

THE ESTABLISHMENT OF THE COURT OF ASTANA INTERNATIONAL FINANCIAL CENTER (AIFC) IN THE WAKE OF ITS PRECURSORS

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(Received: December 2021; Accepted: January 2022; Published: May 2022)

Abstract: The Astana International Financial Center's Court is a novel conflict determination effort aimed at attracting investors in the same way similar financial centers in the Persian Gulf have done with their courts and arbitration processes. This article contrasts and compares various approaches, focusing on aspects of private international law like jurisdiction, relevant law, and the admission and execution of judgments and arbitral awards. This research finds that the initiative's success, particularly for junior courts, will be determined by its ability to create amicable relationships with the host country's local courts.

Keywords: International Financial Centers (IFC); offshore courts; International Business Courts; Kazakhstan.

1. Introduction

Nursultan Nazarbayev, Kazakhstan's former President, publicized establishing the "Astana International Financial Centre (AIFC)" in May 2015, and it was formally initiated in July 2018. The AIFC is a zone in Astana's municipal limits subject to a "unique legislative system in the financial sphere" (Constitutional Statute of the Republic of Kazakhstan on AIFC). The AIFC may qualify as an "Offshore Financial Centre (OFC)" (Monitoring, 2008). Even though the "International Monetary Fund (IMF)" admits that "it has been difficult to define an OFC using a widely recognized description," it moreover denotes as "any financial hub where the offshore activity takes place" (Anuforo. et al. 2018). "Offshore finance is the supply of financial services to non-residents by banks and other agencies" (Monitoring, 2008). The

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Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

AIFC is a "Financial Free Zone," a very small or nominal organization or area whose primary function is to supply offshore corporations and financial services (Erie, Matthew, 2019).

The AIFC Court and the AIFC International Arbitration Center (IAC) were also established as part of the AIFC (Bantekas, 2020). Nine English judges have been appointed, with Lord Woolf, the former Lord Chief Justice of England and Wales, as President. Lord Woolf has extensive expertise in comparable dispute resolution ventures, including the "Court of the Qatar Financial Center."

AIFC is also one of the eight "100 stages" and a component of the nine "2050 strategies" aimed at modernizing the legal arrangement of Kazakhstan and diversifying the country's prudence, which is rich in natural resources (Kadyrova, 2018). Despite advances, the OECD and the American Chamber of Commerce continue to pressure the government to reform the country's culture of corruption and disregard for the rule of law (Smidova, 2020). Work to combat bribery is a plan to create a unique investment court is in the works. A programme that aimed at improving the education of judges and law enforcement officers, however, arbitration legislation is new, yet it is still unsatisfactory.

The AIFC will be exhibited after the "Dubai International Financial Center (DIFC)," which was founded in the United Arab Emirates (UAE) in 2004 and will serve as a model for AIFC and IAC courts (Yeung. et al. 2020). The DIFC has also spurred the formation of comparable offshore offices, for example, the "Qatar Financial Center (QFC)," founded in 2005) and Abu Dhabi Global Market (ADGM, established in the UAE in 2013). The AIFC's dispute resolution system may be compared to its Arabian Gulf pioneers to indicate the AIFC's strengths and faults and forecast its expected prospects or dereliction. The DIFC Courts are referred to as "Outer Courts" in terminology because they are situated in "Outside Jurisdictions" such as the DIFC and because the name distinguishes them from "internal courts," which are local courts in Kazakhstan and the United Arab Emirates (Kingsley, 2019). Because Bermuda and the British Virgin Islands are part of the same OFC, the term "Outside Court" is sometimes used to refer to the local courts in these countries (Zagaris, 2002).

2. Normative and regulatory framework

The AIFC legal system, like those of other centres, is made up of enactments and directives approved by the host country's judicial and controlling establishments, also rules and principles enacted by the AIFC's lawmaking and governing organizations (Zambrana-Tevar, 2019).

First, a financial centre is established, and its principal purpose, organization, and administration are defined by local, national law. The Constitutional Statute establishing the AIFC has already been mentioned. In the case of the Dubai

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

International Financial Center and the Abu Dhabi Global Market, a series of federal rules first enabled the creation of economic free zones in each Emirate, and subsequently, federal and UAE legislation designated two financial hubs, i) in Dubai and ii) in Abu Dhabi respectively. In 2005, Qatar approved a decree establishing the Qatar Financial Center (Ulrichsen, 2016).

Boards of directors, management committees, financial institutions, courts and arbitration centres, and other institutions exist; these institutions are independent. The head of the arbitration centre and the chief justice act significant roles, as are customary provisions in the enactment of the Constitution. Registrars with case management responsibilities are also available. Judges are specifically designated to enforce verdicts and court orders in various areas (ADGM Court Regulations, 2016). Small claims courts or circuits may also be utilized to resolve disagreements on a definite threshold: \$100,000 in the DIFC and ADGM and \$150,000 in the DIFC. All dispute resolution services in the DIFC are handled by the "DIFC Dispute Resolution Agency," which includes the DIFC Court, the "DIFC Arbitration Centre," the London Court of International Arbitration, the DIFC College of Law, and the Wills Registry (DIFC Law, 2011).

There is a "supervisory court" regarding QFC that hears appeals from administrative judgments given by the QFC (Nurmohamed, 2020). Moreover, the offshore courts have jurisdiction over these types of 'internal' administrative law disputes, in addition to their usual jurisdiction over civil and commercial claims. Each case has a lower court and an appeal court, with the potential of creating various departments within the Court (for example, the employment division of ADGM Court) (Zambrana-Tevar, 2019). Because the ADGM Court is built after Scotland's Supreme Court, ADGM justices may appear before the Courts of First Instance and Courts of Appeal as necessary except for hearing appeals from their first instance judgments (Wilske, 2018). Kazakhstan's court system does not include AIFC Courts (Bantekas, 2020).

