

## **COMPARATIVE ANALYSIS OF COMPANY LIQUIDATION PROCEDURES IN THE REPUBLIC OF KAZAKHSTAN AND THE ASTANA INTERNATIONAL FINANCIAL CENTRE**

*(information valid as of 15 May 2025)*

We continue our series of publications on the Astana International Financial Centre (hereinafter – the "**AIFC**"). On 2 September 2024, we published an article on the specifics of company liquidation, strike off, and suspension of activities within the AIFC<sup>1</sup>. In this article, we aim to provide a comparative analysis of company liquidation procedures under the general jurisdiction of the Republic of Kazakhstan (hereinafter – the "**RK**") and the regulations of the AIFC as a special jurisdiction within the RK.

### **1. Regulatory Framework**

First, let us define the terminology and key legal instruments. The AIFC acts regulating liquidation matters include the AIFC Insolvency Regulations<sup>2</sup>, AIFC Insolvency Rules<sup>3</sup>, and Manual Going to liquidation within the AIFC Insolvency Rules and Regulations<sup>4</sup> (hereinafter referred to as the "Manual Going to liquidation")<sup>5</sup>.

From a corporate law perspective, the applicable acts include the AIFC Companies Regulations<sup>6</sup> and AIFC Companies Rules<sup>7</sup>. In addition, other acts related to the liquidation procedure are the AIFC Preferential Creditor Rules<sup>8</sup> and AIFC Recovery and Resolution Rules<sup>9</sup>.

The main legal acts governing the liquidation procedure of legal entities under the general jurisdiction of the Republic of Kazakhstan are the Civil Code<sup>10</sup>, the Law on State Registration<sup>11</sup>, and Rules on Termination Registration<sup>12</sup>. In cases of compulsory liquidation through bankruptcy

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<sup>1</sup> Khamidullina Y., Kultelev T. Specifics of Winding Up, Strike Off and Suspension of Activities of Companies in the AIFC // Digital Journal Kazakhstan Law Review. URL: <https://kazlawreview.kz/specifics-of-winding-up-strike-off-and-suspension-of-activities-of-companies-in-the-astana-international-financial-centre/>

<sup>2</sup> AIFC Insolvency Regulations No. 14 of 20 December 2017 (as amended on 27 December 2024, effective from 1 January 2025).

<sup>3</sup> AIFC Insolvency Rules (IR) No. GR0008 of 29 December 2017 (as amended on 27 December 2024, effective from 1 January 2025).

<sup>4</sup> AIFC [Manual](#) Going to liquidation within the AIFC Insolvency Rules and Regulations (по состоянию на 24 июня 2024 года).

<sup>5</sup> The English-Russian dictionary provides the following translation for the term "*Insolvency*": inability to pay debts; bankruptcy; insolvency.

<sup>6</sup> AIFC Companies Regulations No. 2 of 20 December 2017 (as amended on 14 October 2024, effective from 1 January 2025).

<sup>7</sup> AIFC Companies Rules (COR) No. GR0004 of 29 December 2017 (as amended on 22 September 2024, effective from 1 January 2025).

<sup>8</sup> AIFC Preferential Creditor Rules No. AFSA-L-PC-2019-0002 of 16 February 2019.

<sup>9</sup> AIFC Recovery and Resolution Rules No. FR00061 of 16 April 2023.

<sup>10</sup> The Civil Code of the Republic of Kazakhstan (hereinafter referred to as the "Civil Code") – the General Part adopted by the Supreme Council of the Republic of Kazakhstan on 27 December 1994, and the Special Part adopted on 1 July 1999.

<sup>11</sup> Law of the Republic of Kazakhstan "On State Registration of Legal Entities and Record Registration of Branches and Representative Offices" (hereinafter referred to as the "RK Law on State Registration") – dated 17 April 1995, No. 2198.

<sup>12</sup> Rules for the Provision of the Public Service "State Registration of Termination of Activities of a Legal Entity, Deregistration of a Branch or Representative Office", approved by Order No. 66 of the Minister of Justice of the Republic of Kazakhstan dated 29 May 2020 (Appendix 4) (hereinafter referred to as the "Rules on Termination Registration").

proceedings, the Bankruptcy Law<sup>13</sup> and the Civil Procedure Code<sup>14</sup> apply.

Related regulatory acts that may apply to liquidation within the scope of their respective subject matter include the Entrepreneurial Code<sup>15</sup>, the Labour Code<sup>16</sup>, the Tax Code<sup>17</sup>, the Social Code<sup>18</sup>, the Law on LLPs<sup>19</sup>, the Law on JSCs<sup>20</sup>, the Law on the National Archival Fund<sup>21</sup>, among others.

## 2. Comparison of the Legislation of the Republic of Kazakhstan and AIFC

Let us move on to the analysis of the provisions of the legislation of the Republic of Kazakhstan and the AIFC, which we have presented in a tabular format for convenience.

General jurisdiction of Kazakhstan	AIFC
<b>Grounds for liquidation</b>	
Article 49 of the Civil Code establishes the grounds on which a legal entity may be liquidated, dividing them into <b>voluntary</b> liquidation and <b>compulsory</b> liquidation through the court.	Section 23 of the AIFC Insolvency Regulations similarly provides that a company may be liquidated either <b>voluntarily</b> (voluntary winding up) or <b>compulsorily</b> by the court (winding up by the Court).  In relation to the liquidation procedure, the term " <i>winding up</i> " is used, which refers to the cessation of a company's operations and its liquidation.
<b>Voluntary winding up</b>	
A legal entity may be liquidated by decision of the owner of its property or an authorized body, as well as by a governing body of the legal entity, if such authority is granted by its founding documents. In this case, liquidation may be carried out on any grounds determined by the entity itself (para. 1, Art. 49 of the Civil Code).  However, if the value of the property of a legal entity, in respect of which a decision on liquidation has been made in accordance with para. 1 of Art. 49 of the Civil Code of the RK,	Voluntary liquidation is divided into two types: 1) <i>Voluntary winding up</i> : <ul style="list-style-type: none"> <li>in the cases (if any) specified in the company's articles of association; or</li> <li>if the company resolves to undergo voluntary winding up; or</li> <li>if the company resolves that it cannot continue its business due to its liabilities and that it is advisable to wind up (section 26 of the AIFC Insolvency Regulations).</li> </ul>

<sup>13</sup> Law of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy" (hereinafter referred to as the "Bankruptcy Law") – dated 7 March 2014, No. 176-V ZRK.

