

Tair Kultelev

Head of AEQUITAS branch in the AIFC
Head of Registrations, Senior Associate
AEQUITAS Law Firm
www.aequitas.kz

10 QUESTIONS TO A LAWYER

REGISTRATION OF COMPANIES IN THE ASTANA INTERNATIONAL FINANCIAL CENTRE

The interest of investors to the Astana International Finance Centre (the "AIFC" or "Centre") has been growing. The attractive investment environment contributes to such growing interest. Specifically, the AIFC has tax benefits for its participants providing financial services; exemption from taxes on income in the form of dividends from shares of the participant legal entities registered under the current laws of the AIFC or participatory interests in the charter capitals of the participant legal entities registered under the current laws of the AIFC, and other benefits. The legal institutions applicable in the AIFC are easy-to-understand to investors: laws of the AIFC are based on the principles, rules and precedents of the laws of England and Wales, as well as the standards of the leading financial centres. The AIFC has independent dispute resolution institutions: there are two dispute resolution authorities active in the AIFC territory, which are the AIFC Court and the International Arbitration Centre.

During the period of its existence, more than 1,800 companies have been registered in the AIFC. Starting 2022, the AIFC has registered about 750 companies. However, not every applicant succeeds to get qualified by the Registrar of Companies. This has specifically become apparent during the last year after changes in the geopolitical situation and special interest from the Russian business in relocation of enterprises to friendly jurisdictions. To date, the most popular are the companies in the IT sphere or trading companies, which are used as an intermediate link to re-export goods, minimize losses from economic restrictions, and perform settlements with foreign counterparties, which are very complicated now from the territory of the Russian Federation (the "Russia") because of currency restrictions. Such companies do not actually carry out any activities in Kazakhstan, which is definitely inconsistent with the purposes and objectives, for which the AIFC was established (please see Article 2 of the AIFC Constitutional Law¹).

In light of the above, the AIFC introduced the Strategic Fit Process. This process embraces internal evaluation and process of collective decision-making. Internal evaluation means the Enhanced Due Diligence conducted by the Registrar of Companies with respect to persons and affiliated companies specified in an application. This Enhanced Due Diligence is more extensive than a standard one normally conducted by the registration department.

We believe that by way of introducing the Strategic Fit Process the AIFC tries to filter the companies posing any risk in connection with the sanctioned persons in the ownership structure or carrying out of activities to avoid the sanction measures (e.g. trade in goods, which are restricted for importation into the Russian territory). We can see that the criteria,

¹ <https://aifc.kz/files/legals/7/file3/z.rus.pdf>

which may be significant to decide on approval of an application is the presence of economic interaction with Kazakhstan, carrying out of activities in the Kazakhstan territory, relocation of employees, and in case of setting up a holding company – presence of assets in Kazakhstan. Nevertheless, the Registrar of Companies may refuse to register without specifying any reasons.

We have prepared 10 questions and answers based on our experience involving support of the relocation procedure for the offices of both small companies and major corporations listed by the Fortune 500 and we hope that they will help the readers to get their questions answered and the idea of the recent amendments pertaining to registration of companies in the AIFC.

1. Do the laws of the Republic of Kazakhstan (Kazakhstan) apply in the territory if the AIFC?

The current legislation of the AIFC is based on the Kazakhstan Constitution and composed of:

- AIFC Constitutional Law;
- AIFC acts issued by the AIFC bodies, which are consistent with the Constitutional Law and may be based on the principles, rules and precedents of the laws of England and Wales and/or standards of the leading international financial centres;
- current legislation of the Republic of Kazakhstan applied to the issues not settled by the Constitutional Law and the AIFC acts.

The AIFC acts are issued by the AIFC bodies and cover major part of relations arising between the companies registered in the AIFC and other relevant persons with respect to corporate, contractual, labor and other issues.