On the other hand, the Constitution of Kazakhstan doesn't appear to authorize to establish any similar legal arrangements, stating that "the Republic's judicial system must be created by the Constitution of the Republic and constitutional legislation." It is forbidden to establish special courts under any name. The AIFC was not included in the most recent constitutional change, which would have allowed the AIFC to develop its financial system (Yeung. et al., 2020). Similarly, establishing the DIFC and ADGM necessitated the UAE Federal Constitution changes (Kaul, 2018). Certain Kazakhstani scholars have questioned the constitutionality of the AIFC legal regime. Given Kazakhstan's shaky parting of authorities and the sum of money and respect committed by the management, a moot technicality' might have minimal impact on the AIFC's functioning, at least for the time being.

2.1 Jurisdiction over the subject-matter

All courts reviewed here have jurisdiction in "civil and commercial" cases (Dubai Law, 2011; DIFC Judicial Authority Law, 2004; QFC, 2005; AIFC Court Regulations, 2017). The AIFC's charter specifies legislative control over civil relations, civil procedural ties, financial relations, and administrative processes between AIFC institutions and participants and their workers. However, family issues appear to be excluded, as they were in the ADGM. Employees and the commercial establishments for which they work are likewise subject to the jurisdiction of the four courts. Before introducing Dubai Law No. 5 of 2017, which amended Article 5 of the "DIFC Judicial Authority Law," it wasn't apparent whether the DIFC Courts had jurisdiction over labour issues.

All courts are likewise barred from having jurisdiction in criminal cases. Because many investor complaints in Kazakhstan are tied to criminal processes involving tax and administrative law, this exclusion may drastically decrease the AIFC Court's usefulness. It is not uncommon for slight accounting disparities to be interpreted as significant accusations of accounting fraud, putting foreign company personnel in danger of going to jail. Violations of subsurface usage or environmental restrictions are not uncommonly utilized to influence the stockholders during agreement renegotiations by the management. Nonetheless, three different courts and the Court of AIFC have the authority to construe and rule on the scope of their jurisdiction and interpret the legislation established within each Center. The single case that addresses jurisdiction in mixed-nature situations — from the ADGM Courts — does not explain (Zambrana-Tevar, 2019).

2.2 Jurisdiction over AIFC's 'Centre Participants' in general

An AIFC court's jurisdiction is determined by the parties and their location in or approved by a financial centre. Suppose the disagreement ascends from business conducted inside the AIFC and is subject to AIFC regulations. Other offshore courts, like the DIFC, have a more comprehensive jurisdiction, focusing on whether agreements are fulfilled inside all financial centres and if at least one party to the dispute is based there. The last comprehensive provision gives jurisdiction if any other future rules or regulations of each Center establish that they also prevail in the Center's laws and regulations.

Suppose all parties to the dispute are located in the AIFC, including the Center's management agency and foreign employees. In that case, the AIFC rules grant "exclusive jurisdiction" regardless of where the contract is signed, whether contractual obligations are fulfilled within or outside the AIFC, and whether the dispute pertains to the Center's services and activities. In case of non-availability of a Submission Agreement, conflicts among AIFC participants and non-AIFC

participants appear to be precluded except you belong to other jurisdictions, as specified under.

Under the title of this broad jurisdiction, the AIFC court rules only refer to "foreign employees" (AIFC Court Regulations, 2017), implying that matters involving Kazakhstan citizens seem to be wholly within the jurisdiction of domestic courts. The AIFC regulations' grant of "exclusive jurisdiction" may strengthen the concept that local courts in Kazakhstan cannot interfere in issues involving all persons participating in the AIFC, as well as corporations that are inside and under the AIFC's jurisdiction. AIFC laws, or conflicts involving parties that AIFC laws govern, select AIFC courts.

The AIFC statute is defined as "a legal entity registered under the AIFC Agency Act and a legal entity recognized by the AIFC" in the English translation, and as "a legal entity" in the AIFC Glossary (AIFC Act No. FR0017 of 2018-Centre Participant), which is also written in English, created under the Center's Agency Law, as well as other AIFC-recognized legal organizations." A centre participant is a legal entity that is registered under AIFC Law and is based in Kazakhstan or elsewhere but has obtained a commercial license or "order" from one of the AIFC branches or representative offices. Approved businesses, authorized market institutions, auxiliary service providers, and recognized non-AIFC members are examples of organizations functioning inside.

2.3 Specific Jurisdiction for Disputes Relating to Operations at the Centers

AIFC laws provide AIFC Court's exclusive jurisdiction over issues involving "operations carried out in the AIFC and governed by the legislation" of the Center (AIFC Constitutional Statute, 2015; AIFC Court Regulations, 2017). According to its charter, the AIFC's mission is to grow the securities, insurance, banking, Islamic finance, financial technology, e-commerce, and "innovation businesses" sectors and the economic and professional services markets. The AIFC Glossary also mentions activities like real estate and precious metals. Given Kazakhstan's significant extracting industry, it's notable that no activities relating to the extraction of oil industries are listed.

The "Financial Services Framework Regulations" state that "[a] Person will be deemed to be carrying on activities in the AIFC" if "that Person is a Center Participant and the day-to-day management of those activities (even if those activities are undertaken in whole or in part from outside the AIFC) is the responsibility of the Center Participant in its capacity as such, or that Person's head office is outside the AIFC" (AIFC Financial Services Framework Regulations, 2017).

"Regulated activities" – investments, insurance, and so on – are likely not the same as operations' regulated by AIFC legislation' that are handled individually and need

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

special authorization and legislation (Buckley et al., 2020). Even though related activities or operations are already on the list of Kazakhstan, the phrase "regulated by AIFC law" could be interpreted as implying that they essentially are controlled or controlled by AIFC legislation or any rules and guidelines enacted by regulatory bodies, including AIFC constitutional regulations.

In the case of a contract discrepancy, AIFC's methods are unlikely to imply that the law of AIFC should regulate the contract. Although the AIFC has its contract law, parties to financial transactions involving AIFC and non-AIFC participants are more likely to adopt British law to govern their agreements. Different AIFC rules, financial or otherwise, may apply to the same financial transactions. The AIFC courts will have jurisdiction in this case, even if they exercise English law to the parties to secure the rights and duties of the contracting parties.

