AIFC Venture Capital Practical Guidebook (Volume 1)

co-created

KPMG KINSTELLAR

Contents

Introduction

Disclaimer

AIFC Venture Capital Practical Guidebook has been cocreated by the Astana International Financial Centre (hereinafter – the “AIFC”), Kinstellar and KPMG Tax & Advisory.

Information in this document is not to be deemed or relied upon as legal opinion and should not be treated as a substitute for specific advice concerning any individual situation. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Executive summary

The Venture Capital (hereinafter – VC) industry is going through a transformation driven by global pandemic situation and sustained by technological and market development. The changes have led to a geographic expansion in the capital markets. One of the unintended benefits of the expansion has been the increased distance between the deal flow and investment institutions. Therefore, we believe that the AIFC may be considered as the attractive venue for both international and local VC players. It is a relatively young financial centre with flexible and understandable regulatory environment. This guidebook summarizes the AIFC legal framework applicable to VC funds and their management entities. On top of that, investors and start-ups will be introduced with the information about various organizational-legal structures available at the AIFC; investment deals structuring and ways of exit strategies.

This guidebook furthermore provides information about tax benefits that the AIFC has to offer to its participants. Conclusively, we present a comparative table of the AIFC tax regime and the tax regimes in Cyprus and Delaware since last two jurisdictions used extensively to structure investments in the Eurasian region.

Purpose

The first volume of the AIFC Venture Capital Practical Guidebook is designed to familiarize investors, fund managers, as well as start-ups with business incorporation, authorization and deal structuring processes in the AIFC. The guidebook was also written to provide practical information about VC tax matters that parties may encounter when doing business in the AIFC and Kazakhstan.

Chapter I

Introduction

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1. Fintech and VC landscape in Kazakhstan and the region

Located in the heart of Eurasia, Kazakhstan has a great potential for becoming the regional financial hub due to its regional demographics and historic role as a connecting belt between Europe and Asia. Market benchmark analysis found that the Kazakhstan fintech ecosystem is in its early stages of development, but there is a high potential for future growth. Growing demand for innovative financial products and services, in particular, from the population not covered by banking services or dissatisfied with the quality of the services provided by traditional financial institutions, as well as huge market size of the adult population accommodated in Central Asia and the post-soviet space are the most significant factors in the fintech market's development in Kazakhstan. The AIFC is also actively involved in the country's digitalisation programme. It is currently developing its innovative ecosystem that enables faster introduction of new digital solutions. The Centre has a holistic approach to the development of fintech ecosystem by supporting start-ups, delivering attractive conditions for established enterprises to enter the regional market, providing flexible regulation and connecting to the rich network of investors.

The total annual VC investment in 2019 globally remains higher than in previous years, both in total volume, medium size of deals and number of deals[1]. Investors around the world demonstrate an increasing interest in investing in VC, especially in the FinTech (which has become one of the most attractive sectors for investing globally[2]), AgroTech, EdTech and HealthTech industries.

Still, the amount of VC funding remains largely untapped in the region of Central Asia and the post-soviet space, creating a higher demand and lower competition for such services.

Recognizing the perspectives and opportunities of VC funding, the AIFC is one of first jurisdictions in the region to create favourable and growing ecosystem for alternative and innovative finance industry, including VC funds, crowdfunding operators, digital assets exchanges and digital banking.

2. Introduction to Astana International Financial Centre (Guide to the AIFC)

In pursuing the country's strategic objectives to diversify economy, attract investments and find new ways to improve its business environment, the Astana International Financial Centre ("AIFC") was established in Kazakhstan as a regional financial hub for the Central Asia, the Caucasus, the Eurasian Economic Union ("EAEU"), the Middle East, West China, Mongolia and East Europe.

According to the Global Financial Centres Index rating designed by independent experts at Z/Yen, the AIFC is ranked first among the financial centres located in Eastern Europe and Central Asia, being ahead of Istanbul, Warsaw, Budapest, Moscow and Baku.

> Being the first Common law jurisdiction in the Post-Soviet region, the uniqueness of the AIFC lies in its power to create its own legal and regulatory framework for financial, civil and commercial matters, which is based on the principles, legislation and precedents of the law of England and Wales and international standards.

[1] *Venture pulse Q42019, Global analysis of venture funding, KPMG, dated 15 January 2020*

[2] *ibid*

AIFC Bodies

AIFC Management Council

Definition of strategic growth areas for the AIFC and creation of a favourable environment for its development as a leading international financial services centre

AIFC Governor

Overview of interaction among AIFC bodies and its offices to ensure meeting AIFC's objectives

AIFC Authority

Administrative support for AIFC bodies

Astana Financial Services Authority

AIFC's independent regulator

AIFC Court

AIFC's independent judicial body

International Arbitration Centre

AIFC's independent dispute resolution institution

AIFC FinTech Hub

Support for start-up projects and companies in IT and financial technologies

AIFC Bureau for Continuing Professional Development

Personnel training and implementation of professional standards

AIX

Astana International Exchange

AIFC Green Finance Centre

Ensures development of green finance policy and green financing instruments

AIFC Expat Centre

Providing full range of services to foreign employees and their families

AIFC Business Connect

Support for potential and existing in the AIFC. Specialist services for registration, authorization, and deal sourcing

AIFC Academy of Law

An educational platform within the AIFC, established to provide legal educational programs on the AIFC Law

AIFC creates new opportunities for:

Investors

- highly attractive IPOs/ SPOs - securities of state-owned and private and public sector issuers
- AIX and partners – the Shanghai Stock Exchange, Nasdaq, Goldman Sachs, and Silk Road Fund
- favourable and reliable regulatory framework that is based on the positive experience of the world's leading private equity management centres
- favourable legal and regulatory environment for Islamic finance and banking, takaful and the Islamic capital market

Businesses

- favorable tax climate, independent currency regulation
- the extensive and simplified access to investments
- light Regulatory Sandbox regime to test new products & services in real life
- healthy Venture Capital Ecosystem and enhanced fundraising potential of the Central Asian and CIS start-ups

As part of developing its FinTech pillar, AIFC fully supports innovative companies through acceleration, incubation, mentoring programs and flexible regulation suitable for both start-up and incumbent FinTech firms.

AIFC Fintech Hub as one of the key bodies of the AIFC, is a meeting point for global start-ups, entrepreneurs, investors, industry's top experts and great talent pool. The AIFC Fintech Hub develops a more diverse and knowledgeable Fintech space in Kazakhstan and the region with a pipeline of opportunities for venture capital funds and financial institutions.

VC Support Division has been recently established in the AIFC Fintech Hub. The objective of the VC Support is to build healthy Venture Capital Ecosystem and enhance the fundraising potential of the Central Asian and CIS start-ups as well as deal-structuring capacity within the AIFC.

The network of investors includes international VC funds, angel investors, corporations, accelerators, and family offices. We are also building a strong relationship with local and regional start-up hubs, IT parks, universities, and international accelerators.

Chapter II

Guide to AIFC Legal Framework

The acting law of the AIFC is based on the Constitution of the Republic of Kazakhstan and consists of:

1. the Constitutional Statute;
2. AIFC Acts, which are 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 the Constitutional Statute; and
3. the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by the Constitutional Statute and AIFC Acts.

This guide will only address the most relevant AIFC Acts applicable to investor protection and firms doing business in the AIFC related to alternative finance, including VC funds and Crowdfunding platforms.

The Astana Financial Services Authority (hereinafter - AFSA) is the independent corporate and financial regulator of financial and ancillary services conducted from the AIFC, responsible for registration of legal entities and supervision of financial institutions, including regulation of firms responsible for managing or distributing Collective Investment Schemes, like VC Funds.

1. General Legal Framework

The AIFC General Legal Framework is based on best international practices and principles of English common law. The aim of the legal framework is to provide a concise and up-to-date set of laws that would be highly suitable for use by an international financial centre and would also fit well with the financial services regulatory system that was being prepared in parallel by the AIFC.

The AIFC General Legal Framework can be divided into three classes:

(a) Structural legislation, which includes codes for companies, and partnerships, together with Regulations on the AIFC Court and the AIFC International Arbitration Centre.

(b) Legislation on mainstream commercial law, including Contract (together with a special set of provisions on Unfair Contract Terms), Obligations, Personal Property, Security, Damages and Remedies, and Insolvency codes.

(c) Legislation to provide support for financial operations in the AIFC, which includes (i) general measures, such as Employment Regulations, and Data Protection, and (ii) specific measures of support requiring to be dealt with as part of the general law, rather than by regulatory rules. Examples of this last sub-class are Netting, and Payment System Finality.

In a nutshell, interested parties shall consult the AIFC General Legal Framework in relation to incorporation or registration of legal entities in the AIFC, as well as to data protection, contracts, and employment aspects.

2. Financial Services Framework

The AIFC Financial Services Framework outlines financial conduct and prudential requirements for offering financial services in or from the AIFC. The framework consists of several AIFC Regulations and Rules having general or specific applicability to certain types of services. The list of activities regulated in the AIFC is outlined in the AIFC General Rules Schedule 1 (Regulated Activities) and Schedule 4 (Market Activities).

In a nutshell, interested parties should consult the regulations and rules in the AIFC Financial Services Framework in relation to obtaining licence for offering financial services in the AIFC.

VC Framework

At present, the existing AIFC regulation framework enables a broad range of financial service activities, including capital markets, banking, insurance, Islamic finance, FinTech, asset management and private banking. It also offers an inclusive and robust environment for the development of financial services markets of the AIFC.

The activities of VC fund managers are regulated by the AIFC collective investment scheme regulatory regime (CIS Framework). The CIS Framework consists primarily (but not exhaustively) of:

— general requirements applicable to all financial services providers in the AIFC presented in the AIFC General Rules (GEN);

— financial conduct requirements that are presented in the AIFC Conduct of Business Rules (COB) and the AIFC Collective Investment Scheme Rules (CIS); and

— prudential requirements presented in the AIFC Prudential Rules for Investment firms (PRU INV).

The current AIFC framework on venture capital fund managers primarily represents an extension of the existing AIFC fund regulatory regime with little specific regulatory provisions on venture capital fund managers.

In this regard, AFSA is in the process of developing a new regulatory framework for VC funds and their managers to:

- revise existing eligibility criteria to qualify as VC fund and, if necessary, to develop additional ones in accordance with the best international standards and practices, including but not limited to, investor types, restriction/limits on leverage use, investment instruments, threshold requirements for portion of the capital to be invested in eligible companies, such as start-ups and innovative SMEs;
- simplify authorisation criteria in relation to, but not limited to, minimum base capital, key individuals and business conduct requirements; and
- consider introduction of additional financing instruments for VC funds, including but not limited to, equity and quasi-equity financing instruments.

Crowdfunding Framework

Recognizing the positive role of crowdfunding in providing alternative non-bank funding sources for firms with high growth potential to scale-up and regional market needs in development of crowdfunding services, AFSA has developed and introduced a regulatory framework for loan- and investment-based crowdfunding platforms in the AIFC.

In order to conduct crowdfunding activities the applicant must obtain authorisation from the AFSA. The activities of crowdfunding platforms are regulated by the AIFC crowdfunding framework which primarily (but not exhaustively) consists of:

- general requirements applicable to all financial services providers in the AIFC presented in the AIFC General Rules (GEN);
- financial and market conduct requirements presented in the AIFC Authorised Market Institution Rules, AIFC Conduct of Business Rules and AIFC Market Rules.

Currently, the AIFC regulatory framework on crowdfunding allows clients on the platforms to attract up to:

5 million USD (or equivalent) from retail investors

50 million USD (or equivalent) from accredited investors

per borrower or issuer in a 12 months period.

Chapter III

Guide to Registration in the AIFC

1. Organisational-legal forms available in the AIFC

Firms willing to establish their presence in the AIFC may choose from the list of following organisational-legal forms:

A new body corporate can be established in the organisational form of:

1. Private Company
2. Public Company
3. Open-Ended Investment Company
4. Closed-Ended Investment Company
5. Protected Cell Company
6. Restricted Scope Company
7. Special Purpose Company
8. General Partnership
9. Limited Partnership
10. Limited Liability Partnership
11. Non-profit Incorporated Organisation
12. Foundations

Registered Foreign Company/ Partnership may be registered in the AIFC in the organisational form of:

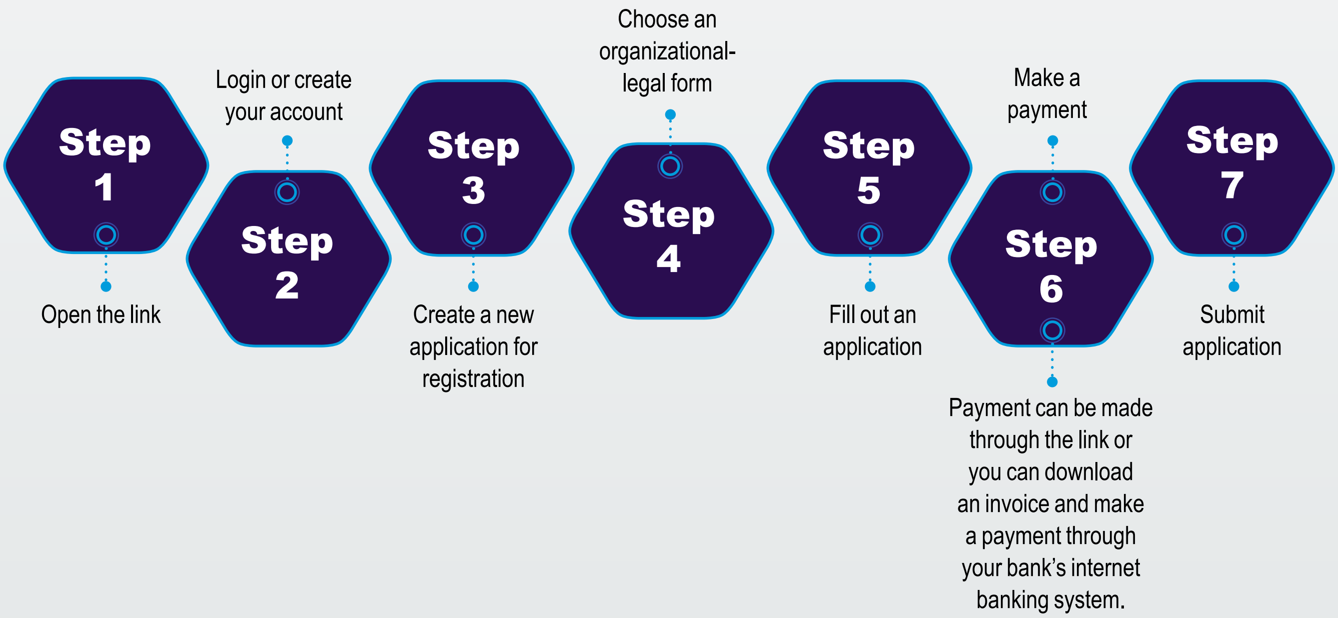
1. Recognised Company
2. Recognised General Partnership
3. Recognised Limited Partnership
4. Recognised Limited Liability Partnership

AIFC General Legal Framework described in the Part 1 of Chapter II provides Rules and Regulations for the legal entities formed in the organisational-legal frameworks given in the table above.