At the time of writing, the total number of the AIFC acts is approximately 100. All AIFC acts are available at <https://aifc.kz/legal-framework>.

The acts are divided into sections in accordance with the spheres of application:

- National legislation of Kazakhstan.
- AIFC General Legal Framework.
- AIFC Financial Services Framework.
- Rules of the AIFC Court.
- Rules of Arbitration and Mediation of the International Arbitration Centre.
- Joint Orders with the Governmental Agencies of Kazakhstan.
- Other (reporting standards and forms).

2. Is it necessary to register with the tax authority or other governmental agencies after registration in the AIFC?

Registration of a company in the AIFC is performed according to one stop principle. This is to say that concurrently with company registration in the AIFC, the company is registered with other required authorities of Kazakhstan, including the justice authority, tax authority and statistics authority.

3. How is reporting submitted to the tax authority?

The tax reporting is submitted at the place of registration of a company in the AIFC. Please note that the AIFC does not have its own tax act and will apply the Tax Code² with respect to taxation.

The AIFC Constitutional Law specifies that the tax regime in the AIFC is determined by the Tax Code with certain exceptions established by the AIFC Constitutional Law.

4. What is the minimum staff for the companies, and may the head perform the functions of an accountant?

A private company may have one director; however, at least two directors are required in practice for the private companies with regulated activities.

Foreigners may be appointed as a chief executive officer and a director.

In case a foreigner is appointed as a chief executive officer of a company, he/she will have to obtain an individual identification number (IIN). No IIN is required for other directors who are foreigners.

Depending on the scope of accountable work, a company head may keep accounting records personally or introduce a position of a chief accountant into the staff (Article 8.2 of the Accounting Law³).

5. What are the migration benefits for the employees of the AIFC participant companies?

According to the list of persons whose labor activities do not require a foreign labor engagement permit from the local executive authority as approved by the Government Decree No. 802⁴, such persons are foreigners engaged by participants and authorities of the AIFC.

Foreigners and stateless persons who are the employees of the participants or authorities of the Centre, investment residents of the Centre and their family members receive an entry visa with a term of up to 5 years (Article 7 of the AIFC Constitutional Law).

Please note that the AIFC participants must have at hand and store the documents with respect to each engaged employee confirming the employee's high qualification, and an engaged foreigner or a stateless person must submit them to an AIFC participant. The list of documents confirming high qualification of a foreigner or a stateless person is determined by the Astana Financial Services Authority (AFSA) (Article 8 of the AIFC Constitutional Law). However, the list of documents confirming high qualification of a foreigner or a stateless person has not been approved yet.

² <https://adilet.zan.kz/rus/docs/K1700000120>

³ https://adilet.zan.kz/rus/docs/Z070000234_/z070234.htm

⁴ Decree No. 802 of the Government of the Republic of Kazakhstan "On Approval of the Rules for Establishing Quota for Engagement of Foreign Labor to the Republic of Kazakhstan and Allocation Thereof among the Oblasts, Cities of National Significance, Capital of the Republic of Kazakhstan, and Establishing of the List of Persons Whose Labor Activities do not Require Foreign Labor Engagement Permits from Local Executive Authorities, and Recognition of Certain Resolutions of the Government of the Republic of Kazakhstan as Null and Void" dated 15 December 2016.

6. Is it necessary for a company to notify the governmental agencies of Kazakhstan of hiring foreign employees, submit respective reports, etc.?

The AIFC participants submit information on the engaged foreigners and stateless persons to the AIFC administration (Article 8 of the AIFC Constitutional Law).

The AIFC administration keeps records of foreign labor engaged by the AIFC participants, AIFC structural subdivision or organization (paragraph 2.1 of the Record Keeping Rules⁵).

To keep records of foreign labor engaged by the AIFC participants, a foreign employee or an employer on his/her behalf or an authorized person submits the following documents to the AIFC:

- foreign employee's questionnaire;
- copy of national passport of a foreign employee (paragraph 2.3.1 of the Record Keeping Rules).