Furthermore, depending on the AIFC's extraterritorial extent, there may be instances when activities occur outside of the AIFC yet are nevertheless functionally subject to 'AIFC.' The AIFC Court, on the other hand, is unlikely to have jurisdiction in such instances since the investigation must take place in the AIFC and be governed by AIFC legislation.

Another head of the jurisdiction is established under the AIFC Contract Regulations. Such regulations "govern contracts made between AIFC Participants, AIFC Bodies and AIFC Participants, and AIFC Bodies, unless otherwise expressly provided in a contract," and "any contract governed by these Regulations is subject to the Court's jurisdiction unless otherwise expressly provided in a contract" (AIFC Contract Regulations, 2017). The contract's terms do not apply if at least one of the contract's parties is not a member of the AIFC or the AIFC Foundation. If the terms of an AIFC or AIFC court contract are not explicitly specified, the AIFC court shall have no domain.

As a result, the contracting parties of AIFC may decide AIFC Court's jurisdiction, regardless of such agreement concluded inside the AIFC. Furthermore, unless the parties agree otherwise, the Center may have jurisdiction where the parties' sole involvement with the AIFC is when they pick the terms of an AIFC contract, regardless of whether they are participating in the AIFC.

Regarding the conjunction "and" in the sentence "The AIFC process is performed in the AIFC and is legally supervised," one could envisage business procedures that take place within the AIFC. Still, they are not unavoidably supervised by the AIFC; on the other hand, operations controlled by the AIFC, however, not all or segments of its fundamentals could be carried out in a financial position (e.g., the AIFC cafeterias, the custodian is located in Luxembourg). Both requirements must be satisfied simultaneously, according to the word "and." There are no two different legal systems.

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

According to the AIFC's Jurisdiction Rules, "disputes" include "incidents." If the "incidents" are also "governed by AIFC legislation," the courts may have jurisdiction over infringement claims (AIFC Regulations on Obligations, No. 16 of 2017), the ability for a violation, which governs the liability of a breach. This statement doesn't seem to be very effective when it's hard to tell whether the offence happened entirely internal or entirely external position. Eventually, though AIFC laws' jurisdiction specifically recognizes lawful objects as groups to the civil action in AIFC courts, natural people, not merely workers in employment issues, may engage in civil and commercial disputes as individuals and corporate executives.

The DIFC Court of First Instance has a more extraordinary jurisdiction than the AIFC Court of First Instance. The claim must include the DIFC or any of its organizations and any Center Establishment or Center Licensed Establishment. Unless the parties have opted out, disputes in which only one of the parties is a corporation formed inside the DIFC or a registered branch of a firm established outside come within the jurisdiction of the DIFC Courts. However, if there are poor connections between the right and the Center, the theory of forum non-convenience may apply.

Whether or not any party to the contract is present, the DIFC Court has jurisdiction over claims "incurred or in connection with" contracts entered into, signed, completed in whole or in part, or to be performed in the DIFC based on the stated or implicit conditions of the contract [1]. This section does not note that such transactions must be governed by DIFC law, as the AIFC regulations stipulate. Claims "arising out of or connected to any occurrence or transaction which has been entirely or partially conducted inside [the] DIFC and is linked to DIFC activity" will also be heard by DIFC Courts (DIFC Judicial Authority Law, 2004). For example, if the accident happened inside the DIFC or the contribution occurred there, and the violation or donation is connected to DIFC financial activity or assistance, the DIFC Court will have jurisdiction over any issues emerging from the breach or donation.

All civil and commercial disputes involving business organizations initiated within the QFC, irrespective of where contractual obligations are performed; between QFC management agencies and companies formed within both the QFC and Qatari resident individuals or entities incorporated in Qatar but not within the QFC are all subject to the QFC Court's jurisdiction. Civil and commercial disputes between commercial organizations initiated in the QFC and their contractors, i.e., contracts with commercial entities established in the QFC, are also subject to the jurisdiction of the QFC Court because they do not belong to any other categories of individuals or legal entities. The QFC Court, like the DIFC, will have jurisdiction over matters involving just one party to the Centre, regardless of whether the contract is linked to the QFC's operations (Sharar, Al Abdin, Mohammed 2016).

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

Finally, the QFC Court has jurisdiction over instances involving QFC commercial organizations and their personnel, such as employment disputes between QFC firms and their foreign employees. Employees who register a complaint with the QFC Employment Standards Office, on the other hand, will not be allowed to appeal the QFC's decision to the QFC Court (Zambrana-Tevar, 2019). Unless they opt out of the jurisdiction, the "ADGM's Court of First Instance" has jurisdiction over "civil and commercial disputes arising out of or about a contract or a transaction undertaken in whole or in part in the Global Market, or to an event that happened in the Global Market" (Herrera, Urquidi, 2019). As a result, it does not seem that the location of the parties to the dispute has an impact.

3. Prompt Compliance

The choice of court agreement is a common foundation for jurisdiction, whether the parties are central participants or are authorized to function in each Center. It may be advantageous to foreign investors who are incorporated in the host country and do business with local organizations owned or associated with the host government, such organizations may be inclined or permitted to assert to such "domestic" courts without authorization, and as such courts are not subject to the jurisdiction of foreign courts or arbitral tribunals.

However, the AIFC Court Regulations give jurisdiction over "disputes transferred by agreement between the parties [...]," the Court may deny jurisdiction or transfer any litigation to another court in Kazakhstan if it thinks it desirable or suitable. If it doesn't work because the subject is sufficiently pertinent to the AIFC, the AIFC Court seems to have the authority to decide whether or not to take jurisdiction. The QFC regulations are even more unclear, stating that "the Court will consider the explicit agreement of the parties that the Court will have jurisdiction" (QFC Court Rules, 2009).