2. How to register your entity in the AIFC

AFSA Office of the Registrar of Companies receives online applications for registration via Digital Resident (Self-Service portal) portal.

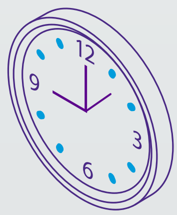
Submit the Application forms and required documents to the Self-Service portal: https://digitalresident.kz/



Approval Process:

1. All documents submitted to the Registrar of Companies are subject to checks. If the application is in order, a Certificate of Incorporation will be issued to the legal entity.
2. Certificate of Incorporation is a conclusive evidence that the requirements of the AIFC Regulations have been complied with and that the legal entity is duly registered under the AIFC Legal Acts.

AFSA aims at completing the registration process within 5 business days after accepting finalised application package.



3. Incorporation of new Holding Company in the AIFC

As an international financial hub with great modern-day infrastructure, the AIFC offers ample space for entities to situate their corporate offices within the jurisdiction of the AIFC. Holding companies, special purpose companies and other management offices can enjoy an ecosystem that allows easy and interchangeable access between the AIFC bodies, governmental institutions, foreign organisations, and other businesses.

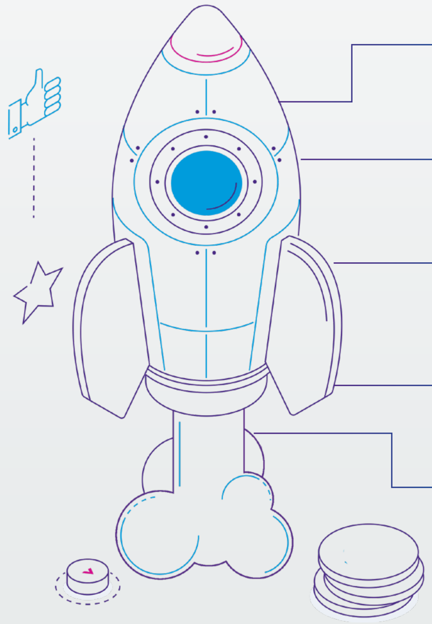
According to the AIFC Companies Regulations, a Holding Company is a holding Body Corporate that is a Company, which may be incorporated in the AIFC in any organisational-legal form. However, one of the most common organisational-legal forms for holding activities in the AIFC is a private company.

A reference to a Holding Company includes a reference to an Ultimate Holding Company, which is:

1. not itself a Subsidiary of another Body Corporate; and
2. the top-most Holding Company of a chain of Bodies Corporate that have a Subsidiary and Holding Company relationship with each other.

Broadly defined, a holding company is a company that does not have any operations, activities, or other active business itself. Instead, the holding company owns assets. These assets can be shares of stock in other corporations, limited liability companies, limited partnerships, VC funds, hedge funds, public stocks, bonds, real estate and etc.

Advantages of establishing a holding company in the AIFC:



- An opportunity to apply common law
- Protection of holding company assets
- Favourable tax regime (exemption from payment of PIT on dividends and capital gain)
- Holding activity at the AIFC does not require obtaining a license from the AFSA
- An opportunity of transfer of incorporation of a company from a foreign jurisdiction to the AIFC to restructure asset ownership.

How to Register:

A Holding Company in the AIFC is a form of commercial organisation with non-regulated activity. That is, the incorporator only applies to AFSA for Registration of the entity. After successful incorporation, AFSA issues the Certificate of Incorporation with “Permitted Activity: Activities of holding companies” label. AIFC legislation does not provide any specific requirements and restrictions to holding companies in relation to its organizational legal forms. The Registration process is described in the Part 2 above.

4. Transfer / redomicile of existing legal entities into the AIFC

‘Transfer of Incorporation’ is one of the options prescribed by the AIFC acts to register a Foreign Company in the AIFC. The main feature of this option of registration is that it allows redomiciliation of an entity from one jurisdiction to the AIFC and vice versa ‘as is’ without conducting liquidation of that entity in its original jurisdiction, if authorised by the laws of the jurisdiction in which it is incorporated.

What is ‘Transfer of Incorporation’?

The AIFC acts prescribe the ability of an entity incorporated in a foreign jurisdiction to be registered in the AIFC as a new legal entity, however it still continues to be the same legal person having all the property, rights and privileges, and being subject to all the liabilities, restrictions and debts, and remaining to be a party to any agreements entered into and legal proceedings commenced before its registration in the AIFC.

The procedure of registration of an entity by way of ‘Transfer of Incorporation’ consists of several steps and depends on the types of companies. The registration of a Foreign Company as a ‘continued’ entity is performed by the Registrar of Companies based on the Foreign Company’s application for continuation.

Benefits:

1. No need to establish a new legal entity
2. No need to transfer rights and obligations under existing contracts
3. Access to attractive AIFC tax and corporate regimes
4. Access to low-cost capital through the use of the AIX and management companies in the AIFC territory

Issues to be considered by a Foreign Company seeking its 'continuation' in the AIFC.

a) permitted jurisdictions

'Transfer of Incorporation' should be authorised by the laws of the jurisdiction in which a Foreign Company is incorporated. This means, that if the 'Transfer of Incorporation' to the AIFC is not allowed by the laws of the Foreign Company's incorporation, then its registration in the AIFC using such option will not be possible. For these purposes, during the redomiciliation process a Foreign Company submits to the AFSA a legal opinion of a law firm in its original jurisdiction based on which the Registrar of Companies decides whether redomiciliation of such Foreign Company to the AIFC will be possible. A list of jurisdictions, which allow 'Transfer of Incorporation' is posted on publicly available sources. The list includes Antigua and Barbuda, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Seychelles and other jurisdictions.

b) types of business to be conducted in the AIFC

A Foreign Company should consider if the activities which will be conducted in the AIFC are subject to obtaining a licence from the AFSA. In such case, the registration process for 'continuation' shall include the 'authorisation' step. The 'authorisation' step does not apply to a Foreign Company which will conduct non-regulated activities in the AIFC.

c) registration (redomiciliation) step for Regulated (Licensed) Activities

The filing package for registration of a Foreign Company undertaking Regulated Activities should be prepared in parallel with the 'authorisation' step and submitted immediately after completion of the 'authorisation' step.

d) timing for completion of redomiciliation process for:

Regulated Activities

Given that the entire redomiciliation process for a Foreign Company applying to conduct Regulated Activities in the AIFC encompasses completion of two steps, namely 'authorisation' and 'registration', therefore, the overall timing for completion of redomiciliation of such entities may take up to 2 months, depending on the quality of applications.

The redomiciliation completes following obtaining by the Foreign Company of (i) a Certificate of Continuation issued by the Registrar of Companies and (ii) a licence for the Regulated Activities issued by the AFSA.

Non-regulated activities

The redomiciliation process for a Foreign Company seeking to conduct non-regulated activities may take four to six weeks and completes following obtaining by the Foreign Company of a Certificate of Continuation issued by the Registrar of Companies.

5. Understanding the nature of the Syndicate investments within the AIFC Platform. Special Purpose Companies in the AIFC.

> A syndicate is a Body corporate created to make a single investment and led by experienced investors. Syndicates are private and may be financed by business angels and/or institutional investors.

Syndication has numerous benefits. The collective group of investors have a higher net worth and a larger network than angels working on their own. They are able to finance start-ups at earlier stages than most VCs. Syndicates also have a more diversified portfolio and a greater ability to pool resources. These resources include skills, contacts, and experts. Due to the nature of syndicate groups, investors can often develop more due diligence.

How Syndicate may be implemented in the AIFC

There can be several ways of creating syndicate funds in the AIFC.

1. Creating a Formal Syndicate. In case investments are generated from third party investors (retail investors and/or accredited investors)

Obtaining a Licence and incorporating a Self-managed fund, which is an internally- managed Domestic fund that does not have to be registered in the AFSA.

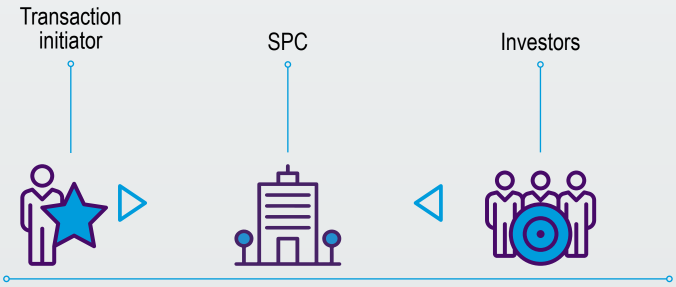
2. Creating Single Investment Vehicle. In case investments are generated from the investors that are in the same group as a General Partner and the arrangement comprises a closed-ended Partnership.

Opening any legal entity in the AIFC for the purpose of single investment. Licence is not required.

Normally, you would identify a Lead angel who acts as the interface with the entrepreneur/management team in co-ordinating the due diligence and agreeing the final negotiations and would then generally act for the syndicate in following the deal. However, you will sign the term sheet and other legal documents and subscribe to the shares as one legal entity, responsible for its investment decision.

6. Special Purpose Companies in the AIFC.

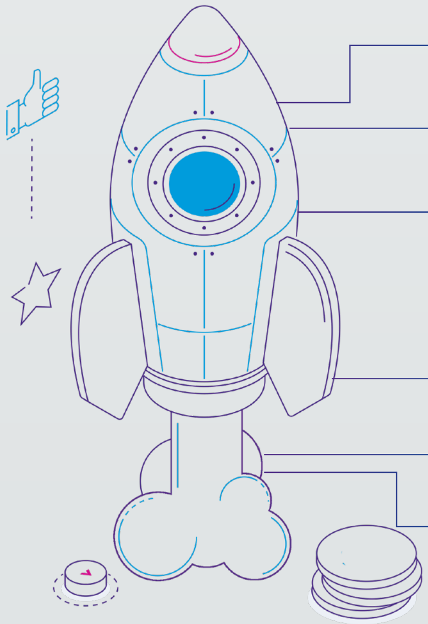
Special Purpose Company (hereinafter – SPC) is a company created for a specific project (also known as SPV or SPE). SPCs in the AIFC are incorporated to arrange specific structured financial transactions. For example, they help companies securitize assets, create joint ventures, isolate corporate assets, or perform other financial transactions.



Use of SPC in the AIFC for doing business

1. The acquisition, possession, or disposal of any asset (tangible or intangible)
2. Obtaining any type of financing (banking operations or capital markets), providing any type of collateral for its assets, providing any compensation or similar support to the benefit of its shareholder(s) or any of its subsidiaries, or entering into any type of hedging agreement
3. Financing of the Initiator or another SPC
4. Acting a trustee or agent for any participant in the Transaction
5. Any other activity approved in writing by the Registrar

Advantages of creating SPC in the AIFC:



- Limited liability
- No minimum share capital requirements
- No requirement to rent office in the AIFC, which allows reducing monetary, time and other costs. Also, SPC is not required to conduct principal business activity in the AIFC (but must maintain a registered office address and can be hosted by their appointed Corporate Service Provider)
- No requirement for holding an annual meeting of shareholders
- No restrictions on foreign ownership
- No requirement to file annual reporting (annual return) with the Registrar of Companies and audit accounts

Chapter IV

Guide to Authorisation in the AIFC

Firms willing to conduct Regulated or Market Activities[3] in the AIFC, including managing a Collective Investment Scheme or operating an Authorised Crowdfunding Platform must obtain authorisation from the AFSA.

There are two authorisation regimes in the AIFC:

1. Full Authorisation – immediately subject to full set of regulatory requirements applicable to the firm
2. Fintech Lab (regulatory sandbox) – special regulatory regime for Fintech firms with bespoke and gradual application of regulatory requirements

1. Full Authorisation

According to the AIFC CIS Rules, VC Fund is a type of Specialist fund that is engaged in Managing Collective Investment Scheme. VC Fund is managed and operated by the Fund Management Company, commonly referred as a General Partner. VC Fund, also known as Limited Partner(s), may be incorporated in the form of 'Closed-Ended Investment Company' or 'Limited Partnership', whereas the Fund Management Company may choose relevant organizational-legal form among various range of those prescribed in the AIFC platform.

2. Authorization Process of the General Partner

There are two processes which need to be completed with AFSA to establish a General Partner (hereinafter – GP) in the AIFC: Authorization (licensing) and Incorporation (registration).

Authorisation

Upon submitting the preliminary application, the AFSA will assess the forms and the documents and consider factors including those shown below:

a. Fitness and propriety of the applicant, its shareholders, and directors.

b. Track record and fund management expertise of the applicant and its parent company or major shareholders.

c. Ability to meet the minimum financial requirements prescribed under the Prudential Rules for Investment Firms.

d. Strength of internal risk management and compliance systems.

e. Business model/ plans and projections and the associated risks.

If the application is successful, AFSA will notify you on the application status and issue an 'In-Principle Approval' letter.

Registration

f. Contact the VC Support team: VC Support Division is at hand to support and guide Fund Managers. The services they provide include, but not limited to support the process of registration and authorisation.

g. Fund Management Company may be established in the form of any organisational-legal forms available in the AIFC.

h. You may apply online via the Self-Service portal or contact the office of the Registrar of Companies via email.

i. Registration fee is 300 USD (paid once).

VC Fund:

a) primarily invests in the equity share capital of unlisted businesses which are at an early stage of development;

b) VC fund may only be established, promoted, or marketed in the AIFC by a Person which is:

- a Domestic Fund Manager, licensed and authorized by the AFSA;
- Board of Directors (Self-managed Fund),
- Foreign Fund Manager, licensed and authorized by the foreign jurisdiction.

c) is a Collective Investment Scheme that is established or domiciled in the AIFC and managed by Domestic or Foreign Fund Manager;

d) is an Exempt Fund, the Units of which are Offered in the AIFC only by way of a private placement: to Persons who are Professional Clients[4];

e) is a Closed-Ended Investment Firm;

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[3] *The list of Regulated and Market Activities is outlined in the AIFC General Rules Schedule 1 and Schedule 4*

[4] *AIFC Glossary defines Professional Clients as: A Client that is either a Deemed Professional Client or an Assessed Professional Client. Meanings of 'Deemed Professional Client' and 'Assessed Professional Client' are defined in the AIFC Conduct of Business Rules – Parts 2.4 and 2.5, accordingly*

Registration of the VC Fund

VC Funds which are managed by Domestic Fund Managers

VC Funds which are managed by Domestic Fund Managers are not required to be registered in accordance with the AIFC CIS Rules, the AFSA must only be notified by the GP of its intention to manage an Exempt Fund.

