dispute settlement through mediation were made [203]. No official reports have been presented for the year 2022, however in 2023 the IAC has issued 415 arbitration awards, including 1695 mediation settlements [204].

Therefore, we can see that mediation is in the highest demand in the AIFC as a way to resolve disputes, while the AIFC Court and the IAC have yet to gain an international reputation.

**4 CHALLENGES AND PERSPECTIVE FOR THE DEVELOPMENT OF LEGAL REGULATION OF THE AIFC**

***§1. The entrance of the English common law into the legal system of the Republic of Kazakhstan***

To understand the process of entrance of “English common law” into the legal system of the Republic of Kazakhstan, it is first necessary to define what is meant by “legal system” at first place. The “legal system” is a broad concept and it could be describing in various ways, such as the “law”, “legal practice”, “dominant legal ideology”, “mechanism of legal regulation” and so on [205, c. 227]. The Kazakhstani legal scholars note that “the structure of the legal system consists of three groups of legal phenomena: a) legal norms, principles, institutions (normative side); b) a set of legal institutions (organizational side); and c) a set of legal views, ideas, ideas inherent in a given society, legal culture; (ideologica side) [206, c. 199]. Prominent legal theorist Nurkeshov E.K. also shares a similar view on a legal system and system of law in general [207, c. 113].

It should be noted that legal science does not dispute the view that the legal system itself is part of a more general and global system – a system of social control, which objectively exists in every society and includes, along with the law, morality and religion, and other elements as well. Lawrence Friedman described the law as a “social control” of a special type, meaning that law is a “governmental social control” [208, c. 9] which exists alongside with other types of control.

At the same time, each independent country possesses its own unique legal system that has common features traditional for certain types of systems. Thus, the concept of “national legal system” is also used to describe each particular country, since the historical path of development and the formation of law, ideology, culture, judicial practice is unique for every state [209, c. 210].

Despite their peculiarities, most national legal systems have common characteristics, so they are usually combined into legal families. Thus, the main legal families in the world are the civil law system (Romano-Germanic), common law system (Anglo-Saxon), religious, communist, traditional, mixed and other systems [210, c. 36]. The Republic of Kazakhstan, being one of the post-Soviet countries and included in the civil law system. However, before the entry of the Kazakh Khanate into the Russian Empire, the historical system of law of our ancestors was the Kazakh customary law, the norms of which were applied by the courts of “biy” [211, c. 34-35] (judge). The court of biys “is of world value,” and “It is an integral part of the unique national code of the Kazakhs... Khans and sultans participated in solving political problems, but the decision of the biys was decisive” according to Kairat Mami [212, c. 451]. However, over the long years of development as a socialist country, Republic of Kazakhstan lost its traditional system of law at the state level, and over the years of its independence, the Republic continued its development as a country with a classical system of civil law, or as it is also called, the Romano-Germanic system of law. At the same time, scholars note that after gaining independence the Republic of Kazakhstan restored some elements of the justice of the “biy court”. According to K. Mami, “the justice of the biys in the medieval nomadic society was entirely aimed at reconciling the parties. Now these areas of development of legal proceedings have become even more relevant” [212, c. 451].

If we turn to the consideration of the features of the civil law system, then it is characterized as “a single hierarchically constructed system of sources of written law, in which normative acts (legislation) occupy a dominant place; the main role in the formation of law is assigned to the legislator, who creates general legal rules of conduct; the law enforcer (judge, administrative bodies, etc.) is only called upon to accurately implement these general norms in specific law enforcement acts; written constitutions with supreme legal force; division of the system of law into public and private, as well as into branches; legal custom and legal precedent act as auxiliary, additional sources;” [205, c. 88] etc.

In other words, the main role is dedicated to the codified (written) laws that play a significant role in this system, and when resolving disputes, judges must apply the laws in its literal sense, and generally do not possess an authority to interpret the meaning and content of the law. This feature is a key difference between the civil law and common law systems. However, it is important to mention that civil law is changing and evolving over time. According to E.B. Abdurasulov, “… already in the first half of the 19th century, in many countries of the civil law system, the interpretation of the law by judges began to be recognized by judges as valid positive law” [213, c. 189].

In contrast to civil law, common law system is characterized where “...the main source of law is the judicial precedent, i.e., the rule formulated by the judge in the process of considering the case” [29, c. 212]. So, in United Kingdom and specifically in England, the concept of legislation in the broad sense of the word, included mainly the judicial practice [204, c. 211]. “Therefore, the main creators of law are judges, who, generalizing practice and being guided by already established cases, can develop on this basis new legal principles – precedents that make up the common law system” [32, c. 212].

In addition to that, English common law is not divided into private and public law as the civil law system, and its structure consists of a) case law; b) equity law; c) statutory law [215, c. 128]. The latter are written laws adopted by the Parliament. So, in the last decades many acts have been adopted by the Parliament to consolidate legal norms into institutions and branches (primarily within civil law), however, English law continues to be precedential in nature” [215, c. 128].

Thus, we can see that civil law and common law systems differ significantly in their characteristics, sources of law, as well as their historical path of development. However, the leadership of the Republic of Kazakhstan took an unprecedented step for the post-Soviet countries to introduce or implement English common law into the legal system of the country. It is important to note that common law was introduced only in a specific area of the Astana International Financial Centre, inside the city of Astana. At the same time, as noted earlier, this initiative is borrowing the international experience of such countries as Qatar and, first of all, the United Arab Emirates.

Hence, the creation of a financial centre or special economic zone with common law jurisdiction is not a new practice, although, it has raised a lot of questions with regards its regulation. For instance, many Kazakhstani scholars and legal practitioners were highly skeptical or openly critical to the initiative of creating common law enclave within the civil law state [216] and even demanded the liquidation of the AIFC [199]. The main argument could be described as the innate incompatibility of the common law and the civil systems [217].