<sup>14</sup> Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the "Civil Procedure Code") – dated 31 October 2015, No. 377-V ZRK.

<sup>15</sup> Entrepreneurial Code of the Republic of Kazakhstan (hereinafter referred to as the "Entrepreneurial Code") – dated 29 October 2015, No. 375-V ZRK.

<sup>16</sup> Labour Code of the Republic of Kazakhstan (hereinafter referred to as the "Labour Code") – dated 23 November 2015, No. 414-V.

<sup>17</sup> Code of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the Budget" (hereinafter referred to as the "Tax Code") – dated 25 December 2017, No. 120-VI.

<sup>18</sup> Social Code of the Republic of Kazakhstan (hereinafter referred to as the "Social Code") – dated 20 April 2023, No. 224-VII ZRK.

<sup>19</sup> Law of the Republic of Kazakhstan "On Limited and Additional Liability Partnerships" (hereinafter referred to as the "Law on LLPs") – dated 22 April 1998, No. 220-I.

<sup>20</sup> Law of the Republic of Kazakhstan "On Joint Stock Companies" (hereinafter referred to as the "Law on JSCs") – dated 13 May 2003, No. 415.

<sup>21</sup> Law of the Republic of Kazakhstan "On the National Archival Fund and Archives" (hereinafter referred to as the "RK Law on the National Archival Fund") – dated 22 December 1998, No. 326-I.

<p>is insufficient to satisfy the claims of creditors, the liquidation commission is obligated to file a petition with the court for the recognition of such legal entity as bankrupt, in order to initiate bankruptcy proceedings under the procedure established by law (para. 4 of Art. 4, para. 2 of Art. 11 of the Bankruptcy Law).</p> <p>This requirement is also contained in para. 4 of Art. 49 of the Civil Code of the RK. However, an overall analysis of this article suggests that liquidation is still possible in the presence of creditors. For instance, if the liquidated legal entity lacks sufficient funds to satisfy creditors' claims, the liquidation commission must sell the company's assets through public auction (para. 5, Art. 50 of the Civil Code). Once settlements with creditors are completed, the liquidation commission prepares a liquidation balance sheet, which is then approved by the owner of the legal entity's property or the body that made the decision to liquidate (para. 7, Art. 50 of the Civil Code).</p> <p>In practice, it is often observed that if the participants decide to voluntarily liquidate a company and the company's assets are insufficient, they provide additional funding to avoid the lengthy and burdensome bankruptcy process. For example, if the assets of a liquidated legal entity are insufficient to fully cover tax liabilities, the remaining tax debt is paid by the participants of the liquidated entity (para. 7, Art. 58 of the Tax Code).</p>	<p><i>2) Creditors voluntary winding up.</i></p> <p>First, before initiating a voluntary winding-up process, the company's directors must make a declaration of solvency stating that the company will be able to fully pay its debts within 12 months (section 31(1) of the AIFC Insolvency Regulations).</p> <p>This means that voluntary winding up is generally permissible even if the company has certain outstanding debts, provided that the directors declare the company will be able to settle them in full.</p> <p>For example, the AIFC regulations may establish procedures and conditions under which participants, former participants, directors, former directors, and other persons may be required to contribute funds to the assets of a company undergoing liquidation (section 24 of the AIFC Insolvency Regulations).</p> <p>Secondly, if the liquidator forms the opinion that the company will not be able to fully pay its debts within the period stated in the declaration of solvency (section 31), they are required to convene a meeting of creditors — no later than 28 days from the date on which that opinion was formed (section 35(1) of the AIFC Insolvency Regulations).</p> <p>In simple terms, even if the company's liquidation was initiated by a resolution of its participants, it is treated as a creditors' voluntary winding up if the directors did not confirm the company's solvency or if a creditors' meeting was held due to the company's insolvency (section 36 of the AIFC Insolvency Regulations).</p>
<b><i>Beginning of liquidation</i></b>	
<p>Using the example of a limited liability partnership (LLP), which is the most common legal form of legal entities under the general jurisdiction of Kazakhstan, the decision to liquidate the LLP, appoint a liquidation commission, and approve the liquidation balance sheets falls within the competence of the supreme governing body (subparas. 7–8 of para. 2, Art. 43 of the Law on LLPs).</p>	<p>In the AIFC, using the example of private companies, which represent the most common legal form of legal entities in this jurisdiction, the decision to liquidate the company and appoint a liquidator also falls within the competence of the supreme governing body (section 32 of the AIFC Insolvency Regulations).</p> <p>Decisions on these matters are made by a</p>