Besides this, foreigners working for the AIFC participant companies must follow general rules of migration and must have relevant documents granting the right to enter and stay (work visa, temporary residence permit).

7. What governing law may be selected by the parties to a contract and what language must be used to enter into transactions?

The AIFC legislation allows for selection of the governing law for contracts by agreement of the parties and establishes that the law selected by the parties must be binding upon such parties (Article 43 of the Regulations on the AIFC Acts⁶).

If any party to a contract is not an AIFC participant, the AIFC act "On Contracts" will apply to regulate their relations only in case this is expressly specified in the contract (Article 7 of the AIFC act "On Contracts"⁷).

Thus, contracts entered into by a private company with the counterparties from Kazakhstan or any other jurisdiction, may be subordinated to a foreign law at the parties' discretion. However, the Kazakhstan legislation will apply to the rights and obligations under a contract, the subject of which is immovable property, participatory interests in a limited liability partnership, subsoil use and in some other cases stipulated by legislation at the imperative level.

Transactions effected in writing, one of the parties to which is the AIFC participant, must be set out in the English, Kazakh or Russian language (Article 20 of the AIFC Constitutional Law).

8. Can a company, which is not active in the sphere of financial activities, be registered in the AIFC?

The companies providing financial services are regulated companies (please see Annex 1 - 4 to the General Rules⁸) and carrying out of the regulated activities requires a relevant license.

⁵ <https://aifc.kz/uploads/Expat/AIFC%20RULES%20ON%20KEEPING%20RECORDS%20OF%20FOREIGN%20LABOUR%20ATTRACTED%20BY%20AIFC%20PARTICIPANTS%20AND%20AIFC%20BODIES%20AIFC%20RULES%20NO.%202%20OF%202018%20April%202019.pdf>

⁶ <https://aifc.kz/files/legals/175/file/1.-aifc-regulations-on-aifc-acts-no.1-of-2017.pdf>

⁷ https://aifc.kz/files/legals/179/file/2.-aifc-contract-regulations-2017_new-design.pdf

⁸ https://aifc.kz/files/legals/65/file/gen- v13_fr0001_01.07.2022.pdf

At the same time, legislation does not prohibit to register companies in the AIFC, which do not provide financial services but work in other branches.

Accordingly, the AIFC acts on regulated activities will not apply to such companies and no license will be required for the regulated activities. In case the type of activities, which the company contemplates to carry out, is not a licensable type of activities from the standpoint of the AIFC laws but is licensable or requires a permit under the Kazakhstan legislation, such types of activities will be governed by the general Law on Permits⁹.

The AIFC allows for the registration of holding companies¹⁰. This type of activities is neither referred to the regulated activities, nor requires a license.

9. Is it necessary to submit any reporting to the AIFC authorities? Is there any annual payment in the AIFC for extension of the company registration?

In addition to the tax and statistical reporting submitted according to the general requirements of the Kazakhstan legislation, it is also necessary to submit reporting with respect to engaged foreign specialists.

Furthermore, the AIFC participants must submit certain number of reports to the register of companies each year. Below are the current obligations of companies on submission of documents:

- filing of annual accounts;
- filing of annual return; and
- filing of annual confirmation statement.

For more details regarding these reports, please see the AFSA Guidance on Filing Obligations of the AIFC Participants to the Registrar of Companies¹¹.

There is no annual payment for extension of registration of a private company (previously there was a payment for extension of a commercial license; however, it was cancelled about a year after establishing the AIFC). As regards the regulated companies, there is a *Supervision Fee*. This fee varies depending on the type of activities and normally reaches USD 1,000-10,000.

10. What is the registration procedure for a private company?

In case the business a private company contemplates to do is subject to licensing under the laws of the AIFC, first of all, it is necessary to contact the Participant Support and Sales Department of the AIFC Authority and obtain a preliminary advice to clarify the type of activities and determine an application, which must be submitted to obtain a license.