So, the process of entrance of English common law into Kazakhstani legal system can be divided into several stages. The first stage begins with the collapse of the USSR and the formation of Kazakhstan as an independent state and continues to the present starting from 1991. This is the period of liberation of all spheres of society's life from the dictates of communist ideology and the orientation of public consciousness, including legal consciousness, towards the values of Western societies and Western ideology. The “westernization” of the Kazakh society, along with other countries of the former USSR, which at the beginning took place within the society mainly spontaneously. Subsequently, this they were supported by conscious and purposeful actions both from the outside of the state and from the inside. If the legislative consolidation of freedom of private property opened the way for participation in the privatization of previously state-owned public wealth, including foreign private parties, mainly Western companies, then the legislative principle of “diversity of ideology” and the removal of the state monopoly on ideology allowed the emergence in Kazakhstan of numerous non-governmental organizations with foreign funding, whose activities were aimed at the formation and dominance in society of Western views on democracy, on human rights and freedom, on the universal nature of Western values and their priority over the values of other societies and states, including over the traditional values of Kazakhstan society.

The measures of the Kazakh government to popularize the English language in the country, in particular, to raise its status to the level of the official language of the state [218], became powerful incentives for further deepening the general westernization of Kazakhstani society and reorienting its public consciousness to Western values. This initiative of the government found its logical continuation in its measures aimed at the country's transition from an alphabet based on the Cyrillic alphabet to an alphabet based on the Latin alphabet [220]. The public discussions that flared up in connection with these two measures of the government indicate that if the first measure “raising the status of the English language to the level of the language” was perceived by the public ambiguously, nevertheless, the reaction to the transition to the Latin alphabet was positive and even enthusiastic, especially from the patriotic part of society and young people [221].

At the same time, the scholars have only recently started to notice and pay closer attention to the “westernization” of the Kazakhstani society as a whole, its public consciousness, as well as its legal consciousness. Researchers note the objective nature of the influence of Western societies on Kazakhstani society, associated with their economic achievements, the level of development of social and political institutions and updated recently with the introduction and spread of the Internet and digitalization throughout the world community. At the same time, the fact is constituted that the Western countries carry out intensive ideological propaganda, in which Western values are absolutized and they are presented as almost the only highest standards and achievements of the entire human civilization [222].

Researchers also pay attention to the negative aspects of the influence of the Western way of life on Kazakh society. In this regard, such norms of behavior are criticized, which are considered liberal in Western societies and are sanctioned in their laws, but fundamentally contradict the traditional values of Kazakhstani society and are rejected by them. (Legislative consolidation of euthanasia, same-sex marriages, the concept of the family as a free union of two people, etc.)

The second stage of the entrance of common law into Kazakhstan is the period of discussion, preparation and adoption of legislative acts, which consolidated the status of English common law as one of the official sources of the substantial law of the Republic of Kazakhstan which started in 2006. This period begins with the adoption of the law “On the regional financial centre of the city of Almaty” dated June 5, 2006 and the functioning of the Regional Financial Centre of the Almaty city, since already at that time the leadership of the state began to raise questions and discuss the necessary conditions for the implementation of the common law into the Republic. In particular, at that time, attempts were made to create a special court in the financial sector, with the possibility of “conducting office work not only in the state language (Kazakh) and Russian languages, but also in English language” [89] to attract foreign investors. The logical outcome of various discussions regarding the implementation of the English common law and attempts to transfer it to Kazakhstani soil was the adoption of the Constitutional Statute AIFC dated December 7, 2015. In this law “the principles, legislation and precedents of the law of England and Wales” were recognized and enshrined as one of the components of the substantive law of the AIFC.

The final legislative formalization of English law as one of the sources of the AIFC law was completed on March 10, 2017, when the amendment was introduced into the Constitution, which states that within the capital city of Astana a special legal regime could be established in the financial sphere. Since the Constitution has the highest legal force and direct effect throughout the territory of the state (Article 4 (2) Constitution), it meant that this provision of the Constitution recognized and enshrined the common law as one of the official sources of AIFC law at the highest – constitutional level. So, despite the fact that application of the common law was limited only to the territory of the AIFC, it is still part of the sovereign territory of the Republic of Kazakhstan, so the AIFC laws are an integral part of the legal system of the Republic of Kazakhstan. This conclusion is confirmed by the fact that common law is now described as part of the laws of the Republic of Kazakhstan by the authors of the new academic course of the textbook “Constitutional Statute of the Republic of Kazakhstan”, many of whom were members of the Constitutional Council of the Republic of Kazakhstan.

Since the 90s of the last centuries, the openness of the Kazakhstani society to the ideological and mental influence of Western civilization and their values, including legal guidelines, which continues to the present, has led to the legislative consolidation of English law as one of the sources of the AIFC laws, and English as the official language of the same financial centre.

The third stage of the entry of English common law into Kazakhstan is the period of its implementation and functioning as one official source of law of the Republic, operating within the territory of the AIFC. This period began on March 10, 2017, that is, with the entry into force of Article 2 (3-1) of the Constitution, according to which a special legal regime was established in the financial sector within the city of Astana and continues to this day.

The entry of English law into competition with other sources of Kazakhstani law actualizes the problem of studying not only theoretical, historical and practical problems of common law, but also the problem of the experience of international financial centres in the application of common law.

International experience suggests that currently world’s leading financial centres and special economic zones in the financial sphere is operating on the basis of the English common law. As previously have been discussed, the prime examples are Dubai International Financial Centre, Abu Dhabi Global Market and Qatar Financial Centre. In addition to Gulf states, we can also mention the experience of the Chinese SEZ – Shenzhen which also used the English common law during the creation of the legal system of the economic zone.

