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*AIFC Court: Theory and Practice*

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# Secção I

## Investigação Científica\*

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# AIFC Court: Theory and Practice

## Tribunal AIFC: Teoria e prática

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**ABSTRACT:** Currently, society in Kazakhstan, as in other developed countries, is being formed under the influence of digitalisation and the globalisation of the economy. In this context, the Astana International Financial Centre is a priority for the development of information and financial services in Kazakhstan and the competitiveness of the country's economy, which suggests the need for its in-depth study. The purpose of this study is to analyse the theoretical and practical foundations on which the activities of the Astana International Financial Centre court are based. For its successful achievement, the method of analysis and synthesis, comparison, formal legal, deduction, and generalisation were used. The findings describe the different aspects of the Astana International Financial Centre and its court. Accordingly, the core essence of such a centre, its main features and characteristics, which are reflected in its development, have been identified. Also, during the practical analysis of the object of the study, the procedural framework on which the Astana International Financial Centre court is based was established, its principles and the factors influencing its effectiveness were examined. As a result, it has been argued that Astana International Financial Centre is a well-functioning financial structure that relies on international investors and other actors, thereby enhancing Kazakhstan's investment climate and its place in the global economy. Given that the subject is relevant in academic circles, its practical value is revealed in its potential as a primary source for subsequent academic studies and as a methodological guide for practitioners on the improvement and development of Astana International Financial Centre.

**KEYWORDS:** economic globalisation; assets; conflict resolution; investments; Anglo-Saxon system of law.

**RESUMO:** Atualmente, a sociedade no Cazaquistão, tal como noutros países desenvolvidos, está a formar-se sob a influência da digitalização e da globalização da economia. Neste contexto, o Centro Financeiro Internacional de Astana é uma prioridade para o desenvolvimento dos serviços financeiros e de informação no Cazaquistão e para a competitividade da economia do país, o que sugere a necessidade do seu estudo aprofundado. O objetivo deste estudo é analisar os fundamentos teóricos e práticos em que assentam as actividades do tribunal do Centro Financeiro Internacional de Astana. Para o efeito, foi utilizado o método de análise e síntese, comparação, jurídico-formal, dedução e generalização. Os resultados descrevem os diferentes aspectos do Centro Financeiro Internacional de Astana e do seu tribunal. Assim, foi identificada a essência deste centro, as suas principais características e particularidades, que se reflectem no seu desenvolvimento. Além disso, durante a análise prática do objeto do estudo, foi estabelecido o quadro processual em que se

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baseia o tribunal do Centro Financeiro Internacional de Astana, foram examinados os seus princípios e os factores que influenciam a sua eficácia. Consequentemente, foi argumentado que o Centro Financeiro Internacional de Astana é uma estrutura financeira que funciona bem e que depende de investidores internacionais e de outros actores, melhorando assim o clima de investimento do Cazaquistão e o seu lugar na economia global. Dada a relevância do tema nos círculos académicos, o seu valor prático revela-se no seu potencial como fonte primária para estudos académicos subsequentes e como guia metodológico para os profissionais sobre a melhoria e o desenvolvimento do Centro Financeiro Internacional de Astana.

**PALAVRAS-CHAVE:** globalização económica; activos; resolução de conflitos; investimentos; sistema de direito anglo-saxónico.

## 1. Introduction

In analysing the present context, attention should be drawn to the extreme influence of the globalisation process on the development of states. It certainly concerns different spheres of society, affecting the activities of public authorities and public administration. Such changes are also relevant for Kazakhstan, as the Strategy “Kazakhstan-2050”<sup>2</sup> sets the goal of becoming one of the 30 most developed countries in the world by 2050. The establishment of the Astana International Financial Centre (AIFC) should be seen as a promising step towards improving and strengthening Kazakhstan's current financial system towards highly developed countries with a high investment climate. At the same time, the necessity to examine directly the activities and foundations of the AIFC court is prompted by its priority for society, not common in other post-Soviet countries. The novelty of the approaches and provisions, and the designation of the AIFC and its court in Kazakhstan are the subject matter of the study. Consequently, there are a number of issues and provisions that require in-depth consideration, necessarily reflecting the specificities not only of Kazakh society but also of the entire Central Asian region. The reason for this is that the activities of the AIFC court should be central to the resolution of civil and commercial disputes in AIFC and the Central Asian region<sup>3</sup>.