GP may also elect the arrangement to be not regulated as a Fund if each unitholder/investor is a company in the same group as a Fund manager.

Requirements for notification

a. GP must notify the AFSA of its intention to manage a Fund as soon as reasonably practicable before the launch.

b. The AFSA may prescribe the form of the notification, which must include the following information:

- the Constitution of the Fund;
- the Offering Materials relating to the Fund; and
- such other information as the AFSA may prescribe.

VC Funds which are managed by Foreign GP

a. Foreign GP must apply to the AFSA to register the VC Fund

b. Define the organisational-legal form of the VC Fund:

- Investment company (closed-ended)
- Limited Partnership

c. Determine the Fund Manager

d. Include in the application for registration a declaration stating that Foreign GP is subject to regulation by a Financial Services Regulator:

- in a Recognised Jurisdiction; or
- in a jurisdiction that is not recognised by the AFSA

e. Submit to the AFSA a copy of its licence to manage funds granted by its home state Financial Services Regulator.

Winding up of the Fund

The Fund Manager of a registered Fund or relevant Centre Participant may request that the AFSA withdraws the registration of that Fund. The AFSA may withdraw the registration of a Fund if it is satisfied that to do so would not prejudice the interests of participants in that Fund.

3. Fintech Lab

Fintech Lab is a special regulatory regime that enables firms to test out new products and services in an environment that is exempt from standard regulatory requirements and allows AFSA to adapt regulatory approaches to keep up with innovation and build legislative frameworks tailored to the market needs.

In a nutshell, the Fintech Lab allows:

1. Firms licenced in foreign jurisdictions to test the regional markets with minimum resources and presence in the AIFC[5].
2. Start-up firms to provide activities regulated in the AIFC by gradually complying with regulatory requirements.
3. Both incumbent and start-up firms to test new products and technologies in live environment with real clients.

In addition, firms may apply for testing their Fintech solutions globally via the Global Financial Innovation Network (GFIN)[6] cross-border testing regime.

Benefits:

1. Regulatory certainty and guidance
2. Fully digital application process
3. Fast-track authorisation (~1 month to obtain licence)
4. Possibility to offer wider range of services
5. No fees
6. General AIFC benefits (tax exemptions, flexible regulation etc.)

[5] *In this case, the AFSA does not impose any limits on the number of Clients, size of funds, types of Clients given that they are performed by the firms regulated in foreign jurisdiction/-s (AIFC Financial Technology Rules Schedule 1)*

[6] *AFSA is the member of the Global Financial Innovation Network (GFIN), an international network of 50+ world-regulators and international organisations, including FCA UK, Hong Kong Monetary Authority, World Bank and others committed to supporting financial innovations in the interests of consumers*

Chapter V

Guide to Structuring Venture Capital Deals and Transactions in the AIFC

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1. Possible sources of investment at different stages of the business life cycle

Possible sources of investment in the company can depend on the stage of the company's development. In general, there are the following stages of venture capital financing.

The seed stage

This is the initial stage of a company which helps finance its first steps. Financing is usually needed for such things as market research, product development, employment of a founding team, etc.

Possible sources of financing:

1. Founders
2. Crowdfunding platforms
3. Incubators and accelerators
4. Angel investors
5. Seed venture capital firms

Start-up stage

At this stage, the company is already incorporated and working on developing its product. Or, it may have launched its product, established its clients base, and even have consistent cash flow, etc. The financing is necessary to further optimise the business model, its clients base and product offerings.

Possible sources of financing:

1. Angel investors
2. Seed venture firms

Early-stage

Early-stage

Funding received at this stage will often be used for manufacturing and production facilities, sales, and more marketing.

The amount invested here may be significantly higher than during prior stages. At this point, the company may also be moving toward profitability as it pushes its products and advertisements to a wider audience.

Possible sources of financing:

1. Venture capital funds
2. Direct investment funds
3. Corporates
4. Institutional investors

Expansion stage

At this stage, the company expands its business to foreign markets, acquires other companies, diversifies its products, etc.

Possible sources of financing:

1. venture capital funds (public, private)
2. direct investment funds
3. big corporations
4. institutional investors
5. asset managers
6. banks

Final stage

At this stage, an investor exits the company by way of an IPO, sale to a strategic investor or any other mechanism.

2. Process of financing through Private Placement

a) Equity financing

The process of financing may consist of the following stages:

- valuation of the company;
- due diligence;
- signing of legal documentation.

Legal documentation

After due diligence and valuation of the company the terms of equity funding are agreed in a letter of intent or a term sheet, and the parties enter into an investment agreement, which can also be called a share purchase agreement or subscription agreement and new articles of association of the company are adopted.

Investment agreement

Investment agreement is usually entered into between the existing shareholders, the investors and the company.

The investment agreement regulates:

- share issuance by the company and subscription to shares by the investors;
- protection of investors rights, such as warranties and indemnities, restrictive covenants, investor consent matters, and governance undertakings;
- relationship between investors and the existing shareholders (rights first refusal, drag-along and tag-along rights, etc.); and
- other matters.

Articles of association

Before completion of a transaction, usually new/amended articles of association are adopted. Articles of association are the main document of the company, which set out main rights and obligations of shareholders and regulate how the company is governed. For example:

- meetings of shareholders and directors;
- directors' duties and powers;
- distributions (dividends);
- voting proceedings;
- redemption and purchase of shares;
- rights attaching to shares or classes of shares;
- transfer of shares; and
- other matters.

Other documents

There may be other documents between the parties, depending on the peculiarities of the transaction, for example:

- voting agreement;
- right of first refusal and co-sale agreement;
- non-disclosure agreement; and
- other documents.

b) Debt Financing

Debt securities

The company may issue debt instruments, which can be bonds or bonds convertible into shares of the company (convertible bonds).

The process of issuing bonds may require preparation of a prospectus. However, depending on circumstances, preparation of a prospectus may not be required, if the offer of the bonds falls within various exemptions, provided for by the AIFC Market Rules. Such exemptions include, inter alia, the following:

a. the offer of the convertible securities is made or directed only at Accredited Investors; or

b. the offer is directed at fewer than 50 Retail Investors in any 12 month period; or

c. the offer is directed at investors who acquire convertible securities for a total consideration of at least USD100,000 (or an equivalent amount in another currency) per Person for each separate offer; or;

d. the total aggregate consideration for the Securities offered is less than USD100,000 (or an equivalent amount in another currency) calculated over a period of 12 months; or

e. other exemptions provided for by the AIFC Market Rules (MAR Rules).

If bonds are to be admitted to the Official List of the AIX, the company must submit to the AIX the listing application together with the supporting documents, pay the listing fees and verify information in the manner requested by the AIX.

The documents to be submitted to the IAX include, among other:

a. approved prospectus (if required) or offer terms (if no prospectus is required); and

b. a copy of the resolution of the authorised body of the company on approval of the listing and offer terms.

500,000 USD

It is worth noting that the company must ensure that the bonds, which it seeks to list have an expected Aggregate Market Value (as defined in the AIX Business Rules) on the AIX at the time of listing of at least USD 500,000 for the AIX listing.

In addition, the company may issue convertible bonds. Under the issue of the convertible bonds, the investor lends money to the company and becomes a creditor (bondholder) of the company. The bonds may be converted (possibly at a discount) into shares in the company in future or upon occurrence of a certain event, such as, for example, a sale or initial public offering (IPO) or a new equity fundraising.

The main benefit of issuing convertible bonds is that it gives a possibility to the parties to postpone setting a valuation until a date in the future.

Venture Debt

As the company grows, its ability to raise debt increases as a source of financing from providing focusing on venture debt. Venture debt is typically secured by instruments allowing to subscribe for shares at a pre-determined price or an option to participate in the company's next equity fundraising. The benefit of venture debt is that it does not substantially dilute founders' shareholding in the company.

Bridge Financing

Bridge financing (usually in the form of a bridge loan) is an interim financing option used by companies to enhance their short-term position until a long-term financing option becomes available. Bridge financing normally comes from a venture capital firm in the form of a loan or equity investment. When the main financing is provided, the bridge loan must be repaid.

3. Classes of Shares. Registration of different classes of shares in the AIFC

> Under the AIFC Companies Regulations, shares represent a share in the share capital of the company.

The AIFC Companies regulations state that subject to the articles of association and the terms of their issue, each share must:

a. give the right to vote at a meeting of the company;

b. represent a proportionate interest in the company; and

c. rank, if fully paid-up, in all respects equally with each other share of the same class of shares in the Company.

The AIFC Companies Regulations allows a company to create different classes of shares to the extent permitted by its articles of association.

For example, the articles of association of a company may provide for two classes of shares:

a. ordinary (common) shares; and

b. preferred (preference) shares.

The AIFC Companies Regulations defines an ordinary share as a share in the company, other than a share that carries a right to participate in dividends or capital (that is, distributions) only up to a specified amount. In contrast, a preference share is a share with dividends that are paid out to shareholders prior to payment of dividends to holders of ordinary shares. If the company becomes bankrupt, preferred shareholders are entitled to be paid from company assets before common holders of ordinary shares.

Investors may wish to invest in preferred shares in the company. However, investors can also invest in ordinary shares (usually, of a very early-stage companies). As a general rule, founders hold ordinary shares.

Information on the classes of shares can be found in the register of shareholders. The register of shareholders is maintained by the company. However, pursuant to section 52 of the AIFC Companies Regulations, a private company may make an election that the Registrar of Companies of the AIFC keeps its register of shareholders. Information on the names and addresses of its shareholders, together with the statement of the shares held by each shareholder and, if the company has 2 or more classes of issued shares, by its class must be promptly entered in the register of shareholders. According to Section 55 of the AIFC Regulations, the company's register of shareholders is kept at the company's registered office or at the premises of the company's agent, if it is maintained by an agent. Each shareholder may inspect the register of shareholders and apply to the Registrar for rectification of the register, if information therein is not accurate.

4. Investors' rights and key conditions protecting investors' interests

It is common for investors to seek protection of their rights from the company. As a general rule, such protections are set out in the legal documentation. Below is the brief description of the most common contractual protections.

Representations and warranties

Usually, the company gives certain representations and warranties to the investor in respect of the following:

- corporate organisation and good standing;
- share capital, voting rights;
- business of the company;
- intellectual property;
- financial statements and other information disclosed to the investor during the due diligence period;
- employees;
- litigation;
- commercial contracts;
- real property; and
- other representations and warranties.

A company may make a disclosure against representations and warranties. If any of the representations and warranties are not true, the company will be liable to the investors.

Liquidation preference

Given that usually investors hold preference shares, in the event of liquidation they are entitled to receive assets remaining after satisfaction of the preceding creditors, but before holders of ordinary shares.

Pre-emption rights. If the company issues new shares, the investors have the right to subscribe to such shares on the same terms as offered to new investors. Pre-emption rights prevent third parties from becoming shareholders of the company.

Rights of first-refusal. Before selling shares to a third a party, a founder must offer them to the investors on the same terms. This allows investors to control the shareholder structure of the company.

Tag-along (co-sale) rights. If a founder sells shares, the investor has the right to join the transaction and sell its shares in the company on the same terms. This allows the investor to benefit by a liquidity event that might not otherwise be available to them. This gives a chance to the investor to participate in the negotiation of the potential sale transaction.

Drag-along rights. If the investor holds a certain percentage of the company's shares, it can require the other shareholders to sell their shares on the same terms to a third party to whom the investor sells its shares. This protection ensures that minority shareholders are not able to block a liquidity event. The drag-along provisions are often restricted to only being exercisable after a certain date, if the purchase price reflects a valuation above a certain threshold, or with the consent of the major ordinary shareholders.

Lock-up periods. In some transactions, investors seek to prohibit founders to transfer their shares during a certain period from the date of investment.

Veto-rights. Investors' consent may be required for the company to take certain actions, which are material to the company's business, value of the investors' shares and the investors' rights.

This usually includes:

- change of the business of the company;
- material changes to the articles of association;
- creation of a series or a class of shares senior to the shares held by the investors;
- payment of dividends and other distributions;
- entering into major transactions; and
- other matters.

Representation in the company's management. The investors may request that they appoint (nominate) one or several directors of the company, who will represent investors. This allows investors to better monitor the business of the company and influence or even block decisions which fall within competence of the directors of the company.

Information rights. Investors have the right to receive certain information about the company and its business, financial statements, auditor's report and other information.

5. Investor participation in management

Generally, investors' participation is required in decision-making of certain strategic matters that may somehow affect the shareholders' rights in the company. Under the AIFC Companies Regulations, such strategic matters include, inter alia, the following:

- amendments to Articles of Association;
- change of a company name;
- appointment and (or) removal of a director;
- reduction of share capital;
- variation or abrogation of class rights;
- alteration of share capital;
- power of a company to purchase its own shares.

> Investors may define other matters that would require their prior authorisation in a company's Articles of Association.

Nevertheless, operational management of a company is usually done by a company's board of directors and its management. Investors that are willing to participate in a company's operational management may do so by having a seat on the board of directors or appointing its representative to the board of directors subject to consent of other investors (if any).

6. Other basic concepts, documents, and agreements within the framework of deal structuring

For the purpose of attracting investment, a company may require an investor to enter into the below forms of agreements and documents in order to keep founders' relations and its operational management in order:

- founders' agreement;
- subscription agreement;
- non-disclosure agreement;
- non-compete agreement;
- intellectual property assignment agreement;
- bylaws/ internal company documentation.

Founders' agreement. A legal agreement that founders of a company may conclude when they found company. This type of agreement serves to govern the business operations of a company and founders' (e.g. investors') responsibilities, rights and obligations with respect to the company. Founder agreements usually include provisions in relation to, inter alia, management of a company, business strategy and technology of a company, intellectual property assignments, roles and commitments of founders, and dispute resolution mechanisms.

Subscription agreement. A type of a share offer document under which the company undertakes to issue or sell a specific number of shares of a specific class at a specific price, while the subscriber (investor) undertakes to buy the shares on the terms established in the agreement. The parties also may define other transaction details, including, inter alia, payment structure, structure of issuance of shares, provisions regarding investors' protections, and due diligence of a company.

Non-disclosure agreement. A legal agreement under which sensitive information or knowledge and terms and conditions of its disclosure is determined and outlined by the parties to such agreement. Usually, a company, while attracting investments, discloses sensitive information in relation to its inventions, products and business concepts. In order to protect its business, a company may conclude a non-disclosure agreement with any third party, to which a company discloses such sensitive information.

Non-compete agreement. A legal agreement under which one party undertakes not to be a shareholder, member of the board of directors or otherwise to be involved in another company, the business or products of which are similar to the investee company. Such agreements are usually concluded between an employer and employees, however, there may be cases when such agreements are entered into between founders and (or) investors and the company.