The application agreement must be in writing, according to the DIFC and ADGM laws, although the DIFC rules do not specify the written form. The DIFC Court Registry can receive entitlement forms from associations if they are attended by a court selection agreement in the precise wording specified in the practical instructions. However, the DIFC Court has the discretion to decide its authority when the legal proceedings are begun. Lastly, the respondent's acceptance of the facilities may not imply that he is relinquishing his right to appeal to the authorities of DIFC Court, as long as the claim is filed within a set time frame.

3.1 Governing Law

The levies imposed by British legislation in these four financial hubs have piqued the general public's interest. The "Dubai International Financial Center" stated that "The oasis of common law in the proximity of the continental legal system"

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

(Krishnan, 2018). "Part-time" juries from common law countries had appointed, like in certain English-speaking Caribbean nations. The case is adversarial. Revocation orders, freezing orders, and inspection are common law litigation tools. The quantity of actual uses of English law, on the other hand, varies from Center to Center.

The principles defining the AIFC's scope and the laws that AIFC courts apply are unclear. The "AIFC Court Regulations and AIFC Court Rules are Procedural Laws" are thoroughly comparable to the English Code of Civil Procedure. According to the ruling, "the AIFC's activity is controlled by a decision of the Board of the Astana International Financial Center Court, which is based on the principles and statutes of the laws of the United Kingdom and Wales, as well as the standards of the world-famous financial center" (Zambrana-Tevar, 2019). The Court of AIFC is also "constrained by the AIFC Acting Law and may also take into consideration final AIFC Court judgments in connected issues as well as final judgments of courts of other common law jurisdictions."

The AIFC's "Acting Law" is made of

[the AIFC] Constitutional Statute; AIFC Acts, which are not inconsistent with this Constitutional Statute and which may be based on the principles, legislation, and precedents of the law of England and Wales and the standards of leading global financial centres, adopted by the AIFC Bodies in the exercise of the powers given by this Constitutional Statute; and the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by this Constitutional Statute and AIFC Acts (AIFC Constitutional Statute, 2015).

As a result, Kazakh law merely plays a supporting role, and case law may only "inform" a court ruling. Given the preceding, the AIFC's substantive law shall be the Central Laws and Regulations, as well as any law agreed to by the parties - unless it contradicts Kazakhstan's public order or policy - or any rule that the Court deems best relevant to the nature and circumstances of the dispute.

The AIFC Regulation clarifies this problem on AIFC Acts. Section 40.2 seems to require the AIFC to be used in regulatory concerns; otherwise, "the law agreed upon by all the parties involved," the regulations of such country "most closely connected to the circumstances and facts of the persons concerned," and Kazakhstan law owing to the system are the relevant laws.

'[a]n explicit choice of a governing law in a contract is effective against all Persons impacted by the decision,' according to the AIFC Regulation on AIFC Acts. 'The existence, validity, effect, inter-pretation, and execution of [the] contract, or any provisions of [the] contract, including any formality requirements,' is governed by this legislation. The contract is regulated by the Acting Law of the AIFC' in the absence of an explicit preference.

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

The contract's relevant law governs the ability and power of agents. In the arrangement amongst the third party and the agent, if the latter is acting as a representative or principal, the principal's rights and responsibilities to the third party are governed by applicable legislation. A clause on the legislation applicable to legal subrogation is also included, nearly entirely based on "EU Regulation Rome I's, Article 15". Its own set of rules governs the Dubai International Financial Center. To deal with the substance of the issue, the DIFC Court may allow implementing the local laws unambiguously selected through the litigants. The DIFC internal law can be performed if no other choice exists, especially regarding the supervisory role. In the lack of DIFC dispute resolution norms, the "laws of England and Wales" - and other common law nations – possibly used, as well as decisions from other jurisdictions. Whether the UAE's local law may be the preferred legislation for litigants in a DIFC dispute? Perhaps, the establishment of the legal system of DIFC is considered to be a definite legal system. However, the parties have no justification and cannot adopt UAE law since the DIFC Court may apply foreign domestic laws (Isidro, 2021).

Where the choice of law of the parties' contradicts communal policy or public morality, the regulations selected by the litigants in DIFC action will have no right to be implemented. In the situations of the QFC and the AIFC, this reference to public morality also becomes a reference to public order, and it may be a severe reminder that certain Muslim nations' norms and traditions vary from those of the West. Even though these centres are intended to attract vast numbers of foreign workers and their families, the phrasing of the harsh bill does not seem to allow for any cultural adaptations. If an explicit choice of law conflicts with DIFC overriding required requirements, such as those having regulatory substance, it may be ignored (Oseni, Umar, Hassan, 2015).

The ADGM calls for a comprehensive implementation of English and Welsh law, including English equity norms, inside the Center, "as it exists from time to time" (ADGM Application of English Law Regulations of 2015). Nonetheless, this bold absorption of an entirely foreign legal system comes with many caveats. English law shall be applicable "insofar as it applies to the circumstances of the ADGM", "subject to any modifications as those circumstances require," "subject to any amendment thereof" constituted by the ADGM laws, and "notwithstanding any changes made to the law of England after the enactment of ADGM regulations." The Centre will make such modifications; each new English law is expressly incorporated into the ADGM's legal system. Any inconsistency between English law and the statutes and principles of ADGM should be decided in favour of the last mentioned. Choice of law agreements is not explicitly mentioned.

The QFC Constitutive Legislation states that rules and guidelines of the QFC extend to the agreements, dealings, and settlements between firms founded or operated in

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

the QFC and persons or organizations based in the QFC or outside of Qatar unless the parties agree otherwise (QFC Law, 2005). A vague statement also states that QFC courts "generally settle matters based on" mutually agreed on laws. Still, if this choice contradicts the public order of Qatar, the QFC option, the policy of the public, or consumption law will be ignored for money.