So, the review of the international experience shows that DIFC was the first type of new type of financial free zone which created special legal regime based on English common law. Similarly, we can also note the Qatar Financial Centre created in 2005 and which went through a slightly different path of development and also becoming a pioneer in the development of the Free Financial Zones by offering the world another revolutionary idea [168, p. 5]. The unique feature of the QFC is that the participants of the Centre “are not limited to the geographical boundaries of the zone (FEZ - author's note), since organizations registered in the QFC are allowed to work anywhere in the state of Qatar. Thus, the QFS can be defined as an “on-shore zone”, and the Qatar International Court and Dispute Resolution Centre as an “on-shore court” [168, p. 5].

The situation is somewhat different in the People's Republic of China. Initially, the decision to create special economic zones was made in the early 1980’s. In general, the leadership of the PRC set a course for opening borders for international business, and one of the first experiments in liberalizing legislation was the creation of a special zones. These zones were originally defined as “export processing zones” and on May 16, 1980 they were officially named “special economic zones” introducing the term for the first time [223, p. 24]. Subsequently, the country’s leadership has identified five territories, in different provinces of the country, to attract foreign investment, by creating a free economic zone. Thus, the following directions for the creation of an SEZ were determined - Shenzhen, Zhuhai, Shantou Xiamen and then Hainian Island in 1988 [150, p. 9]. However, it is important to note that the dynamic development of an SEZ’s were associated not only with its legislative regulation, but with the transfer of legislative functions to the management of an SEZ’s themselves. The first FEZ to receive legislative autonomy was the Shenzhen FEZ. Thus, the leadership of the Shenzhen SEZ in 1987 conducted a study of the experience of Hong Kong, European countries and the United States, Shenzhen officials formulated a five-year legislative plan, which listed 135 economic regulations to develop an SEZ [150, p. 9]. So, basically, the most of the countries that was analyzed by the developers of an SEZ in China were common law jurisdictions, including Hong-Kong, United States of America and United Kingdom.

So, according to one of the officials of the Shenzhen SEZ legislative bodies, these economic regulations were crucial for creating a basic legal framework for managing various economic activities in the Shenzhen SEZ, and only with these rules the Shenzhen SEZ could make another step to accelerate the inflow of foreign capital into the region [150, p. 9].

In other words, the international experience suggests that the development of an SEZ is impossible without effective legislative regulation of its activities. Moreover, in order for this regulation to become effective, practice shows that specialized economic zones must have legislative autonomy in terms of the adoption of regulations governing economic and other business activities on their territory.

In addition to that, we can also note the impact of the AIFC law towards the national legislation of the Republic of Kazakhstan. For instance, the highest representative body of the state – Parliament developed a bill to introduce amendments into the civil legislation of the state, taking into account the principles of the English common law. So, the Majilis decided to introduce following common law principles into the Civil Code – promissory estoppels, warranties and representation, indemnity clauses [224]. This is a clear sign that English common law is continuing to influence legal architecture of the state.

Moreover, it is not only the legislator that is applying the international experience, but the court system as well. The Supreme of the Republic of Kazakhstan was one of the first state bodies that actively cooperated with the AIFC and its Court to implement the best international practices [225]. For instance, in 2017, one year prior to the official launch of the AIFC, the Supreme Court signed a memorandum of mutual cooperation with the AIFC [225] and it is apparent that it was not a formal step. Since that moment several meetings and events were conducted between AIFC and Supreme Court of the Republic of Kazakhstan, including the lectures that has been made by the AIFC Court justices and more importantly the launch of the educational program for the professional development of the national judges the AIFC Academy of Law [226]. Therefore, we can notice that creation of the AIFC became another big step in the entrance of the common law into the Kazakhstani law system.

The importance of the cooperation between two justice systems could increase if we take into consideration the fact that traditional legal system of Kazakhs was customary law called ‘adat’ and the judges played a critical not only in the administration of the justice but also in the development of the legislation, which is very similar to the role of the justices in the English common law system. Therefore, it is an incredible opportunity for our state to revive our traditional legal system by learning from the experience of one of the best judges in the world. Especially, if we take into account that our government already has taken some steps to recreate the ‘biy councils’ in different regions of our country as a mediation centre for the resolution of civil disputes [227].

Now, if we analyze the role of the English common law in the development of the AIFC, it can be noted that two legislative instruments were used to implement it on the territory of the financial centre. Firstly, these are the AIFC Acts, and secondly, case law. As noted earlier, the AIFC Acts can be based on the principles, norms and precedents of the law of England and Wales (Article 4 (1(3) of the AIFC Constitutional Statute), at the same time, AIFC judges may take into consideration the precedents of the AIFC Court as well as the judgments of other common law courts (Article 13 (6) AIFC Constitutional Statute).

It should also be noted that in addition to the Constitution and the AIFC Constitutional Statute, the substantive law of the AIFC is consists of the AIFC Acts. So, it has already been noted that at the moment more than 160 different AIFC Acts have been adopted, including 27 regulations, 39 rules, 67 consulting papers, as well as 28 types of other Acts, including guidelines, a glossary, joint orders with state bodies and etc. [228].

As for the case law, this issue has also been considered in previous chapters. Thus, we have already noted that out of 58 disputes considered by the AIFC Court, the Centre has never referred to the precedent of the AIFC Court, or other courts of common law jurisdiction.

Therefore, we can draw several main conclusions regarding the entry of English common law into the legal system of the Republic of Kazakhstan. Firstly, this process is carried out on the basis of the Constitution of the Republic of Kazakhstan, The AIFC Constitutional Statute and the AIFC Acts. It is also worth noting that English common law is implemented directly on the basis of the AIFC Acts, developed by the Legal Advisory Council, which includes an expert group of specialists from England. The last but not least feature is that the effect of the Acts of the Centre is limited to the territory of the Astana International Financial Centre itself, and primarily applies to the participants and bodies.