In case the contemplated type of activities is not subject to licensing from the standpoint of the laws of the AIFC, an applicant may commence registration of a private company without any delay.

10.1 The first step to set up a private company is to determine legal address, chief executive officer (*CEO*) and director(s) of the company.

⁹ https://online.zakon.kz/Document/?doc_id=31548200

¹⁰ <https://aifc.kz/holding-companies-and-corporate-offices/>

¹¹ https://afsa.aifc.kz/uploads/Forms%20post-registration/Ver3_Guidance%20on%20Filing%20Obligations.pdf

To register a company, it is necessary to have a real office located in the AIFC (Edict of the Kazakhstan President "On Determining the Boundaries of the AIFC Territory"¹²). Therefore, prior to registration it is necessary to enter into a lease agreement between a future shareholder and a landlord or obtain a relevant letter of guarantee from a landlord on entering into an agreement with a private company after its registration. Later, such lease agreement may be entered into by a private company itself.

The dimensions of the office are not important, but this must be a real office. An applicant may also contact the *Corporate Service Provider* holding a relevant AIFC license, which will provide the legal address and corporate services.

10.2 Another step is the filling out of an application¹³ for registration of a private company and submission on the self-service portal¹⁴. The application includes the following sections:

- details of an applicant;
- types of activities;
- legal address;
- charter capital;
- shareholder (with disclosure of information up to the ultimate beneficiary);
- chief executive officer and director(s);
- articles of association; and
- information on whether the selected type of activities falls under regulation on counteraction against money laundering and financing of terrorism (*CMLFT*).

It is worth mentioning that, when submitting the application on the self-service portal, the directors and the chief executive officer must undergo the Know Your Client (KYC) procedure. For this purpose, they will be provided with a link to fill out information about themselves and make photos.

The application for registration must attach a copy of a resolution on incorporation (copy of a template of the resolution on incorporation is available on the AIFC's website)¹⁵. The resolution must be issued with respect to the following issues:

- registration of a legal entity in the AIFC;
- appointment of a person authorized to execute all documents and take all required and proper actions on behalf of the legal entity in connection with registration of the legal entity in the AIFC;
- appointment of a person authorized to execute all documents and take all required and respective actions on behalf of the legal entity after registration of the legal entity in the AIFC;
- appointment of the director(s);
- appointment of the chief executive officer;

¹² <https://adilet.zan.kz/rus/docs/U1500000161>

¹³ Please see the application form <https://afsa.aifc.kz/private-company/>

¹⁴ Self-service portal <https://digitalresident.kz/#/login>

¹⁵ Please see the form of the resolution on incorporation <https://afsa.aifc.kz/private-company/>

- appointment of a secretary(ies) – if any; and
- approval of the articles of association.

The application for registration must attach a copy of the *Articles of Association* in case a private company acts not on the basis of the model articles of association. The articles of association must contain provisions regarding the company name; type of activities; rights associated with shares or classes of shares; transfer of shares; procedure for holding general meetings; number of directors, their appointment and termination of their powers; allocation of powers between the shareholders and directors; distribution of profits; issue of new shares; restrictions on share transfer; procedure for termination and liquidation of the company. Schedule 5 to the AIFC Companies Rules¹⁶ contains the model articles of association. The shareholders are free in their choice of the provisions to be included in the articles of association, provided that such provisions will not contradict the Regulations and the AIFC Companies Act¹⁷.

[For your information: The documents issued by a foreign state do not require apostilization and translation into the Russian/Kazakh language. All documents are submitted to the AIFC in the English language. However, we recommend requesting the documents from foreign jurisdictions with apostil (legalization) in advance, because after registration of a company such documents (originals or notarized copies and with notarized translation) will be required to open a bank account. Furthermore, to open a bank account, in addition to the banking forms, resolution on incorporation and documents disclosing the ownership structure it will be necessary to submit the articles of association. If a company works on the basis of the model articles of association, it will be sufficient to preserve and print out an application for registration (Registration Application of Private Company), which will contain a respective mark. The banks require translation of the articles of association / application.]