The issue has undoubtedly received greater relevance as a result of the issuance of Resolutions of the Council for the Management of the Astana International Financial Centre<sup>4</sup>, as its legal status was enshrined at that time.

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<sup>2</sup> Strategy “Kazakhstan-2050”. 2012. <https://cutt.ly/RCJW4xz>.

<sup>3</sup> Opening speech. 2022. <https://court.aifc.kz/ru/an-introduction/>.

<sup>4</sup> Resolutions of the Council for the Management of the Astana International Financial Centre. 2016. <https://aifc.kz/files/legals/391/file3/b-c-bc-0-30-2-a-87ab.-0-1.7.2021-4-o-a09b0.pdf>.

Discussions on how to organise its activities, and the extent of the jurisdiction of its decisions, have been on going to this day. In this context, it is worth noting that such a study was undertaken by T.C. Nguyen, N.T. Nguyen, D.H. Vo<sup>5</sup> who attempted to distinguish the activities and jurisdiction of the national courts of Kazakhstan from that of the AIFC. The authors have managed to qualitatively address this issue, but the aspect of reconciling international approvals with the decisions of the AIFC remains unresolved. Rather controversial is the argument of A. Baimoldayeva<sup>6</sup> who argues that the activities of the AIFC court contain a number of risks that contradict the basic principles of international law. According to the author, such a stance is not justified, as this body was developed based on provisions within the limits of the current legislation of Kazakhstan, which excludes the possibility of endowing it with such a characteristic as being unconstitutional. Furthermore, the fundamentals of the AIFC court were explored by D.H. Vo and N.T. Nguyen<sup>7</sup>, who established the relationship between the development of AIFC and Kazakhstan in the international arena, in the context of economic and investment relations. Their findings are quite in-depth, but require further elaboration, by analysing statistics on the number of international investors attracted to this international financial centre in recent years.

One must agree with A. Bulatov and E. Sergeev<sup>8</sup>, who has succeeded in defining the legal nature of the AIFC court in his study. For a more in-depth analysis, the experience of similar international centres should be examined to determine the common and distinctive features between them. To establish the legal status of judges of the AIFC, Y. Zhang<sup>9</sup>, compared them with national judges. However, the author believes that in this context it would be more appropriate to examine the regulations governing these bodies and characterise them independently.

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<sup>5</sup> NGUYEN, T.C., NGUYEN, N.T., VO, D.H. 2020. Necessary conditions for establishing an international financial center in Asia. *Cogent Business & Management*, 7(1), 182-195.

<sup>6</sup> BAIMOLDAYEVA, A. 2022. The Establishment of the Court of Astana International Financial Centre (AIFC) in the Wake of its Precursors. *Journal of Legal Studies*, 29(43), 19-41.

<sup>7</sup> VO, D.H., NGUYEN, N.T. 2021. Determinants of a global financial center: An exploratory analysis. *Borsa Istanbul Review*, 21(2), 186-196.

<sup>8</sup> BULATOV, A., SERGEEV, E. 2021. International financial centers as channels for foreign investment inflow to European cities. *Journal of Globalization Studies*, 12(1), 101-116.

<sup>9</sup> ZHANG, Y. 2022. Defects and Challenges of Current International Financial Governance. *The Change of Global Economic Governance and China*, 1, 151-168.

The purpose of the study is to examine the theoretical and practical provisions on which the operation and development of the AIFC court are founded. To this end, the study carried out a number of tasks, namely: to examine the theoretical content of the concept of an international financial centre; to establish the essence of AIFC; to define the specifics of the AIFC court; to characterise its starting points and the procedural provisions on which it is based; and to consider promising directions for the further development of the AIFC court.