Intellectual property assignment agreement. An agreement under which one party (e.g. founders, employees, consultants of a company) agrees to assign all and any intellectual property rights to a company. Investors might feel safer when a company is secured in terms of ownership over its inventions, designs or any other products that a company is developing. In any case, it would be beneficial for the company to maintain intellectual property assignment agreements in order ensure that inventions of the company belong exclusively to the company and no future claims may arise in respect of ownership of intellectual property. Generally, such agreements may be also concluded with investors.

Bylaws/ internal company documentation. Since the attraction of investment requires a company and its founders to enter into numerous agreements and take lots of steps towards obtaining such investment, it is important for a company to maintain its corporate documents and internal documentation and policies in good order. The company may develop its own polices in relation to, inter alia, internal structure of governance, assignment of intellectual property rights, employment requirements. Maintenance of internal documents of a company in good order may save time and money while dealing with attraction of investment. A company and investors shall pay attention to mandatory provisions in relation to notification and submission requirements under the Acting law of the AIFC, the violation of which may burden the company with fines.

Chapter VI

Guide to exit strategies for investors

The main exit strategies include taking the company public through an initial public offering (IPO) or selling the company to a strategic acquirer. This chapter will provide a summary of the (i) exit via IPO route and (ii) exit via sale of the shares through private placement / takeover.

1. Exit via IPO. Understanding of the role of AIX

Initial Public Offer

One of the ways to exit a project is via an IPO, where a company (or existing shareholder) sells a part of their business to the public in the form of shares. This strategy offers more benefits in the sense that it enhances access to liquidity in the event that investors are seeking returns or refunds earlier than anticipated. In addition, it may simultaneously allow the company to raise capital via a share offering and later use shares as a tool for other corporate purposes such as acquisitions.

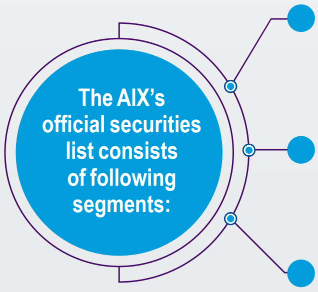
It is considered an «exit» because the existing shareholders (investors) of a company are able to sell some or all of their shares in the company for cash, thus «exiting» their investment.

Prior to an IPO, the company is privately held, and it is typically very difficult to sell the shares to anyone, so the value that the shareholders have is not easily realizable due to the lack of a public market. However, once the company is available on a public stock market after an IPO, the shareholders can sell their shares to the general public. The AIX is an excellent platform for IPO “exit” as it provides flexible and modern rules to achieve this goal.

This summary provides an overview of the structure and regulatory regime of the AIX and its primary IPO segments. The key tax preferences granted from listing on AIX will be covered in [Chapter VII].

Astana International Exchange (AIX)

The AIX is an authorised stock exchange operating at the territory of the AIFC. Within the AIFC, only stock exchanges that are authorised by the AFSA can operate regulated markets.



- Main Market (including Mining Companies Market, Belt and Road Market)
- Regional Equity Market Segment (REMS)
- Pre-IPO segment (however, this segment is not applicable in the context of exit via IPO, so it will not be covered in this note).

Main regulatory requirements

A company wishing to list its shares on the AIX must comply with:

- the AIX Business Rules, including:
  - the Markets Listing Rules (MLR)
  - the Prospectus Rules (PR)
  - the Regional Equity Market Rules (REM), if applicable,
  - the Mining Company Rules (MCR), if applicable,
  - the Admission and Disclosure Standards (ADS)
- The AIFC Market Rules (MAR).
- Part 6 (Capital Markets) of the AIFC Financial Services Framework Regulations (FSFR).

Together, these set out:

- The conditions which must be satisfied in order for a company's shares to be eligible for admission to the AIX's Official List and to trading on the AIX.
- The procedure for application.
- The obligations applying to companies and their directors once the shares are listed and traded.

> Following the listing, the company will also be subject to the Market Disclosure Rules (MDR) and certain continuing obligations set out in the AIFC Market Rules (MAR).

These contain continuing obligations for companies with securities admitted to the AIX Official List, including in relation to the publication of periodic financial information, the disclosure of major shareholdings and the dissemination and filing of regulated information.

Listing requirements

There is a two-stage procedure for the admission of securities to the AIX's Official List:

1. **First, the securities need to be admitted to the AIX Official List by the AIX.**
2. **Second, the securities need to be admitted to trading by the AIX.**

Once both processes are complete, the securities are officially listed and admitted to trading on the AIX.

The prospectus

A prospectus is required under AIFC Market Rules (MAR1.1) if a company:

- Offers securities to the public in or from the AIFC, or
- Seeks the admission of securities to trading on a regulated market in the AIFC (currently, AIX).

The prospectus is typically the result of weeks of collaboration between the company, its investment bank (and sponsor), its lawyers and accountants.

Although all of the directors of the company will be unlikely to attend the various drafting sessions, they should be encouraged to review various advanced copies of the document to ensure its completeness and accuracy since they will ultimately be responsible for it.

Format of prospectus

A prospectus may be drawn up as a single document or separate documents. The prospectus must consist of the following three principal components, either combined into a single document or kept separate:

- A summary. This must provide the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities. Its content must be accurate, fair and clear and not misleading and it must be consistent with the other parts of the prospectus. MAR 1.4 sets out detailed requirements for the contents of the summary. Summary is not required for REM issuers.
- A registration document. This must contain information relating to the issuer. Schedule 1 of the MAR sets out the content requirements for a registration document for equity securities.
- A securities note. This must contain information about the securities. Schedule 2 of the MAR sets out the content requirements for a securities note for equity securities.

A company undertaking an IPO of equity securities is likely to combine these components and produce a single document.

Where an issuer prepares a prospectus as a single document, it must be composed of the following parts in the following order:

1. **A table of contents**
2. **A summary**
3. **The risk factors**

Any other information referred to in the Schedules to the MAR that is to be included in the prospectus.

General contents

The prospectus must contain the necessary information which is material to an investor for making an informed assessment of:

- The assets and liabilities, profits and losses, financial position and prospects of the issuer (and of any guarantor).
- The rights attaching to the securities.
- The reasons for the issue and its impact on the issuer.

> The information may vary depending on the nature of the issuer, the type of securities and the circumstances of the issuer.

Prospectus responsibility and liability

Responsibility for the prospectus is determined by MAR 1.9. In the case of a prospectus in respect of shares, those responsible for the content of the Prospectus include, among others:

- The issuer of the securities.
- The issuer's directors.
- Anyone who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus (MAR1.9.1(d)).

Prospectus approval process

The draft prospectus must be submitted electronically to the AIX for approval along with certain supporting documents. The forms of all relevant documents are available on the AIX webpage[7].

AIX may request other information as it deems necessary in considering giving approval of the prospectus.

Filing and publication of the prospectus

After a prospectus has been approved by the AIX it must be made available to the public (PR 6.3). In the case of an IPO, the prospectus must be made available to the public as soon as is reasonably practicable, and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the offer of securities.

The prospectus shall be deemed to be available to the public when published in electronic form on any of the following websites:

- The website of the issuer.
- The website of the AIX.

Listing application procedures

Before submitting the documents, the issuer should agree a date with the AIX on which it will consider the application for listing.

Documents to be provided in advance

The following documents must be submitted, in final form, to the AIX before AIX is to consider the application (MLR 17.2):

- A completed AIX Application form for Admission of Securities to the AIX Official List (which can be found on the AIX website).
- The approved prospectus.
- A copy of the resolution of the authorised body on approval of the listing and offer terms;

Documents to be provided on the day of Admission

The following documents must be submitted, in final form, to AIX before 9 a.m. of Nur-Sultan time on the day of admission to the AIX Official List MLR (17.3):

- A completed shareholder statement.
- A completed pricing statement, in the case of subscription or offer of securities.

> Provided that all the documents required by MLR 17.2 and 17.3 are complete and received on time, the AIX would generally expect to process an application for admission to the AIX Official List within two weeks.

Admission to the Official List

Admission to the Official List becomes effective when the AIX's decision to admit the securities to listing has been announced by its respective notice on the AIX webpage.

[7] https://www.aix.kz/listings/for-potential-issuers/listing-requirements/

Applying for admission to trading

An issuer must also apply to the AIX for admission to trading in accordance with the ADS. Under this process, the issuer must submit a formal application for admission to trading and a copy of the prospectus or other document relating to the issue to the AIX on or around the same date that an application is made to AIX for admission to the AIX Official List (ADS 3.2.1(R)). The formal application will only be deemed to be made when a prospectus has been approved (ADS 3.3.2(2)).

> Admission to trading becomes effective when the AIX publishes its approval of the admission by way of notice via a Regulatory Announcement Service to the AIX Market one Business Day prior to Admission (ADS 3.6.2).

Continuing obligations

As soon as the company's securities are admitted to listing and to trading it becomes subject to the continuing obligations set out in the MDR and MAR[8].

Overall summary of major check points for listing on AIX

CHECK POINT	REQUIREMENT
Audit of financial statements	3 years (but 1 year for REM segment) of audited financial statements prepared in accordance with IFRS, US GAAP, Swiss GAAP, and other standards acceptable to AFSA.
Minimum public float	At least 25% (15% for REM segment) Note: AIX reserves the right to decrease this minimum amount, should it decide in its discretion to do so) for Equity Issuers.
Market capitalisation	At least $1M at the time of listing
At least one of the three years of audited financial statements is in net profit	Yes (this requirement does not apply to REM segment and Mining Companies)
Ability to operate its business independently of controlling shareholder	Yes (this requirement does not apply to REM segment)
Compliance with the Corporate Governance Principles (MAR2)	Yes

[8] https://www-aix-kz.s3.eu-central-1.amazonaws.com/uploads/2020/11/AIX-Guide-to-ongoing-obligations_V2_2020_Final.pdf

2. Exit via sale of shares through private placement / takeover

In a sale of the shares through private placement / takeover, another company purchases the business in the company, either with cash or stock in the acquiring company or with some combination of stock and cash. The buyer of a company in a commercial sale is usually a strategic buyer. Selling a company to a strategic acquirer, such as an industry partner or competitor, is the most common exit for an investor. Selling to a strategic acquirer is often referred to as an «M&A exit». Because they are in the same business, strategic buyers are best fit for assessing business prospects.

Accordingly, strategic buyers can often pay more for companies because of strategic fitness and potential synergies. Selling to a strategic buyer generally constitutes a complete exit from a company, typically selling the entire company for cash consideration. Partial exits from a company, although possible, are usually rare. In such cases, the selling party usually receives the (often illiquid) shares in the buying company in lieu of cash.

Selling a business to a strategic investor

> A strategic buyer expects synergies from the merger with the target company's business. Typically, a strategic investor operates in the same industry as the target company and seeks to gain access to new markets, experience, patents or know-how of the target company, including in the area of strategic management, through the merger.

As a rule, buying an existing company or off-the-shelf technology is cheaper and faster than starting it on one's own. The higher the expected synergistic effect, the higher the price the buying company is ready to pay for the target company. This may be because the expected benefits are specific to the buyer and are achievable with relatively little investment and careful integration planning.

Taking into account such goals and expectations of a strategic investor, in the exit planning process, existing investors need to predict and assess the potential synergies in order to justify the maximum valuation of the interest to be sold.

A strategic investor integrates an innovative company into its existing business, since otherwise such company's financial statements will not be consolidated with the investor's financial statements as part of the business and will be treated as a long-term financial investment. That is why all other investors exit and the management is changed at the same time. When selling a company to a strategic investor, two main forms are used: sale of shares and sale of assets. In addition to an innovative idea or product, the reason for a strategic investor to buy a company may also be the project team.

This type of purchase of an innovative the company is called acqui-hire or acq-hire (from acquire and hire), i.e., the purchase of a start-up by a large company in order to acquire its team.

A large holding may not be interested in developing the product of an innovative company, but at the same time feel the need for talented specialists to improve its products.

Sale of an interest in a company to a financial investor

> This exit option can be either independent or involve the company attracting a new round of funding.

Potential buyers can be:

- institutional qualified investors, such as pension funds and large insurance companies, who may be interested in buying out the investor's interest, or, less often, a part of the entrepreneur's pre-IPO interest if such interest is offered at a certain, sometimes quite significant, discount;
- some venture and mutual funds operating on the open market and specialised in investing in shares of high-growth companies in the second or third round of funding;
- investors specialised in less risky investments or industry investments, for example, in real estate, logistics and distribution companies, media companies;
- banks buying a company for its current income.

Financial investors are careful in pre-investment due diligence and may use complex transaction structures. Financial investors often use significant leverage (i.e., additional debt) to achieve their return on investment targets. As a result, they become more sensitive to factors such as the quality of management, the sustainability of the level of operating profit and free cash flow.

Redemption of an interest in a business by an entrepreneur/management (including MBO)

The exit process can be provided by a system of options for partial purchases of shareholdings. The exit structure consists of a set of rights and obligations of the parties to sell their interests or purchase the partner's interests. The buyout of an interest in a business can be carried out both by the entrepreneur and/or by a team of managers.

As a rule, the possibility of buying out a business by an entrepreneur is provided for by a system of put and call options at the stage of structuring the deal and agreeing on its terms. In consideration for the investor's right to sell control over a company to a strategic investor expressed in the form of the entrepreneur's put option, the entrepreneur always gets a call option to buy out such interest.

The founders of the business or senior management of a company will most likely not be able to use any cash flows to buy it out. Therefore, such transactions are, as a rule, carried out with the raising of debt financing and are called a leveraged buyout (LBO).

A transaction where the management buys out the company's interest is called management buyout (MBO).

The sale of an interest to the current management usually occurs in the absence of other buyers in the market.

Factors influencing the choice of an investor's exit strategy

The exit strategy depends on the stage of the life cycle of the innovative company. The exit of an investor at the seed stage is possible only if seed financing funds are involved. Since at the seed and start-up stages, an innovative company has no historical data and financial indicators, potential buyers of the investor's interest are most often strategic investors interested in acquiring technology or a talented team.

In this case, the project also needs the support of a successful business in forming a strategy and development tactics for further growth. At the stage of early growth and expansion, an innovative company most often raises funds with the help of a financial investor (e.g. venture capital funds).

> IPO is possible mainly for mature companies, due to the complexity of the process and the requirements that arise in connection with the public status of a company.

Another factor that determines the way to exit the project is the scenario (prospects) of project development. Each of the exit methods is characterised by a different level of complexity and efficiency (return on investment). IPO is the most complex, but usually the most profitable for the investor. Therefore, this method is suitable only for successfully developing companies, the market value of which will be high. Also, successful projects can be sold to a strategic investor or bought out by the founders and management. If the company has the opportunity to independently continue its development, with no additional support from an industry specialist (in the person of a strategic investor), sale to a financial investor is possible.