<p>Decisions on these matters are made by a qualified majority – not less than three-quarters of the votes of the participants present or represented at the meeting, unless otherwise provided by the charter (para. 2, Art. 48).</p>	<p>simple majority of the votes of the company's participants, unless otherwise provided by the articles of association (para. 1, p. 14 of the Manual).</p> <p>However, the adoption of a liquidation resolution must be preceded by a Declaration of Solvency, which must be made by the company's directors:</p> <p>(a) within the five weeks immediately prior to the date of the resolution to wind up; or</p> <p>(b) on the date of the resolution to wind up, but before the resolution is actually voted on at the relevant meeting (section 31(2) of the AIFC Insolvency Regulations).</p>
<p>The governing body of a legal entity that has adopted a decision on its liquidation is required to immediately notify the registering authority and the state revenue authority at the place of registration (para. 1, Art. 50 of the Civil Code).</p> <p>The relevant governing body of the legal entity must also submit written notice of the liquidation decision to the tax authority at its location within three working days from the date the decision was made (para. 1, Art. 58 of the Tax Code).</p>	<p>The company must immediately notify the AIFC Registrar of Companies by submitting the resolution on voluntary winding up along with the Declaration of Solvency (List of accompanying documents to the Notice<sup>22</sup> and para. 1, p. 14 of the Manual).</p> <p>If the company resolves to proceed with a voluntary winding up, it is required to publish a notice of this resolution within 14 calendar days from the date the resolution was adopted, in accordance with the applicable rules (section 27 of the AIFC Insolvency Regulations).</p> <p>The company must immediately notify the AIFC Registrar of Companies by submitting the resolution on voluntary winding up along with the Declaration of Solvency (List of accompanying documents to the Notice and para. 1, p. 14 of the Manual).</p> <p>If the company resolves to proceed with a voluntary winding up, it is required to publish a notice of this resolution within 14 calendar days from the date the resolution was adopted, in accordance with the applicable rules (section 27 of the AIFC Insolvency Regulations).</p> <p>The AIFC acts do not specify the content of such a notice or the media in which it must be published. We believe that the notice may be published by the liquidator either in Appointed Publications, or, following the general rules, in periodicals distributed throughout the territory</p>

<sup>22</sup> AIFC Application of Voluntary Winding Up Form

	<p>of Kazakhstan (para. 3, Art. 50 of the Civil Code), for example, in the Yuridicheskaya Gazeta (Legal Newspaper).</p> <p>Furthermore, under paragraph 1 of Article 4 of the Constitutional Law on the AIFC<sup>23</sup>, the applicable laws of the Republic of Kazakhstan will govern matters not expressly regulated by the AIFC acts. For instance, regarding the fulfillment of tax obligations by a liquidated legal entity, the Tax Code of Kazakhstan will apply. Accordingly, the requirement to notify the tax authority will also be applicable.</p>
<p>After the decision on liquidation is adopted, the legal entity ceases its business activities, employment contracts and agreements with counterparties are terminated, and all account transactions are suspended in preparation for the upcoming tax audit.</p> <p>A detailed overview of all stages of liquidation – both for companies registered under the general jurisdiction of the Republic of Kazakhstan and within the AIFC (including licensed entities) – can be found in our previously published article.</p>	<p>From the moment voluntary winding up begins, the company must cease its business activities, except where continuation is necessary for the effective completion of the liquidation. At the same time, the company retains its legal personality and corporate powers until the official termination (liquidation), regardless of the provisions of its articles of association (section 29 of the AIFC Insolvency Regulations).</p>
<p>From the date a ruling is issued to initiate rehabilitation or bankruptcy proceedings, the transfer of shares or participatory interests in the charter capital of the debtor is prohibited (subpara. 5, para. 1, Art. 50 of the Bankruptcy Law).</p> <p>However, no such restrictions are imposed in the case of voluntary liquidation.</p>	<p>In the case of voluntary liquidation, any transfers of shares or changes in the status of participants made after the commencement of the liquidation are deemed invalid unless approved by the liquidator (section 30 of the AIFC Insolvency Regulations).</p>
<b><i>Liquidator and Liquidation Commission / Committee</i></b>	
<p>The Civil Code of Kazakhstan contains only three articles dedicated to the liquidation of a legal entity:</p> <ul style="list-style-type: none"> <li>– Article 49 – Grounds for liquidation of a legal entity;</li> <li>– Article 50 – Procedure for liquidation of a legal entity;</li> <li>– Article 51 – Satisfaction of creditors' claims.</li> </ul> <p>The body that adopts the decision to liquidate</p>	<p>In general, the procedure for voluntary winding up is set out in sections 23–36, while creditors' voluntary winding up is covered in sections 37–44 of the AIFC Insolvency Regulations.</p> <p>In the case of voluntary winding up by a resolution of the members, the general meeting of the company is required to appoint one or more liquidators to carry out the winding up and distribute the company's assets (section 32(1) of the AIFC Insolvency</p>

<sup>23</sup> Constitutional Law of the Republic of Kazakhstan "On the Astana International Financial Centre" dated 7 December 2015, No. 438-V ZRK (hereinafter referred to as the "Constitutional Law on the AIFC").