## 2. Materials and Methods

The study topic is conventionally divided into two parts, namely the theoretical and the practical. The method of analysis and synthesis was used to study the theoretical component. Thus, the study of the concept of AIFC, its foundations and properties were based precisely on the method of analysis. The main issue under investigation has been divided into separate categories, namely international financial centres, and courts of international financial centres. Also, a method of synthesis was used to identify the characteristics of the AIFC court and to establish its characteristic features. It was possible to draw together the aspects derived from the analysis and examine the relationship between the AIFC and the AIFC court. In addition, the analysis method was used to study the provisions of a number of regulatory and other documents. Among them are Strategy “Kazakhstan-2050”<sup>10</sup>, Resolutions of the Council for the Management of the Astana International Financial Centre<sup>11</sup>, Constitutional Law of the Republic of Kazakhstan No. 438-V “On the Astana International Financial Centre”<sup>12</sup>, Civil Code of the Republic of Kazakhstan<sup>13</sup>, Law of the Republic of Kazakhstan No.

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<sup>10</sup> Strategy “Kazakhstan-2050”. 2012. <https://cutt.ly/RCJW4xz>.

<sup>11</sup> Resolutions of the Council for the Management of the Astana International Financial Centre. 2016. <https://aifc.kz/files/legals/391/file3/b-c-bc-0-30-2-a-87ab.-0-1.7.2021-4-o-a09b0.pdf>.

<sup>12</sup> Constitutional Law of the Republic of Kazakhstan No. 438-V “On the Astana International Financial Centre”. 2015. [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=3;-106#pos=3;-106](https://online.zakon.kz/Document/?doc_id=39635390&pos=3;-106#pos=3;-106)

<sup>13</sup> Civil Code of the Republic of Kazakhstan. 1994. [https://online.zakon.kz/document/?doc\\_id=1006061#sub\\_id=0](https://online.zakon.kz/document/?doc_id=1006061#sub_id=0).

261-IV “On Enforcement Proceedings and the Status of Bailiffs”<sup>14</sup>, AIFC Court Regulations<sup>15</sup>.

Comparisons between AIFC and other international financial centres were made through a benchmarking method. Thus, it has been possible to identify their common and distinctive features, and the principles that underlie their functioning. Furthermore, the method of comparison allowed for a discussion of the topic under study, namely by comparing the views and positions of academics on the AIFC court. The method of deduction was used to determine the logical structure and the order in which the results were presented in the study. Thus, at an early stage of the investigation, a general theoretical analysis of the categories that form the object of the presented study was carried out, which enabled the general provisions of the topic in question to be developed. These provisions were further elaborated by establishing a practical framework for the operation of the AIFC court.

The study examined various normative documents and regulations containing specific terms related to the legal circle. The formal legal method was applied to ensure their accurate and qualitative interpretation, allowing such lexical constructions to be correctly appealed to during investigation. To form concise and, most importantly, meaningful conclusions, the study used the method of generalisation. Accordingly, on its basis, the findings obtained were studied, and the main aspects of the study were identified and reflected in the conclusions. Moreover, the synthesis method was also employed in the consideration of prospective areas for the implementation of future studies. The study was conducted in three stages. The first stage defined the organisational foundations, namely the outline of the investigation, purpose, and approach. This stage also introduced a study of the theoretical aspects of the AIFC and its court. At the second stage, practical provisions and approaches were identified and recommendations for the further development of AIFC in Kazakhstan were formulated. The results were also compared with similar and differing

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<sup>14</sup> Law of the Republic of Kazakhstan No. 261-IV “On Enforcement Proceedings and the Status of Bailiffs”. 2010. [https://online.zakon.kz/document/?doc\\_id=30617206&sub\\_id=0&pos=3;-106#pos=3;-106](https://online.zakon.kz/document/?doc_id=30617206&sub_id=0&pos=3;-106#pos=3;-106).

<sup>15</sup> AIFC Court Regulations. 2017. <https://aifc.kz/files/legals/68/file3/53-0.pdf>.



perspectives of other authors. The third stage summarised the findings of the study and drew conclusions.