An account may be opened with a bank by a representative. The chief executive officer must sign a specimen signature card. The card may be notarized by a foreign notary and apostilled. All other banking forms (application for account opening, client questionnaire, application for remote banking services) are signed in a simple form].

When submitting the application on the self-service portal, the applicant must pay the registration fee in the amount of USD 300 either online or by a non-cash bank transfer attaching a document confirming the payment. In case of submitting directly to the registration department, the fee will be USD 500.

10.3 We mentioned above that the AIFC introduced the Strategic Fit Process. To date, there are no official instructions for the updated registration process; however, based on the information received from the AIFC, after receiving an application with a full set of documents, the Registrar of Companies evaluates it and decides whether an applicant is eligible to be the subject of the Strategic Fit Process and informs within 5 business days of the additional documents, which will be required for the Enhanced Due Diligence, and may also request to pay for consideration of additional documents (the amount of such additional payment is not fixed and is determined in each specific case separately, and depends on the risk degree, complexity of an application, sphere of business, connections with the sanctioned persons and the tentative time, which

¹⁶ AIFC Companies Rules <https://aifc.kz/files/legals/237/file/2.-aifc-companies-rules-no.gr0004-of-2017.pdf>

¹⁷ AIFC Companies Act <https://aifc.kz/legal-framework/companies/>

may be required to consider the application, and the time, which may be required for the post-registration monitoring of the company).

Once the applicant submits all additional documents and information, the Registrar of Companies will conduct the second round of evaluation within two weeks. During this period, the Registrar of Companies may request for an interview with the applicant, shareholders or directors. After receiving the additionally requested documents, the application will be finally considered within three weeks. In total, the applicant will be given three months to provide the additionally requested documents and information; otherwise, the application will be considered as void.

The Registrar of Companies may apply the Strategic Fit Process not only in case it can see a company's connection with Russia on the basis of the initially considered documents, but even in case the registrar can see any potential risks for the AIFC and Kazakhstan in general.

Strategic Fit Process requires submission of the following documents:

- **Employees hiring plan** for the next 3 years. This document is drafted in a free form and must contain the following key sections:

Number of employees. The plan must contain information on the total number of employees required for successful business operation within the 3-year period, including detailed information on the created workplaces with a breakdown into full-time or part-time employees.

Exact positions and job titles. This section includes the description of the executive and management positions, administrative personnel, sales department, technical specialists, and any other positions specific for the business.

In-house and outsourced positions. The plan must clearly specify the positions to be held by in-house employees and the positions to be outsourced to external persons and service providers.

Local and foreign employees. The plan must describe in detail the allocation of the positions between local and foreign employees.

- **Financial plan** in the form of a diagram or a table for the next 3 years. This document is drafted in a free form and must contain information on financial solvency and creditworthiness of the contemplated business and includes the following key sections:

Estimated amount of funds. These data must include initial investments, operational costs, marketing costs, and information on the required charter capital.

Source and wealth of funds. This section must provide information on whether the company will be self-financed or will apply loans, investments, or will combine these sources of financing.

Revenue generation strategy. The applicant must submit a precise revenue model determining the key sources of revenues and forecasted indices of revenues and costs for the next 3 years.

Potential investments opportunities. If applicable, the financial plan must also consider the investment generation strategy.

- **Business plan** may be provided in a free form and must contain the following sections:

Very extensive information on the proposed business activities. The business plan must contain a description of the applicant and detailed description of the contemplated project.

Description of projects or products, if any. This section must describe the list of services (projects), which the company contemplates to provide (implement).