Now, if we look at the implementation of common law in special economic zones of other countries, then the most relevant examples will be the Dubai International Financial Centre, Qatar Financial Centre and Abu-Dhabi Global Market, which all operates on the basis of the common law principles. Moreover, both United Arab Emirates and Qatar as a state have traditionally been the part of the civil law system [229] [230], similar to the Republic of Kazakhstan, which has been developed as the civil law state since becoming the part of the Soviet Union [217]. However, there are differences and nuances that separates our country from the path of Gulf states. For instance, the UAE and Qatar for a long period of time were under the political as well as legal influence of the United Kingdom [218, p. 72]. Whereas, the Republic of Kazakhstan, as one of the Soviet totalitarian republics, was isolated from the rest of the world for almost 80 years. So, even after becoming an independent country, the leadership of the Republic of Kazakhstan took the course for cooperating with the neighboring post-Soviet countries, for example, within the framework of the Eurasian Economic Union [219].

Another important distinction would be the fact that Gulf states are hereditary monarchies and the main source of law is Islamic law – “Sharia” [231, p. 4]. Moreover, the citizens of Great Britain who resided in the territory of modern UAE and Qatar were not subject to Sharia law but rather English laws. Moreover, in Qatar there was a court that administered justice on the principles of English law [232, p. 79]. Hence, we can see that the English common law has been applied for more than half a century in the territory of the Persian Gulf countries.

Whereas the Republic of Kazakhstan is a democratic secular state and therefore, some scholars suggest that such differences also should be taken into account, since the creation of territories with special legal regime would entail different constitutional and legal issues for the unitary state as the Republic of Kazakhstan [197].

However, despite the fact that certain Kazakhstani scholars claim that common law and civil law system are incompatible, international experience suggest otherwise. There are a lot of jurisdictions that have a mixed legal system that operates on the basis of both common law and civil law. For instance – Ireland, South African Republic, Puerto Rico, state of Louisiana in USA and state of Quebec in Canada [4]. Another example would be State of Israel which is also a unitary state that is characterized as a prime example of mixed legal system [233]. In addition to the named jurisdictions, the studies show that countries around the world do not belong to one specific legal family, rather most of the states have a mixed legal system [234, p. 103-104]. Moreover, the process of blending different legal systems described as a positive process which contributes to the further development of the country by enriching the legal system through diffusion of various cultures, by better understanding of global legal traditions as well as facilitating the economic development [4]. Hence, the experience of many different mixed legal systems, and specifically the experience of UAE and Qatar suggests that creation of the territory with a special legal regime based on the common law has a great potential to positively influence the legal system of the Republic of Kazakhstan in the nearest future.

***§2. The challenges for the co-existence of the state (Kazakh), officially used (Russian) and English languages within AIFC***

This chapter will consider the issue of coexistence of three languages in the Republic of Kazakhstan, the state language– Kazakh, the official language used in the country – Russian, and the official language of the AIFC – English languages.

Generally, from the moment of gaining independence, the Republic of Kazakhstan has officially used two languages – Kazakh and Russian. The Constitution of the country establishes that the state language of the Republic is the Kazakh language (Article 7 (1) Constitution). While the Russian language also could be used on the equal grounds alongside the Kazakh language (Article 7 (2) Constitution).

It has already been noted in previous chapters that English is the most widely spoken language in the world. Hence, the review of the international experience suggests that the decision to officially use English language was a necessary step. Since, at has been previously mentioned, the English language is widely used in the DIFC, QFC, ADGM and Shenzhen SEZ [235]. The importance of the English language is evidenced by the fact that almost all the rules and regulations governing the activities of the Gulf state financial centres and Shenzhen SEZ are officially published in English and they all available on their official websites.

Therefore, it is apparent that development of the international financial centre requires either widespread use of the English language as it used in China, Qatar and UAE. Therefore, currently, the international language of business has also received an official status in our country, although it has an official status only within the defined boarders of the Astana International Financial Centre. Hence, the English language is used in all areas of public relations regulated by the AIFC law and throughout its the territory (Article 15 of the AIFC Constitutional Statute).

It is also worth mentioning that there was a plan for the implementing the English language in the Republic of Kazakhstan as a whole. The initiative was developed into a Roadmap for the Development of Trilingual Education for 2015-2020, which was adopted in accordance with the Joint Order of the acting. Minister of Education and Science of the Republic of Kazakhstan dated November 5, 2015 No. 622, Minister of Culture and Sports of the Republic of Kazakhstan dated November 9, 2015 No. 344 and Minister for Investment and Development of the Republic of Kazakhstan dated November 13, 2015 No. 1066 (the roadmap).

The roadmap included seven different initiatives for the gradual implementation of trilingual education in the Republic of Kazakhstan starting from the junior to senior classes. However, the initiative was not fully implemented and some people associate this with the statement of the President of the country, Kassym-Jomart Tokayev. He claimed that implementation of a third language is an important but difficult task and his position is following: “firstly, there should be the Kazakh language, (then) the Russian language. They are very important to our children. And only then they can learn English” [236].

This position was supported by many scholars and various public figures who note that there is a big problem with the use and development of the Kazakh language [237], especially in large cities and within governmental institutions [238]. The main issue is considered to be the predominant use of the official Russian language which impedes the development of the Kazakh language.

Now if we turn to the status of the English language in the AIFC, then all of the AIFC Acts are developed and subsequently adopted in English (Article 16 of the AIFC Constitutional Statute). The law provides that the Acts of the AIFC can be translated by the AIFC itself into Kazakh and Russian languages, however, it is not an obligation for the AIFC to translate all the existing AIFC Acts and currently there are more than 400 different Rules and Regulations adopted within the financial centre. In addition to that, in case of the disputes between the AIFC participants or its bodies, the litigation will also be conducted in English, however, at the request of the parties, the litigation may be conducted with translation into Kazakh or Russian (Article 18, the AIFC Constitutional Statute).