### 3. Results

Kazakhstan's economic development is realised through various approaches and instruments, one of which is the formation of an international financial centre. In this context, it is the AIFC, which was formed following the adoption of the Constitutional Law of the Republic of Kazakhstan No. 438-V "On the Astana International Financial Centre"<sup>16</sup>. This legal act defines the basic organisational and procedural framework on which the activities of the AIFC are to be implemented, but before analysing them, it would be useful to define the concept of an international financial centre to understand its nature and role for the state. Thus, an international financial centre is a place where financial institutions, specialised credit and financial institutions carrying out international monetary, credit, financial, securities and gold transactions are located. Cambridge Dictionary defines an international financial centre as a city where a lot of financial activities happen, and there are many banks and financial organisations, and often a stock exchange<sup>17</sup>. The significance of this kind of centre for the state that hosts it is that it allows for a significant increase in the level of financial infrastructure development in the country concerned, thereby dynamically increasing financial resources. There are three components that need to be considered to shape the investment climate of a financial centre, namely the existence of a stable currency, economic freedom, and active and mobile markets<sup>18</sup>.

It is expedient to analyse the mission and purpose of an international financial centre from two perspectives. The first is characterised by the geographical location of such a centre, in particular its banks, insurance companies and financial intermediaries. The second is based on the grouping of

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<sup>16</sup> Constitutional Law of the Republic of Kazakhstan No. 438-V "On the Astana International Financial Centre". 2015. [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=3;-106#pos=3;-106](https://online.zakon.kz/Document/?doc_id=39635390&pos=3;-106#pos=3;-106)

<sup>17</sup> Financial centre. 2022. <https://dictionary.cambridge.org/dictionary/english/financial-centre?q=+Financial+Centre>.

<sup>18</sup> ANIKIN, N.S. 2020. The influence of English common law on the development of young international financial centers (IFCs) on the example of the IFC "Astana". *Global Science Capabilities*, 11, 299-303.

centres by the relevant sectors of the economy. However, both are typically transparent and focused on international clients, in particular investors, which in turn distinguishes an international financial centre from a national one. The advantage of establishing an international financial centre in the territory of a state, in this context of Kazakhstan, is that it contributes to increasing the dynamics of capital attraction in the country, which certainly develops its investment attractiveness. Considering it in terms of social change, the formation of the centre provokes more financial revenues for the budget, which in turn helps to address unemployment and other socio-economic issues in the country. An analysis of the concept and essence of an international financial centre suggests that its formation is an extremely complex process, requiring both resources and time. Such features are prompted by some factors determining the procedure for the establishment of a centre. These include a stable and developed financial system; a strong currency with a stable exchange rate; a political and social climate; a convenient geographical location; and a developed and improved financial infrastructure. In addition, these factors should include the openness of the country's economy to the free movement of capital; positive attitudes towards business and economic freedom of entrepreneurs and investors; modern information transfer technologies; highly qualified human resources; compliance of society with applicable international standards, in particular in the implementation of accounting, reporting, oversight and regulation<sup>19</sup>.

The analysis of the theoretical aspects underlying the formation of an international financial centre showed that one of the highest priority means of preserving state financial and also technological sovereignty, where it is located, while implementing within it a full international market mechanism based on the management of global financial flows. As for the AIFC court, which is the key objective of this study, it has a number of features, the consideration of which is a prerequisite for its further development. The first step is to identify the scope of the activities of AIFC that cover countries in Central Asia, the Eurasian Economic Union (EEU), the republics of Transcaucasia, the Middle East, the territory of Western China, Mongolia, and countries in Europe. Such a geographical setting

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<sup>19</sup> BATYRBEKOVA, D.S., UKIN, S.K., SAULEN, N., SHUNAYEVA, S.M., ZHUSSUPOVA, G.B. 2019. Astana International Financial Centre-A Legal Enclave in Kazakhstan. *Journal of Advanced Research in Law and Economics*, 10, 1390-1398.

was not chosen randomly but was determined by the purpose of the development of the AIFC. It consists in supporting and developing the non-resource sector of the country's economy, in the context of improving and expanding the capital market. Its implementation involves the issuance of government securities and shares owned by private and quasi-public companies in the context of Standing payment order and Initial Public Offering. The activities of the AIFC are intertwined with the principles underlying the Dubai International Financial Centre (DIFC). This choice is not random, as it is driven by common features that are characteristic of the structure of Kazakhstan's and the United Arab Emirates' state economies. To a large extent, these properties are attributable to the large volume of financial capital that is generated by oil sales transactions. Also common to both is the need for diversification, which can be realised through the design and development of new sources of revenue<sup>20</sup>.