<p>the legal entity appoints a liquidation commission. From the moment the liquidation commission is appointed, it assumes the authority to manage the assets and affairs of the legal entity. The liquidation commission represents the liquidated entity in court (para. 2, Art. 50 of the Civil Code).</p> <p>The law does not set a minimum or maximum number of members of the liquidation commission.</p> <p>Nor does it establish any specific qualification requirements for its members.</p> <p>Moreover, even a former director may be included in the liquidation commission. Despite the termination of their employment, they may still be listed as the director in the legal entity database and may remain authorized on the LLP's signature card with the servicing bank – unless replaced by a member of the liquidation commission.</p>	<p>Regulations).</p> <p>A comparison of these two types of voluntary winding up shows that the key difference lies in the involvement of creditors: at a creditors' meeting, creditors may propose a candidate to be appointed as the company's liquidator (section 38(2)) or establish a liquidation committee consisting of no more than five persons (section 39 of the AIFC Insolvency Regulations).</p> <p>From the moment a liquidator is appointed, all powers of the company's directors cease, unless their continuation is approved by the liquidator or the liquidation committee (section 32(2), section 40 of the AIFC Insolvency Regulations).</p> <p>This reflects the flexibility and foresight of the AIFC framework, as the assistance of directors may still be necessary for the completion of winding-up procedures – for example, for closing bank accounts.</p> <p>The AIFC Insolvency Regulations do not establish any specific qualification requirements for the liquidator or members of the liquidation committee.</p> <p>According to Schedule 3 to the Regulations, the following definitions apply:</p> <p><i>Liquidator</i> – in relation to a company, means a person appointed as the company's liquidator (including a provisional liquidator).</p> <p><i>Person</i> – includes any natural or legal person, as well as unincorporated bodies, including a company, partnership, unincorporated association, governmental authority, or a state.</p> <p><i>Provisional Liquidator</i> – in relation to a company, means a liquidator appointed on a provisional basis in accordance with section 58 (Appointment of Provisional Liquidator).</p> <p>The term "Provisional Liquidator" is used in the context of compulsory winding up (sections 49–64 of the AIFC Insolvency Regulations), and may refer to any natural or legal person.</p> <p>Additionally, within 3 working days of the company approving the appointment of a</p>
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	liquidator, it must notify <sup>24</sup> the AIFC Registrar of Companies of the appointment (section 5.31.6 of the AIFC Insolvency Rules). This provision does not apply to standard voluntary winding up, but does apply to creditors' voluntary winding up.
<p>The liquidation commission takes measures to identify creditors and collect outstanding debts, and must notify creditors in writing about the liquidation of the legal entity (para. 3, Art. 50 of the Civil Code).</p> <p>After the deadline for creditors to submit their claims has passed, the liquidation commission prepares an interim liquidation balance sheet. This document includes information on the assets of the liquidated legal entity, a list of claims submitted by creditors, and the results of their review.</p> <p>The interim liquidation balance sheet is approved by the owner of the legal entity's property or by the body that adopted the decision on liquidation (para. 4, Art. 50 of the Civil Code).</p> <p>If the liquidated legal entity does not have sufficient funds to satisfy creditors' claims, the liquidation commission sells the company's assets through public auction in accordance with the procedure established for the enforcement of court judgments (para. 4, Art. 50 of the Civil Code).</p> <p>Payments to creditors are made by the liquidation commission in the order of priority established by Article 51 of the Civil Code (para. 5, Art. 50).</p> <p>After settling accounts with creditors, the liquidation commission prepares the final liquidation balance sheet, which is approved by the body that adopted the decision on liquidation (para. 7, Art. 50 of the Civil Code).</p> <p>Any remaining assets after satisfying creditors' claims (in accordance with Article 51 of the Civil Code) are distributed for the purposes specified in the founding documents (para. 8, Art. 50 of the Civil Code).</p>	<p>The AIFC Insolvency Regulations provide a detailed description of the liquidator's powers in section 25 and Schedule 2.</p> <p>The liquidator prepares a <i>Statement of Affairs</i> reflecting the company's financial position prior to the commencement of liquidation. This document outlines the company's assets and liabilities, as well as any encumbrances secured by the company's assets (p. 15 of the Manual).</p> <p>Upon completion of the company's affairs, the liquidator prepares a <i>final report</i> on the liquidation process and the distribution of assets. To present this report, a final meeting must be convened, with participants being notified in advance through an official notice published at least one month prior to the meeting date (sections 34 and 43 of the AIFC Insolvency Regulations). This requirement applies to both types of voluntary winding up.</p> <p>This aligns with the powers of the liquidation commission under Kazakhstan's general jurisdiction, where interim and final liquidation balance sheets must be submitted to the body that adopted the liquidation decision.</p> <p>Under both types of voluntary winding up, the company's assets must first be used to settle its liabilities (with due regard to the order of priority established by the AIFC Insolvency Regulations). Any remaining assets—unless otherwise provided by the articles of association—are to be distributed among the participants according to their rights and shares in the company (section 44 of the AIFC Insolvency Regulations). For instance, a company may have a class of shares that grants priority rights to company assets in the event of liquidation.</p> <p>An additional distinction of the liquidation process under AIFC jurisdiction is that if liquidation lasts more than one year, the</p>

<sup>24</sup> AIFC Notice of Appointment of Liquidator.

	liquidator is required to convene a general meeting of participants annually to report on the progress and actions taken during the past year, and must also submit a report to the AIFC Registrar of Companies (sections 33, 42, and 69 of the AIFC Insolvency Regulations).
<p><b>Compulsory Liquidation</b></p> <p>According to paragraph 2 of Article 49 of the Civil Code, a legal entity may be liquidated by a court decision in the following cases:</p> <ul style="list-style-type: none"> <li>– recognition of the legal entity as bankrupt;</li> <li>– invalidation of the registration if there were irremediable violations of the law during the establishment of the legal entity;</li> <li>– absence of the legal entity at its registered address, as well as the absence of participants or officials essential for its operation for a period of one year;</li> <li>– conducting activities in gross violation of the law, including: <ul style="list-style-type: none"> <li>• systematic activities contradicting the company's charter objectives;</li> <li>• conducting activities without the required license or engaging in activities prohibited by law;</li> </ul> </li> <li>– on other grounds provided for by legislative acts of the Republic of Kazakhstan.</li> </ul> <p>A claim for the liquidation of a legal entity on the above grounds may be filed by the tax authority (para. 3, Art. 49 of the Civil Code). In cases of bankruptcy, the right to file such a claim is also granted to the creditor, the debtor, and the liquidation commission in the event of voluntary liquidation (Art. 4, subpara. 1 of para. 2 of Art. 11, and para. 1 of Art. 40 of the Bankruptcy Law).</p>	<p><b>Compulsory Liquidation</b></p> <p>According to section 49 of the AIFC Insolvency Regulations, court-ordered winding up may be initiated in the following cases:</p> <ul style="list-style-type: none"> <li>– the company has resolved to be wound up by the Court; or</li> <li>– the company is unable to pay its debts; or</li> <li>– a moratorium applicable to the company has expired, and no voluntary arrangement has been approved in respect of the company; or</li> <li>– the Court has jurisdiction to make a winding-up order under any other AIFC regulations or rules; or</li> <li>– the Court is of the opinion that it is just and equitable for the company to be wound up.</li> </ul> <p>According to section 51 of the AIFC Insolvency Regulations, unless otherwise provided by other AIFC acts or rules, an application to the Court for winding up a company may be made only by:</p> <ul style="list-style-type: none"> <li>– the company itself (e.g., through one of its members),</li> <li>– its directors, or</li> <li>– a creditor (including a contingent or prospective creditor).</li> </ul>
For non-operational legal entities and legal entities without functioning officers, the legislation provides for special grounds and a simplified liquidation procedure (para. 2 of the Supreme Court Resolution No. 5 <sup>25</sup> ). In	Similar provisions also exist in AIFC acts. For example, the AIFC Companies Regulations provide for a procedure known as " <i>Strike off</i> ", which translates as " <i>to remove, erase, or liquidate</i> ". <sup>29</sup> However, in this case, the