Documentation

The principal documentation under the private placement exit route is essentially the same as used on any other private sale transaction. The two key documents used under this route are:

— the sale and purchase agreement and

— the disclosure letter.

Practical issues regarding the documentation:

Sale structure. From a legal structuring point of view (and this is the same as with any other corporate transaction), the sale of a company can be carried out either through a «share deal», an «asset deal» or, alternatively, a sale to a strategic buyer can take the form of a merger. The choice of the type of legal structuring will be determined by many characteristics, including timing, ease of implementation, and tax considerations. However, an exit is unlikely to be by way of an asset sale in a private equity situation unless there are overwhelmingly strong reasons to avoid a share sale. This is because sale of assets will almost invariably lead to a tax charge (e.g., VAT) with the company disposing of assets, thereby reducing the funds available to return to the investor. In addition, if the goal is a clean exit, then an asset sale would not accomplish that as the target company would remain in the ownership of the investor(s).

Consideration. Private equity investors focus on cash, with a strong preference for payment at completion. This means that, when acting as sellers, investors will normally wish to avoid earn-outs and other deferred consideration structures. Equally, price retention mechanisms, such as completion or escrow accounts, will be resisted (unless they are introduced at the investor's suggestion in order to solve other transaction issues, such as disagreement over the warranty provisions).

The tax treatment of the consideration will be critical for the seller, who may incur significant tax consequences as a result of sale. Therefore, it is essential that the taxation treatment of the proposed transaction for all the selling parties is analysed at the outset, so that any tax issues are resolved as early in the process as possible, and the right structure is achieved through negotiation.

Warranties and indemnities. Traditionally, investors negotiating sale transactions have refused to provide any warranties or indemnities to buyers because they are not involved in the management of the company and therefore have no means of assessing whether any particular warranty is accurate. Therefore, in practice, the only exception would be that investors would warrant their ownership of their shares and the valid execution of transaction documents by them. So, in essence, this leaves the management shareholders as the only available warrantors.

Restrictive covenants. Many share sale agreements include restrictive covenants imposed upon the sellers to secure the value of the business for the buyer. Investors will strongly resist being required to enter into any such covenants because the existence of a restrictive covenant binding upon them may restrict their ability to undertake future investments.

Confidentiality. Investors may not agree to enter into any obligations which might restrict their ability to use general or sector knowledge acquired in the course of any investment.

Guarantees. Buyers may seek guarantees of the sellers' obligations under warranties or other provisions of the sale and purchase agreement.

Chapter VII

Tax benefits of being incorporated in the AIFC

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1. Introduction

> The changing business environment in Kazakhstan provides a range of opportunities for investors.

Facilitating an increase in business profitability, tax incentives are a great tool to maximize these opportunities. In this chapter, we provide an overview of Kazakhstan's tax system as well as the tax benefits that may be available to your start-up or investment in Kazakhstan. We trust that you will find this information useful and hope that it will help you plan and enhance your operations in Kazakhstan.

2. Tax System in Kazakhstan

2.1 General

Domestic tax legislation in Kazakhstan is based primarily on Code No. 120-VI of the Republic of Kazakhstan On Taxes and Other Mandatory Payments to the Budget (hereinafter, the "Tax Code"), dated 25 December 2017, which entered into force on 1 January 2018[1]. The statutory tax framework governing specific areas of tax relations in Kazakhstan also includes other regulatory legal acts and constitutional laws (e.g., Constitutional Statute No. 438-V of the Republic of Kazakhstan On Astana International Financial Center (hereinafter, the "AIFC Law"), dated 7 December 2015) which are specified in the Tax Code.

As Kazakhstan is a unitary state, there are no separate municipal and/or regional taxes in Kazakhstan. As such, all taxes and fees are addressed in the Tax Code.

In addition to taxes and fees, other mandatory payments, contributions and duties may be due in accordance with the Pension Law[2], the Mandatory Social Insurance Law[3], the Mandatory Social Medical Insurance Law[4] and customs codes[5].

We provide below a list of the main taxes, fees, mandatory payments and contributions that may apply to individuals and entities in Kazakhstan (including the branches and representative offices of foreign companies).

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[1] *In line with the provisions of Law No. 382-VI of the Republic of Kazakhstan On Amendments and Addenda to the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the State and Law of the Republic of Kazakhstan On the Introduction of the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the State, dated 10 December 2020*

[2] *Law No. 105-V of the Republic of Kazakhstan On Pensions in the Republic of Kazakhstan, dated 21 June 2013*

[3] *Law No. 286-VI of the Republic of Kazakhstan On Mandatory Social Insurance, dated 26 December 2019*

[4] *Law No. 405-V of the Republic of Kazakhstan On Mandatory Social Medical Insurance", dated 16 November 2015*

[5] *Code No. 123-VI of the Republic of Kazakhstan On Customs Regulation in the Republic of Kazakhstan, dated 26 December 2017; Customs Code of the Eurasian Economic Union*

General taxes and contributions (discussed in more detail below):[6]

- Corporate income tax ("CIT");
- Corporate income tax withheld at the source of payment of the income ("WHT");
- Payroll taxes and contributions (personal income tax ("PIT"), social tax, mandatory pension contributions, social security contributions and social medical insurance contributions;
- Value-added tax ("VAT");
- Vehicle tax;
- Land tax;
- Property tax;

Subsoil user taxes

- Signature bonus;
- Reimbursement of historical costs;
- Mineral extraction tax;
- Royalty;
- Kazakhstan's share in production sharing
- Excess profit tax;
- Alternative tax;

Other taxes

- Excise tax;
- Gambling tax (applies to casinos, bookmakers, etc.);
- Rental tax on exports;

Fees

- Fee for the use of a license for specific types of activities (e.g., the gambling business, alcohol retail sales);
- Fee for the use of land plots;
- Fee for the use of water resources from surface sources;
- Fee for emissions into the environment;
- Fee for forestry use;
- Fee for the use of fauna (e.g., aquaculture);
- Fee for the use of specially protected natural territories (e.g., nature conservation areas);
- Fee for the use of the radiofrequency spectrum;
- Fee for the provision of long-distance and/or international telephone and cellular communications;
- Fee for the use of outdoor advertising;

Duties

- Import and export duties;
- State duties and levies.

2.2 Statue of Limitations

In general the statute of limitations for tax liabilities and claims in Kazakhstan is three years, with a few exceptions. The main exceptions include subsoil users and taxpayers subject to state tax monitoring. The statute of limitations is set at five years for these two types of taxpayers.

2.3 Tax Residence

> The tax treatment of legal entities and individuals in Kazakhstan depends on their tax residence status.

Tax residents are subject to income tax in Kazakhstan on their worldwide income, while non-residents are subject to income tax in Kazakhstan on their income from Kazakh sources (also referred to as Kazakh-source income).

Legal entities established under Kazakh legislation and foreign legal entities with an effective place of management in Kazakhstan are treated as tax residents of Kazakhstan. Other foreign legal entities are deemed to be non-residents.

Individuals residing in Kazakhstan for more than 183 days (90 days in the case of individuals deemed investment residents of Astana International Financial Center) in any period of 12 consecutive months are treated as residents. Regardless of the period of stay in Kazakhstan, an individual is regarded as a Kazakh tax resident if all of the following criteria are met:

- The individual is a Kazakh citizen or has a Kazakh residence permit;
- The spouse and/or close relatives of the individual live in Kazakhstan;
- The individual and/or the spouse and/or close relatives of the individual own immovable property in Kazakhstan or otherwise have immovable property available in Kazakhstan (e.g. via rent) for the individual and/or spouse and/or close relatives of the individual.

Individuals who are not regarded as residents of Kazakhstan in accordance with the above criteria are deemed to be non-residents.

[6] *Please note that this brochure only provides more detailed information on general taxes and contributions, as these apply to most taxpayers in Kazakhstan*

2.4 CIT

Residents

Resident legal entities are subject to CIT in Kazakhstan. In most cases, the CIT rate in Kazakhstan is a flat 20% (please refer to the subsection Simplified declaration regime below for more information on the special tax regime that allows certain taxpayers to assess taxes (CIT and social tax) at the rate of 3%).

> The tax base for CIT is net taxable profits, which is computed as the difference between taxable revenues and deductible expenses.

When calculating the net taxable profits of the permanent establishment of a non-resident in Kazakhstan, only taxable revenues and deductible expenses attributable to such permanent establishment should be considered.

For CIT purposes, a taxpayer can claim a tax deduction for costs incurred to receive business revenues, including payroll costs, depreciation and amortization of fixed and intangible assets, lease payments, various service fees, interest expenses, and other costs of doing business. While most expenses can be deducted in full, there are deductibility limits on some costs, such as interest and business trip expenses. Any tax-deductible expenses of a taxpayer in Kazakhstan must be substantiated by source documents, such as invoices, receipts, contracts, deliverables, reports, etc. Taxpayers should retain all these supporting documents and provide them to the tax authorities in the case of a tax audit.

Gross annual income can be reduced by the amount of certain types of revenues, as stipulated by the Tax Code. For example, gross annual income can be reduced by the amount of investment income earned by an investment fund registered under the Acting Law of the AIFC and duly recognized in the accounts by the custodian/management company of the investment fund.

- **Net taxable profit can be reduced by the amount of net operating losses carried forward from past periods. Net operating losses can be carried forward for ten consecutive years.**
- **As the tax period is a calendar year, the CIT return must be filed annually.**

[7] *In 2021, KZT 70,118,846 or approximately USD 165,500 at the exchange rate in effect in February 2021*

Simplified tax declaration regime

Kazakh tax legislation also stipulates a so-called simplified tax declaration regime which enables a resident legal entity to tax its revenues at the rate of 3%. The amount of the assessed tax is then split equally into CIT and social tax obligations: half of the assessed tax is paid as CIT, while the other half is paid as social tax.

Applied on a semiannual basis, expenses may not be deducted under this regime. In certain cases, however, the amount of the assessed tax can be reduced by a small fraction of payroll-related taxes before the split into CIT and social tax obligations. A resident legal entity may qualify for the simplified declaration regime if it meets all of the following criteria:

30 people ▷ the maximum average headcount for the tax period is 30 people;

24,038 times the monthly calculation index[7] ▷ the marginal revenue for the tax period

the entity does not engage in ▷ production or storage and realization of excise goods, subsoil use activities, realization of petroleum products, lottery business, glassware and scrap metal recycling, provision of financial leasing as well as consulting, accounting, audit, financial, insurance and legal services.

Non-residents

Non-resident legal entities that have permanent establishments in Kazakhstan are taxed similarly to Kazakhstan resident legal entities. As such, they are required to register a permanent establishment in Kazakhstan, pay and report CIT on the Kazakh-source income that the permanent establishment earns and on income from sources outside Kazakhstan.

In addition to CIT, non-residents that have a permanent establishment in Kazakhstan are subject to the 15% branch profits tax (hereinafter, the “BPT”). This tax applies annually to the net after-tax income of the permanent establishment, regardless of whether it repatriates the profits to its head office. The BPT tax rate may be reduced (usually to 5%) under most tax treaties signed by Kazakhstan (for more information, please refer to the section Tax Treaty Benefits) under certain conditions.

According to the Tax Code, non-resident legal entities are deemed to have a permanent establishment in Kazakhstan if they have a fixed place of activity in Kazakhstan which is used to conduct entrepreneurial activities. This includes any place of management, branch, division, or representative office in Kazakhstan, regardless of the duration of the activity conducted through this fixed place.

In addition, a non-resident is deemed to have a permanent establishment in Kazakhstan if it provides services through its personnel in Kazakhstan for more than 183 days in any period of 12 consecutive months in connection with one or multiple connected projects. Temporary breaks in the activities of a non-resident during the 12-month period are not recognized as an interruption in activities for permanent establishment purposes.

2.5 Kazakh-source Income of Non-residents

The general rule in Kazakhstan is that the income of a non-resident from the sale of goods or provision of services is regarded as Kazakh-source income if the goods are sold and the services are provided in Kazakhstan. In addition to this general rule, the Tax Code stipulates certain types of "tainted" services that result in Kazakh-source income regardless of where the services are actually performed, if the non-resident provides these services to a registered taxpayer in Kazakhstan. These "tainted" services include management, financial (other than insurance and reinsurance services), consulting, engineering, marketing, audit and legal services (other than attorney-related services and notarial services).

> In addition to the above, capital gains, dividends, interest income and royalty arising in Kazakhstan are regarded as Kazakh-source income.

Notwithstanding the above, the income of a non-resident should not be regarded as Kazakh-source income if it is received from the AIFC authorities or organizations of the AIFC authorities (i.e. legal entities registered under the Acting Law of the AIFC, in which at least 50% of their shares/participation interests are held directly or indirectly by the AIFC authorities).

2.6 WHT

Non-residents that do not have a permanent establishment in Kazakhstan are subject to WHT on their Kazakh-source income (for more information, please refer to the section Kazakh-source Income of Non-residents). The liability to calculate, withhold, remit and report the tax is vested with the Kazakh payer of taxable income acting as the tax agent.

WHT is applied at the following rates:

15%	Capital gains, dividends, interest and royalty
15%	Insurance premiums
5%	Reinsurance premiums
5%	Income from international transportation services
20%	Service fees and other income not indicated above

In addition, income that a non-resident legal entity registered in a state with a preferential tax regime receives from a Kazakh legal entity or the permanent establishment of a non-resident in Kazakhstan is regarded as Kazakh-source income, regardless of where the services are performed or the goods are sold. Kazakh-source income received by a non-resident legal entity registered in a state with a preferential tax regime is subject to WHT at 20% with no possibility for a reduction or an exemption. The Kazakhstan government has drafted an official list of states recognized as states with a preferential tax regime (for more information, please refer to Appendix A).

The Tax Code provides several important tax benefits related to Kazakh-source dividends and capital gains.

Firstly, dividends payable to a non-resident legal entity by a Kazakhstan resident are exempt from WHT if all of the following criteria are met:

- the non-resident has owned the shares/a participation interest in a Kazakh legal entity for more than three years at the time of the date of the accrual of the dividends;
- the Kazakh legal entity paying the dividends is not a subsoil user;
- not more than 50% of the value of the shares on which the dividends are paid derives from the property of an entity which is a subsoil user in Kazakhstan at the time of the dividend payment.

Notwithstanding the above, dividends are not exempt from WHT if one of the following conditions is met:

- the Kazakh legal entity paying the dividends (except for Kazakh legal entities regarded as Astana Hub participants[8]) reduces its CIT by 100% for activities eligible for such reduction and the share of CIT reduced by 100% accounts for at least 50% of the total estimated income tax of such Kazakh legal entity;
- the dividends are paid out of profits that have not been taxed at the level of the Kazakh legal entity paying the dividends.