A distinctive feature of the AIFC is that it is formed and implemented on the principles and provisions of the law of England and Wales. This approach follows from the fact that London has been regarded as the financial centre of the world over the last century, particularly in economic relations<sup>21</sup>. It can be argued that communication and interaction with international investors, who base their activities on the principles of English law, is facilitated. Thus, AIFC is genuinely an exceptional institution, capable not only of sustaining Kazakhstan's course towards modernisation, but also of actively reflecting on the development of the business environment, enhancing its success and efficiency. This is evidenced by the opportunities provided by this financial centre for its subjects, namely investors and entrepreneurs. Accordingly, investors are provided with opportunities to analyse securities of both public and private issuers not only from Kazakhstan, but also from other countries in the region. In turn, businesses are finding it much easier to access investors, including international and regional financial mechanisms.

One of the most important features of the AIFC is its structure, namely the presence of a court. This body, like the AIFC, is characterised by a particular

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<sup>20</sup> How the Court of the Astana International Financial Centre works: the story of its head. 2021. <https://pravo.ru/opinion/232644/>.

<sup>21</sup> ZAMBRANA-TEVAR, N. 2019. The Court of the Astana International Financial Centre in the Wake of Its Predecessors. *Erasmus Law Review*, 1, 122-135.

novelty. It consists in the fact that such a court is the first in the Central Asian region to represent a full-fledged judicial system based on the provisions and rules of the law of England and Wales. This context reveals its unique character as Kazakhstan uses the Romano-Germanic legal system. In addition to the above provisions, in its activities, the AIFC Court is guided by the leading international standards defined for the settlement of civil and commercial conflicts arising in the AIFC. This property determines the limitations of its legal jurisdiction since it applies only to those disputes that are formed as a result of the activities of the AIFC subjects. In addition, the jurisdiction of this court also includes conflicts assigned to it by agreement of the parties<sup>22</sup>. Particular attention should be paid to the fact that the AIFC court is not part of the national judicial system of Kazakhstan and is therefore independent in its activities. The independence of the AIFC court is also expressed in the fact that it uses its own procedural provisions, which were developed from the rules and approaches common to the law of England and Wales, and the standards of other successful international financial centres. The priority property of the AIFC is that its activities are implemented through the eJustice electronic document management system<sup>23</sup>. Its main advantage is that litigants can file a lawsuit electronically, which allows the process to be undertaken from anywhere in the world. Thus, it is possible to speak of the modernisation of such a court, particularly the absence of a geographical limitation on the parties to the dispute.

The AIFC Court has a Chairman and eight judges. At the same time, it has a separate team whose activities revolve around administration, pre-trial proceedings, and preparation of cases, all under the supervision of the Registrar. When characterising the features of the AIFC court, it should be noted that the subjects of the appeal are empowered to use the services of a lawyer. It comes as an advantage as the interests of litigants can be represented not only by lawyers from Kazakhstan, but also from any country, provided that they have a valid professional licence to practice law. The modernisation and development of the AIFC court is also featured in the fact that its office, which is located in Nur-Sultan, is equipped with special IT systems that allow judges to hold conferences,

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<sup>22</sup> Opening speech. 2022. <https://court.aifc.kz/ru/an-introduction/>.

<sup>23</sup> The AIFC Court launched the eJustice system. It allows you to file claims from anywhere in the world. 2019. <https://cutt.ly/RCJOiVF>.

hearings and other necessary events remotely. The activities of the AIFC court can be outlined not only from a legal perspective, but also in terms of education. It actively engages with the best international educational institutions and promotes an international-class higher legal education. The advantage of this factor is that it provides a mechanism for improving the professional competence of future lawyers and judges directly in the Republic of Kazakhstan. Thus, describing the practical provisions of the AIFC court, it should be emphasised that it is an effective mechanism for resolving civil and commercial disputes of the AIFC, directly in the Central Asian region, within which it was established. In addition, the AIFC court creates and develops a fully independent common law court system for the speedy resolution of civil and commercial disputes, one that is reliable, fair, and accessible, and that has the flexibility to meet the needs of international business.