Article 17 of the Constitutional Statute also establishes that all documentation on the territory of the AIFC, including accounting, statistical, financial and technical, will be maintained in English. Moreover, in case of application by individuals and legal entities, the official response of the AIFC bodies will be submitted in English or the language of application, provided that the language of application is Kazakh or Russian. Also, Article 20 of the AIFC Constitutional Statute provides that all written transactions made on the territory of the financial centre by AIFC participants must be in English, unless otherwise specified by agreement of the parties. In addition, if one of the parties to a written transaction is an AIFC participant, then it must be committed to writing in the English language, or in the Kazakh or Russian language (Article 18 (2) of the AIFC Constitutional Statute).

Given all the provisions of the AIFC Constitutional Statute, and the fact that one of the main goals of the AIFC is to attract foreign investors and gain the status of the leading financial centre in Central Asia, the establishment of English as the official language seems to be a reasonable measure. However, several important issues shall be addressed with regard to the implementation of the English language on the territory of the AIFC.

Hence, the official use of multiple different languages on a certain territory always creates or potentially can create a various problem. For instance, it is important to understand that all the AIFC Acts and other documents will be prepared and adopted in English, which means that there is high probability that inconsistencies in the translation will occur during the translation of all the documents into Kazakh and Russian languages. Dimilar problem has already arisen when draft laws were translated from Russian into Kazakh language [239]. The deputies of the Parliament of the state made over 40 comments regarding the correctness of translations of draft of a single law from Russian into Kazakh. language.

Secondly, it should also be taken into account that even with the correct translation of terms from English, it may be very difficult to convey the original meaning of legal terms, since there is a significant difference between the English common law system and the civil law system, and between English common law principles and civil law principles. In other words, certain terms have totally different meanings in different languages and such difference could be in linguistic differences, but primarily it could be historical differences in the development of the two legal systems, which can cause difficulties during the translation of official documents from English.

Therefore, the indicated difference between the two legal systems may lead to different interpretations of the legal principles specified in official documents, primarily in the AIFC Acts. The same applies to the execution of the decision of the AIFC Court, writ of execution, responses to appeals from individuals and legal entities. Thus, the AIFC faces a big task to ensure the correctness of translations of official documents. Thus, it can be noted that more than 400 different kinds of AIFC Acts were published on the AIFC official website, of which only about 25 Acts were translated into Kazakh and Russian. However, the rest of the AIFC Acts regulate relations with government agencies, such as tax, currency, investment and other relations. Also, the AIFC participants enter into legal relations with financial institutions in the Republic of Kazakhstan, including the National Bank and second-tier banks. In addition, citizens of the Republic of Kazakhstan will also be interested in participating in financial activities on the territory of the AIFC, or may be interested in the services of the AIFC Court or the International Arbitration Centre.

Therefore, there is a direct need for an official and correct translation of the AIFC Acts, so there will be a uniform understanding and application of the AIFC Acts by the AIFC participants, AIFC bodies, state, individuals and legal entities in the Republic of Kazakhstan. It also could potentially contribute to the wider dissemination of information about the activities of the AIFC both among the citizens of the Republic of Kazakhstan, and in its promotion on the territory of all Central Asian and CIS countries, where Russian is still the predominant language. Hence, the best solution seems for the AIFC to translate all of the existing acts into Kazakh and Russian languages in order to minimize the negative consequences from the discrepancies from the translation of the AIFC acts and other official documents.

***§3. The peculiarities of implementing the Islamic law in the AIFC***

One of the main modern financial trends that is taking place within past several decades around the globe is the rise of the new industry – Islamic finance. One of the main driven factors of the Islamic finances is that Muslim population became the fastest growing religious group in the world [240]. Hence, according to different international estimates, the share of the Islamic finances for 2021 reached the amount of more than 2.5 trillion dollars with a forecast of growth to 3.8 trillion by 2023, or 1% of the total assets of the global financial sector [241]. So, within the Islamic financing the largest sector is Islamic banking which is estimated to be at 1.7 trillion dollars or 70% of the total assets of the Islamic financial sector which develops swiftly with such sectors as Islamic insurance (takaful) and the Islamic capital market [241].

So, in general, the Islamic financing could be described as the management of financial resources in accordance with the canons of Islamic law – Sharia. Hence, one of the main differences between Islamic finance and the traditional financial model is the lack of usury or interest [242]. In other words, if a person takes a loan, then it is prohibited for the lender to take the predetermined or guaranteed amount of reward [242]. Instead, the Islamic financing is characterized as a “project investment” which is associated with the division of risks between the borrower and the lender, or “equity participation” [243]. As noted earlier, “the bank does not receive interest, but simply studies the business plan proposed to it, analyzes the risks and decides whether to participate in the business as a partner” or not [243]. Thus, the basis of Islamic finance is the belief that a bank should not enrich itself only by lending money, since “money should not have any value in itself, but only a way of exchanging products and services that actually have value” [244].

Now, if we look at the history of the Islamic financing, it is generally agreed that the first modern Islamic bank appeared in the capital of Egypt – the city of Cairo in 1971, with the participation of the Nasser Social Bank, which began its activities in 1972 [245]. While the first Islamic bank in Kazakhstan, as well as throughout the CIS was opened in 1992, by Decree No. 5 of the President of the Republic of Kazakhstan, Nursultan Nazarbayev, the Kazakh International Commercial Bank Al-Baraka was established, which invested 100 million US dollars in the economy of Kazakhstan. However, the main stage in the development of Islamic finance took place on 2009, when Kazakhstan was the first of the post-Soviet countries to adopt 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” (hereinafter referred to as the Law on Islamic financing) [246], which laid the foundation for the legal regulation of the activities of an Islamic bank in the Republic of Kazakhstan in 2010, it was Al Hilal Islamic Bank JSC, created by agreement between the Governments of the Republic of Kazakhstan and the UAE [247].