Secondly, Kazakh-source income (the gains of a non-resident legal entity from the alienation of shares/a participation interest) is exempt from WHT if all of the following criteria are met:

- 3 years — the non-resident has owned the shares/participation interest in the Kazakh legal entity for more than three years as of the date of disposal;
- the company in which the shares/participation interest are/is sold is not a subsoil user;
- the company in which the shares/participation interest are/is sold does not derive 50% or more of its value from the property of an entity which is a subsoil user in Kazakhstan.

The above tax benefits are not available for non-residents registered in a state with a preferential tax regime. However, the Tax Code provides other unilateral exemptions with respect to Kazakh-source interest, dividends and capital gains that may be applicable, regardless of the jurisdiction of registration of the non-resident.

Under the Tax Code, Kazakh-source dividends and interest are exempt from WHT in Kazakhstan if the corresponding securities (including shares) are listed on a Kazakh stock exchange (i.e., the Kazakhstan Stock Exchange ("KASE") and/or the Astana International Exchange ("AIX") as of the date when the Kazakh-source income is accrued. In addition, any Kazakh-source income (gains of a non-resident) should be exempt from WHT if the corresponding securities (including shares) were sold through an open trade on a Kazakh stock exchange or any other foreign stock exchange, provided that the securities are officially listed on a corresponding stock exchange.

If a non-resident does not qualify for the above exemptions under Kazakhstan domestic law, the non-resident may apply the provisions of a relevant tax treaty. Tax treaties concluded by Kazakhstan may provide other tax benefits and/or exemptions from WHT on Kazakh-source income (for more information, please refer to the section Tax Treaty Benefits).

2.7 PIT

Resident individuals, as well as non-resident individuals who receive Kazakh-source income (for more information, please refer to the section Kazakh-source Income of Non-residents), are subject to PIT in Kazakhstan. As a general rule, PIT is withheld from an individual's income. Liability for calculating, withholding, remitting and reporting the tax is vested with the Kazakh payer of taxable income acting as the tax agent.

In certain cases, an individual is required to independently calculate, pay and report the respective tax. This tends to happen when an individual receives income from a payer that may not be regarded as the tax agent. This may be the case when income is paid by an individual who is not the employer of the individual receiving such income.

> In these situations, non-resident individuals must register for tax purposes in Kazakhstan to comply with their PIT obligation.

PIT rates vary, depending on the type of income as well as the individual's tax residence. Individuals who are tax residents of Kazakhstan are subject to PIT at the rate of 10% on all types of income other than Kazakh-source dividends. Kazakh-source dividends received by resident individuals are taxed at the rate of 5%.

The Kazakh-source employment income of non-resident individuals is subject to PIT at the rate of 10%, while other types of Kazakh-source income received by non-resident individuals are taxed at the rates specified for WHT (for more information, please refer to the section WHT).

A Kazakh tax agent is required to withhold PIT from the income of the recipient, remit it to the state budget on a monthly basis and report the tax on a quarterly basis. Individuals who receive income that they have to report independently must comply with their PIT obligations on an annual basis.

The Tax Code provides several important tax deductions, benefits and exemptions that may apply to PIT.

[8] *Astana Hub participants are Kazakh taxpayers that are registered with Astana Hub authorities and enjoy special tax benefits (subject to meeting certain fiscal and regulatory requirements) with respect to activities in the field of IT services and IT solutions that they engage in*

2.8 Tax Treaty Benefits

According to Kazakh tax legislation, international agreements/treaties concluded by Kazakhstan take precedence over domestic tax legislation. As such, a foreign investor as a tax resident of a treaty partner country may refer to the applicable tax treaty to determine their tax liabilities in Kazakhstan.

At present, Kazakhstan has concluded tax treaties with 55 countries (please refer to Appendix B for more information on treaty partner countries as well as the reduced rates of tax applicable to certain types of income). The application of tax treaty provisions may be beneficial for foreign investors operating in Kazakhstan either through a Kazakh subsidiary or a branch office, as tax treaties usually provide for reduced rates of tax (WHT and/or PIT) on interest, royalties, dividends and reduced BPT rates. In addition, some types of income, (e.g. business income), may be fully exempt from taxation in Kazakhstan subject to compliance with certain criteria.

Tax treaty benefits apply almost automatically to the Kazakh-source income received by non-residents. To claim tax treaty benefits or tax relief, a non-resident is required to provide the Kazakh payer of income (Kazakh tax agent) with a document certifying its tax residence status in the country that has concluded the relevant tax treaty with Kazakhstan (in the case of BPT, the certificate should be provided to the tax authorities by the branch). The certificate must be issued by the tax authorities in the country of tax residence of the non-resident.

> To be legally valid in Kazakhstan, the tax residence certificate must be duly legalized/affixed with an apostille.

In addition, tax treaty benefits apply to certain types of income if the non-resident recipient of the income is regarded as the beneficial owner of such income.

In 2019, Kazakhstan signed and ratified a so-called multilateral instrument, ("MLI"), whose provisions entered into force in Kazakhstan on 1 October 2020. The purpose of the MLI is to prevent base erosion and profit shifting. The MLI achieves this goal by introducing additional criteria (to those stipulated in tax treaties) that non-residents must meet to be eligible for relevant tax treaty benefits. The MLI provisions apply to Kazakh WHT from 1 January 2021 and other Kazakh taxes from 1 April 2021 (please refer to Appendix B for more information on the tax treaties covered by the multilateral instrument), which may influence the tax position of non-residents in Kazakhstan.

The main restriction adopted by all MLI signatory countries, including Kazakhstan, is the so-called Principal Purpose Test. Under this test, a treaty country can deny treaty relief to a taxpayer if it has established that the taxpayer concluded the transaction under consideration primarily to obtain such treaty relief, unless the granting of tax treaty relief in the applicable circumstance is in line with the purpose of the tax treaty.

In addition, in accordance with the MLI position of Kazakhstan, the Principal Purpose Test is supplemented by the Simplified Limitation on Benefits rule ("Simplified LOB"). This rule introduces additional restrictions on the application of a tax treaty to a limited number of persons. For instance, individuals, state institutions, public companies, non-profit organizations, and companies engaging in active business activity (in other words, not holding companies or financial companies) are considered so-called qualifying persons eligible for tax treaty benefits. The Simplified LOB rule should enable intermediate holding/financial companies to apply tax treaty provisions, because such companies should not be regarded as qualifying persons. Unlike the Principal Purpose Test which applies to all MLI signatories, regardless of their specific MLI position, the Simplified LOB rule is only applicable when both parties to a specific tax treaty have decided to apply this rule (as may be the case with Russia).[9]

2.9 VAT

> According to the Tax Code, registration as a VAT payer is mandatory for individuals, resident legal entities and non-resident legal entities operating through a branch or representative office in Kazakhstan, which have annual taxable sales in excess of 30,000 (20,000 from 2022) times the monthly calculation index.[10] VAT registration is optional for other entities whose taxable sales do not exceed this threshold.

[9] *Please note that under the MLI other criteria may apply, in addition to the Principal Purpose Test and Simplified LOB rule, depending on the type of income and the tax treaty in question*

[10] *In 2021, KZT 87,510,000 or approximately USD 206,500 at the exchange rate in effect in February 2021 (to be determined for 2022)*

Registered VAT payers must charge VAT on their taxable sales and may claim a credit for the input VAT that they pay to suppliers and for the import VAT that they pay upon importation of goods into Kazakhstan. Taxable turnover includes the sale of goods or services in Kazakhstan, and the import of goods into member states of the Eurasian Economic Union. The standard VAT rate is 12%.

Exports of goods from Kazakhstan and international transportation services are subject to zero-percent VAT.

The sale of certain goods and the provision of certain services are also exempt from VAT. Such a VAT exemption applies, inter alia, to certain financial operations, such as banking services, security transactions and insurance services, as well as transactions concluded by investment funds registered under the Acting Law of the AIFC as well as the management services of these investment funds.

If a foreign service provider is not registered as a VAT payer in Kazakhstan, it is not liable for charging VAT on services provided to Kazakh VAT payers. In this case, liability for charging this VAT is vested with Kazakh VAT payers, provided that Kazakhstan is the place of sale of the services. Under this "self-charge" VAT payment method, the Kazakh VAT payer is required to pay VAT on top of the foreign service provider's fees.

The amount of VAT due to the state is the excess of the total amount of output VAT that the VAT payer would charge during the tax period over the total amount of input VAT available for credit, including any VAT paid for the services of non-residents, and any import VAT. VAT payers are required to file a VAT return and pay VAT to the state budget on a quarterly basis.

2.10 Payroll Taxes and Contributions

Employers in Kazakhstan are liable for certain payroll-related taxes and withholdings, such as PIT (for more information, please refer to the section PIT), social tax, contributions to pension funds as well as contributions to the Social Security Fund and Social Medical Insurance Fund. Social tax and contributions to the Social Security Fund are payable by the employer, whereas PIT and contributions to pension funds are withheld from employee salaries.

Contributions to the Social Medical Insurance Fund consist of two installments: one is withheld from employee salaries, while the other is borne by the employer.

These payroll tax requirements apply to resident entities as well as the subsidiaries and branches of non-residents. Kazakh employers are required to report and remit payroll taxes and contributions to the state on a quarterly basis.

Social tax

Employers in Kazakhstan are required to pay social tax for their employees. The social tax is borne entirely by the employer, and no portion is withheld from employee salaries. Social tax is fully deductible for the CIT purposes of the employer.

Social tax is levied at a flat rate of 9.5% (11% – starting from 2025) on the gross income of employees, both residents and non-residents, including all fringe benefits, whether received in cash or in kind. There is no maximum threshold for the social tax base. Mandatory contributions to pension funds in Kazakhstan and a few other minor allowances, such as compensation for unused vacation, are exempt from social tax.

Mandatory pension contributions

> Kazakh citizens must pay 10% of their gross income as a mandatory pension contribution to the Unified Accumulative Pension Fund ("UAPF") in Kazakhstan.

The gross income amount subject to mandatory pension contributions is capped at 50 times the minimum salary.[11] Foreign citizens who do not have Kazakh residence permits are not required to join the UAPF. The employers of Kazakh citizens must withhold pension contributions from employment income and remit them to the UAPF. Mandatory pension contributions are fully deductible for PIT purposes.

Kazakh citizens working under civil law contracts (hereinafter, "contractors") are subject to the same rules on mandatory pension contributions. As such, the same rate of pension contributions, as well as the salary cap, also apply to contractors. The amount of contributions should be withheld from the remuneration of contractors by the paying entity (although the latter does not act as the contractor's employer).

[11] *In 2021, KZT 2,125,000 or approximately USD 5,000 at the exchange rate in effect in February 2021*

Social security contributions

Employers must make contributions for each employee who is a Kazakh citizen, citizen of the Eurasian Economic Union and foreign citizen who has a Kazakh residence permit. Social security contributions apply to the monthly gross salary of an employee. In 2021 taxpayers (employers in Kazakhstan) are required to calculate social security contributions at the rate of 3.5% (rising to 5% from 2025) of an individual's gross salary up to an amount equal to seven times the minimum salary.[12]

10,412 KZT

Therefore, the maximum contribution amount is KZT 10,412 (approximately USD 25 at the exchange rate in effect in February 2021) per individual per month.

As social security contributions may be offset in full against social tax, they do not represent an additional tax burden for the employer.

Social Medical Insurance Contributions

Paid by the employer

In addition to social security contributions, a Kazakh employer must also make contributions to the Social Medical Insurance Fund for each employee who is a Kazakh citizen, citizen of the Eurasian Economic Union and foreign citizen who has a Kazakh residence permit. Social medical insurance contributions are applicable at the rate of 2% (3% from 2022) on an individual's gross salary up to an amount equal to 10 times the minimum salary.[13]

> Accordingly, the maximum contribution amount is KZT 8,500 per individual per month. Social medical insurance contributions may be offset in full against the employer's CIT.

Paid by the employee

Additionally, Kazakh employees are also required to make contributions to the Social Medical Insurance Fund in the amount of 2% of gross salary. The same cap of 10 times the minimum salary applies in this case. The employer is required to withhold the corresponding amount from the gross salary and remit it to the Social Medical Insurance Fund. Unlike social medical insurance contributions paid by the employer, contributions made by the employee are not deductible for the CIT purposes of the employer.

2.11 Property, Land and Vehicle Taxes

Property tax is payable by the following categories of taxpayers:

- Legal entities that own or use buildings, structures, dwellings, premises and other structures located in Kazakhstan which are regarded as fixed assets or investment property under International Financial Reporting Standards (IFRS) or under the Accounting and Financial Reporting Law;[14]
- Individuals who own real estate and housing, buildings, garages and other structures located in Kazakhstan.

The property tax rate is set at 1.5% for legal entities and applies to the average annual book value of tax assets (regardless of whether profit is derived from the use of the assets). With respect to individuals, the tax rate varies depending on the value of the property (as a rule, the rate does not exceed 1%). Such value is determined annually by the authorized government authority, based on several criteria and coefficients.

Individuals and entities owning or using vehicles registered in Kazakhstan are subject to an annual vehicle tax. The vehicle tax rate depends on the engine volume, age and country of origin of the vehicle.

Land tax applies to entities and individuals that own or use land in Kazakhstan. The land tax rate depends on the land quality and is established in the form of annual fixed payments per unit of land area. Local authorities may decrease or increase the tax rate, depending on the type and location of the land, by up to 50% of the rates stipulated by the Tax Code.

Legal entities subject to property, land and/or vehicle tax are required to file a land, vehicle and property tax declaration that contains designated sections for the reporting of each type of tax. The form must be submitted annually, while the amount of each tax is paid quarterly.

> The Tax Code does not stipulate reporting requirements for these taxes for individuals. As such, individuals subject to property, land and/or vehicle tax are not required to file any declarations in this case. Nevertheless, individuals are required to make corresponding tax payments on an annual basis.

[12] *In 2021, KZT 297,500 or approximately USD 700 at the exchange rate in effect in February 2021*

[13] *In 2021, KZT 425,000 or approximately USD 1,000 at the exchange rate in effect in February 2021*

[14] *Law No. 234-III of the Republic of Kazakhstan On Accounting and Financial Reporting, dated 28 February 2007 (the "Accounting and Financial Reporting Law")*

2.12 Transfer Pricing

According to the Transfer Pricing Law[15], Kazakhstan transactions subject to state transfer pricing control include, inter alia, international (cross-border) sales of goods or services, regardless of whether the parties to a transaction are related parties or not.

The Transfer Pricing Law defines international transactions, inter alia, as the sale/purchase of goods by Kazakh residents outside Kazakhstan and the provision of services where one party to the transaction is a non-resident with no permanent establishment in Kazakhstan.