According to the DIFC Court Rules, a party desiring to utilize the findings of an inquiry into a non-DIFC legal action as evidence must submit an early notice, stating the issue of the investigation's conclusion as well as the Court's evidentiary process. The notice must state if expert testimony on foreign law will be presented, along with the foreign law's duplicate document. The ADGM Court Regulations provide for specialist testimony on foreign law and, in certain situations, the filing of judicial judgments when such a legal point is heard in the context of international law (ADGM Court Regulations, 2016).

4. Judgments and other judicial decisions are recognized and enforced

Within the AIFC, there is an AIFC Court; the AIFC's courts may adopt regulations or practical guidance to ensure those judgments and other arbitral decisions are adequately enforced. As with other centres, new rules and agreements with local or foreign courts for the motivation of recognition and enforcement should be anticipated in the future. In reality, the AIFC is an associate of the "SIFoCC (Permanent Forum of International Commercial Courts)" that may help with conceding and execution via MoUs and informal agreements.

Judgments of the AIFC are to be enforced in Kazakhstan "in the same manner and on the same conditions as decisions of onshore" courts. Parties essentially initiate a petition to the AIFC Court for an 'execution order' and then translate the judgments into Russian or Kazakh. The AIFC Court has already reached an agreement with the Republican Chamber of Private Bailiffs, responsible for implementing domestic court orders. According to reports, Kazakhstan's Senate is working on a bill to add the AIFC court to the list of courts, and the AIFC court's judgments and orders will be carried out by the Minutes in line with local legislation (Bookman, 2020). Despite this prospective legal shift, enforcement processes may remain challenging, mainly if AIFC courts give remedies that Kazakhstan's legal system does not provide.

Kazakhstani domestic court verdicts "are to be executed in the AIFC in line with [the] legislation," according to Kazakhstani law (AIFC Constitutional Statute, 2015). This clause might suggest that Kazakhstani judgments will have a similar impact on the AIFC as they do everywhere in Kazakhstan. It is unlikely that the Court of AIFC will be required to implement the national Civil Procedure Code in these situations. It might alternatively be interpreted as a gift of authority to the 'onshore' courts on the grounds of enforcement, parallel litigation, or *res judicata*.

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

Except for the possibility of obtaining a certified copy of an AIFC judgment, there is no mention of foreign judgments being recognized and enforced inside the AIFC or AIFC court decisions being recognized outside the AIFC. The AIFC is very important in terms of international enforcement. Courts are excluded from the host country's domestic judicial system since the AIFC's architects could have done differently and did not follow the DIFC's lead in this regard. It might imply that parties to AIFC action cannot take advantage of Kazakhstan's limited recognition treaties, particularly those with the "Commonwealth of Independent States (CIS)" and the treaties used by the courts in Kazakhstan (Kassenova, 2020). If the AIFC Court's judgment is not classified as a judgment of the "Court of the Republic of Kazakhstan," not just the treaty mentioned earlier may apply. Still, the country seeking recognition may also apply internal recognition regulations based on reciprocity, which usually involve judgments issued by courts of judicial organs in some countries.

An AIFC court award (opposite to an IAC arbitral award) couldn't be designated as an arbitral award recognized under the New York Convention (NYC) since an AIFC court is not an arbitral tribunal. Although the term "arbitral award" is defined by the NYC as "an arbitration conducted by a permanent arbitral institution," submitting an arbitration always requires the parties' consent—the AIFC courts may have jurisdiction without the need for a court agreement—and the parties to arbitrate must appoint an arbitrator. Even though Kazakhstan denies the AIFC's status as a domestic court, other nations' courts may conclude that the AIFC is, after all, a judicial institution of a sovereign state with the same characteristics as any other judicial institution and that its judgment must be for acknowledgement. An independent nation may split its form inside its boundaries in any manner it sees appropriate and creates specialized judicial institutions as required, all while remaining a cohesive political and legal entity in the eyes of the rest of the world.

Furthermore, suppose the Republic of Kazakhstan has ratified an international treaty that includes terms vary from the Constitutional Regulations (AIFC). In that case, the international treaty's requirements essentially are followed (AIFC Constitutional Statute, 2015). The paragraph above appears to guarantee that global judgments and arbitral decisions be recognized and enforced within the AIFC, but not the other way around, according to the treaty ratified by Kazakhstan. To implement decisions of foreign courts within the AIFC, AIFC courts must operate municipal courts in Kazakhstan. Still, admission of AIFC court verdicts outward of Kazakhstan may not be benefited from these agreements.

Lastly, nevertheless of the AIFC court's kind and position, or the IAC's ruling, it is apparent that the AIFC is located on the territory and within the jurisdiction of the Republic of Kazakhstan. Foreign creditors should benefit from a practical and enforceable recognition treaty or any subsequent individual arrangement if a

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

decision debtor has assets in the area with the AIFC. Like every other country, Kazakhstan carries international responsibility for its territory unless a treaty specifies otherwise. Furthermore, concerning administrative and criminal proceedings, Kazakhstan's domestic courts and other state agencies maintain particular residual jurisdiction over persons and legal companies incorporated inside the AIFC. Like foreign courts, its financing comes from public monies, which may encourage the AIFC courts' inclusion in the Kazakh judiciary. All of this demonstrates that the AIFC and AIFC courts are not entirely distinct from the host country's legal system.

The DIFC's identification and enforcement standards have been tested more thoroughly in the field. The DIFC Court, the Dubai Court, other government bodies and international judicial institutions have signed various agreements and memorandums of understanding. While MoGs seem to be successful in identification and enforcement, their legal character remains a concern. The Memorandum of Understanding (MoU) among the "Supreme Court of Kazakhstan and the DIFC Courts," for example, states that it "has no binding legal force" and "does not constitute a treaty or act" (Koster, Harold, and Mark, 2018). A DIFC implementation judge is also in charge of enforcing offshore decisions inside the DIFC, which is completed totally in conformity with the internal laws of DIFC's and court regulations.