A characteristic feature of the AIFC is the limitation period. In this context, this property is an advantage over the system of national judicial proceedings. Under the legislation of the Republic of Kazakhstan, specifically Article 178 of the Civil Code of the Republic of Kazakhstan<sup>24</sup>, the limitation period is three years. In turn, within the AIFC court, such a period is six years after the cause of action arises, which is common in English law. Another feature of the AIFC court is that it appoints an enforcement judge, whose task is to supervise the enforcement of judgments, which is not typical of the national court system in Kazakhstan. Regarding the enforcement of judgments of the AIFC court, this issue is governed by a special provision, namely Article 13(7-9) of the Constitutional Law of the Republic of Kazakhstan No. 438-V “On the Astana International Financial Centre”<sup>25</sup>, which provides that the enforcement of AIFC court decisions in Kazakhstan is carried out in the same manner and under the same conditions as the enforcement of Kazakhstani court decisions. Therefore, it can be argued that the execution of AIFC court decisions should be based on the provisions of the Law of the Republic of Kazakhstan No. 261-IV “On Enforcement Proceedings

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<sup>24</sup> Civil Code of the Republic of Kazakhstan. 1994. [https://online.zakon.kz/document/?doc\\_id=1006061#sub\\_id=0](https://online.zakon.kz/document/?doc_id=1006061#sub_id=0).

<sup>25</sup> Constitutional Law of the Republic of Kazakhstan No. 438-V “On the Astana International Financial Centre”. 2015. [https://online.zakon.kz/Document/?doc\\_id=39635390&pos=3;-106#pos=3;-106](https://online.zakon.kz/Document/?doc_id=39635390&pos=3;-106#pos=3;-106)

and the Status of Bailiffs”<sup>26</sup>, but that the court decision should be controlled by a private bailiff.

Following this analysis, it would be useful to highlight the main objectives of the AIFC Court Regulations<sup>27</sup>. First of all, it is worth highlighting the independence of the judges who make up the AIFC court, as this is the aspect that lies at the heart of its work. By having judges from different countries, the court seeks to ensure the confidence of the international business and legal community that the activities of the AIFC court are conducted in a transparent and, most importantly, impartial environment, which excludes the possibility of external pressure. Besides, the purpose of such a court is to support and provoke higher levels of regional trade, by asserting the certainty of the subjects of application for the administration not only in the AIFC, but also in the Republic of Kazakhstan and the Central Asian region. An analysis of the structure and approaches to the implementation of decisions in the AIFC court suggests that one of its activities is to entrench a modernised court, with leading international standards. Naturally, the review and decision-making of an AIFC court cannot be based on solitary work, which implies the necessity for it to cooperate, and establish quality business links with other courts. Such relations should be established not only within the Republic of Kazakhstan, but also within the Central Asian region and even within those systems of jurisdictions with which the Republic of Kazakhstan establishes and implements trade relations. An equally important focus of the AIFC court is its support for educational and outreach activities, expressed through the promotion of higher legal education, which should be implemented to qualitatively address the needs of lawyers and judges, certainly within the Republic of Kazakhstan and Central Asia.

#### **4. Discussion**

Following a general theoretical analysis of the provisions and the practical principles of the AIFC court, it would be useful to discuss the findings to establish common and differing viewpoints of authors. Thus, attention should be paid to the

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<sup>26</sup> Law of the Republic of Kazakhstan No. 261-IV “On Enforcement Proceedings and the Status of Bailiffs”. 2010. [https://online.zakon.kz/document/?doc\\_id=30617206&sub\\_id=0&pos=3;-106#pos=3;-106](https://online.zakon.kz/document/?doc_id=30617206&sub_id=0&pos=3;-106#pos=3;-106).

<sup>27</sup> AIFC Court Regulations. 2017. <https://aifc.kz/files/legals/68/file3/53-0.pdf>.

study by I. Bantekas<sup>28</sup>, in which he compares AIFC with DIFC. Here, it was possible to identify the relationship between the two, in particular, the author argues that they share similar properties in both the economic and legal spheres. The author of this study agrees with this statement since the results of the investigation led to similar conclusions. In this context, the general view is that the economies of both countries, namely Kazakhstan and the United Arab Emirates, are developed and filled with capital from oil revenues, with both models formed based on English law. Another argument in favour is that of D. Mytko<sup>29</sup>, who advocates the need for the development and further improvement of the AIFC court in his study. Although it is developed and innovative, the provisions on which it is based, along with the approaches used in the work, must be constantly updated. Such a requirement is necessary to guarantee that the AIFC court continues to qualitatively fulfil its tasks, considering the constant changes in society. The author believes that in such a case it is necessary to create a special sector in its system to timely respond to societal and legislative changes, including those in international law.