Under the Transfer Pricing Law, services must be provided at arm's length prices. If services are not provided at arm's length prices, the tax authorities can make a transfer price adjustment to the Kazakh party to the international business transaction. A deviation by any amount is subject to a transfer price audit. There is no stipulation in the Transfer Pricing Law regarding the size of transactions, other than transactions related to agricultural goods. Accordingly, it is highly likely that the tax authorities would seek to apply a transfer pricing adjustment, no matter how small, if insufficient evidence on the use of the market price for goods or services were produced at the time of the audit.

Under this law, Kazakh taxpayers concluding international transactions are required to maintain documentation substantiating and describing their pricing policies. Such documentation can take the form of a functional analysis, economic analysis and benchmarking study disclosing how the parties to a transaction came up with the price, contracts, deliverables, price quotes from competing suppliers, etc.

The Transfer Pricing Law recognizes five acceptable transfer pricing methods which are in general consistent with the recommendations of the OECD guidelines.[16] We list here the five methods that taxpayers may use to determine market prices in the following order of priority:

- comparable uncontrolled price (CUP) method;
- cost-plus method;
- resale price method;
- profit split method; and
- transactional net margin method

[15] *Law of the Republic of Kazakhstan No. 67-IV On Transfer Pricing, dated 5 July 2008 (the "Transfer Pricing Law")*

[16] *Organization for Economic Cooperation and Development (the "OECD")adopted transfer price guidelines which are followed, in whole or in part, by many OECD member countries*

The Transfer Pricing Law assigns a higher priority to the CUP method. Taxpayers must provide sufficient substantiation for using a respective method for determining market prices.

The Transfer Pricing Law envisages use of the following sources of information on market prices in the following order of priority:

- officially recognized sources of information;
- stock exchange quotations;
- price information maintained by the state authorities of Kazakhstan;
- software used by the authorities, information provided by taxpayers and other sources of information.

As mentioned above, the highest priority is given to officially recognized sources of information. While the list of officially recognized sources of information is extensive, most of the sources of information only refer to commodities. The services covered by officially recognized sources of information are limited to financial services and the transportation of oil and petroleum products.

In the case of information on the market prices of products and services for which an officially recognized source of information is not available, taxpayers should refer to the other sources of information stipulated in the Transfer Pricing Law.

3. Tax Regime of Astana International Financial Center

3.1 General

In general, the tax system of Astana International Financial Center adheres to the same principles that are applicable to the general tax system in Kazakhstan. As such, the AIFC tax regime is mainly regulated by the Tax Code, with a few exceptions related to AIFC tax preferences governed by the AIFC Law. The AIFC Law stipulates a range of tax exemptions, including the following:

- tax exemptions for passive income derived from investments related to Astana International Financial Center;
- tax exemptions for qualifying financial services and ancillary services provided by AIFC participants (i.e. legal entities registered under the Acting Law of the AIFC and legal entities recognized (accredited) by the AIFC as AIFC participants);
- other tax exemptions with respect to AIFC participants and their employees.

> The tax benefits available to AIFC participants are significant and should be explored by every business.

In addition, AIFC participants registered under the Acting Law of the AIFC are regarded as Kazakh tax residents. As such, they are also eligible for benefits and exemptions available under the tax treaties concluded with Kazakhstan (for more information, please refer to the section Tax Treaty Benefits).

3.2 Tax Benefits of Astana International Financial Center

CIT and VAT

According to the AIFC Law, AIFC participants are exempt from CIT (the CIT exemption applies until 2066) and VAT on income/turnover from the provision of the following financial services on the territory of Astana International Financial Center[17]:

- Islamic banking services;
- reinsurance and insurance brokerage services;
- investment management services for the assets of investment funds;
- brokerage, dealer or underwriting services;
- any other financial services defined by the Joint Order of the AIFC, the Ministry of Finance and the Ministry of National Economy On Approving the List of Financial Services Provided by Participants of the Astana International Financial Centre, the Income from which is Exempt from Payment of Corporate Income Tax, Value-Added Tax (available in English, Russian and Kazakh).[18]

In addition, until 2066 AIFC participants are exempt from CIT on income from the provision of the following ancillary services to the AIFC authorities and to other AIFC participants that engage in qualifying financial services:

Legal services | **Audit services** | **Accounting services** | **Consulting services**

To apply CIT exemptions on income from the financial and ancillary services indicated above, AIFC participants are required to maintain separate accounting of income and expenses related to qualifying activities and of income and expenses related to other types of activities (if applicable). Separate accounting should be maintained in accordance with certain rules established by the Joint Order of Astana International Financial Center, the Ministry of Finance and the Ministry of the National Economy (available in English, Russian and Kazakh).[19]

Property tax, land tax and PIT

In addition to the CIT and VAT exemptions indicated above, the AIFC Law provides the following tax exemptions:

- from property tax for AIFC participants that engage in qualifying financial and ancillary services on property located on the territory of Astana International Financial Center;
- from land tax for AIFC participants that engage in qualifying financial and ancillary services on land plots located on AIFC territory;
- from PIT for foreign citizens (foreign individuals) employed by the AIFC authorities or AIFC participants that engage in qualifying financial and ancillary services (the PIT exemption applies until 2066).

Investment-related tax benefits

In addition to the tax incentives provided to AIFC participants, the AIFC Law provides tax benefits related to Kazakh-source dividends, interest and capital gains (the benefits listed below apply until 2066).

1. First of all, Kazakh and foreign individuals and legal entities (resident and non-resident) are exempt from CIT, WHT and PIT in Kazakhstan on dividends and capital gains received in connection with their participation interest in an AIFC participant which is a legal entity registered under the Acting Law of the AIFC.
2. Secondly, Kazakh and foreign individuals and legal entities (resident and non-resident) are exempt from CIT, WHT and PIT in Kazakhstan on interest, dividends and capital gains received in connection with securities listed on Astana International Exchange as of the date of sale (in the case of capital gains) or as of the date when the Kazakh-source income is accrued (in the case of interest and dividends).

[17] *Engagement in qualifying financial services requires obtaining a license from the AIFC authorities*

[18] https://aifc.kz/legal-framework/tax-administration

[19] https://aifc.kz/legal-framework/tax-administration

3.3 AIFC Tax Administration

In addition to tax benefits and exemptions, the AIFC Law provides special tax administration criteria that apply to so-called AIFC taxpayers. This term includes the AIFC authorities and AIFC participants that meet the following two criteria:

- the AIFC member is only registered with the state authorities of Kazakhstan on the territory of the AIFC;
- the AIFC member only operates on the territory of the AIFC.

Special conditions applicable to AIFC taxpayers

According to the AIFC Law, AIFC taxpayers are entitled to:

1. Maintain accounting documents (including tax returns) and submit all the necessary documents to the tax authorities in the English language;
2. Maintain tax records in the functional currency, provided that the same functional currency is used throughout the tax period;
3. Determine taxable items and calculate taxes and other mandatory payments to the state budget in the functional currency, provided that the same functional currency is used throughout the tax period (however, the amount of calculated taxes and other mandatory payments is due in tenge);
4. Apply one of the following versions of tax accounting policies:
   - a special version, the template of which was approved by the joint act of the AIFC and the State Revenue Office (with possible addenda/amendments based on the nature of business);
   - a version developed by the taxpayer in accordance with the requirements of the Tax Code;
5. Apply one of the following versions of CIT tax registers (file used to calculate CIT obligations):
   - a special version, the template of which was approved by a joint act of the AIFC and the State Revenue Office (with possible addenda/amendments based on the nature of business);
   - a version developed by the taxpayer.

Procedure for filing tax returns

The AIFC Law does not stipulate any special conditions on tax filing obligations. Accordingly, AIFC participants should adhere to the general filing requirements regulated by the Tax Code. CIT and PIT returns must be filed, regardless of whether the taxpayer (the AIFC member) has CIT or PIT objects. In contrast, other tax returns should only be filed if a corresponding tax obligation arises and the tax objects are relevant for the taxpayer (AIFC participant).

Taxpayers that fail to file tax returns on time may be subject to administrative fines that vary from 30 to 70 times the monthly calculation index.[20]

> Failure to file a tax return within 30 working days of receiving a notification of non-submission leads to the suspension of debit transactions on bank accounts.

In addition to the above, debit transactions on bank accounts can also be suspended as a result of the following:

- failure to register as a VAT payer;
- outstanding tax liabilities;
- failure to explain why the taxpayer's representatives are not present at the place of registration of the office in the event of a tax audit;
- failure to eliminate violations identified during a tax audit;
- failure to grant access to the taxpayer's office or territory in the event of a tax audit;
- inability of the tax authorities to reach the taxpayer at the place of registration of the office via postal services.

3.4 Implications for Controlled Foreign Companies

> Entities established under the Acting Law of the AIFC are regarded as Kazakh tax residents. Therefore, they are subject to so-called controlled foreign companies rules (the "CFC rules"). These rules apply in accordance with Kazakh tax legislation as well as the legislation of foreign countries.

[20] In 2021, from KZT 87,510 to KZT 204,190 or approximately from USD 210 to USD 480 at the exchange rate in effect in February 2021

In essence, the CFC rules require a taxpayer (whether an individual or an entity) to tax the retained profits of foreign companies in the country of residence of the taxpayer if such companies are covered by the definition of a controlled foreign company (hereinafter, “CFC”) stipulated by the CFC rules of the country of residence of the taxpayer (if the CFC rules are in place). The CFC is broadly defined as a foreign company that is either directly or indirectly controlled by a resident taxpayer. Jurisdictions vary greatly in their approach to determining control over a foreign company. In general, such factors as the percentage of shares/participation interests held in a foreign company, the tax exemption of the foreign company in its jurisdiction of residence or the registration of such a company in a country with a preferential tax regime may determine whether this foreign company should be regarded as a CFC.

> Given that Kazakh tax legislation has CFC rules in place, the foreign subsidiary of an AIFC participant may potentially be regarded as a CFC for Kazakh tax purposes.

In this case, AIFC participants may be taxed on the profits of its foreign subsidiary (i.e. CFC profits). In addition, an AIFC participant may in turn be subject to the CFC rules of foreign countries. Accordingly, an AIFC participant may be regarded as the CFC of a foreign parent company/investor.

Some jurisdictions provide certain tax benefits and/or exemptions to CFCs. While some companies may be covered by the definition of CFC, their income may qualify for exemption. In this case, the presence of the foreign company does not necessarily represent an additional tax burden for the taxpayer deemed to control this company.

25%

Based on the example of the CFC rules applicable in Russia, a Kazakh tax resident entity registered on the territory of the AIFC may be regarded as a CFC for the Russian tax purposes, if inter alia over 25% of its shares/participation interests are held by a Russian taxpayer.

Normally, such a taxpayer (also classified as the controlling person) would be taxed on the retained profits of the CFC (retained earnings) if such profits exceeded the threshold of RUB 10 million. In this particular case, however, the CFC’s profits may be exempt from taxation in Russia because Russian tax legislation provides an exemption for profits of a CFC that is, inter alia, a tax resident of a member state of the Eurasian Economic Union.

Currently, CFC rules are in place in all EU Member States and are being introduced in a growing number of countries outside the EU. Therefore, an investor should remain cognizant of the fact that potentially the income (or part of the income) of a subsidiary registered on the territory of the AIFC may be included in the investor’s taxable income and may be taxable in its country of residence.

> Given that a CFC and the income of a CFC are defined in different ways, depending on the jurisdiction, it is advisable that investors conduct further analysis as to whether entities registered on the AIFC territory are subject to any CFC rules in their country of residence.

4. Comparison of the AIFC, Cypriot and Delaware Tax Regimes

As discussed previously, the AIFC provides a range of tax benefits for its participants. For your information, we present below a comparative table of the AIFC tax regime and the tax regimes in Cyprus and Delaware, two jurisdictions used extensively to structure investments in the Eurasian region.

	AIFC	CYPRUS*	DELAWARE: CORPORATION*	DELAWARE: LLC*
Income tax (or similar): CIT in the case of legal entities; PIT in the case of individuals with Delaware LLC	Statutory CIT rate of 20% CIT exemption for qualifying types of income Certain taxpayers may qualify for 3% CIT under the simplified tax declaration regime, subject to compliance with certain criteria	Statutory CIT rate of 12.5% CIT exemption for qualifying types of income Special Contribution for Defense ("SCD") applicable at the rates of 17%, 30% or 3% SCD exemption available for qualifying types of income subject to compliance with certain criteria	Statutory Federal CIT rate of 21% on worldwide income Statutory Delaware CIT rate of up to 8.7% on Delaware-source income if business is conducted in Delaware Annual Delaware franchise tax of at least USD 175	No tax at entity level Income (loss) is passed onto LLC participants who then pay taxes at their level No tax for non-resident LLC participants if the LLC's income is from non-US sources and the LLC does not do business in the USA Annual fee of USD 300
Taxation of incoming dividends	Incoming **dividends are excluded from gross annual income,** unless they have been received from an entity that applies a 100% CIT reduction	Incoming dividends are exempt from CIT but subject to 17% SCD SCD exemption available subject to compliance with certain criteria	Incoming dividends are subject to Federal CIT Dividends received from domestic corporations may be deductible for Federal CIT purposes subject to compliance with certain criteria No Delaware CIT implications, unless business is conducted in Delaware	Incoming dividends are passed with no CIT onto LLC participants who then pay taxes at their level
VAT (or similar)	Statutory VAT rates of 0% and 12% VAT exemption for qualifying financial services VAT exemption available for certain other activities subject to compliance with certain criteria	Statutory VAT rates of 0%, 5%, 9% and 19% VAT exemption available for some activities subject to compliance with certain criteria	Not applicable	
WHT (or similar) on interest, royalty	Statutory WHT rate of 15% on interest and royalties paid to non-residents (20% if paid to non-residents registered in black-listed jurisdictions) Reduced WHT rates applicable under tax treaties subject to compliance with certain criteria	No WHT on interest 10% WHT on royalty associated with intellectual property rights used in Cyprus WHT exemption available for royalty paid to a connected entity in the EU subject to compliance with certain criteria	Statutory WHT rate of 30% on interest and royalties paid to non-residents Reduced WHT rates applicable under tax treaties subject to compliance with certain criteria WHT benefits and exemptions available subject to compliance with certain criteria	Statutory WHT rate of 30% on interest and royalties paid to non-residents Reduced WHT rates applicable under tax treaties subject to compliance with certain criteria WHT benefits and exemptions available subject to compliance with certain criteria

