AIFC LAW CONFERENCE

04 July 2018, Astana

SPEECHES AND HIGHLIGHTS OF THE CONFERENCE

Dear reader,

I would like to introduce this book of speeches of our distinguished experts that were held within the AIFC Law Conference on 4th of July 2018.

Throughout the Conference a number of issues, as the dispute resolution perspectives at the AIFC Court and International Arbitration Centre were discussed along with AIFC a special legal framework based on the principles, legislation, and precedents of the law of England and Wales and the standards of leading global financial centres, which has been elaborated under the guidance of the AIFC Legal Advisory Council.

The aim of the Conference was not only to introduce AIFC Bodies and their services on dispute resolution, but to open the platform for discussion of contemporary issues and recent trends in litigation and legislative procedures.

The panels of discussion covered contemporary issues in resolving disputes. Furthermore, distinctive features of the AIFC Jurisdiction and the main goal of establishing a sustainable legal regime with an appropriate legal framework were presented and discussed.

All of the topics were discussed by distinguished judges of the AIFC Court, and International Arbitration Centre as well as by international experts.

We believe that issues that were covered throughout the Conference by our speakers, presented in this book, will allow you to get an understanding of AIFC activities, our ambitions and goals that we seek to achieve.

Kindest regards,

Kairat Kelimbetov
Governor of the AIFC

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AIFC LAW CONFERENCE

The Astana International Financial Centre (AIFC) in partnership with the Foundation of the First President of the Republic of Kazakhstan – Elbasy held the AIFC Law Conference (Conference) on 4 July 2018 at the Nazarbayev Centre, as part of the official presentation of the AIFC.

The Conference is intended to become a platform for discussing topical issues and current trends in resolving commercial and civil disputes, as well as modern issues related to contemporary problems in the field of judicial and legislative procedures, the exchange of practical knowledge and professional experience in the sphere of international law and arbitration.

THE OBJECTIVE

The mission, objectives, and services of the AIFC Court and the AIFC International Arbitration Centre (IAC) were presented at the Conference. Participants of the Conference discussed the advantages and opportunities offered by the AIFC Court, the IAC and the AIFC's legal system for prospective and existing AIFC participants.

AIFC COURT

I am delighted to introduce the AIFC Court which is an exciting and hugely significant initiative for the AIFC, the Republic of Kazakhstan, and Eurasia.

The AIFC Court provides a Common Law court system for the first time in Eurasia. It operates to the highest international standards to resolve civil and commercial disputes in the AIFC. It has exclusive jurisdiction over disputes arising out of the activities and operations of the AIFC and jurisdiction in the case of other disputes in which all parties agree in writing to give the AIFC Court jurisdiction.

The AIFC Court is separate and independent from the courts of the Republic of Kazakhstan. There is a Court of Appeal whose decisions are final. It has its own procedural rules that have been modelled on English Common Law procedures and leading international practice. It has a special fast track procedure for small claims up to the value of US $150,000.

It has an e-filing system that enables parties to file cases electronically at the AIFC Court from anywhere around the world without the parties having to be physically present in Astana.

Cost and time efficient case management will ensure that cases are administered and adjudicated as quickly and appropriately as possible.

Its decisions are supported by a robust enforcement system within the Republic of Kazakhstan.

In addition to myself as Chief Justice, the AIFC Court has eight Justices. Six Justices are judges who are eligible to hear cases in the AIFC Court of First Instance and Court of Appeal.

There are Justices who are judges in the AIFC Small Claims Court. The Justices are among the most experienced and distinguished judges from the Common Law world with global reputations for absolute independence, impartiality, integrity, unconditional application of the rule of law, and incorruptibility.

The AIFC Court is supported by a dedicated Registry team that is led by the Registrar.

There are extremely wide rights of audience. All lawyers with a professional lawyer or advocate practicing certificate from anywhere around the world are eligible to register with the AIFC Court Registry to represent parties in cases at the AIFC Court.

The AIFC Court will have permanent state of the art administrative facilities, including leading IT, conference, meeting, and hearing rooms, at its EXPO-2017 Astana premises.

It is working with leading international education institutions to provide world class professional legal and judicial education that will contribute to the development of future lawyers and judges in the Republic of Kazakhstan.

The judges, procedures, practices and standards at the AIFC Court will be familiar to businesses currently operating in major financial centres around the world. I welcome you to the AIFC Court.

The Rt. Hon. The Lord Woolf
Chief Justice, AIFC Court

THE RT. HON.
THE LORD WOOLF

Dear distinguished fellow guests, colleagues, and especially the Minister of Justice and the Chairman of the Constitutional Council, I feel very honoured to be able to speak a few words to you on this stage in your presence and to first of all accept that I also feel extremely modest because others have undertaken the task of devising the legal framework of the new financial centre where the Court and the International Arbitration Centre will play a permanent part. It is essential to ensure, if the financial centre is going to succeed, that it has a court and an arbitration centre that inspire confidence.

In that regard, I have to acknowledge the outstanding help that we have received, first of all, from the Governor of the AIFC and from his Chief Lawyer, Marat Aitenov. We are also extremely privileged to have present the Chief Justice of the Dubai International Financial Centre's Court, whom I have known for some time and whom it gives me pleasure to honour.

The reason why the law is so important in a financial centre is because the AIFC is an international financial centre and it depends upon those who are prepared to do business with it and trust it. And for that purpose, they need to be satisfied that there is a legal framework in which they can have total confidence. My responsibility regarding the AIFC is related to the Court, so I am sure you will excuse me if I concentrate on that.

The Court is extremely important because even if it may not be involved in any dispute or have to decide any cases, the very fact that it is there sends a message of huge importance to investors. It sends a message that the Court, if needed, can be trusted to do a perfect job and doing a perfect job involves doing justice and doing justice involves impartial and independent judges who will do their duty as they have undertaken before your President to deal with cases in a trusted manner. In traditional words that have been used by other jurisdictions when appointing judges - they do justice without fear or favour, without fear of doing the right thing which a case requires, irrespective of what other interests may be involved.

It does not matter whether one of the parties is the most powerful in the jurisdiction itself or among the weakest - they are both entitled to have the same quality of justice. That is what our Court is going to try to do. It could do it in many ways. When necessary, it may do it by resolving disputes. When resolving disputes, it has got to do it efficiently and expeditiously. It has also got to look at the bodies who are also operating and see that they are behaving lawfully and not unlawfully. And that is what we will do our best to achieve.

There will be an opportunity to hear from three of the nine judges who have been appointed by the President and saying that in this particular conference centre is a matter of very great significance because on the second floor there is the President`s museum of achievements. The books that I have read about the President, some of the books written by himself, are where I have learnt about the desires of the President for this Court, from which we will try to model and implement

THE RT. HON.
THE LORD FAULKS QC

“Independence of the Judiciary and the AIFC Court”

I would like to join with all others who have spoken in wishing the AIFC great good fortune in this exciting enterprise which is being undertaken. It is an extraordinary privilege to be one of the first judges of the AIFC. As a lawyer and a part-time judge of many years I do not take the independence of the judiciary for granted. In particular, during my time as the UK Justice Minister I was acutely aware of the importance of judges as a check on power and as an important part of the way our Constitution in the UK works.

In the course of the Brexit process, about which many of you will be aware, the independence of the judiciary has been demonstrated by decisions of the courts concerning the legality of the process of our leaving the EU. Judges were quite unfairly criticized by commentators and, in particular, by newspapers. The independence of the judiciary came under real scrutiny during that time, and I am glad to say, has survived it.

It seems to me to be a sign of a confident government here in Kazakhstan that it acknowledges and celebrates judicial independence. That is one of the reasons I very much welcome the decision to set up the AIFC Court with judges from England and Wales.

And I hope that the incorporation of the Common Law system, respected throughout the world, will have an important and respected part to play in the AIFC in the years to come. I feel that it will be complementary to other courts in Kazakhstan and in Eurasia rather than in competition with them.

It will be, of course, independent of the parties to any disputes and independent of the Government. I believe that it will provide confidence in the system for international business and an underpinning for the centre for finance regulated as we have heard during the conference this morning in a flexible and dynamic way.

One final point, echoing what Lord Woolf said, we do not know how often the Court will be resorted to, particularly in the early months and years. There may be many cases, there may not be very many cases, but its very existence will, I think, provide a vital underpinning and confidence for those increasing numbers of businesses who will seek to do business in the AIFC. Maybe that going to the Court will be a last resort, but the existence of a court in which all parties can have confidence is a vital part of the rule of law.