<sup>25</sup> Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated 18 June 2004 No. 5 "On Judicial Practice Regarding the Liquidation of Absent Legal Entities and Absent Debtors, as well as Legal Entities Operating in Gross Violation of the Law."

<sup>29</sup> See, for example, the translation suggested by the Multitran dictionary: <https://www.multitran.com/>

<p>particular, under the Civil Code, an authorized body (typically the tax authority) may file a claim with the court in cases where the legal entity is absent from its registered or actual address, or where the founders (participants) and/or officers necessary for the entity's operation have been absent for one year. The same applies in cases of activity carried out in gross violation of the law (para. 2, Art. 49 of the Civil Code). In such cases, the legal entity may be liquidated immediately following the court's decision, without a tax audit<sup>26</sup>.</p> <p>Additionally, the court has the authority to grant a liquidation petition without initiating bankruptcy proceedings:</p> <ul style="list-style-type: none"> <li>– at the request of the tax authority, in cases where the debtor is recognized as absent<sup>27</sup>; or</li> <li>– at the request of the debtor itself, provided certain conditions are met, such as: the debt amount does not exceed 2,500 MCI<sup>28</sup>, there are no assets, no funds in bank accounts, and no other property (Art. 114 of the Bankruptcy Law).</li> </ul> <p>Moreover, the draft of the new Tax Code (expected to be adopted in 2026) introduces a mechanism for administrative liquidation of inactive taxpayers without a court decision, as well as a simplified liquidation procedure without audit for entities with annual turnover below 500 million tenge.</p>	<p>authority to strike off a company from the register lies not with the court, but with the AIFC Registrar of Companies.</p> <p>According to section 167 of the AIFC Companies Regulations, the Registrar may strike off the name of a company from the register if the Registrar has reasonable cause to believe that:</p> <ul style="list-style-type: none"> <li>(a) the company is not carrying on business or is not in operation;</li> <li>(b) the company is in breach of the AIFC Companies Regulations; or</li> <li>(c) the continued registration of the company is prejudicial to the interests of the AIFC.</li> </ul> <p>For example, the Registrar may conclude that a company is not operating if it fails to file its <i>annual return</i>, or if it is not present at its registered address (especially relevant for licensed companies)<sup>30</sup>.</p>
<p>The basis for a creditor to file a petition with the court for the recognition of a debtor as bankrupt and to initiate bankruptcy proceedings is an outstanding monetary obligation of the debtor to the creditor, established by a court decision that has entered into legal force or by an enforcement document ordering the recovery of funds from the debtor, or by the debtor's acknowledgment of the debt, unless otherwise provided by law (Article 5 of the Bankruptcy Law).</p> <p>The previously applicable version of this article provided that the basis for a creditor to</p>	<p>A company may be wound up by court order if it is deemed insolvent.</p> <p>A company is considered insolvent if:</p> <ul style="list-style-type: none"> <li>(a) a creditor to whom the company owes more than USD 2,000, and whose debt is due, has served the company with a written demand for payment of that amount, and the company has failed to pay the debt or reach terms for its repayment to the reasonable satisfaction of the creditor within three weeks; or</li> <li>(b) an enforcement order or other court judgment issued in favor of the company's</li> </ul>

<sup>26</sup> See, for example, the decision of the Specialized Interdistrict Economic Court of Almaty dated 4 September 2023, Case No. 7527-23-00-2/8771.

<sup>27</sup> An absent debtor is a debtor recognized as inactive in accordance with the Tax Code, whose absence, as well as the absence of its founder (participant) or officer, has been established in the manner prescribed by the Bankruptcy Law.

<sup>28</sup> The Monthly Calculated Index (MCI) amounts to 3,692 tenge as of 1 January 2025.

<sup>30</sup> As follows from public sources, the AIFC Registrar of Companies has already initiated the liquidation of a number of companies based on reasonable grounds to believe that they had violated provisions of the applicable AIFC legislation and that their activities could pose a threat to market stability. Among such companies are Artificial Investments Company Ltd. and VERSOR Engineering Ltd.

file a petition with the court for the recognition of a debtor as bankrupt or for the application of a rehabilitation procedure was the debtor's insolvency, provided that the obligation remained unfulfilled for three months from the due date, in an amount of not less than one hundred times the MCI.	creditor has been returned unsatisfied in whole or in part; or (c) it is proven in court that the company is unable to pay its debts as they fall due (section 50 of the AIFC Insolvency Regulations).
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### 3. Comparison of the Status of a Liquidator in the General Jurisdiction of Kazakhstan and an Official Liquidator in the AIFC

It is worth addressing separately the status of the Official Liquidator (hereinafter – "**Official Liquidator**"), as this topic raises many questions among practicing lawyers. Some consultants argue that the involvement of an Official Liquidator is mandatory in all cases of voluntary liquidation in the AIFC, while others take the view that their involvement is not required in voluntary liquidations without the participation of creditors.