The Law on Islamic Finance regulated the creation of Islamic banks and the general development of Islamic finance in our Republic. In accordance with the Law on Islamic Finance, amendments were made to the Law of the Republic of Kazakhstan on Banks and Banking Activities (Banking Law), where Article 3 (5-1) states that Islamic bank is a second-tier bank that has a license and carries out banking activities in accordance of the Chapter 4-1 of the Banking Law. Also, Article 52-1 of this law establishes that Islamic Bank shall not be entitled to collect remuneration in the for of interest for provision of banking services. It is also prohibited for the Islamic bank to guarantee the return of an investment deposit or income on it, finance the production of tobacco, alcohol products, weapons and ammunition, gambling, as well as other types of entrepreneurial activities, financing (crediting) of which is prohibited by the Council on the principles of Islamic finance is not entitled to collect remuneration in the form of interest, guarantee the return of an investment deposit or income on it, finance (credit) activities related to the production and (or) trade in tobacco, alcohol products, weapons and ammunition, gambling, as well as other types of entrepreneurial activities, financing (crediting) of which is prohibited by the Council on the principles of Islamic finance.

Separately, it is worth considering such body as the Council on the Principles of Islamic Finance, which performs one of the key functions in Islamic banks. This body is called upon to determine the compliance of the activities, operations and transactions of an Islamic bank with the requirements specified in Article 52-1 (Article 52-2 of the Banking Law). Also, the council on the principles of Islamic finance has the right to additionally determine other requirements for the activities of an Islamic bank that are mandatory for an Islamic bank to comply with (Article 52-1 (2) of the Banking Law).

Also, the Banking Law defines the conditions regarding banking and other operations, the charter of an Islamic bank, deposits, issuance of securities, financing of persons, investment and agency activities.

So, despite the effort for the legal regulation of the Islamic financing and specifically Islamic banking, the studies suggests that there has been little development of Islamic finance in Kazakhstan in recent years. Thus, in 2019, the total share of Islamic banks in the assets of commercial banks of the Republic of Kazakhstan increased from 0.17% to 0.21% [248, p. 6]. So, at the end of January 2019, the indicator amounted to 35.9 billion tenge from Al Hilal Bank (+ 51.5% per year) and 17.7 billion tenge from Zaman-Bank (+ 15.7% per annum) [248, p. 6].

As for the development of Islamic finance in the Astana International Financial Centre, there are three Acts that have been adopted so for – AIFC Islamic Banking Business Prudential Rules, AIFC Islamic Finance Rules as well as AIFC Takaful and Retakaful Prudential Rules. These Acts regulate the general activities of Islamic finance and Islamic banking in the AIFC. The official website state of AIFC establishes that AIFC is the first platform in the region that provides businesses with systematic access to a rapidly growing and promising investment segment - Islamic finance [249]. The basis of these measures is a specially developed roadmap, which is called the “Islamic Finance Master Plan for the Republic of Kazakhstan 2020-2025” (Master Plan). Thus, this Master Plan provides for the achievement of the following goals [250]:

* to position the AIFC as an internationally vibrant Islamic marketplace;
* to increase Islamic financial assets at least by up to 3-5% of total financial assets by 2025;
* to strengthen financial stability and sustainability; and
* to increase financial inclusion.

To achieve these goals, development is envisaged in the following nine areas, which include:

1. Internationalization of the AIFC;
2. Islamic banking;
3. Islamic capital market;
4. Islamic insurance (takaful) and re-takaful;
5. Islamic non-banking institutions;
6. Islamic social finance;
7. Financial technology (fintech):
8. Halal sector;
9. Islamic finance education and training.

In accordance with these directions, the Master Plan establishes Strategic Initiatives for each of the nine directions. In addition, the Strategic Initiatives provide Recommendations for the implementation of each direction. Moreover, the Master Plan also contains an Action Plan, which contains detailed steps for each of the Strategic Initiatives both by year, from 2020 to 2025, and by the AIFC bodies that are responsible for implementing the Action Plan.

So, as it has been previously mentioned, the Muslim population is the fastest growing group of people. Therefore, it is also expected that the demand for Islamic finance will increase in the Republic of Kazakhstan as well. Thus, according to the Master Plan, the AIFC plans to take into account the experience of other international financial centres, this is traditionally the experience of the city of Dubai, as well as London. In the previous chapters, it has been noted more than once that the DIFC is the main example for the development of the AIFC, however, it is worth noting that the DIFC does not have special Acts regulating Islamic finance activities. The main reason is that the United Arab Emirates is a Muslim country, and the country's legislation as a whole supposed to comply with the canons of Islam, respectively, there was no need for the leadership of the DIFC to adopt special legal acts regulating Islamic finance activities on the territory of the financial centre.

As for London, it is worth noting that at the moment the capital of England is the leading centre in terms of Islamic finance in Europe, ranking 9th in the world in terms of Islamic financial assets [252]. In part, this became possible due to the policy of the UK authorities, after the functions of supervising the UK financial market were transferred from the Bank of England to the Financial Services Authority [252]. Another reason is related to the plans announced at the 9th World Islamic Economic Forum by the former British Prime Minister David Cameron, that he and his government plan to make the UK an international financial centre for Islamic finance [253, p. 38].

Thus, in 2003, the UK authorities began to amend the legislation by forming a tax and regulatory framework, which allowed the development of Islamic finance products. So, one of the first initiatives was the abolition of the double land tax in the form of a levy on Islamic mortgages [253, p. 38] which make the UK the first European country to introduce legislative changes to ensure an equal ground for Islamic finance in its tax bills [253, p. 38].

At the same time, in addition to Islamic banks themselves, a distinctive feature of the development of Islamic finance in the UK is that traditional banks such as HSBC, Lloyds TSB, etc. offer a range of Islamic finance and banking services by opening special “Islamic windows” [252]. So, if we compare the UK legislation with the AIFC, we can notice a similar initiative provided in the Master Plan, in the section of recommendations for the development of Islamic banking by providing the opportunity for traditional banks in Kazakhstan to open the same “Islamic windows”, taking into account the requirement of Sharia laws [250]. Now, the analysis of the international experience suggests that Islamic windows are one of the most effective tools for the development of the Islamic finances as a whole. The studies conducted in Malaysia, Algeria and United Kingdom clearly shows that rise of Sharia based finances directly corresponded with the legislative measures in these countries to allow conventional banks to open Islamic windows [254, p. 183].