I very much look forward to being part of this most important project.

THE RT. HON. SIR ROBIN JACOB

"Resolving Intellectual Property Law Disputes in emerging markets"

Sometime ago, when the Thesians were here, some inventions were made: they improved the saddle, they improved the bow. There were inventors then, and there will be inventors here in the future. One of the things that any outsider notices almost immediately about Kazakhstan is how young the place is and how confident its citizens are. How will that play as regards this Court? Well, out there in your universities and in new start-up companies that have not yet been made but will shortly be coming into existence (or some of them which exist now), there will be young inventors. In many cases, they will not be in a position to run global factories or anything of that kind, and one of the ways in which they will exploit and develop their inventions will be through contracts with those who can. They will have to learn, and they will learn, the world patent system. They will obtain patents which are really no more than the legal instrument by which you create property in an invention, and they will license others to use it. Until the creation of the Court and its associate sister body, the International Arbitration Centre, how were they to do that?

Were they to use the rules of New York? Were they to use the rules of the UK? Were they, if ever there was a dispute with their licensee, to have to go to these places? Yes, that is what it was, but, it is not anymore.

I hope that the inventors of Kazakhstan will realise they now have their homegrown place for protecting the contracts they made with the rest of the world. And that really does matter, because if they invent, as I think they will, if they improve, then that would make Kazakhstan a place the world will look to for invention and creation. The Court, by way of background, will be something that they can build their businesses on. It has been said once, it has been said twice – it does not matter too much how busy the Court is. In theory, it is indeed better if the Court never has to sit, provided the parties know what the rules are and they settle.

A Victorian judge put it this way once: “Lawyers and judges particularly are up to see not so much the physiology of the system, but the pathology when things have gone wrong”. Well, we are here as the pathologists, but I really hope everything lives very well and they do not need to come to see us.

THE RT. HON. SIR STEPHEN RICHARDS

“Contemporary litigation and its future”

Well I am not going to speak today about judicial control or regulatory decisions, as that will have to await another occasion. What I am going to do is say a few words about the procedural rules that provide the framework for modern court litigation. I approach the topic with some hesitation because among the judges of the AIFC Court are colleagues with immense experience of the subject.

The AIFC Court Rules are based ultimately on the Civil Procedure Rules of England and Wales. Those Rules were introduced about twenty years ago, as a new code, completely rewritten, following a fundamental procedural review by Lord Woolf. Further, major procedural changes were introduced within the last ten years, as a result of recommendations by my colleague, Justice Sir Rupert Jackson, in a comprehensive review of civil litigation costs. My only involvement was primarily as the Chairman of the English Civil Procedure Rule Committee at the time when Sir Rupert`s recommendations were being implemented.

The English rules have suffered from a growth in size and complexity over their relatively short lifetime. As different courts and different types of litigation have led to additional rules or variations on the original rules, the rules have increased in size by over a third in just twenty years.

I am pleased to say that the AIFC Court Rules are shorter and avoid those complexities. They deal with the essentials of making responding to a claim and taking it through to a hearing and judgment. They allow for an abridged procedure in appropriate cases. There is a special procedure for small claims. They deal specifically with arbitration claims and with the procedures to be followed on an appeal, but otherwise they offer a straightforward uniform structure, which will assist litigants and promote speedy and cost-effective litigation. No doubt some fine-tuning will be called for, but it should be possible to avoid the constant and substantial growth in the size of the rules that has been a feature of the English system.

The key with procedural rules is, of course, to strike an appropriate balance between detail and flexibility. Detail can lead to greater consistency and predictability. The more general and open-textured the provision is, the more likely it will give rise to uncertainty and scope for argument and that its limits will have to be tested in the courts. On the other hand, the elaboration of detailed rules can lead to over-rigidity, and encourage parties to play the rules for tactical advantage rather than concentrating on efficient litigation.

The AIFC Court Rules, in my view, strike a good balance. They allow for procedural flexibility guided by general principles that promote consistency and certainty. I refer in particular to the overriding objective in Part 1 of the Rules. The overriding objective is again based on that in the English Civil Procedure Rules. It will be familiar to English lawyers. It is worth quoting in full because it echoes some of the points that were made by Lord Woolf in his opening remarks today. I quote: “These rules have an overriding objective of enabling the Court to deal with cases justly. Dealing with a case justly includes, so far as practicable, ensuring that the system of justice is accessible and fair, ensuring that the parties are on an equal footing, ensuring the case is dealt with expeditiously and effectively using no more resources than is necessary, dealing with the case in ways which are proportionate to the amount of money involved, to the importance of the case, to the complexity of the case, and of the issues and to the financial position of each party, and making appropriate use of information technology”.

The Court must seek to give effective tools to that overriding objective, when it exercises any power under the Rules. That is to say that the stated principles guide the exercise of judicial discretion. Moreover, the Court may waive any procedural requirement if satisfied that that is in accordance with

the overriding objective. That is a reminder that the Rules are there to assist the proper conduct of litigation, not to act as a 'straight jacket'. Flexibility is, in fact, built into the Rules.

The Rules also provide that it is the duty of the parties to help the Court to further the overriding objective. That leads to a wider point - that concerning the role of the parties.

One of the problems Lord Woolf was seeking to deal with at the time of the drafting and introduction of the English Civil Procedure Rules twenty years ago was that timetables were not adhered to and orders were not being complied with. The Rules he introduced improved things to a significant extent, but delays and non-compliance were still a continuing problem at the time of Sir Rupert Jackson's review into the costs of litigation.

A rule change was then made to emphasize the importance of conducting litigation efficiently and at proportionate cost and the need to enforce compliance with rules and orders of the court.

The case law that followed laid down initially what was seen as too strict an approach and caused consternation in the legal profession. However, matters settled down quickly as a result of further judicial guidance that adopted a more nuanced approach, whilst still a relatively strict one. What the court stressed was the need for a culture of compliance and cooperation if litigation was to be conducted efficiently and at proportionate cost.

Compliance should be the norm, and the parties should work together to ensure that in all but the most serious cases satellite litigation is avoided where a breach has occurred. It is to be hoped that such a culture of compliance and cooperation will apply to litigation in the AIFC Court.

The AIFC Court Rules enable the Court to play an active part in fostering that approach, and whilst my focus has been on litigation, I should mention finally that there will also be an important role for mediation and conciliation as part of the overall process of resolution of disputes that reach the Court. That is another aspect of cooperation between the parties that one would hope to encourage.

AIFC INTERNATIONAL ARBITRATION CENTRE (IAC)

The International Arbitration Centre ("IAC") provides an independent, economical and expeditious alternative to court litigation, operating to the highest international standards to resolve civil and commercial disputes in the AIFC.

The IAC has its own panel of outstanding international arbitrators and mediators who are greatly experienced, independent, impartial and of the highest integrity.

The IAC offers parties maximum choice and flexibility in choosing the rules and procedures they wish to use for the solution of their disputes at the IAC.

Parties may agree for the IAC to:

- *Administer their arbitration according to the IAC Arbitration and Mediation Rules 2018. These Rules include procedures for expedited arbitrations, the appointment of emergency arbitrators, and resolution of investment treaty disputes.*
- *Administer their arbitration according to the UNCITRAL Arbitration Rules or ad hoc arbitration rules.*
- *Administer mediations according to the IAC Arbitration and Mediation Rules 2018 or ad hoc mediation rules.*
- *Provide other forms of alternative dispute resolution.*

The IAC provides fundholding for arbitrators' fees and the holding and disbursing of advances paid to cover the reasonable costs of the IAC's own services and facilities.

The IAC is an appointment authority, offering the appointment of arbitrators and mediators from its panel, for arbitrations and mediations conducted at the IAC or elsewhere.

Arbitration awards of the IAC are enforceable in the Republic of Kazakhstan as orders of the AIFC Court, supported by a robust enforcement system. They are also enforceable internationally under the New York Convention.

The IAC will provide permanent state of the art administrative facilities, including first class IT systems, conference, meeting, and hearing rooms at the "IAC Chambers" which will be located at the IAC EXPO 2017 Astana premises.

The procedures and standards at the IAC seek to follow international best practice and will be familiar to users of arbitration and mediation services in major financial centres around the world.

Barbara Dohmann QC
Chairman, IAC

BARBARA DOHMANN QC

“An Introduction to the IAC”

I want to make a point about our Rules, which were published on the 1 January 2018. They are prefaced by Lord Woolf CH’s overriding objective. They are characterized by enormous flexibility, which I will illustrate very briefly. For example, they are intended to be improved or expanded in order to continuously adapt to the needs and requirements of the parties.