In Kazakhstan's general jurisdiction, any person may act as a liquidator (or, if a liquidation commission is appointed, as one of its members). There are no specific qualification requirements imposed on such persons. Typically, the liquidation commission includes representatives of the participants, as well as lawyers and accountants who are directly involved in the liquidation process (e.g., in the preparation of the interim and final liquidation balance sheets and in supporting the tax audit). Additionally, the former CEO of the company may be included in the commission to ensure that they have legal authority to close the company's bank accounts upon completion of the liquidation procedure.

Below, we provide a comparative analysis of the roles and individuals involved in procedures under the Bankruptcy Law and those under the AIFC Insolvency Regulations.

Under the Bankruptcy Law, the following key terms are used:

- **Administrator** – includes temporary administrators, rehabilitation managers, interim managers, and bankruptcy trustees, who exercise powers in accordance with the Bankruptcy Law during court proceedings and the rehabilitation or bankruptcy procedures;
- **Bankruptcy Trustee** – a person appointed by the authorized body in the field of rehabilitation and bankruptcy to carry out the bankruptcy procedure;
- **Rehabilitation Manager** – a person entrusted with managing the debtor during the rehabilitation procedure;
- **Temporary Administrator** – a person contracted to compile the register of creditors' claims and prepare a conclusion on the debtor's financial stability during the court's consideration of a rehabilitation case;
- **Interim Manager** – a person either contracted or appointed by the authorized body, as provided by the Bankruptcy Law, to compile the register of creditors' claims and assess the debtor's financial stability during the court's consideration of a bankruptcy case, and also to conduct the bankruptcy procedure until the appointment of a bankruptcy trustee.

The structure of the AIFC Insolvency Regulations can be broadly divided into the following main parts:

1. **Voluntary Arrangements** – a voluntary agreement between a company and its creditors for the restructuring of debts. This allows the company to avoid liquidation if creditors agree to new terms (such as payment deferrals, partial debt write-offs, etc.). During this period, a **moratorium** is imposed, meaning a temporary suspension of creditors' rights to enforce claims against the debtor company. A **Supervisor** is appointed to oversee the arrangement, and must be a qualified **Insolvency Practitioner** (section 8).
2. **Receivership** – a procedure involving the appointment of a **Receiver** or **Administrative Receiver** to manage and sell part of the company's assets in order to repay debts owed to a specific creditor. These roles must also be held by qualified **Insolvency Practitioners** (section 14). In essence, these procedures are comparable to the rehabilitation procedure under the Bankruptcy Law of Kazakhstan.
3. **Winding Up** – the process of ceasing a company's operations followed by its liquidation. The winding-up procedure is set out in detail in Part 4, which includes five chapters.
  - Chapter 1 covers the appointment and powers of the liquidator.
  - Chapter 2 (**Voluntary Winding Up**) governs voluntary liquidation initiated by the company itself (section 32).
  - Chapter 3 (Creditors' Voluntary Winding Up) regulates liquidation involving creditors (section 38).
  - Chapter 4 contains provisions common to both types of voluntary winding up.
  - Chapter 5 (**Compulsory Winding Up**) addresses liquidation initiated by court order.

The central figure under the AIFC Insolvency Regulations is the **Liquidator**. In the case of voluntary winding up, the liquidator is appointed by the company itself (section 32); in creditors' voluntary winding up, the appointment may be made either by the company or by the creditors (section 38); and in compulsory winding up, the liquidator is appointed by the court or by the creditors in accordance with sections 56 and 57.

Additionally, the court may appoint a **Provisional Liquidator** under section 58. The primary duty of the liquidator in the context of court-ordered liquidation (section 60) is to collect, preserve, and realize the company's assets and distribute the proceeds to creditors. If any surplus remains, it must be transferred to the parties entitled to it.

Part 9 of the AIFC Insolvency Regulations is devoted to *Insolvency Practitioners*, including qualification requirements and registration in the AIFC register. According to section 87, a person may not be appointed or act as a *Receiver*, *Administrative Receiver*, or *Liquidator* unless they are registered as an *Insolvency Practitioner*.

Analysis of the AIFC Insolvency Regulations reveals several key structural features, including the scope of regulated legal relations and the parties involved. Certain sections of the AIFC Regulations clearly correspond to provisions in the Bankruptcy Law of Kazakhstan – particularly those relating to bankruptcy procedures.

However, the AIFC Insolvency Regulations go beyond the typical framework of insolvency regulation and include separate chapters specifically dedicated to voluntary winding up, which is

itself a novelty compared to the legislation of Kazakhstan. This leads to serious concerns regarding the AIFC regulator's position, which requires that an Official Liquidator, even in cases of voluntary liquidation, must hold a status established under Kazakh law exclusively for bankruptcy procedures – i.e., be listed in the register of administrators (temporary, rehabilitation, interim, or bankruptcy trustees) maintained by the Ministry of Finance of the Republic of Kazakhstan.

As a result, unlike the general regime in Kazakhstan, even in voluntary winding up within the AIFC, the liquidator must be a person registered as an Official Liquidator.

As for the AIFC Insolvency Rules, their structure mirrors that of the AIFC Insolvency Regulations and includes sections on Voluntary Arrangements, Moratorium, Receivership, and Winding Up. Part 5, which is dedicated to winding up, covers sections 5.1 to 5.53.

Section 5.1 sets out a key exception: if a company is undergoing voluntary winding up by resolution of its members, then only the following provisions apply: sections 5.6 to 5.8, 5.16 to 5.30, and 5.53 – and none of these provisions mention the Official Liquidator.

Moreover, the second part of section 5.1 provides that if a company is undergoing creditors' voluntary winding up, the following provisions do not apply: sections 5.2 to 5.5, 5.10, and **5.11**.

Importantly, section **5.11**, which is explicitly excluded in this context, contains the provision for convening the first meeting of creditors, where a resolution may be passed to appoint an Official Liquidator as the company's liquidator. Therefore, since this section does not apply to the creditors' voluntary winding-up procedure, the appointment of an Official Liquidator in such cases is a right, not an obligation, of the company.