Before the DIFC Court in Dubai may execute a judgment or court order, it should be ultimate and enforceable, deciphered into Arabic, and authorized by the DIFC Court. The executive party should acquire an implementation letter from the DIFC Court to the Chief Justice in Dubai and later submit an execution request to the execution judge in the "internal" Dubai Court, the implementation letter, and the certified conversion. The Dubai courts' execution judge will deal with any objections to the implementation, although he will not evaluate the claim's merits. It will be carried out in line with Dubai's procedural laws, much as the verdict or order of the Dubai Internal Court. Interim orders issued by the DIFC, such as freezing orders, are also enforced by Dubai onshore courts, but not search rankings.

The UAE Procedures Law controls the implementation of DIFC judgments in other emirates, stating that the competent enforcement magistrate in Dubai will submit a DIFC judgment or instruction to the enforcement court in the UAE terrain for execution. Any procedural complaints submitted by the previous execution judge in another emirate will be sent to the implementation judge in Dubai, as would one's asset obtained due to the execution sale. It's unclear if DIFC courts may send DIFC rulings straight to the ultimate UAE execution judge outside of Dubai in reality.

Because the DIFC Court is part of Dubai's legal system, its verdicts and conclusions benefit from the UAE's international treaty involvement [2]. The DIFC Court may additionally be utilized as a 'pipeline jurisdiction,' permitting internal recognition of

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

global judgments and arbitration proceedings for the DIFC and DIFC legislation, with the goal of later enforcement in Dubai or the UAE, however other than the Dubai Centre.

Before or after the DIFC judgment is rendered, a party who has submitted to the DIFC Court's jurisdiction or whose dispute falls under the DIFC Court's jurisdiction for any other reason may agree to "any dispute arising out of or relating to the following causes" without paying any money to the DIFC Court. The judgment creditor might choose which judgment to transfer to arbit.

It further allows the DIFC performing party to convert its DIFC judgment into an arbitration award of the DIFC and the London Court of International Arbitration, allowing it to be recognized and enforced under the more appropriate New York City in New York Convention and a more significant number of countries to be parties to the arbitration award. Alustath is skeptical about the latter option because (a) an affirmative award would not qualify as arbitration for the motivation of the NYC since the arbitrator would not settle any severe substantive issues, and (b) there can be no proof of leaving, and (c) Foreign courts will be violated by confirmation decisions; otherwise, these courts will have authority over the mechanism for recognizing and enforcing court judgments. Under the New York Convention, an arbitral tribunal may turn a party's settlement agreement into a recognized and enforceable arbitration award, but only if applicable arbitration rules and regulations are followed.

The Abu Dhabi Global Market and the Ministry of Justice in Abu Dhabi also signed a Memorandum of Understanding on mutual execution of the judgment, enabling the ADGM Court to select an executive judge for the Ministry of Justice in Abu Dhabi to carry out the decision outside of the ADGM. Creditors can instantly appeal to the Department of Justice (ADJD) of Abu Dhabi to enforce their Abu Dhabi Global Market Court judgments. Only decisions of other Emirates or the Ministry of Commerce are recognized inside the ADGM if an agreement is established in advance.

The ADGM Court will deal with the acknowledgment and execution of international verdicts and overseas arbitral awards in compliance with the UAE Conventions and its internal procedural rules. When a foreign court that is not a party to the applicable treaty makes a ruling, the ADGM Chief Justice, after discussing with the ADGM Chairman and certifying that it would give equal substantive treatment, directs the foreign Court to be regarded as a "recognized foreign court." Its monetary judgments are deemed "recognized foreign courts," excluding tax payments. The foreign judgment or provisional compensation order should be considered ultimate and decisive "notwithstanding that an appeal may be underway against it, or that it may still be susceptible to review in the courts of the originating court." Foreign decisions must be registered during the six years of the judgment with the ADGM Courts.

The ADGM court will not reconsider the case's merits and will only refuse recognition if the foreign judgment is executed in whole or in part (partial execution is also possible); If the decision cannot be implemented in the nation where it was rendered; If the originating Court isn't competent to hear the case; If the debtor is not given enough notice; if the judgment was acquired by deception; If the right to rule does not belong to the person submitting the registration application; if the judgment is in violation of the "ADGM or Abu Dhabi General Policy"; or if the exposition of the case is already the subject of a final judgment by another court; or if the case's subject matter is already the subject.

In the following conditions, a foreign court of the first instance is regarded to have jurisdiction: (a) if the debtor willingly comes before the Court in an opponent's action, either the plaintiff or the counterclaim; (b) if the debtor is a legal person or is domiciled in the Court's jurisdiction, the entity is registered following the Court's laws. If the debtor resides in the Court's jurisdiction or is a legal entity, the debtor is registered according to the Court's rules. If an appeal against foreign judgments is pending, the debtor's ADGM court has the authority to rescind recognition of the registration or to postpone the cancellation request.

The QFC's internal rules state that the QFC Courts' judgments and orders are verdicts of Qatari courts, and thus "capable of enforcement and execution by Qatari courts as would be a judgment or order of any other Qatari court" (QFC Court Rules, 2009). Qatar's authorities shall offer colossal assistance to the QFC Courts as is required for implementation. Though, a QFC enforcement judge will be "mainly responsible for the execution of the Court's judgments, decisions, and orders," according to the QFC Court regulations. The application for the enforcement of the QFC ruling should be directed first to the enforcement court, which has the jurisdiction to impose penalties and orders and then to the appropriate Qatari authority or authority, where it should be translated into Arabic.

The QFC does not directly address the recognition of QFC decisions made by other Emirates or outside the UAE and the glory of international judgments and judgments issued by different UAE local courts. Referring to a QFC Governance as a local government in Qatar, on the other hand, may imply that the latter has all of the benefits of a Qatari arbitrator. The QFC Court, on the other hand, must acknowledge the international ruling under the same terms as the Qatar Court.

5. Courts' Responsibilities and International Judicial Cooperation

The courts of these centres Finance may issue warrants for custody, custody, search, sale, or preservation of related property, orders to enter premises, orders to freeze and search warrants, orders to provide documents and proof of custody, the appointment of guards or trustees, or a demand from a litigant to surrender his identification and provisional payment, amid other possessions. The AIFC Court

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

Rules' list of available interim remedies and orders, as well as the procedure for granting them, is identical to the DIFC Court Rules' list.