Special attention should be given to a study by O.A. Didenko and F.T. Sametova<sup>30</sup> in which authors argue that the national judicial system in Kazakhstan has more advantages than the AIFC court. They argue that it is more understandable for citizens and that its jurisdiction covers a wider range of social relations. However, the authors do not agree with this conclusion, as it is not entirely practical to compare the AIFC court with the national courts in Kazakhstan. This is because they do not resolve the same types of disputes, which consequently makes it impossible to compare them. At the same time, the AIFC court has exclusive jurisdiction, which separates it from other institutions. An equally debatable perspective is presented by M. Makhanbetaliyeva<sup>31</sup>, who stresses that the existence of the AIFC court is not necessary and does not require separate development. She argues that the existence of the AIFC already

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<sup>28</sup> BANTEKAS, I. 2020. The Rise of Transnational Commercial Courts: The Astana International Financial Centre Court. *Pace International Law Review*, 33(1), 1-41.

<sup>29</sup> MYTKO, D. 2021. Directions of offshore financial activity development in the conditions of globalization. *Challenges of Science Today*, 1, 137-139.

<sup>30</sup> DIDENKO, O.A., SAMETOVA, F.T. 2021. Theoretical and practical issues of legal translation (on example of documents of the Astana International Financial Centre court (the AIFC court). *Philological Sciences*, 61(2), 1-9.

<sup>31</sup> MAKHANBETALIYEVA, M. 2020. Astana International Financial Centre. Court and the analysis of their first judicial decision. *Interscience*, 16(3), 54-55.

determines the differentiation of economic relations in society that arise within its borders. Accordingly, she believes that conflicts arising during the financial centre's activities should be resolved in courts of general jurisdiction. The author, however, argues that such an assertion contains a number of disadvantages. In particular, as noted above, the area of relations arising between the subjects of the financial centre has its own specific characteristics, regulated by the relevant provisions. Such provisions have been developed directly in relation to the activities of the AIFC, which indicates its isolation from society and the need for individual dispute resolution. In addition, it can be argued that the position of M. Makhanbetaliyeva<sup>32</sup> is not practical because, as identified in the study, the AIFC is based on the principles of English law, whereas the courts of Kazakhstan are based on the Romano-Germanic legal system.

V.V. Yarkov, K.L. Branovitskii, V.V. Dolganichev<sup>33</sup> stated that the formation of an international financial centre in Kazakhstan contributes to the development of its investment climate. The authors agree with this statement since similar results were also obtained within the framework of this study. At the same time, attention should be paid to the factors that contribute to investment attractiveness, which they have highlighted in their study. They emphasised the need for preparation on the part of both Kazakhstan, namely business, and international investors. They believe it is a prerequisite for successful investment within the Almaty Financial Centre, through which the state economy can develop. They also highlighted the need to develop a system or mechanism in Kazakhstan that would be able to rationally regulate the revenues generated by the various operations within the centre. At the same time, it is important to analyse the state of various sectors of the state economy before distributing them, to ensure that the received assets are delivered in accordance with the needs of society. The approach of H. Yeung, F. Huang, Z. Bekmurzayeva, D. Janaidar<sup>34</sup> should be reviewed as they explore priority areas for further regulatory development that will not only regulate the AIFC but also its court. It assumes an

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<sup>32</sup> Ibidem.

<sup>33</sup> YARKOV, V.V., BRANOVITSKII, K.L., DOLGANICHEV, V.V. 2022. Interaction and Competition of Legal Systems: A Study of Civil Procedure. *European and Asian Law Review*, 5(1), 16-23.