Turning to the Manual, in cases of voluntary winding up without creditors, the members of the company are required to convene a general meeting at which they pass a resolution for voluntary winding up and appoint "*one or more liquidators of the company*" (p. 14). By contrast, in the case of creditors' voluntary winding up, *the company can appoint an authorised insolvency practitioner as liquidator* (p. 15). This clearly indicates that the Manual provides the option, but not the obligation, to appoint an Official Liquidator in a creditors' voluntary winding-up procedure.

At the same time, the position of the AIFC Registrar of Companies is that an Official Liquidator must be appointed in all cases of voluntary winding up, regardless of whether the company has creditors.

While the requirement to involve an Official Liquidator in creditors' voluntary winding up may be justified – as it involves asset realization and creditor settlements – in cases of voluntary liquidation without creditors, the liquidator's role is essentially limited to: realizing any remaining company assets, supporting the tax audit process, and preparing and submitting the final package of documents to the AIFC Registrar of Companies for the purpose of deregistration.

In our view, the regulator's requirement to appoint only an Official Liquidator even in a simple voluntary winding-up process appears excessive and creates unjustified barriers. Such a restriction limits the pool of persons<sup>31</sup> who may participate in the liquidation process<sup>32</sup> and thereby reduces competition in the relevant services market.

<sup>31</sup> The Public Register of the AIFC includes a list of Insolvency Practitioners and Official Liquidators. As of today, the register contains 12 specialists, 6 of whom are residents of Kazakhstan (<https://publicreg.mvafsa.com/liquidators/>).

<sup>32</sup> For reference: the procedure for including an applicant in the register of persons authorized to act as administrators is defined by Article 12 of the Bankruptcy Law of Kazakhstan, and one of the key requirements is the successful completion of a qualification exam.

This approach could be seen as inconsistent with the fundamental principles of the Entrepreneurial Code of Kazakhstan, particularly: Article 18, which prohibits restrictions on competition; and Article 194, which prohibits government bodies and regulatory authorities from introducing limitations that hinder the creation and operation of market participants or that impose unreasonable administrative barriers.

To support our position, we refer to the AIFC regulator's requirement that any appointed Official Liquidator must also be authorized to act as an administrator (i.e., as a temporary administrator, rehabilitation manager, interim manager, or bankruptcy trustee). As is evident, this position effectively assumes the possession of specialized qualifications and expertise – the same as those required under the general jurisdiction of Kazakhstan for individuals involved in rehabilitation and bankruptcy procedures.

As a result, the right to conduct voluntary liquidation proceedings (including those without creditor involvement) within the AIFC is granted only to a narrow group of individuals specifically authorized by the AIFC regulator. In our view, however, this restriction is based on a misinterpretation of the applicable legislation.

A comparison of the roles and functions of participants in bankruptcy procedures under the Bankruptcy Law clearly indicates that even under the procedures established by the AIFC Insolvency Regulations, the involvement of insolvency professionals and Official Liquidators should be limited exclusively to cases involving: creditors' voluntary liquidation, or compulsory (court-ordered) liquidation. Accordingly, imposing this requirement in the context of member-initiated voluntary liquidation without creditor involvement appears to lack both legal basis and practical necessity.

#### 4. Role of the Official Liquidator in the Strike Off Procedure

First and foremost, it should be emphasized that under the general jurisdiction of Kazakhstan, there is no procedure for compulsory strike off of a legal entity by decision of the registrar. The closest equivalent in nature is the simplified liquidation of an absent debtor, which is initiated by the tax authority and carried out solely on the basis of a court decision.

In this context, the regulation of an analogous procedure within the AIFC represents a departure from the general approach of national legislation and introduces a mechanism that is relatively new and atypical for the Kazakh legal system.

However, such regulation is common in jurisdictions based on English common law. For example, in the guidance on voluntary liquidation published by the Abu Dhabi Global Market (**ADGM**), it is stated that *if a company has ceased trading for more than three months and otherwise meets the requirements, it may apply for **voluntary strike off**, as provided in the Companies Regulations. Notably, a liquidator or insolvency practitioner is not required to complete this process*<sup>33</sup>.

Thus, an alternative method for terminating a company's operations without the need to appoint an Official Liquidator may be to apply for strike off at the company's own request in accordance with paragraph 4 of section 167 of the AIFC Companies Regulations. The main advantage of the strike off procedure is that the AIFC Insolvency Regulations and Insolvency Rules do not apply to

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<sup>33</sup> See sections 1.13, 2.4, and 2.7 of the *Voluntary Liquidation Guidance*: <https://en.adgm.thomsonreuters.com/rulebook/what-happens-when-companys-affairs-are-fully-wound>

it. Accordingly, there is no requirement to appoint an Official Liquidator, making the process simpler, faster, and less costly.

Strike off is typically used in cases where the company has not carried on business, owns no assets, and has no creditors, which corresponds to the meaning of subparagraph (a) of paragraph 1 of section 167 of the AIFC Companies Regulations. However, if the company previously had assets or was engaged in any activity, it is sufficient – at the preparatory stage – to: terminate all contracts with employees and creditors, settle all liabilities, dispose of all assets, and cease all business activities for a period of three months, as implied by paragraph 7 of section 167 of the same Regulations. In essence, this approach closely resembles the preparatory steps required for voluntary liquidation under Kazakhstan's general jurisdiction. As with the strike off process, a tax audit is also required in the case of standard voluntary liquidation.

Additionally, some companies, prior to undergoing a tax audit, choose to enter a “dormant” status for the duration of the statute of limitations period — a topic we discussed in detail in a previous article.

A distinctive feature of the strike off procedure is that a company can be restored within 10 years (section 168(1) of the AIFC Companies Regulations and section 101(1) of the AIFC Insolvency Regulations).