I would also like to mention a few things that are unusual in the AIFC Arbitration Rules 2018. For example, you can join outsiders to the arbitration agreement, who can come in by agreement of the parties and the order of the tribunal. Consolidation of arbitration is also possible. This issue has very frequently given rise to a lot of problems. For example, very similar issues arise, the parties are connected through their trade and business, however, they cannot have their arbitration served by one panel or heard together because the relevant rules do not permit it. Our Rules do so.

Any duly authorised person can represent any parties before the arbitral tribunal, they do not even have to be lawyers. The venue of an arbitration, despite its seat in Astana, can be anywhere in the world that is the most convenient to the parties and to the tribunal. The language, as has been mentioned, can be chosen by the parties, the applicable law will be that which the parties have either already chosen in their contracts or that which they choose in the agreement with the tribunal.

Under our Rules, the tribunal has extensive powers, again, not available under many other rules in the world. It can grant interim relief, emergency relief, injunctions, summary judgement (summary determination), as part of which the tribunal can dismiss the action or grant a summary judgement at an early stage in cases where a defence (or a case) is hopeless. If parties have come to an agreement, the tribunal can issue a consent award. If parties have arbitrated somewhere else but want to come here, they can do that by agreement, and a tribunal will be appointed for them or be chosen by them.

In cases where you have a value of less than five million dollars, the parties can request an expedited procedure, which is even more cost effective and speedier.

Finally, again not available in many other rules, emergency arbitrators can be appointed and make emergency orders. Many of these flexibilities are reflected in our model arbitration clause, pursuant to which the parties may choose from an array of various steps which may be undertaken by them as part of the dispute resolution process. In particular, they can select our Rules, but in case they want to choose other rules, including ad-hoc rules such as the UNCITRAL Rules, they are of course free to do so as well.

Very important indeed is the question of the choice of the arbitrator. We have a panel of outstandingly qualified people from whom parties can choose. The parties can also leave it to the Chairman of the IAC to appoint the arbitrators, and that will happen from the arbitrators sitting on our panel. Equally, parties can ask to have their own arbitrators already chosen to be used by the International Arbitration Centre and, particularly, it is possible for the parties to say that they want an arbitrator of a particular skill set or expertise. You have already had a chance to get acquainted with at least two of those at this conference.

Thus, arbitration is an alternative to court litigation anywhere in the world, not just to the courts in Kazakhstan. You can come from absolutely anywhere, with not necessarily at all a financial dispute within the AIFC, but with a dispute of any kind. We have flexibility. We have adaptability. We have the diversity that includes, of course, Sharia law, as has been explained to you earlier.

But, finally, what we also have is receptiveness. For example, you can ask the tribunal to become more fact-finding, more inquisitorial and use techniques of expertise, so that you have a very early determination with the help of the tribunal having established the necessary technical facts.

RANDY J. HOLLAND

“History of International Arbitration”

Your Excellencies, ladies and gentlemen, distinguished guests, it is an honour for me to be with you today, to have been selected as an arbitrator and to speak to you briefly about the history of international arbitration.

Arbitration in the simplest sense is simply a way in which parties can resolve their disputes without going to a formal court. Long before there were courts or judges, or principles of law people looked to arbitration to adjust their differences, and when the course of arbitration is traced through the centuries, we find it in primitive societies and in modern civilisations. Phillip of Macedon, the father of Alexander the Great, is reported to have used arbitration to settle territorial disputes arising from a peace treaty with some Greeks in 337 BC.

Arbitration in the area of commercial transaction also has ancient origins. Lord Mustill, an English Lord of Appeal in Ordinary and a prominent scholar, has written about the history of arbitration, and he says: “Commercial arbitration must have existed since the dawn of commerce. All trade potentially involves disputes, and successful trade must have a means of dispute resolution other than force”. In fact, commercial arbitration was known to the desert caravans in Marco Polo’s time and was a common practice among Phoenician and Greek traders.

In the Homeric period chiefs and elders more or less had regular sittings to settle disputes of all persons who chose to appear before them. Ancient and modern traders have always felt a great reluctance about becoming involved in litigation. Expense and delay are the usual reasons offered, but a stronger reason is that suits at law are contentious and seriously affect business goodwill.

Throughout history, traders have been interested in continuing business relationships after the resolution of the dispute. If we look at the charters that were issued to English merchant guilds, we will see that they demonstrate recognition by those traders of the value of an extrajudicial method of dispute resolution. Some of the earliest records of the English guilds show they preferred justice according to the law of merchants rather than Common Law in the courts. This is understandable because it is common knowledge that until the time of Lord Mansfield, the English courts were poorly equipped to cope with commercial causes of action.

According to Lord Campbell, mercantile questions were so ignorantly treated when they came to the courts in Westminster that they were usually settled by private arbitration among the merchants themselves.

Therefore, it is not surprising that England is said to be the modern developer of arbitration. As a result of the difficulties encountered in taking complex commercial matters to inexperienced formal courts, private arbitration began to flourish in England.

Commercial disputes in England were dominated by private arbitration and in the words of Lord Mustill: “on a scale which may not have been equalled elsewhere”. This was especially true in England after the enactment of the Common Law Procedure Act of 1854. The most important change in the 1854 Act was the inclusion of arbitration pursuant to a rule of law. This meant that an English court could use its judicial power to refer a complicated matter to arbitration. In such instances, the reference to arbitration was an extension of the formal court and, therefore, the court could use its penal powers to ensure compliance with an award. In the United States the Arbitration Act was adopted in 1925 in response to a perception that courts were hostile to arbitration. Before 1925 American Common Law courts routinely refused to enforce arbitration agreements. However, the United States Congress concluded that arbitration had more to offer than the courts recognized, including the promise of more informal, faster and often cheaper resolutions for everyone involved. Therefore, the Congress directed the courts to abandon their hostility and instead treat arbitration agreements as valid, irrevocable and enforceable.

Accordingly, the 1925 Act in the United States established a liberal policy in favour of enforcing arbitration agreements. The most common use of international arbitration today is the resolution of commercial disputes. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides international recognition and enforcement of arbitration agreements. The Convention, in addition to making arbitral awards enforceable, also requires courts of the contracting States to stay upon request an action in a national court that has been brought in contravention of a valid arbitration agreement. There are 159 signatories to the New York Convention. A substantial body of international case law has developed in the last 60 years. Commercial matters will be the focus of this new International Arbitration Centre.

Kazakhstan has been a signatory to the New York Convention since 1996 and will be a beneficiary of its enforcement provisions. Due to the growing success of international commercial arbitration, some dedicated institutions have been established across the world to act as centres for dispute resolution of commercial matters by arbitration and by adopting uniform rules. You have heard about many of them earlier today. The establishment of this International Arbitration Centre is the most recent addition.

This new Centre provides an independent, economical, expeditious and expert alternative to court litigation, operating according to the highest international standards to resolve civil and commercial disputes. The procedures and standards of this International Arbitration Centre will follow international best practices and should be familiar to many people who have used arbitration and mediation elsewhere. The practice of arbitration has gained particular prominence in this century as a parallel to traditional courts. Today, arbitration is the process whereby disputes are submitted to an impartial person, the arbitrator, for a final and binding determination known as the award. The arbitrator conducts an evidentiary hearing, reviews testimony and evidence by the parties and renders an award that is enforceable in court.

The last point is important. The success of an arbitration process depends on the ability of the parties to enforce the award. Arbitration awards of this Centre will be enforceable in the Republic of Kazakhstan as orders of the AIFC Court and will be supported by a robust enforcement system. They are also enforceable internationally under the New York Convention. Arbitration is one of the multi doors for alternative dispute resolution. As I have said, it has been practised for centuries.

Today, it remains the voluntary agreement of persons to submit their differences to expert arbitrators of their own choice and to bind themselves in advance to the decision of those arbitrators. As the various arbitration institutes like this new Centre continue to make rules and make arbitration seats more friendly and voluntarily available, they will continue to be appealing to parties.

In conclusion, the advantages of arbitration are an expert of the parties' own choosing, an economical resolution of complicated commercial disputes and an efficient and expedited decision. This new International Arbitration Centre provides an excellent opportunity for parties to provide for the private resolution of their important commercial disputes.