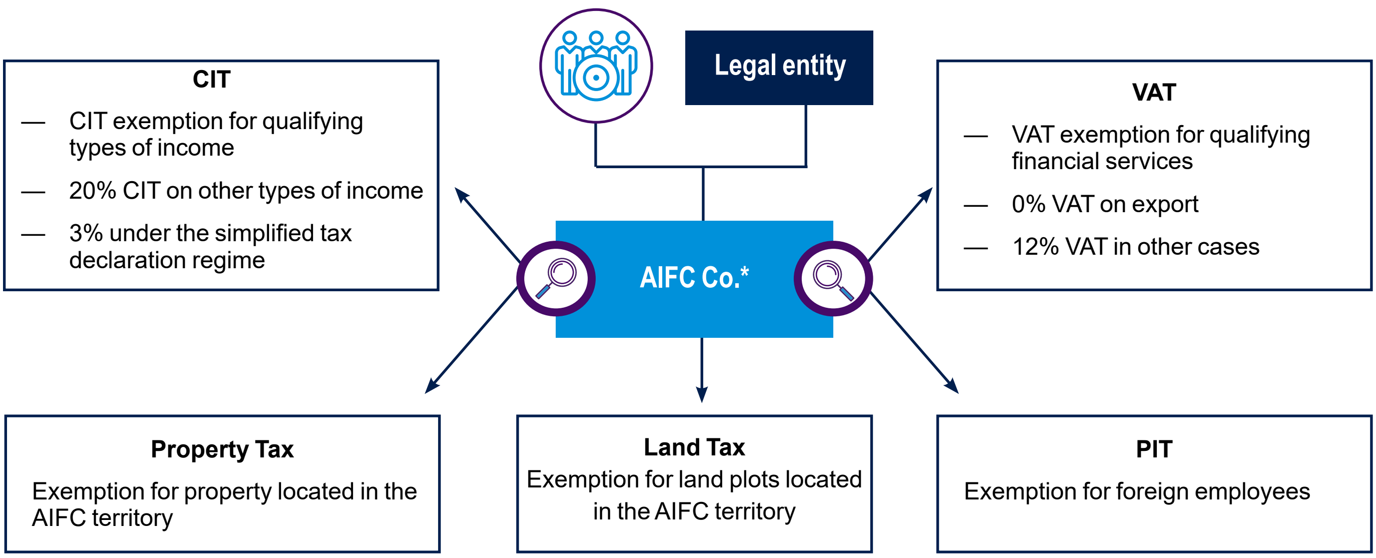
	AIFC	CYPRUS*	DELAWARE: CORPORATION*	DELAWARE: LLC*
Taxation of outgoing dividends	**Dividends are exempt from taxation**	No WHT on dividends	Statutory WHT rate of 30% on dividends paid to non-residents Reduced WHT rates applicable under tax treaties subject to compliance with certain criteria WHT benefits and exemptions available subject to compliance with certain criteria	Not applicable to dividends
Taxation of capital gains from the alienation of shares/participation/ ownership interests	**Capital gains** realized from the alienation of shares/ participation interests in AIFC participants registered under the Acting Law of the AIFC **are exempt from taxation**	In general, capital gains realized from the alienation of shares/participation interest in a Cypriot entity are tax-exempt, unless the Cypriot entity owns immovable property in Cyprus or derives (directly or indirectly) at least 50% of its value from immovable property in Cyprus	In general, capital gains realized by a non-resident from the alienation of shares in a corporation are tax-exempt unless the non-resident engages in US trade or business	In general, capital gains realized by a non-resident from the alienation of an ownership interest in an LLC are tax-exempt, unless the non-resident engages in US trade or business
Social security taxes and contributions (or similar)	Social tax is imposed at the rate of 9.5% on the monthly gross salaries of both resident and non-resident employees Social security contributions are imposed at the rate of 3.5% on the monthly gross salaries of employees who are Kazakh citizens, citizens of the Eurasian Economic Union and foreign citizens who have a Kazakh residence permit. A monthly salary cap of USD 700 applies to the assessment of social security contributions Social medical insurance contributions are imposed on the monthly gross salaries of employees who are Kazakh citizens, citizens of the Eurasian Economic Union and foreign citizens who have a Kazakh residence permit. A monthly salary cap of USD 990 applies. The rate is set at 2% The employer's portion of taxes and contributions is deductible for CIT purposes	Social insurance contributions are imposed on annual wages with an annual cap subject to compliance with various rules. The rate is set at 2.9% for employers and 2.65% for employees Social insurance contributions may also apply to certain other types of payments to individuals at various rates Contributions to the Social Insurance Fund, Redundancy Fund, Training and Development Fund and Social Cohesion Fund are imposed on employers at the rates of 8.3%, 1.2%, 0.5% and 2% of monthly wages, respectively. A monthly wage cap of EUR 4,572 applies to contributions to the Social Insurance Fund, Redundancy Fund and Training and Development Fund	The old age, survivors and disability insurance (hereinafter, "OASDI") is imposed on annual wages capped at USD137,700. The OASDI rate is set at 6.2% for both employers and employees The hospital insurance is imposed on annual wages without any limits. The rate is set at 1.45% for both employers and employees The employer pays his own portion of social security taxes and collects the employee portion through withholding The employer's portion of taxes is deductible for federal CIT purposes	

	AIFC	CYPRUS*	DELAWARE: CORPORATION*	DELAWARE: LLC*
Number of tax treaties in the jurisdiction	55 tax treaties	61 tax treaties	68 tax treaties	68 tax treaties (treaty application should be analysed on a case by case basis)
Estate tax (or similar)	Statutory property tax rate of 1% **Property tax exemption** for objects located in the AIFC	No	Imposed at the state of Delaware level Various rates apply	The ownership interest of a non-resident individual in an LLC is subject to the US estate tax, but can be avoided if the ownership interest is held through a foreign legal entity
Net wealth tax	No			
Inheritance tax	No			
Gift tax	No			

The above summary of tax implications that may arise in Cyprus and/or the USA is based on publicly available information

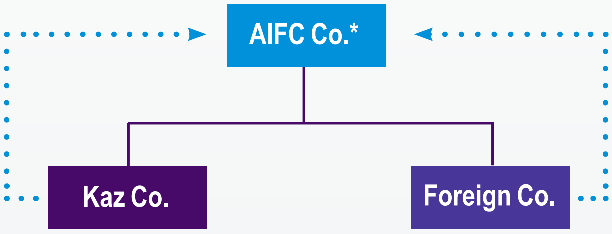
5. Tax Benefits at a Glance

Main Tax Benefits



A legal entity registered under the Acting Law of the AIFC

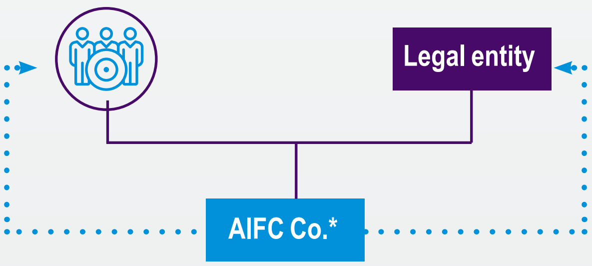
Taxation of Incoming Dividends

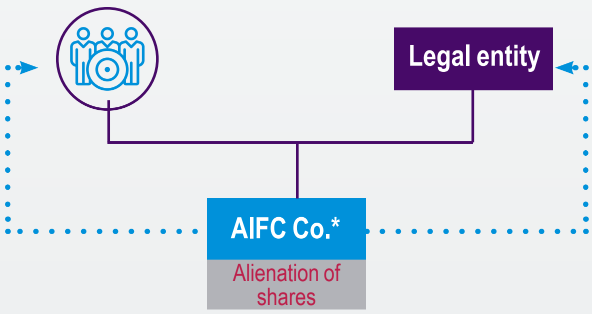


dividends

1. Generally, dividends are exempt from taxation in Kazakhstan
2. Foreign Co. may potentially be regarded as a CFC for AIFC Co.

Taxation of Outgoing Dividends





dividends

1. Dividends are exempt from taxation in Kazakhstan
2. AIFC Co. may potentially be regarded as a CFC for Foreign participants/shareholders

1. Capital gains (if any) are exempt from taxation in Kazakhstan

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A legal entity registered under the Acting Law of the AIFC

Appendixes

7. Appendixes

7.1 Appendix A: List of States with a Preferential Tax Regime

No.	COUNTRY/TERRITORY	No.	COUNTRY/TERRITORY
1	Principality of Andorra	21	Republic of Liberia
2	Antigua and Barbuda	22	Lebanese Republic
3	Commonwealth of The Bahamas	23	Republic of Mauritius
4	Barbados	24	Islamic Republic of Mauritania
5	Kingdom of Bahrain	25	Portuguese Republic
6	Belize	26	Republic of Maldives
7	Nation of Brunei, the Abode of Peace	27	Republic of the Marshall Islands
8	Republic of Vanuatu	28	Principality of Monaco
9	The Co-operative Republic of Guyana	29	Republic of Malta
10	Republic of Guatemala	30	Mariana Islands
11	Grenada	31	Kingdom of Morocco (Only regarding Tangier)
12	Republic of Djibouti	32	Republic of the Union of Myanmar
13	Dominican Republic	33	Republic of Nauru
14	Commonwealth of Dominica	34	Kingdom of the Netherlands (Territory of Aruba and the dependent Territories of the Antilles)
15	Kingdom of Spain (Only part of the Canary Islands)	35	Federal Republic of Nigeria
16	People’s Republic of China (Only the Special Administrative Regions Macao and Hong Kong)	36	New Zealand (Only regarding the Cook Islands and Niue)
17	Republic of Colombia	37	Republic of Palau
18	Union of the Comoros	38	Republic of Panama
19	Republic of Costa Rica	39	Independent State of Samoa
20	Federation of Malaysia (Only regarding the Labuan enclave)	40	Republic of San Marino

No.	COUNTRY/TERRITORY	No.	COUNTRY/TERRITORY
41	Republic of Seychelles	46.3	Commonwealth of Puerto Rico
42	Saint Vincent and the Grenadines	46.4	State of Wyoming
43	Federation of Saint Christopher and Nevis	46.5	State of Delaware
44	Saint Lucia	**47**	Republic of Suriname
45	**United Kingdom of Great Britain and Ireland (the following territories only):**	**48**	United Republic of Tanzania
45.1	Anguilla	**49**	Kingdom of Tonga
45.2	Bermuda	**50**	Republic of Trinidad and Tobago
45.3	Virgin Islands	**51**	Republic of Fiji
45.4	Gibraltar	**52**	Republic of the Philippines
45.5	Cayman Islands	**53**	**French Republic (the following territories only):**
45.6	Montserrat	53.1	Kerguelen Islands
45.7	Turks and Caicos Islands	53.2	French Polynesia
45.8	Isle of Man	53.3	French Guiana
45.9	Channel Islands (Guernsey, Jersey, Spark, Alderney islands)	**54**	Montenegro
45.10	South Georgia	**55**	Democratic Socialist Republic of Sri Lanka
45.11	South Sandwich Islands	**56**	Jamaica
45.12	Chagos Archipelago		
46	**United States of America (the following territories only):**		
46.1	Virgin Islands of the United States		
46.2	Guam		

7.2 Appendix B: Tax Treaties with Kazakhstan

No.	COUNTRY	DIVIDENDS (INDIVIDUALS, COMPANIES)	DIVIDENDS (COMPANIES*)	INTEREST (%)	ROYALTIES (%)	BRANCH PROFIT TAX (%)	MLI COVERED BY THE TAX TREATY**
1	Armenia	10	10	10	10	5	Yes
2	Austria	15	5	10	10	5	No
3	Azerbaijan	10	10	10	10	2	No
4	Belarus	15	15	10	15	5	No
5	Belgium	15	5	10	10	5	Yes
6	Bulgaria	10	10	10	10	10	Yes
7	Canada	15	5	10	10	5	Yes
8	China	10	10	10	10	5	Yes
9	Croatia	10	5	10	10	5	No
10	Cyprus	15	5	10	10	5	No
11	Czechia (Czech Republic)	10	10	10	10	5	No
12	Estonia	15	5	10	15	5	Yes
13	Finland	15	5	10	10	5	Yes
14	France	10/15	5	10	10	5	Yes
15	Georgia	15	15	10	10	5	No
16	Germany	15	5	10	10	5	No
17	Hungary	15	5	10	10	5	Yes
18	India	10	10	10	10	10	Yes
19	Iran	15	5	10	10	5	No
20	Ireland	15	5	10	10	5	Yes

No.	COUNTRY	DIVIDENDS (INDIVIDUALS, COMPANIES)	DIVIDENDS (COMPANIES*)	INTEREST (%)	ROYALTIES (%)	BRANCH PROFIT TAX (%)	MLI COVERED BY THE TAX TREATY**
21	Italy	15	5	10	10	5	Yes
22	Japan	15	5	10	10	Not specified	Yes
23	Korea	15	5	10	10	Not specified	Yes
24	Kyrgyzstan	10	10	10	10	10	No
25	Latvia	15	5	10	10	5	Yes
26	Lithuania	15	5	10	10	5	Yes
27	Luxembourg	15	5	10	10	10	Yes
28	Malaysia	10	10	10	10	10	Yes
29	Moldova	15	10	10	10	5	No
30	Mongolia	10	10	10	10	10	No
31	Netherlands	15	0/5	10	10	5	Yes
32	North Macedonia	15	5	10	10	5	Yes
33	Norway	15	5	10	10	5	No
34	Pakistan	15	12.5	12.5	15	Not specified	Yes
35	Poland	15	10	10	10	10	Yes
36	Qatar	5	10	10	10	10	No
37	Romania	10	10	10	10	15	Yes
38	Russia	10	10	10	10	10	Yes
39	Saudi Arabia	5	5	10	10	Not specified	Yes
40	Serbia	15	10	10	10	10	Yes

No.	COUNTRY	DIVIDENDS (INDIVIDUALS, COMPANIES)	DIVIDENDS (COMPANIES*)	INTEREST (%)	ROYALTIES (%)	BRANCH PROFIT TAX (%)	MLI COVERED BY THE TAX TREATY **
41	Singapore	10	5	10	10	5	Yes
42	Slovak Republic	15	10	10	10	5	Yes
43	Slovenia	15	5	10	10	5	Yes
44	Spain	15	5	10	10	5	Yes
45	Sweden	15	5	10	10	5	Yes
46	Switzerland	15	0/5	10	10	5	No
47	Tajikistan	15	10	10	10	10	No
48	Turkey	10	10	10	10	15	Yes
49	Turkmenistan	10	10	10	10	5	No
50	Ukraine	15	5	10	10	5	Yes
51	United Arab Emirates	-	5	10	10	5	Yes
52	United Kingdom	15	5	10	10	Not specified	Yes
53	USA	15	5	10	10	5	No
54	Uzbekistan	10	10	10	10	Not specified	No
55	Vietnam	15	5	10	10	5	No

** Unless indicated otherwise, the rates in this column apply if the recipient company owns at least 10% of the capital or the voting power of the paying company, as the case may be. Special conditions may apply such as a minimum period of ownership*

*** Status as of 15 January 2021*

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