At the same time, attention should be drawn to a previous ambiguity we identified in the AIFC Companies Regulations, which we discussed in detail in our article dated 2 September 2024. The issue concerned section 167(4) of the Companies Regulations, which was, at the time, worded as follows:

*"If an application is made by a Company to strike the Company's name off the Register following a voluntary winding up in accordance with the procedures under the AIFC Insolvency Regulations, the Registrar of Companies may strike the Company's name off the Register..."*

This wording created a certain degree of legal uncertainty, giving the impression that a formal voluntary winding up procedure must necessarily precede the strike off, with mandatory compliance with all requirements of the AIFC Insolvency Regulations – including the appointment of an Official Liquidator.

This legal interpretation was addressed in the updated version of the AIFC Companies Regulations, which came into force on 1 January 2025. The revised provision no longer refers to the AIFC Insolvency Regulations, thereby eliminating the earlier uncertainty.

## **5. Liquidation of Branches and Representative Offices in the General Jurisdiction of Kazakhstan and in the AIFC Jurisdiction**

In the general jurisdiction of the Republic of Kazakhstan, the procedure for deregistration of branches and representative offices is not governed by the Civil Code. Article 49 of the Civil Code sets out the procedure for the liquidation of a legal entity; however, under Article 43, branches and representative offices are not legal entities but rather structural subdivisions of a legal entity located outside its principal place of business.

Accordingly, the provisions of Article 50, which establish the procedure for the liquidation of legal entities, do not apply to the termination of the activities of branches and representative offices.

Nevertheless, in practice, the process for terminating the operations of a branch or representative office of a resident legal entity largely mirrors the liquidation procedure for legal entities. It begins

with the adoption of a resolution by the competent body of the parent company to terminate the operations of the branch (or representative office), followed by its deregistration from the relevant registers.

The procedure for fulfilling tax obligations in such cases is carried out in accordance with Article 58 of the Tax Code of the Republic of Kazakhstan, which is titled: "*Fulfillment of the Tax Obligation of a Liquidated Legal Entity, as well as in the case of Termination of Activities in the Republic of Kazakhstan by a Structural Subdivision or a Permanent Establishment of a Non-Resident Legal Entity*", or in accordance with Article 61, if the entity in question is a structural subdivision of a resident legal entity.

Additionally, a legal entity that meets the criteria set forth in Article 59 of the Tax Code may be liquidated under a simplified procedure.

The process of terminating operations concludes with the submission of an Application for the Registration of Termination of Activities of a Legal Entity, Branch, or Representative Office<sup>34</sup> to the registering authority. Another similarity between the termination of a branch or representative office and the liquidation of a legal entity is that the authorized person of the branch or representative office responsible for the termination process must notify creditors and publish a notice in a newspaper. A copy of this notice must be attached to the deregistration application. However, under Kazakhstan's general jurisdiction, such a person does not bear the title of liquidator and typically acts based on a power of attorney issued by the parent company.

As for the procedure for registering branches and representative offices in the AIFC, it is important to note that, within the AIFC jurisdiction, such structures are registered in the form of a **Recognised Company**, unlike in Kazakhstan's general jurisdiction, where branches and representative offices are subject to record registration under their commonly understood designations. This status enables such entities to operate within the AIFC without having to establish a separate legal entity.

According to the AIFC Insolvency Regulations, a Recognised Company may not be voluntarily wound up under the provisions of that act (subparagraph (b), paragraph 1, section 83). On this basis, the AIFC Registrar of Companies holds the position that a Recognised Company may cease to exist only through strike off, as provided under the AIFC Companies Regulations. This approach appears well-founded, as a Recognised Company – being effectively a branch or representative office of a foreign legal entity – does not have the status of an independent legal entity, and therefore is not subject to liquidation procedures applicable to registered AIFC companies.

At the same time, the AIFC Insolvency Regulations may apply to the termination of a Recognised Company through court proceedings in the following cases:

- (i) the company is unable to pay its debts, has been liquidated, struck off, or has otherwise ceased to exist as a legal entity in accordance with the laws of its jurisdiction of origin; or
- (ii) the court determines that liquidation is just and equitable (subparagraph (c), paragraph 1, section 83).

There are two types of strike off:

- a. compulsory strike off (examples are provided in the table above), and

<sup>34</sup> Appendix 1 to the Rules on Termination Registration.

- b. voluntary strike off under paragraph 4 of section 167 of the AIFC Companies Regulations.

In the case of a voluntary strike off, termination is typically carried out by the Recognised Company submitting a formal application to the AIFC Registrar of Companies, along with the following documents:

- a resolution of the parent company,
- a declaration of solvency,
- the tax audit report, and
- a power of attorney (if the application is submitted by a representative).

Upon receiving the application for voluntary strike off, the Registrar publishes a notice<sup>35</sup> of its intention to strike off the company on the official AIFC website. In accordance with paragraph 8 of section 167 of the AIFC Companies Regulations, after a three-month period, the Registrar issues an official order, removes the Recognised Company from the Public Register, and submits the relevant information to the justice authorities for deletion from the National Register of Business Identification Numbers.

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<sup>35</sup> Notice of the AIFC Registrar of Companies dated 13 May 2025 regarding the intended strike off of Representative Office of Eximbank in Nur-Sultan (Nur-Sultan -i Kevpiselet) (BIN 191242900193 [https://orderly.myaifsa.com/articles/aifsa-notice-aifsa-o-ec-2025-0153-from-13-may-2025-on-striking-hungarian-export-import-bank-private-limited-company-doing-business-in-the-aifc-as-representative-office-of-eximbank-in-nur-sultan-\(nur-sultan-i-kepviselet\)-off-the-register](https://orderly.myaifsa.com/articles/aifsa-notice-aifsa-o-ec-2025-0153-from-13-may-2025-on-striking-hungarian-export-import-bank-private-limited-company-doing-business-in-the-aifc-as-representative-office-of-eximbank-in-nur-sultan-(nur-sultan-i-kepviselet)-off-the-register)