ANDREW WHITE QC

“Oil and Gas Arbitration in Eurasian Region”

Your Excellencies, distinguished guests, ladies and gentlemen, it is a great privilege to have been invited to Kazakhstan and to have been given the opportunity to speak on the occasion of the opening of the International Arbitration Centre here in Astana. The Government`s decision to establish this Centre is an important step in the development of a modern legal framework that will enable businesses and Governments to enforce legal rights and liabilities, as well as to resolve commercial difficulties that arise from contractual relationships. Parties to contractual arrangements require a high level of confidence that when disputes arise, they are capable of being resolved efficiently, fairly, economically and by a tribunal that possesses the relevant level of expertise both in terms of the applicable law and its familiarity with the subject matter of the particular contract and its context. This Centre should go a very long way towards providing the assurance that businesses require. I will return to why that is so a little later.

My expertise is in the areas of Oil, Gas and Construction. I have spent the past twenty-eight years conducting arbitrations and litigation all over the world, but with particular emphasis on Asia and Eurasia. Over the past ten years, a very large part of my time has been spent sitting as an arbitrator in disputes concerning construction and energy projects in Asia. And one of the greatest privileges I consider is to have been entrusted by parties around the world to decide their disputes by applying different legal systems in diverse cultures.

Oil and Gas and Construction projects are currently vital components of the economic success of Kazakhstan and are likely to remain so for the foreseeable future. Here are some facts. First of all, Oil and Gas. A recent publication by the Norwegian Institute of International Affairs in early 2018 reported that Kazakhstan possesses 3% of all global oil reserves, placing it amongst the world`s Top 15 countries in terms of proved oil reserves.

There are 172 oil fields and 42 gas condensate fields in Kazakhstan, the three largest being Karachaganak, Kashagan and Tengiz. Kashagan is the largest oil field outside the mainland region. More than 80 oil fields are under development. Over 90% of the oil reserves are, however, concentrated within the fifteen largest fields. This is the largest number of super giant oil fields outside the Persian Gulf. Kazakhstan is one of the few places in the world where major oil discoveries are still being made.

KazMunaiGas is the national Oil and Gas company created by the state in 2002. It controls around 20% of the total oil and gas reserves of Kazakhstan. There are also three major refineries in Kazakhstan: Atyrau, Shymkent and Pavlodar. The United States Government gives the following statistics in relation to energy reserves in Kazakhstan. In terms of crude oil, there are 30 billion barrels of proved oil reserves, which places it as the 12th largest oil reserve in the world. In terms of natural gas, Kazakhstan has 2.4 billion cubic metres of proved natural gas reserves, which places it as the 15th largest reserve in the world as at 2017. In terms of coal, Kazakhstan has 33.6 billion tons of approved coal reserves, which accounts for 3.8% of all the reserves in the world.

According to the forecast of the Kazakh Ministry of Energy, as reported by KMG, oil and condensate production has grown continuously over the past thirty years and will grow gradually to 88 million tons by 2020. This continuing growth is set to be attributable to a significant influx of investment, more favourable world market conditions for crude oil

production and the large-scale study of subsoil areas in the Caspian and Aral Seas, which will contribute to further additional resources. The recent report suggests that the Tengiz Karachaganak Operating Company and the North Caspian Operating Company are implementing around 45 billion dollars' worth of projects.

The following recent ongoing projects are particularly noteworthy.

First of all, the Caspian pipeline expansion. In 2017 a pipeline capacity expansion project was completed, involving the 935-mile crude oil export pipeline that runs from Tengiz to the Black Sea. The Tengiz field expansion in 2016 - Chevron announced a $36.8 billion investment for the development of that field, which some observers have said may move Kazakhstan to become a Top 10 oil producer in the world. This ongoing development includes the future growth, capacity and reliability project, which is designed to reduce bottlenecks and increase plant efficiency and reliability at facilities.

There is also the Karachaganak field expansion project, aimed at installing additional gas handling capacity to maximise utilisation of liquid stabilisation trains as the field's gas to oil ratio increases. Eni and Shell each own 29.25% of the Karachaganak gas condensate project field. Then there is the Kashagan field expansion, which is an offshore expansion in the Caspian Sea. It is the largest known oil field outside the Middle East. This high-pressure high-temperature multi-phase development by the North Caspian Operating Company is the largest field discovered in the past forty years and has been beset with technical difficulties. There are also other potential offshore projects.

There is then the One Belt and One Road initiative, closely related to Kazakhstan's Oil and Gas projects; there is the development of facilities for supporting infrastructure and transport links with other countries in the region, falling conveniently within the wide ambit of the Belt and Road initiative championed by China. In fact, when the Kazakh Government announced four years ago that foreign investors in non-energy sectors would receive a ten-year tax break on corporate and land taxes in special economic zones, transportation and logistics were listed as priorities. With the Belt and Road initiative underway, Chinese investment and labour influx has led to a burgeoning array of construction and engineering projects in Kazakhstan. It has been said that Kazakhstan may well move faster in terms of reforms and economic growth than any other country in the region.

A report published by Samruk Kazyna JSC in September 2017 suggests that the Belt and Road implementation in Kazakhstan is expected to be faster than in other participating countries due to substantial synergies with the Nurly Zhol programme and an optimised legal and regulatory framework. There have been various railway and logistic terminal projects which concluded in 2016 and 2017. Two are ongoing projects involving the Khorgos terminal, the development of which is expected to continue to 2020. The terminal is commonly known as the Khorgos Gateway. As many of you will know, it is a dry port or terminal for handling cargo for trains, which connects Kazakhstan to China. A new town known as Kent has been constructed from scratch with apartment blocks, schools and shops to support workers at the new terminal. The Kuryk seaport is located in the Mangystau region and is designed to increase Kazakhstan`s marine transfer capacity by enabling direct reloading from trains and trucks to ferries, which is mainly aimed at servicing the Oil and Gas projects of Kazakhstan. The first phase was completed in December 2016. And it has been reported most recently that port operators will build a universal transhipment terminal to increase the volume of cargo transportation through the port and is scheduled for commissioning in 2022.

Then, in addition, there are various green building projects. The Abu Dhabi Plaza Astana development is expected to be completed this year and is one of the most expensive and biggest developments in Astana. Expo City Astana was completed in 2017. The willow factory in Almaty is located in the Damu logistics port and is the first industrial building in Kazakhstan to gain LEED certification. Energy consumption is designed to be 25% lower in the future, thanks to the use of greener technologies, whilst 30% less water will be used. Then there are the Talan Towers Astana - this recent development comprises two towers: one housing the Ritz-Carlton Astana hotel and the other taller twin being used as a Class A international office complex. Bridging the two structures is a three-storey podium containing a luxury fashion gallery. It is again the first building in Kazakhstan to gain LEED certification.

Now, the success of all these projects depends upon an intricate framework of bilateral and multilateral agreements entered into by state entities and corporations based either here in Kazakhstan, or, more commonly, in other countries.

The range of contracts required to give effect to a major Oil and Gas development such as Kashagan is immense. Types of contractual arrangements include consortium agreements, joint venture agreements, unit agreements that govern the relationship between all companies that have interests in adjacent blocks, production sharing agreements, agreements for the provision of professional services required to design and supervise the construction of process plants and pipelines, construction contracts, securities, such as parent company guarantees, bonds and letters of credit. Now many of these contractual arrangements will be governed by different applicable laws - some Common Law, some civil. And most, say, those relating to securities, will provide for disputes to be resolved by way of arbitration somewhere in the world.

Why then choose the Astana International Arbitration Centre for the resolution of disputes? I think there are four very powerful reasons why parties involved in such projects should come here to Astana.

They can be boiled down to these.

1. First, it is regulated by a system of institutional rules that have been carefully crafted by highly experienced commercial lawyers to meet the needs of businesses.

2. Second, the members of the panel of arbitrators who are available to decide disputes have outstanding international reputations and a body of experience in both the laws that the parties may have chosen for the resolution of their differences and the character of the legal issues that are likely to arise. For example, contracting parties are likely to be able to find amongst the panel someone who knows about the problems that can arise under a unit agreement, or someone who has experience of the particular technical problems that can arise in building a process facility in the Kashagan oil fields. By way of example, the oil in that field is particularly SAR (high in sulphur) and presents serious corrosion problems in the use of steel and welding.

3

The third reason is geographical convenience. The obvious choice for the place for a hearing of an arbitration arising out of a Kazakh project is surely Astana. The city is also convenient for regional disputes that arise out of One Belt One Road projects.

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Fourthly (Ms Dohmann has touched on this earlier), the administrative costs and the level fixed for arbitrators' remuneration is extremely reasonable and much lower than the rates charged by some other institutions. In conclusion, I would like to wish the IAC every success as it begins the process of developing an international reputation as a first-class location for the resolution of commercial disputes.