The regulations of these centres courts also address international civil cooperation under different titles about requests for help from foreign courts, but only for the start of civil litigation that has previously started or is now going to begin. These courts may issue various orders addressing witness examination, ordering witnesses to take a deposition, producing documents, or inspecting property based on an appropriate application backed by evidence.

The ADGM Court guidelines further provide that witnesses may be forced to testify, even if they are not under the ADGM Court's jurisdiction but are in Abu Dhabi. An examiner or commissioner may be appointed by The Court of ADGM to record the evidence "beyond the jurisdiction" for this purpose. The Rules of ADGM Court further indicate that "any person nominated by a foreign state's court or other judicial body shall have the ability to administer oaths in the ADGM to gather evidence for use in civil proceedings" (ADGM Courts Regulations, 2016).

5.1 The 'Offshore' Courts and Arbitration Centers Relationship

The analysis of four economic centres has created arbitration tribunals or dispute resolution centres to offer arbitration and mediation services as substitutes for their external judicial systems. These groups are self-contained, with their legal personality, budget, and internal board of directors, President, and CEO. Additionally, some experts are designated as globally known specialists from the common law countries to serve on these regulatory and supervisory bodies, just as they have been nominated to serve on courts. In other circumstances, each Center collaborates with more experienced arbitration institutions to design its arbitration system (e.g., LCIA at DIFC and ICC at ADGM). The ADGM Arbitration Center, on the other hand, only offers a limited number of arbitration hearings and is not a mature arbitration institution that regulates and supervises arbitration processes. Such arbitration processes are distinct from those used by other arbitration institutions in the host nation and the host country's arbitration rules and regulations. The arbitration statutes of the AIFC, ADGM, and QFC specifically state that the host country's arbitration rules are not applicable inside the particular financial Center.

Arbitral awards rendered inside the four financial centres may be enforced as if they were the offshore courts' decisions – either within the Center or within the host nation. As a result, the DIFC and DIFC courts may judge based on the judgment provisions. In contrast, inside the AIFC and "in line with" Kazakhstan's domestic laws, the AIFC Courts necessarily identify and implement judgments issued under the norms of Kazakhstan's other arbitration organizations. Awards rendered by these countries' arbitration tribunals may be overturned if they violate their laws or rules (DIFC Arbitration Law, 2008; AIFC Arbitration Regulations, 2017). The

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

UNCITRAL Model Law provides the sole grounds for setting aside offshore arbitral verdicts; any reference to domestic legislation refers to the core law, whereas any reference to public policy refers to the host country's public policy.

Though the AIFC Court declared that the AIFC decision would be implemented in Kazakhstan similarly to the AIFC Court's decision, the AIFC also adds that such rulings "will conform to the Republic of Kazakhstan's arbitration institution" (AIFC Constitutional Statute, 2015). This stance may seem contradictory since some local practitioners are astonished and frightened that the country's local courts may be utilized as an appeals court for arbitral rulings, as they have been in the past. The external Court may also carry out temporary reliefs ordered by the arbitral tribunal and help collect evidence, such as issuing summonses to witnesses according to its procedural norms. Within each financial Center, the offshore courts recognize foreign arbitral decisions in line with each Centre's unique rules and laws. The reasons for denial of recognition are essentially the same as those used by NYC. If Dubai or Kazakhstan is a signatory to the DIFC or DIFC recognition agreement, the treaty will prioritize the two financial centres' arbitration rules and internal recognition procedures.

5.2 The Courts' Independence and Management Judges' Appointment and Removal

Any adjudicatory mechanism's success may be determined by its financing and independence. Analyzing the appointment procedure, maintaining discipline, and sacking judges (particularly chief justices, who is considered a pivot in courts' administration), court registrars, and directors of arbitration centres may be effective ways to measure a court's independence during the investigation. It's also crucial to look at their financial independence and the process of preparing and submitting budgets and yearly financial statements to the host country's authorities. The judges of these courts are likewise protected from responsibility by the statutes and regulations of these courts. Another strategy to ensure independence and due process is to ensure that judicial proceedings are made public.

On the advice of the President of the AIFC, the President of the Court and other judges of the AIFC Court are appointed and removed by the President of the Republic of Kazakhstan (AIFC Constitutional Statute, 2015). Other than the Chief Justice, all AIFC justices are appointed after consultation. In the same way that the QFC judges may be removed for bad health, insolvency, criminal offences, or significant misbehaviour, AIFC judges can be removed. Because its Chief Justice may create an inquiry method to investigate charges of wrongdoing, the AIFC regulations may lend a level of independence to the removal process (AIFC Court Regulations, 2017).

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

The DIFC's Chief Justice and other judges are selected straightly by Dubai's independent state, but the rest courts' appointments are made in cooperation with other authorities, perhaps adding independence. For example, the ADGM Courts Committee, that is constituted of at least five members selected by the Executive Committee of the Emirate of Abu Dhabi, the head of the ADGM Court is appointed by the Emirate's ruler's advisory committee, which is made up of several government ministries and other local authorities. Upon the basis of the nomination by the Chief Justice, the ADGM Board of Directors appoints the other justices of the ADGM Tribunal. The Chairman and judges of the QFC Regulatory Courts and other courts (e.g., civil and commercial courts) are made by the "Qatar's Council of Ministers." In the event of illness, bankruptcy, a criminal offence, or significant misbehaviour, they are removed by the same body.

Although AIFC has its budget, it specifies paying money to the AIFC court "in line with the Republic of Kazakhstan's budget items" (Ibid: Art. 19). The DIFC's Dispute Resolution Authority has its budget, including the Courts' budget. The ADGM has the same level of financial freedom. The QFC Courts also have their budget, although the Emirate's budget regulations do not apply in this circumstance.