However, in case with the AIFC and the Republic of Kazakhstan, the national legislation of the country does not permit the opening of the Islamic windows by the conventional banks, since it is not envisaged in the Banking Law. Moreover, the banks in the Republic of Kazakhstan also cannot use the AIFC regulatory framework, because the AIFC participants can only launch Islamic windows in the territory of the host state only if the local jurisdiction of the country allows the opening of the Islamic windows [250]. Therefore, it is apparent that one of the main impediments for the development of the Islamic finances is the legal barrier established by the national legislation and it is critically important for the state to reconsider its policies toward Islamic windows and legislatively allow its operation in the state, so that Islamic financing will receive a real boost for future growth [251].

Another feature of the development of Islamic finance in the UK is that, back in 1995, Loughborough University became the first university in Europe to recognize and introduce the teaching of Islamic banking and finance at the master’s level, in cooperation with the Islamic Foundation of Great Britain, which sponsored academic staff to teach students who have chosen the direction of an optional course for obtaining a master’s degree [253, p. 38].

Similar initiative was also reflected in the AIFC Master Plan, where one of the recommendations is to establish partnerships with higher educational institutions of the Republic of Kazakhstan in order to create special courses (6-month internship programs) to raise awareness among young professionals regarding the fundamentals of the Islamic financing. However, this plan does not provide for the creation of specialties at the level of bachelors and masters, as it is developing in England.

In general, taking into account the best practices of the UK, it can be noted that the Master Plan, which was developed in the AIFC, complies with international standards for the development of Islamic finance. So, until 2018, only two banks operated in Kazakhstan - Al Hilal and Zaman Bank [255]. However, since the establishment of the AIFC, a financial company, Al Saqr Finance, has received a license in the financial centre, the digital Islamic bank Tayyab has also begun to operate, including the Qatari financial company Al Rayan Investment LLC, which has begun the process of creating Al Rayan Bank in the Centre [256].

However, despite the fact that the new jurisdiction of the AIFC creates favorable conditions for the development of Islamic finance, experts note that most of the Master Plan is advisory in nature [256], and that the current bureaucratic system in the country creates difficulties in the development of the Islamic banking sector, preventing Islamic financial clients from companies of great opportunity, for example, to participate in government programs, on a par with other banks [257]. Thus, in order to accelerate the development of the promising sector of Islamic finance, further legislative regulation and implementation of the principles of Islamic finance in the country is necessary in order to improve the legal framework and expand the opportunities for the development of Islamic finance.

**CONCLUSION**

The following conclusions and recommendations are suggested on the basis of the conducted research.

The Republic of Kazakhstan followed the latest trend by creating the Astana International Financial Centre in the capital of the state. Moreover, the creation of the AIFC represents an unprecedented step, since it is the first special economic zone regulated by English common law principles not only in the Central Asian region, but also among all of the post-Soviet countries. Despite the fact that the applicable law of the AIFC is modelled on the principles of the common law of England and Wales, a substantial amount of work has still been carried out in order to create the elaborate legal architecture of the financial centre. It necessitated great legislative, organizational and financial efforts to establish a territory with a special legal regime in the financial sphere. So, despite the fact that the AIFC and its court are quickly gaining international recognition, it has only been six years since the moment of its inception and many issues have not yet been analysed or tested.

This study is one of the first attempts to review the constitutional status of the AIFC as a special legal regime. Hence, the thesis identifies the main stages of the legal regulation of the international financial centres historically situated in the Republic of Kazakhstan. The emergence of the IFC in Kazakhstan was divided into three stages – the initial stage (1990-2006), the experimental stage of the creation of the Regional Financial Centre of Almaty city (2006-2015) and the current stage of the development of the AIFC, which is still ongoing.

The thesis also substantiated the scientific definition of the IFC that encompasses its three main features – territorial, economic and legal characteristics. Moreover, on the basis of the national legislation and the substantial law of the AIFC, new legal definitions of the AIFC have been developed that include its “narrow” and “broad” definitions. The legal definition of the AIFC has been derived from the analysis of the “constitutional status” of the Astana International Financial Centre, which in turn was based on an examination of its terms “legal status” and “status”.

The successful development of an international financial centre is dependent on several different factors and it was vital that after the failed attempt with the creation of the Regional Financial Centre of Almaty city our state would apply the best practices. The study shows that leadership of the country took into consideration the practices of international IFCs and executed these within the AIFC. Hence, the creation of the modern type of SEZ requires following certain policies, including constitutional regulation, organizational independence, legislative delegation and the implementation of English common law principles.

The thesis also discusses the main purpose and corresponding five objectives of the AIFC enshrined in the constitutional statute. The examination of the leading international practices shows that it is critically important to specify the end goals in the statutory regulation, as otherwise there is a high risk of not achieving any results.

The future success of the AIFC is directly related to the development of its substantial law, which creates an attractive legal environment for international businesses and investors. The analysis of the applicable law of the AIFC shows that discrepancies exist with the national legislation of the Republic of Kazakhstan. The regulations on the AIFC acts have deviated from the AIFC Constitutional Statute in establishing the hierarchy of the legal acts of the AIFC. The regulation of the AIFC acts contracted the entire Constitution into only one paragraph of the constitution. It is apparent that the narrowing of the scope of application of the constitution by the internal AIFC act is not in line with its general concept that applicable laws of the AIFC should not amend or revise the provisions of the legal acts that hold greater legal authority.