SHEIKH BILAL KHAN

"Islamic Finance and Arbitration in the AIFC Market"

Your Excellencies, ladies and gentlemen, distinguished guests, firstly, my background is as a qualified English lawyer, formerly with Linklaters. From the Islamic law point of view, I am a qualified Shariah lawyer. I have had the honour of advising governments regarding drafting laws, regulations as well as sitting as an adviser for several Prime Ministers and Presidents' offices across the world. I mentioned my background to highlight the reason that Islamic finance has become a real and genuine alternative based on ethical principles and this mode of finance has been adopted by many countries across the world. We are not talking about just the Islamic world but even the United Kingdom where I come from and the City of London prides itself on being probably the leading global Islamic financial centre in the world, and has the best sets of laws and the enabling legal and regulatory frameworks.

I have had the privilege of advising lawmakers and regulators on establishing the first rules and the first wave of Islamic finance thinking. From those days we have had a lot of traction. We have had the privilege of also structuring and launching the UK government`s sovereign Sukuk, which is the Islamic sovereign bond issuance. This was the first Sukuk issued by any European and Western country and we were quick off the mark because we ended up beating Luxemburg by a few months.

If you look at the London skyline, from the Olympic village to the Chelsea Barracks, they have all been either completely or partially financed by Islamic finance according to the Shariah law principles. We are talking about almost a 3 trillion-dollars industry globally, and therefore potentially a huge amount of inward investment into the European countries especially to the UK and to others.

There are a lot of opportunities here in Kazakhstan – Islamic finance is one of the six key pillars of the new Astana International Financial Centre. Islamic finance works very well with FinTech, green finance and the whole ecosystem.

In the light of the 2008 global financial crisis, everybody from governments and the World Bank are looking at Islamic finance as a real alternative to conventional finance.

Islamic finance is where contracting parties believe in not just sharing the economic returns but also sharing in the risk element and therefore there is a closer alignment between the real economy and the financial economy and thus a move away from debt-ridden structures and arrangements and avoiding major economic crises.

In the words of the former chairman of the UK FSA, Lord Adair Turner, we need to keep away from such casino financing which unfortunately modern conventional financing is becoming. The financial services industry has sadly lost touch with reality especially in the derivatives space. Islamic finance is now a genuine alternative and a real mainstream option. Moreover, it is not limited to the Islamic world only but, to give you a very small example of a town in the Northeast of the UK in Newcastle known as Gateshead, which had a local transaction where both contracting parties were not Muslims but they chose Islamic finance as a way of structuring their funds for ethical reasons. This demonstrates the value proposition of Islamic finance and its acceptance among all communities. Islamic finance has grown to the extent that even the Church of England, the Church of Scotland, the Vatican City in Rome and many other international institutions are looking at tapping into Islamic finance, and I happen to advise a few of them.

I want to speak briefly about Shariah law or what is also known as Islamic law and the amazing overlap with English Common Law. What I think is very fascinating is that English Common Law is working very naturally with Islamic law for international Islamic financial transactions. This is most likely due to the fact that English Common Law has been prevalent obviously among the Commonwealth countries and most of the Islamic world has been under the British Empire in one form or another which has been a huge learning experience for both legal systems to understand their interplay. Most of the doctrines and the concepts that you find in English Common Law , in commercial law, contract law, and in the law of property and trusts, are somewhat similar to Islamic law.

If you go to Harvard University Law School, you will see engraved on the entrance a powerful legal statement which is in fact a verse from the Holy Qur'an. I enquired about this and asked as to why this is the case and why not have something from Greek or Latin. I was told that they could not find a more powerful and poignant statement about justice than this verse of the Holy Qur'an which unequivocally states that: "O you who believe! Stand firm for justice, as witnesses before God, even if it is against yourselves or (your) parents or (your) nearest of kin."

The word and concept of arbitration in particular is mentioned on numerous occasions in the Holy Qur'an and God talks about the impartiality and other key elements of arbitration. I feel there is a nice overlap and interplay between the two legal systems whereby Shariah law governs the underlying substance and the practical economic structure of the transaction while the contractual wording of the legal documentation is in accordance with the law of the jurisdiction, namely for our purposes the English Common Law . According to various statistics, 95 per cent of Islamic financial transactions globally are documented and drafted according to English Common Law . What I found in my years of experience sitting as an adjudicating arbitrator is that unfortunately there is little or no Shariah law expertise on the benches of arbitrators and this is a huge need of the hour for so many major civil and commercial disputes emanating from many parts of the world.

It is important to highlight that at the AIFC we are not talking about the International Arbitration Centre being limited to Kazakhstan, but rather the scope is truly international as any civil or commercial dispute from any part of the world can be brought here. Islamic financial transactions have this underlying opportunity where you can draft a suitable arbitration clause that allows the parties to elect the seat of arbitration, the jurisdiction, the jurisprudence, the arbitrators, the procedures and many other freedoms of election for their mutual convenience, comfort and suitability. The flexibility of arbitration is the real beauty. It is extremely flexible to even the extent of the language which is to be used in the proceedings, the method, the format and even the precise steps in the procedures and as such you can even have Shariah law or aspects of Shariah law or even more the exact school of Shariah law and thus there are real possibilities for closer alignments with English common law.

I have had disputes coming out of the Middle East and I have sat on disputes in Turkey, in Pakistan and disputes emanating from other parts of the world. Furthermore, this is not limited by the way just to Islamic finance because many disputes in almost 60 countries that have Muslim majority population and also in many other countries with Muslim minorities where parties are Muslims but the matter is not strictly an Islamic financial transaction which may require cultural and religious expertise on the part of the arbitrators. This is where the International Arbitration Centre is unique in its panel of arbitrators.

Therefore, the parties may elect someone like me to sit as one of the arbitrators who understands the language and their culture. I think the more communication and marketing we do the better it would be for awareness of the IAC. Our Chairman mentioned in her opening speech this morning on two occasions the value-added advantage of the IAC, namely our Islamic finance expertise. After her comments, I had several people coming to me including the Group Chairman of JP Morgan to discuss this in more detail. This is a unique selling point of the IAC because everything else that we offer in our centre can be to an extent available elsewhere in other

centres and seats. However, the Islamic finance piece which is one of the key pillars of the AIFC is only available here. Personally, I offer arbitration expertise on an ad hoc basis globally and now as a panel arbitrator as well.

I also want to highlight the fact that all disputes through arbitration can be dealt with expeditiously and according to the instructions of the parties. Shariah law does not block or stifle the resolution of disputes but, in my years of experience, acts as merely a reference point and to facilitate justice and a fair resolution in an impartial and confidential manner. I have never had, except on one or two occasions, the proceedings being conducted in any other language besides English as it is the language of instruction and medium for most parties in disputes. We are seriously looking at billions worth of deals.

So far, parties have gone to English courts for Islamic financial matters which you must have seen especially in the case of some of the high-profile cases in the UK High Courts including the recent Dana Gas Sukuk. I think we have a fantastic opportunity at the IAC where we can combine Shariah law and English law and have this offered through our centre. Therefore, I think we have a phenomenal opportunity.

Thank you for your time and patience. I will be around to answer any questions.

LEGAL ADVISORY COUNCIL (LAC)

AIFC Legal Advisory Council (LAC) is established with the objective of ensuring the introduction of the best global practice and the transposition of the relevant law of England and Wales. Representatives of global leading law firms and barristers' chambers such as Baker McKenzie, Herbert Smith Freehills, Hogan Lovells, Michelmores, Norton Rose Fulbright, White & Case, and 3 Verulam Buildings are members of the LAC.

The LAC's task initially was to oversee the preparation of the AIFC General Legal Framework, looking at the topic in a strategic way as well as at the drafting detail. It has given preliminary approval to AIFC General Legal Framework Acts which were further adopted by relevant AIFC bodies. It now has to move on to the development of that Framework to ensure that it remains up to date and can cope with the expansion of the business of the AIFC.

The LAC has given preliminary approval to a large number of AIFC Acts on the basis of drafts prepared by one or more of the AIFC bodies. Before the draft AIFC Acts were assessed by the LAC, they had each been reviewed by an expert, Mr John Leahy, an Australian barrister and solicitor with more than 40 years of experience in legal drafting in common law jurisdictions.