The Court's budget and yearly financial accounts are generally determined by the chief judge of these foreign courts. The ultimate approval of the court budget is entrusted to the government entity in the DIFC, the Abu Dhabi Global Market, and the Qatar Financial Center. In contrast, it is assigned to the central agency in the DIFC. Judges' compensation is typically distributed by the same person or institution appointed and removed judges. The remuneration of judges on the AIFC platform is not subject to reduction. In nations where currency exchange rates vary dramatically, paying international judges in hard currency instead of local Kazakh currency has an economic benefit (e.g., Kazakhstan), though, without particular regulation, like in Kazakhstan. Other essential responsibilities of the chief justice include choosing the registrar, executive judges, and other court officials and staff, overseeing their daily operations, creating or recommending special courtrooms, and, in certain situations, authorizing or developing courts procedures and additional central standards advice. The strength of the judges on the site might potentially be a good measure of how efficient it is. In the case of the AIFC, however, there are sometimes simple suggestions "enough to deal with issues before the court expeditiously" (Ibid: Art. 10). Judges' appointment and renewal, reasonable character requirements for meetings, English language competency, age limitations, expertise, professional experience, and educational and other qualifications in common law jurisdictions all have considerable freedom. Judges are usually permitted to hold office in other jurisdictions while serving in the courts of major financial centres.

6. Conclusions

The popularity of offshore operations offices that offer dispute resolution services is expanding in regimes keen to entice overseas investors. Still, their judicial and legal structures are flawed or unappealing to these prospective investors and their legal advisers. However, we have cause to suspect that efforts to put these procedures in place would be better used for the country's overall legal and judicial reforms. These measures will adequately fit the country's complicated constitutional framework, which still needs development. The journey is lengthy, with progress in independence discrepancy, separation of powers, and most importantly, the rule of law. It may be more rewarding when lawyers and businesses have a high level of trust in local courts. Some jurisdictions in Europe and Southeast Asia have done this by simply opening the English part of traditional commercial courts to international lawyers and providing full hearing rights to international lawyers.

Although AIFC legislation strives to keep its actions and Participants hidden from the rest of the nation, there is a risk that it will not gain adequate confidence; if there are any questions concerning their interpretation or how to deal with local courts, don't hesitate to get in touch with us. Unlike the DIFC, overseen by the "UAE Federal Supreme Court and the Dubai Supreme Court," the AIFC is explicitly excluded from Kazakhstan's domestic legal system. As a result, based on the following constitutional legal features of the Act, it endures being determined if the country's Supreme Court would appropriately undertake the coordinating function. Communication with the AIFC is one of the responsibilities of the "International Council of the Supreme Court of the Republic of Kazakhstan" in this respect.

The amount of unpredictability can affect law firms in Kazakhstan, who must now advise clients on including the conditions of court selection and arbitration in any contract produced and negotiated, as well as the AIFC and IAC Court's jurisdiction. However, if there is a strong link between external and internal institutions, these outer courts may become a formidable force, pulling the country's whole legal and judicial system behind them. There may be numerous mutually beneficial benefits if these ties are excellent and local courts do not consider these courts as "uninvited visitors." If the district court is too excited about its jurisdiction, problems may develop.

In this situation, charges of vagueness and irresponsibility in international commercial and investment arbitrations may be unjustified since the offshore Court's new procedures seem to provide openness and are subject to sovereign government scrutiny. However, it is unclear if the broad appeal of these tribunals - the elite in international arbitration who experienced parties can only approach - applies to them. Most conflicts in the DIFC are about employment might indicate a different direction.

Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

Personnel from the courtroom following British law by British courts seem to be a good idea for the whole corporate world, particularly in the Persian Gulf nations with a long connection with the UK. Given the UAE's and Qatar's cosmopolitan populations, English-speaking courts may provide comfort to "foreigners," but they may also strengthen Anglo-Saxon culture's worldwide impact.

On the other hand, Kazakhstan has a significantly smaller international English-speaking community. Despite President Nazarbayev's resignation in March of last year, it remains to be seen how many multinational enterprises have been enticed by the charismatic President Nazarbayev. Like the disastrous Almaty Financial District, some believe this will be merely another bluff. A few individuals take advantage of the government funds allocated to this new grandiose plan. The procedural benefits of British litigation, such as disclosure and case law, may make these mechanisms more appealing. Still, they are perhaps, perceived as biased by possible complainants in other parts of the host country. They may not demonstrate that they are willing to submit to his jurisdiction in this new financial position.

Offshore courts of OFCs are sometimes referred to as "jurisdictions of refuge" and "jurisdictions inside jurisdictions" for practical reasons. They may be compared to arbitration, which is being investigated within the context of non-nationalization theory, as an example of evasion of national justice. International business courts and foreign courts may be used to demonstrate how postmodern nations suddenly reverted to medieval Europe. The abandoning of Napoleon's rational and equitable justice concepts in the nineteenth century resulted in a more intriguing but more chaotic power allocation.

Acknowledgements

The authors thank the anonymous reviewers and editor for their valuable contribution.

Funding

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Authors Contribution

The authors confirm the contribution to the paper as follows: study conception and design, data collection of the study has conducted by Alina; while the co-author Malik has conducted the analysis and interpretation of the results, and drafted the manuscript. Both authors reviewed the results and approved the final version of the manuscript.

Disclosure Statement

The authors have not any competing financial, professional, or personal interests from other parties.

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Alina, B., Malik, Z. U. D., (2022)

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Alina, B., Malik, Z. U. D., (2022)

The Establishment of the Court of Astana International Financial Center (Aifc) in the Wake of Its Precursors

Notes:

- [1] Art. 5.A.1.b; CFI 018/2016 Standard Chartered Bank vs. (1) Fal Oil Company Limited
(2) Investment Group Private Limited.
[2] With the Gulf Cooperation Council Agreement of 1996, the Riyadh Agreement of 1983, and bilateral treaties with Tunisia, France, Egypt, China, and Kazakhstan, the UAE has signed a number of multilateral accords.