Hence, it is of paramount importance to clearly identify the place of each and every AIFC act within the legal architecture. However, this is still not clear with regard to the AIFC Court’s interpretation of the substantial law of the AIFC. International as well as national practice suggests that it is preferable to identify the AIFC Court’s interpretation at the same level as the interpreted act or immediately after the constitution and the AIFC Constitutional Statute. For instance, the DIFC law clearly specifies the list of the DIFC bodies that have the authority to request the interpretation of the substantive law and the place of such interpretation within the architecture of the DIFC law. The application of such practices will bring clarity to the hierarchy of the legal acts.

It is apparent that the AIFC Court has a substantial role in forming the international reputation of the AIFC. Its practices should therefore be regularized in a predictable and transparent manner. Hence, the place of the AIFC Court’s interpretation should be specified, in addition to the cases when the AIFC Court should provide the exclusive interpretation of the AIFC acts as well as the AIFC bodies that could demand the official interpretation of such acts.

The clear legal architecture of the AIFC also requires the clarification of the place of case law. Although the AIFC Constitutional Statute establishes that the AIFC Court can use its own precedents as well as the precedents of the other “common law jurisdictions”, nevertheless, the place of such precedents within the hierarchy of the AIFC acts is not clear. Moreover, since there are so many different common law jurisdictions as well as mixed ones, it is very important to legislatively establish the list of such jurisdictions. This will clarify which precedents of other courts could be used in the AIFC in a dispute.

The thesis also identified that the AIFC Court does not fit the legislative description of “special” or “emergency” courts. Instead, the AIFC Court should be considered one of the Kazakhstani courts. Due to the fact that the AIFC is explicitly outside the national justice system, this status of the AIFC Court may create impediments to executing its decisions in foreign countries. Therefore, amendments to the national legislation should be introduced to establish that the AIFC Court is part of the national judicial system and that it is one of the specialized courts of the republic. However, in order to maintain its independence and gain prominence among the international community, it is necessary to establish that it is outside the jurisdiction of the Supreme Court of the Republic of Kazakhstan.

Currently, the national justice system is undergoing large-scale reform and one of the goals is the attempt to revive national Kazakh traditions – in particular, the “court of byis”. In order to successfully implement reform, it is necessary to use the experience of the highly esteemed justices of the AIFC Court, institutionalize the interactions with the AIFC Court and to use their expertise in other fields.

As mentioned before, the emergence of the AIFC and its common law court does not create a duality within the legal system of the Republic of Kazakhstan. In order to understand the trajectory of this process, the thesis identified the historical development of the entrance of English common law into Kazakhstan. Essentially, after gaining its independence from the Soviet Union, the Republic of Kazakhstan was on the track of slowly applying the principles of the English common law in the early 1990s. However, there were no direct institutional reforms and the most notable shift happened during the creation of the Regional Financial Centre of Almaty city. However, after the failure of the RFCA, the implementation of the common law was pushed forward by the emergence of a legal transplant in the form of the Astana International Financial Centre. The research suggests that Republic of Kazakhstan is not planning to adopt English common law principles throughout the territory of the state, but rather limit their use within the boundaries of the AIFC.

Nevertheless, it is important to mention that the constitution of our state explicitly declares that Republic of Kazakhstan is a unitary state, which means that there should be only one legal system and one judicial system throughout the territory. Hence, the existence of the AIFC has caused a substantial amount of backlash and criticism, mainly from the academic community in our country. However, the analysis of international examples clearly suggests that creation of the common law court is one of the most efficient ways to promote an international financial centre. Meanwhile, this is the sole purpose of the creation of special economic zones in the financial sphere, which operates on the principles of the English common law.

In addition to the AIFC Court, the other five bodies of the AIFC are also reviewed within the research. The thesis not only analyses the individualities of each AIFC body separately, but also substantiates that their functions directly correlate with the legislative purpose and objectives of the AIFC. Moreover, the corporate structures of the RFCA, DIFC, ADGM, QFC, Shenzhen SEZ and Shanghai FTZ are considered. An analysis of the other IFCs suggests that after the failed attempt with the RFCA and the MFC, the leadership of the state took into consideration the leading international practices and effectively applied these in the AIFC. Hence, it was not only the corporate structure that was created according to the international standards, but its functions and legislative authorities as well.

The development of the new common law jurisdiction within the AIFC has a specific goal of constructing a favourable legal environment for international businesses. Therefore, the legal regime that was created for the AIFC participants has been reviewed. The thesis analyses the requirements for obtaining this status, as well as the process involved in authorization and receiving a licence, in addition to the types of activities that could be conducted and the possible obligations of the AIFC participants.

Another aspect of the modern type of international financial centres is that they create favourable tax and visa regimes in their territories. The favourable regime of the AIFC is analysed and compared with the national legislation of the Republic of Kazakhstan to understand the advantages that exist within the AIFC.

Since the official language of the AIFC is English, this has resulted in the English language becoming a third official language in the Republic of Kazakhstan after the Kazakh and Russian languages. It is important to mention that all of the AIFC acts are developed and adopted in the English language, whilst the overwhelming majority of the population, including the academic community, does not possess the proficiency in the English language to read and analyse its content. Hence, there are objective difficulties in the theoretical analysis of the AIFC by the Kazakhstani academic community. This suggests that the development and adoption of the legal acts in different languages lead to complications with their accurate translation into other languages. Hence, it is apparent that the AIFC should provide the official translation of all of its existing acts, of which there are more than 400 at the current time. The translation of the AIFC laws into the Kazakh and Russian languages will facilitate the integration of the AIFC into the professional and academic Kazakhstani community.

Finally, the main purpose of the AIFC as well as its corresponding five objectives have been analysed within the thesis. One of the goals of the AIFC outlined in the constitutional statute is the development of Islamic financing in our state. After conducting a comparative analysis with the best international practices of the United Kingdom, Malaysia and Algeria, it is apparent that amendments should be introduced to the banking law of the Republic of Kazakhstan. It is recommended that conventional banks should be legislatively allowed to open Islamic windows, because this is one of the most effective tools for the development of Islamic financing that could produce immediate positive effects.

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