MICHAEL BLAIR QC

“Unique features of the AIFC Jurisdiction”

I am honoured to be invited to chair this Conference session on the AIFC Legal Framework, and to deliver one of the three addresses on behalf of the Legal Advisory Council (LAC). I am joined on this panel session by two members of the distinguished group of lawyers who make up the LAC under my chairmanship. These two are, first, Andrew Oldland QC, the Senior Partner of Michelmores LLP, an English commercial law firm, and Michael Thomas, who is a partner in the London branch of the international law firm Hogan Lovells International LLP, specialising in financial services.

I was honoured to be invited to preside over this illustrious body, the LAC. I imagine I was chosen because I had previously been closely involved in the establishment and reform of two financial regulatory systems.

In the United Kingdom, I was the most senior lawyer inside financial regulation from 1987 to 2000 and helped to deliver two major changes to the original system, which dated from 1986. The reforms took place in the early 1990s and then, even more radically, in the late 1990s. I retired as General Counsel to the UK Financial Services Authority in 2000 and returned to practice at the English Bar. Secondly, I was invited in 2001 to join the inaugural board established to create the Dubai Financial Services Authority in the United Arab Emirates, and I served on that board until 2013. This initiative in Kazakhstan is a third opportunity to help create something new and important in the financial field. That is a real privilege for which I am grateful to all concerned.

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As today's programme shows, I am asked to say a few words about the unique features of the AIFC Jurisdiction, and my remarks will be followed by two other contributions. One of these will be a presentation on the AIFC General Legal Framework, and the second will tackle one of the more complex legal issues involved in the AIFC initiative. This is What does 'in the AIFC' actually mean?

First, however, I should explain what the Legal Advisory Council actually does and has already done. It is an advisory body, as its name applies, and is appointed for a year at a time by an Order of the Governor. Its focus has been the "General Legal Framework" which is the working body of commercial law with which the AIFC has been equipped. The LAC has been and remains an expert adviser and consultant on the quality of this whole body of commercial legislation, and on each individual item as well.

An early task, therefore, was to identify (i) the highest and most appropriate international standards to take into account, and also (ii) the specific jurisdictions from where individual sets of regulations etc could draw inspiration. This task was carried out in the light of the preference expressed by the President of the Republic and of its Parliament for the highest international standards and for the principles and procedures of the English common law.

Thereafter the LAC was involved in amending and eventually approving draft regulations and rules that together comprise a coherent body of commercial law of the kind required by this ambitious project.

These tasks took up most of the calendar year 2017, as the AIFC was due to open its doors on 1st January 2018. The target date was achieved by the LAC with a few days to spare. The LAC has now moved on to a second phase, in which we are assisting the AIFC with initiatives to promote a better understanding of the AIFC legal landscape. This is aimed in particular at potential Centre Participants. In this second phase, we are also ready to participate in amendment and development of the legislation already in force.

I turn to the AIFC jurisdiction in general, and its unique features. I propose to divide this topic up into two parts, that is, first, the legal nature of the AIFC Centre itself, and, secondly the nature of the general law devised for the AIFC. There is uniqueness in each of these two areas.

Uniqueness in constitutional terms. As everyone here knows, the AIFC has a secure constitutional basis, derived from enabling changes to the Constitution of the Republic of Kazakhstan and from a Constitutional Statute passed by the Kazakhstan Legislature. I pay tribute to those here present who were involved in bringing that constitutional structure into existence.

There is nothing unique about a firm constitutional base such as that of the AIFC: indeed, it would be legally unsafe to set up a financial centre on the AIFC lines without the benefit of support at the highest political levels and without imaginative constitutional empowerment. That said, the AIFC is, as far as I know, unique in the way in which it has come into being as a territory dedicated to financial services in a major world power.

The other international financial centres that come to mind are all, with one exception, set up in relatively small jurisdictions.

Jersey and Guernsey are both small islands with a unique history leading to their becoming dependencies of the British Crown. The new centres in the Middle East have grown up inside relatively small jurisdictions (Dubai and Abu Dhabi in the wider United Arab Emirates, and the centre in the State of Qatar). The various financial centres in the Caribbean, such as the Cayman Islands, are also relatively small jurisdictions. Singapore is more substantial in size, but, of course, stands on its own as a unitary state. All the other centres I have mentioned are set up inside a larger jurisdiction or are countries or territories inside the British Commonwealth. So, except for Singapore, in all these cases there is a “mother state” in one sense or another.

The apparent exception is Hong Kong, which nowadays looks similar in constitutional terms to the AIFC. It is a part of the People’s Republic of China, but has a different constitutional and legal structure, with a clear focus on financial services as well as trade.

It is a “Special Administrative Region” of the People’s Republic of China: hence the expression “One country, two systems”. However, the historical development of Hong Kong was very different, and indeed unique in itself. Hong Kong, when initially developed as a financial centre, was another small island, held by the UK as a colony on a long lease granted by the then Government of China. The territory was returned to China on the expiry of the lease in 1997, and it is only from then onwards that the apparent similarity with the AIFC arises.

Uniqueness in the jurisdiction. The legal nature of the AIFC has a second notable characteristic. The AIFC is, in my view, unique in the way in which legal authority to govern is based on a blend between personal jurisdiction and jurisdiction based on a territorial space.

This blend is not unusual in the special field of juridical capacity but is extremely rare in the much broader field of a legal system's essential structure. As to courts etc, a mix of jurisdictional bases is a commonplace for those concerned, as I was for 20 years in my early life, with juridical nexus in contentious legal matters (that is the authority of courts and judicial systems; and with the validity of arbitral machinery).

Courts have a territorial base and are also open to additional jurisdiction based on contractual or voluntary submission to jurisdiction, at least in civil and commercial matters. Arbitrations have "seats" and depend, even more than do courts, on a personal, contractual, agreement between the parties. However, the blend between "territory" and "person" is unusual in relation to the creation of an international financial centre, and in the associated commercial legal system which is required to support it.

The Constitutional Statute of the AIFC clearly sets out the two strands in this blend.

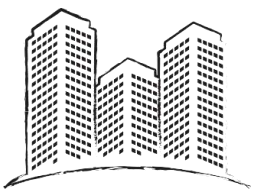
First, it enables a distinctive territory to be marked out as the physical home of the AIFC. This has led to the Presidential Decree of 28 December 2017 which, with effect from 1 January this year, places a boundary around a large part of downtown Astana, amounting to 1632 hectares. Inside the boundary is the AIFC territory.

Second, it creates a concept of "Centre Participants". Under Article 1(5) of the Constitutional Statute, these Participants comprise "legal entities registered under the Acting Law of the AIFC and legal entities recognised by the AIFC." There are two types of Centre Participants: legal persons created under AIFC law, and other legal persons created elsewhere, but recognised in the AIFC, and thus able to carry out financial activities as Participants in the AIFC. The body which deals with registration and recognition is the Astana Financial Services Authority (AFSA).
However, the blend between "territory" and "person" is unusual in relation to the creation of an international financial centre, and in the associated commercial legal system which is required to support it. The Constitutional Statute of the AIFC clearly sets out the two strands in this blend.

Here is the origin of the jurisdictional blend: territory, and personal adherence. But, and this is the unique aspect, it is crucial to the conceptual approach that not everyone resident or doing business in the territory at (i) above has the allegiance to the AIFC that is necessary for (ii) above. Many enterprises established inside the boundary have been and can remain completely unconnected to the AIFC and continue to be governed by the general law of the Republic of Kazakhstan. It is also necessary (with one unimportant exception) that anyone with the allegiance to the AIFC through registration or recognition (under (ii) above) should have a registered address in the Centre and should also have some kind of physical presence there.

In the language that has become familiar in the LAC, therefore, the AIFC is a mixture of jurisdiction based on the concept of an "enclave" and also based on the concept of a "club". An "enclave", for this purpose, is a part of one country or territory that is carved out as different from the rest. The DIFC in the Emirate of Dubai, itself in the UAE, is a classic example. The "club" concept, by contrast, is personal. It is derived from members' societies, like golf or tennis clubs: the main thing that binds the club together is the common agreement of the members to be members and to abide by the club rules.

Here in the AIFC, both aspects are present, but the "club" aspect is strongly predominant. It has to be so if the other firms and enterprises in the 1632 hectares are able to carry on business there under the general law of the Republic, as if the AIFC had never been brought into existence. Unless they agree with a Centre Participant to do business under AIFC law, they need have nothing to do with the Centre itself. No Centre Participation, no compulsory involvement.



This is an innovation in relation to international financial centres. There is one remotely comparable jurisdiction, where the financial centre is inside a sovereign state, and where, in essence, the powers of the regulator, and the jurisdiction of the Courts and tribunals attached to the centre, are both based on the concept that the territory of the "centre" is wherever a licensed firm has its premises within the state.

