

## **'Transfer of Incorporation' under the AIFC acts: practical steps**

**21 February 2020 – We discuss below the successful redomiciliation of Kazakhstan Energy Reinsurance Company Ltd from the Islands of Bermuda to the Astana International Financial Centre and the main procedural steps required for the redomiciliation under the Acting Law of the AIFC. Our note is intended to be a helpful guide – it is not comprehensive and does not constitute legal advice.**

On 24 December 2019 the Astana Financial Services Authority ("**AFSA**") completed registration of Kazakhstan Energy Reinsurance Company Ltd. ("**KERC**"), an affiliated company of JSC NC "KazMunayGas" in the Astana International Financial Centre ("**AIFC**") by way of a 'Transfer of Incorporation'.

'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<sup>1</sup>.

Foreign investors generally consider 'Transfer of Incorporation' as an alternative solution for setting up a presence in the AIFC, however, despite continuous interest in redomiciliation such option was never tested before. KERC is the first and the only entity which completed its redomiciliation to the AIFC from Bermuda, where it had been operating since 2004. Kinstellar LLP acted as Kazakhstan legal counsel to KERC in connection with all aspects of its redomiciliation.

### 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, whereas it 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.<sup>2</sup>

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.

### 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,

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<sup>1</sup> AIFC Companies Regulations 2017, section 151.

<sup>2</sup> AIFC Companies Regulations 2017, section 155.

Bermuda, British Virgin Islands, Cayman Islands, Seychelles and other jurisdictions. The full list of permitted jurisdictions is set out in the table below.

(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-licensed activities in the AIFC.<sup>3</sup>

(c) registration (redomiciliation) step for Licensed Activities

The filing package for registration of a Foreign Company undertaking Licensed 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:

*Licensed Activities*

Given that the entire redomiciliation process for a Foreign Company applying to conduct Licensed 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 2-3 months.

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 Licensed Activities issued by the AFSA.

*Non-licensed activities*

The redomiciliation process for a Foreign Company seeking to conduct non-licensed 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.

**Glossary:**

**AIFC** means the Astana International Financial Centre;

**AFSA** means the Astana Financial Services Authority;

**Acting Law of the AIFC** has the meaning given to it by article 4 of the Constitutional Statute "On the Astana International Financial Centre" dated 7 December 2015, as amended;

**Ancillary Services** means the activities specified in Schedule 2 of the AIFC General Rules;

**Foreign Company** means a body corporate incorporated in any jurisdiction other than the AIFC;

**Licensed Activities** means Regulated Activities, Ancillary Services or Market Activities which are subject to obtaining a licence from the AFSA;

**Market Activities** means the activities specified in Schedule 3 of the AIFC Financial Services Framework Regulations;

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<sup>3</sup> AIFC General Rules 2017, Rule 1.1.1

**Registrar of Companies** means an individual appointed as the Registrar of Companies under section 9 (Appointment of Registrar) of the AIFC Companies Regulations;

**Regulated Activities** means the activities specified in Schedule 1 of the AIFC General Rules.

List of jurisdictions allowing 'Transfer of Incorporation'				
1. Andorra	12. British Virgin Islands	23. Ireland	34. Maldives	45. Seychelles
2. Anguilla	13. Brunei	24. Isle of Man	35. Malta	46. St Kitts and Nevis
3. Antigua and Barbuda	14. Cayman Islands	25. Israel	36. Marshall Islands	47. St Lucia
4. Aruba	15. Cook Islands	26. Jersey	37. Mauritius	48. St Vincent Grenadines
5. Austria	16. Costa Rica	27. Latvia	38. Montserrat	49. Switzerland
6. Bahamas	17. Cyprus	28. Lebanon	39. Nauru	50. Turks and Caicos Islands
7. Bahrain	18. Dominica	29. Liberia	40. Netherlands Antilles	51. UAE (Dubai, RAK)
8. Barbados	19. Gibraltar	30. Liechtenstein	41. Panama	52. Uruguay
9. Belgium	20. Grenada	31. Luxembourg	42. Philippines	53. US Virgin Islands
10. Belize	21. Guernsey	32. Macao	43. Portugal (Madeira)	54. USA (Delaware)
11. Bermuda	22. Hungary	33. Malaysia (Labuan)	44. Samoa	55. Vanuatu

#### About Kinstellar

Kinstellar was founded as a spin-off of the Central European practices of a London-based Magic Circle law firm and has maintained international best practices to the highest standards. With offices in ten jurisdictions and over 250 local and international lawyers, we deliver consistent, joined-up legal advice and assistance across diverse regional markets – together with the know-how and experience to champion your interests while minimising exposure to risk. Kinstellar has offices in [Bulgaria](#), [the Czech Republic](#), [Hungary](#), [Kazakhstan](#), [Romania](#), [Serbia](#), [Slovakia](#), [Turkey](#), [Ukraine](#), and [Uzbekistan](#).

Kinstellar's experience speaks for itself: major corporations, financial institutions, governments and the most respected international law firms trust us because we deliver.

#### Kinstellar in Kazakhstan

In Kazakhstan, Kinstellar has offices in [Almaty](#) and [Nur-Sultan](#), which were launched in 2013 and 2018, respectively. Our Nur-Sultan office operates through Kinstellar Astana, an AIFC Participant which is a recognised company holding a licence for providing legal services on the territory of the Astana International Financial Centre.

Our experts in Kazakhstan have years of experience assisting leading investors in Kazakhstan and across Central Asia. Our team of international and local lawyers is highly regarded and widely seen by leading international law firms as the “go-to team” in Kazakhstan for complex transactions. As part of Kinstellar’s seamless cross-border coverage, our Almaty and Nur-Sultan offices provide a wide range of legal services and is particularly strong in banking and finance, capital markets, dispute resolution, and corporate/M&A. Our legal experts bring international experience and local knowledge in key sectors of the Kazakh economy such as oil and gas, mining, financial services, infrastructure and telecommunications.

We are one of the leading law firms in Kazakhstan with top tier rankings by international legal directories, such as *Legal 500* and *Chambers and Partners*.

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