<sup>34</sup> YEUNG, H., HUANG, F., BEKMURZAYEVA, Z., JANAIDAR, D. 2020. Institutional Development and the Astana International Financial Centre in Kazakhstan. *Washington University Global Studies Law Review*, 19(1), 53-82.



extension of the provisions and consequently the scope of social relations covered by the AIFC. In this context, the authors consider it appropriate to analyse statistical data and other information that would allow characterising the current state of the financial centre's investment attractiveness. Accordingly, based on the findings, the main weaknesses of the current system of AIFC should be identified, which, including through the issuance of a new legal act, would accelerate its development and effectiveness.

Also, the findings reached by W. Gu and J. Tam<sup>35</sup> should be taken into account. Their relevance is manifested in the fact that they are formed solely on the experience of Kazakhstan, in particular the specifics of its development and the trends that would be appropriate to involve the AIFCs in its activities. The authors agree that changes to the AIFC would have a positive impact not only on the centre itself, but also on Kazakhstan's economy at large, preceded by training that would be based on both human resource development and resources. In the discussion on the AIFC court, special attention should be paid to the study of V.V. Stepanova<sup>36</sup>. As part of her study, she examined the correlation between the Eurasian Economic Union (EEU) court and the AIFC court. She points out the contradictions that currently arise in prioritising the decisions of these institutions, as their jurisdictions differ from one another. Also, it was possible to qualitatively determine the areas in which the activities of these courts may overlap. However, she found that despite the differences in the legal systems governing the aforementioned courts, there has been no concurrent jurisdiction over the period of their operation. The author agrees with this assertion, noting that respecting the boundaries between the activities of the courts and avoiding the formation of divisions between their decisions is indicative of the high competence and professionalism of the personnel, namely judges.

It can therefore be argued that there are a number of institutions in the contemporary international arena that enable international cooperation and joint action between countries. The court of the Astana International Financial Centre, discussed in the study, is also a phenomenon that demonstrates the promise of

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<sup>35</sup> GU, W., TAM, J. 2021. The Global Rise of International Commercial Courts: Typology and Power Dynamics. *Chicago Journal of International Law*, 22(2), 443-492.

<sup>36</sup> STEPANOVA, V.V. 2020. Creation of the IFC "Astana" as a new stage in the constitutional and economic development of the Republic of Kazakhstan. *Bulletin of Alikhan Bokeikhan University*, 46(2), 156-156.

Kazakhstan's development in the context of a globalised economy. It should be noted that, so far, the institute has been doing a good job in fulfilling its tasks. Moreover, most of the considered arguments also suggest that its further development and importance for the society and state development of Kazakhstan is a priority. According to the author, the centre in question is relatively new to Kazakh society, which accordingly requires an educational policy regarding its scope of work as well as its objectives. This approach will accelerate its integration into society, which will contribute to its development and, consequently, to its expansion. As a result, the AIFC court is expected to be successfully consolidated as a promising role model within other financial centres.

### **Conclusions**

The conducted study shows that despite the fact that the AIFC court emerged only several years ago, it is a priority mechanism for the economic and legal development of Kazakhstan, indicating the need for its further improvement. This conclusion was reached through a comprehensive implementation of both theoretical and practical analysis of the topic. At the initial stage of the study, the general concept of an international financial centre was defined as a global location with a developed infrastructure that can attract and redistribute financial assets and provide services to financial market participants. At the same time, the study identified that the main difference between this type of centre and a national financial centre lies in its participants, as the international one is aimed at cooperation with international clients. Furthermore, the legal nature of the AIFC court has been defined. Respectively, the AIFC is formed in Kazakhstan, embodying the development of the national and regional financial sectors. Its activities are based on the expansion and improvement of capital markets, resource management, development of financial technologies, and monitoring of Islamic finance, along with private banking and the green asset industry. The investigation has established that the AIFC is a powerful mechanism with a number of advantages, among others for the socio-economic development of Kazakhstan.

The formation of such a body as a court within the structure of the AIFC is certainly a successful step not only for the direct development of the centre but

also for the role and place of Kazakhstan in the international economic arena. This is because the formation of a separate body regulating relations between AIFC participants raises its status, including among foreign investors. Accordingly, any disputes will be settled expeditiously and, most importantly, unbiased and justly. In the same way, the AIFC court's very existence undoubtedly increases the credibility of the institution, which induces more capital from investors and businesses. The subject matter requires further investigation as it has a number of other unresolved aspects, one of which is the comparative analysis of the AIFC and the EEC court system.

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