But, and I wish to stress this, the uniqueness just described in the AIFC is not merely an unmistakable result of the drafting of the Constitutional Statute; it also has real benefits in terms of the development of a financial centre.

Uniqueness in the relationship with the law of the Republic. This blend of jurisdiction leads directly to a further unique aspect of the AIFC model. The interlock between AIFC law and the national law of Kazakhstan, as the "mother state", is directly, and uniquely, affected by this blend between "territory" and "people". And the solution in my view is beneficial to the AIFC, and, I would hope, to the Republic of Kazakhstan as a whole.

Most of the other financial centres of which I am aware are "enclave" models. They have a strict border around the relevant territory, whether it is of a few hundreds of hectares or something larger. Within this territory, every person located inside the boundary who carries on financial services is prohibited from doing so unless it, he or she has a licence from the regulator. This is very different from the AIFC. Here, non-Participants in the Centre, as just explained, can carry on trading, even in financial services, under the general law of the Republic. In the AIFC territory, both legal systems operate side by side, depending on who has or has not become a Centre Participant. Nowhere else, in my view, does this co-existence of legal systems exist.

This is self-evidently a flexible system, which seems very useful to all concerned. And the risk of jurisdictional clashes between the two legal and judicial systems has been greatly reduced by the clarity of the AIFC legal structure, including its ground-breaking Constitutional Statute.

Further, in these other centres, the erection of the strict territorial border means that the question of where the activity is being performed becomes a key one in one particular and important aspect. Two types of the three types of financial activities that are carried on in such centres are clear. Firms licensed in the centre can do regulated business (i) with other firms so licensed, and (ii) with persons "abroad", that is outside the "mother" state as a whole. But the legality of the third type of business, that is regulated business (iii) between a centre licensee and a person resident elsewhere in the "mother state", is much less clear.

It is no secret that there are or have been problems about the "enclave" structure in one or more of these centres, because of the unresolved issue about "which law applies to what?" When a firm licensed in the centre wishes to do business with a counterparty in the "mother state", there has been a question whether it can do so under the banner of the centre licence, or whether it needs to have an additional licence in the "mother state" in order to deal with that person.

In the AIFC, by contrast, this question does not arise at all. The AIFC Centre Participant has its own licence, and as long as it carries out business in the rest of the Republic of Kazakhstan in a way that means it is still legally acting as a Centre Participant (registration, residence, transacting/booking the contract in the AIFC, etc), there should be no difficulty about determining which is the applicable legal system. This is the case even where the counterparty is not itself also governed by AIFC law. If it is willing to deal with the Centre Participant under the Centre Participant's person law (that is AIFC law) that is the end of the matter.

The special structure in the Constitutional Statute has these two substantial benefits. Firstly, inside the Centre, there is no exclusion of persons preferring to remain subject to the general law of Kazakhstan. Banks and Insurance Companies in downtown Astana can still carry on all their financial activities there in a same way as before 2018. And, secondly, outside the Centre, the risk of conflict between legal systems is largely avoided, by answering the three simple issues (a) whether there was a Centre Participant in the transaction or process; (b) whether it was acting in that transaction or process within the jurisdictional requirements of the AIFC (registration, business transacted in the Centre etc), and (c) whether the counterparty had or had not taken steps to ensure, as was its right, that the general law of the Republic still applied to its activities.

I conclude that the AIFC is unique in this way; I do not know of another financial centre set up as an internal territory, with its own commercial legal system, but on the basis of a flexible and "permeable" border permitting business to be carried on under its own rules with counterparties in the "mother state".

SPECIAL FEATURE OF AIFC GENERAL LAW

My second topic relates to the General Legal Framework, as worked on last year by the LAC with help from draftsmen and many of the AIFC staff.

"Codified" Commercial Law. First, it provides its own codified commercial law in simple language. The various sets of Regulations, reflect, broadly speaking, English Law, but with some special features adopted carefully from other jurisdictions. This will allow for judicial development and may in due course lead to legislative change as well.

Plainly, the Judges in the AIFC Courts will be able to take into account developments in common law jurisdictions elsewhere so far as relevant to the case being tried. But the central task of the judiciary in the AIFC will be the interpretation of the commercial "Code" provided here.

The "Code" develops organically, and not by reference to an outside legal system. Secondly, and linked to this first point, the task, for the judiciary, does not include any duty to ascertain and apply what the law is in any parent legal system: instead, it includes the consideration of relevant developments in relevant foreign legal systems as part of the function of applying the AIFC code itself. Some other commercial centres have preferred to proceed by reference, where necessary, to a living and breathing foreign legal system, including any changes that occur there through judicial interpretation. This approach, it seems to me, obliges the advocates in the courts there to be up to date in relation to many developments in the parent legal system, which would be of direct relevance unless plainly inconsistent with the written law in the Centre.

In the AIFC, however, the intention of the draftsmen of the commercial "code" was to enable the law in the Centre to stand on its own feet, as a transplanted but autonomous entity, to a greater extent than in the alternative model. AIFC law speaks for itself and will develop organically with experience rather than by having to apply directly any of the results that belong elsewhere. Time will tell which of the systems turns out to be the better one. For myself, I prefer the greater internal consistency, and I would say autonomy, of the approach here in the AIFC.

Lastly, the commercial law of the AIFC has one unique feature involved in its creation. It was brought into being with the input of an advisory body composed of experienced international commercial practitioners. I do not know of any other international centre that has proceeded in this way.
It is not for me to say whether the "input" of the LAC has been an unalloyed benefit. It would be foolish to suggest that the first "code" on which we advised is perfect and incapable of improvement. However, I am modestly hopeful that our efforts, supported by our able Secretariat and senior advisers from within the AIFC, will be seen to have led to real gains for the Centre overall.

ANDREW OLDLAND QC

“What does ‘in the AIFC’ mean?”

Dear Ladies and Gentlemen,

It is a great pleasure and privilege to be invited to participate as a speaker in this Panel on the AIFC Legal Framework.

I will elaborate further on the concept of "in the AIFC" mentioned by Michael Blair QC a little earlier. It is an important question as once you are "in" the AIFC your commercial activities are governed by AIFC law and subject to the AIFC's regulatory regime. If you are not "in" the AIFC you will be subject to the laws and regulatory regime of the Republic of Kazakhstan.

As you have heard earlier today an important part of the AIFC is its dispute resolution function. I will be focusing now on the AIFC's legal and regulatory framework, so although organisations can opt into the AIFC for dispute resolution purposes or select AIFC law as the law governing a contract for activities carried out elsewhere – I will not be addressing these "opt-in" aspects of the AIFC's jurisdiction.

The starting point is to consider the legal character of the AIFC. Michael Blair has touched upon this already. Although the AIFC has, as Michael described it a "mother" or "host" state in the shape of the Republic of Kazakhstan, the AIFC is not defined by a geographical area carved out of the mother state. It is, in fact, primarily to be invited to participate as a speaker in this Panel on the AIFC Legal Framework defined by personal jurisdiction - it is a "club". One of the rules of membership of this club, is that its members (or "participants") must (with a couple of exceptions) have a presence within a delineated area of downtown Astana which includes, but is not confined to, the Expo site; but, as you all know, the vast majority of economic activity in this part of Astana will have nothing to do with the AIFC. A consequence of this is that parts of a building in downtown Astana may be "in" the AIFC, whereas other parts of the same building, or even floor, will not.

There is no requirement for a substantial or even significant physical presence within the delineated area, some physical presence will do.

The AIFC is perhaps best described as a "club" where its members have a residency requirement. Michael has told you of the advantages of and rationale behind adopting such a model.

It is crucial to understand this, as the concept of "in the AIFC" is not therefore primarily defined by geography.

LEGISLATION

These characteristics of the AIFC are derived from the following legislation:

- Presidential Decree No 614 made on 28 December 2017;
- Article 1(5) of the Constitutional Statute;
- Regulation 6 of the Financial Services Framework Regulations No 18 of 2017;
- Certain provisions relating to the incorporation or recognition of legal entities from the General Legal Framework.

PRESIDENTIAL DECREE - TERRITORY

The Presidential Decree delineates the territorial boundaries of the AIFC, but does not, of course, restrict any non-AIFC activities from taking place. This is different from, for example, an "enclave" such as the DIFC.

Under Article 1 (5) to be a centre participant (a member of the club), you must be a legal entity which is either "registered" under the Acting Law of the AIFC or "recognised" by the AIFC.