Rationale of registration in the AIFC and Kazakhstan. One of the most important sections contains the reasons for registration in the AIFC. It is recommended not to specify general advantages such as an opportunity to apply the laws of the AIFC, tax benefits, opportunity of consideration of cases in the AIFC Court as a key reason.

Ownership and top management structure. The business plan must disclose the company ownership structure, including identification of shareholders, and disclose the ownership structure of shareholders. The business plan must also clearly set out the management structure, including disclosure of key persons responsible for decision-making and management of an organization.

Target market and counterparties. It is necessary to provide an example of advantages or benefits the market will get out of this type of activities; describe the markets where the applicant carries out activities providing full information on the market segment where the applicant does the business and the niche, specifying the competitors on this market; contemplated sources of revenues and determination of the types of counterparties / customers (retail, professional, etc.).

Risks. It is necessary to conduct a comprehensive analysis of the existing and potential risks, including the definition, evaluation and measures on mitigation of risks, and their impact on implementation of projects.

Information on physical presence in Kazakhstan. It is necessary to provide information on physical presence of the director(s) in Kazakhstan, and information on the registered office in the AIFC territory, indicating whether this will be a physical office or a co-working space, which will be used as a registered office.

- **Strategic Fit Questionnaire.** This questionnaire will be provided by the Registrar of Companies and consists of 18 questions relating to the contemplated types of activities, reasons for carrying out activities in the AIFC; whether the applicant is going to carry out activities in Kazakhstan; whether the applicant contemplates to relocate any production or innovations to Kazakhstan; whether the contemplated business activities include cooperation with local Kazakhstan companies; whether the applicant or any affiliated party of the applicant or other affiliated parties currently have any presence in other countries; what currency the applicant contemplates to use for its activities; whether the applicant contemplates to hire Kazakhstan citizens; a separate block relates to the sanction compliance.
- **Legal opinion** confirming that neither the applicant, nor any of its affiliated companies, directors, shareholders or employees are included in the sanctions lists, and that the contemplated activities do not violate any sanction regime. The AIFC specifies that such opinion must be submitted by a Kazakhstan law firm recognized by Chambers Global, the Legal 500 or IFLR 1000, or a law firm holding a valid license of AFSA for the provision of ancillary services.

Furthermore, the AIFC may also request for submission of other documents, such as the office lease agreement, information on the place of residence of the chief executive officer in Astana, CVs of directors.

It is worth additionally mentioning that requirements on additional documents will also apply in case of setting up a holding company. The applicant must specify in such documents an overview of its strategic approach to operation and management of its subsidiary companies, which the holding company will possess, assets and areas, including description of the management structure of such companies, and investment strategy. Although a holding company is not an operating company but only possesses the assets and participatory interests in other companies, it is important for the Registrar of Companies to understand the types of assets such holding company will possess. For example, if the sphere of assets possessed by a holding company is under sanctions, this will pose certain risks for the AIFC.

10.4 Registration ends with the issuance of the electronic *Certificate of Incorporation* of a private company containing the name, BIN and date of registration¹⁸.

AEQUITAS Law Firm holds the AIFC license for the provision of ancillary services and is authorized to provide the following types of services: provision of legal services, provision of consulting services – compliance, regulatory, due diligence, risk consultancy and acting as a company service provider. The set of AEQUITAS services on "turnkey" support of the company registration includes obtainment of IIN for the chief executive officer of the company, drafting of the required corporate documents, drafting of a legal opinion as part of the sanctions screening, translation services, payment of all fees and disbursements, obtainment of a seal, electronic digital signature, opening of a bank account, and activation of online banking.

For detailed information regarding AEQUITAS, its team, projects and practice areas, please visit the official website www.aequitas.kz.

¹⁸ As a result of redomiciliation, a company obtains the certificate of continuation (paragraphs 152-153 of the AIFC Companies Act and paragraph 5.2 of the AIFC Companies Rules ([AIFC Companies Rules](#))).