AFSA is the gatekeeper to the club as, in addition to its role as a financial regulator, it is also the Registrar. Both registration and recognition fall within AFSA's remit. Centre participants must also be licensed and, if they carry out regulated financial activities, authorised.

ACTIVITIES FALLING "IN THE AIFC"

The FSFR is the governing financial regulation under which a number of rules (or Rulebooks) sit.

Regulation 6 Financial Services Framework Regulations 2017

MEANING OF "IN THE AIFC"

(1) A Person will be deemed to be carrying on activities in the AIFC for the purposes of these Regulations if:

(a) that Person is a Centre Participant and the day-to-day management of those activities (even if those activities are undertaken in whole or in part from outside the AIFC) is the responsibility of the Centre Participant in its capacity as such; or

(b) that Person's head office is outside the AIFC, but the activity is carried on from a branch maintained by it in the AIFC; or

(c) the activities are conducted in circumstances that are deemed to amount to activities carried on in the AIFC under Rules made by the AFSA.

(2) The AFSA may issue Rules and guidance as to the circumstances in which activities capable of having an effect in the AIFC are or are not to be regarded as conducted in the AIFC.

This provision is aimed at identifying the circumstances when activities are "deemed" to be carried on for the purposes of the FSFR, thereby ensuring that the conduct falls within the remit of regulation by AFSA.
In turn subpara (a) divides into two parts:

i) The activities are carried on by a Centre Participant (so a registered or recognised legal entity); and

ii) The day to day management of those activities is the responsibility of the Centre Participant in its capacity as such.

In short, a Centre Participant carrying out activities for which it has either been registered or recognised which it is responsible for managing on a daily basis.

But the section "even if those activities are undertaken in whole or in part from outside the AIFC" is important. This clearly envisages that the activities being carried on will still fall "in" the AIFC for the purposes of this particular regulation even if they are carried out outside the geographical limits of the AIFC.

This means that activities conducted outside the area of downtown Astana will be able to fall within the legal and regulatory ambit of the AIFC. This is consistent with the AIFC's aim to be a financial hub with financial services & products bought and sold throughout Eurasia and indeed the wider world.

Whether or not such activities also fall within the legal and regulatory regimes of other sovereign states (or indeed the Republic of Kazakhstan) and require dual regulation, will be an important consideration for Centre Participants. It will depend critically on the precise nature of the activity being carried out.

A system of recognition (as between regulators) may in due course alleviate such issues.

The same problem does not, of course, arise if your customer is also a Centre Participant provided the activities fall within the remit of both parties' registration or recognition as Centre Participants. These activities as between Centre Participants can take place anywhere in the world and still fall "in the AIFC". However, if the activities take place outside Kazakhstan, the laws of the sovereign state in question will also apply, so dual regulation may be required. Under the Contract Regulations 2017, contracts between AIFC Participants and AIFC Bodies and AIFC Participants are deemed to be governed by AIFC law unless an alternative is expressly provided for in the contract.

Turning then to subpara (b):

Under Article 1(5) and provisions within the General Legal Framework, a legal entity from outside the AIFC can apply to have a branch recognised as a Centre Participant. Care needs to be taken not to read the word "in" here in its geographical sense alone. Although the word "branch" clearly connotes a physical presence, it needs both to be physically within the area of downtown Astana and also "in", by way of recognition, the club. As I have already observed, there will be many commercial organisations within the AIFC's territorial limits some of which will be affiliates of foreign parent companies which will have nothing to do with the AIFC. There is a degree of overlap here with subpara (a), but there is no requirement to have responsibility for day to day management of the activities. If you are a branch recognized by AFSA any regulated activities that you carry out through that branch will fall "in the AIFC".

It is worth noting, of course, that if you have been successful in obtaining recognition through a branch, this will be because the 'head office' is governed by a system of financial regulation which is of sufficient quality and rigour to be recognised by AFSA. The 'head office' will not be able to use its branch's AFSA authorisation.

Finally, subpara (c):

The purpose of this provision is to enable AFSA to protect the integrity of the AIFC. It is a method by which AFSA can bring potentially marginal activities by a Centre Participant within the AIFC and therefore within its powers of regulation and enforcement. AFSA, upon careful analysis of the activity being carried out and in accordance with the Rules and its guidance, may "deem" that activity to fall within the AIFC and can thereafter take steps to regulate, prevent or curtail those activities.

For completeness, I should mention that where activities are carried out "in the AIFC" which contravene the criminal laws of Kazakhstan, then the perpetrator of those activities will be subject to the criminal justice system of the Republic of Kazakhstan. Such a perpetrator may also face 'civil' sanction within the AIFC arising from the same activities.

One final matter, to the extent that the General Legal Framework or the Financial Regulations of the AIFC do not cover activities, those activities will be subject to the laws of the Republic of Kazakhstan. So, for example, if you were a mining company that successfully registered within the AIFC and obtained a commercial licence, your company registrar regime would be that of the AIFC, but as, for obvious reasons, there are no AIFC laws governing mining activities, those mining activities would be subject to local law. Until the AIFC has introduced fully-fledged banking and insurance legislation, which it hopes to do this year, the same applies to banks and insurance companies.

To summarise "in the AIFC" is defined for legal purposes by two things:

- Whether or not you are a Centre Participant who has at least some limited presence within the delineated area; and
- The nature of the activities in question and any agreement relating to them: if they are not financial or related ancillary services, they are likely to fall outside the AIFC.

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MICHAEL THOMAS

“Presentation of AIFC General Legal Framework”

My name is Michael Thomas. I am a partner in the financial institution's group of the international law firm, Hogan Lovells. I have been asked to provide an overview of the AIFC's General Legal Framework, to explain how it fits within the wider legal system of the financial centre and to describe the process by which the legal model for the General Legal Framework was determined.

LEGAL FRAMEWORK OF THE AIFC

Before we dwell in more detail on the General Legal Framework, I think it would be helpful to summarise how the broader legal framework supporting the operations of the AIFC fits together.

Firstly, the legal basis for the AIFC is founded in national Kazakh law, including the Constitutional Statute on the AIFC and the relevant Decrees and Resolutions of the President. This empowers the AIFC Management Council to establish regulations and other measures to define the roles and powers of the various bodies within the AIFC.

The AIFC Management Council has established measures defining the structure and powers of the bodies within the AIFC, including the AIFC Court and the Astana Financial Services Authority.

The AIFC Governor has adopted detailed Regulations to govern activities of participants within the AIFC, including the package of regulations comprising the General Legal Framework – that is, the body of laws and regulations that are intended to support the functioning of the commercial operations of participants in the AIFC; and also, the Financial Services Framework Regulations – that is, the regulations establishing the basis on which financial services and capital markets-related activities shall be regulated within the AIFC.

These framework regulations are supported by detailed rules providing greater detail on how participants should comply with the requirements and principles set out in the Regulations. These include:

- Rules issued by the AIFC Authority in respect of the General Legal Framework Regulations; and
- The Rulebooks issued by the AFSA, providing detailed regulatory requirements supporting the financial services regime established by the Financial Services Framework Regulations.

OVERVIEW OF THE GENERAL LEGAL FRAMEWORK

So now that you know how General Legal Framework fits into the wider system, let me explain what it is, and how it has been developed. As I mentioned earlier, the General Legal Framework comprises the body of laws and regulations that are intended to support the functioning of the commercial operations of participants in the AIFC. The objective of the General Legal Framework is to establish the fundamental laws required for a functioning legal system.

It is also intended to support the detailed rules on financial services:

(a) For example, whilst the financial services regulations and rules can specify the regulatory requirements applicable to establishing businesses to perform regulated activities, you first need to have established a regime governing the establishment of the company that will operate the regulated business. You need to establish the company before you can undertake the regulated business.

(b) Similarly, whilst the financial services rules regulate the performance of investment services, you also need laws of contract and obligations to govern the relationships between the parties participating in those investment services.

The scope of the General Legal Framework is broad. It covers the legal relationships between AIFC bodies, AIFC participants, and their employees. It covers a wide range of legal topics, such as contract law, corporate law, property, employment and privacy laws.

The authorities involved in the development of the various Regulations include: the AIFC Authority, which is involved in drafting the Regulations; the Legal Advisory Council, which reviews the drafts and advises on refinements to those drafts; and the AIFC Governor, who adopts the final form of the drafts.

DEVELOPMENT OF THE GENERAL LEGAL FRAMEWORK

In early 2017, my firm was engaged to produce a report for the AIFC Authority to assist it to select a model for the development of the AIFC's general laws. It was important to ensure that the AIFC would launch with a comprehensive set of general laws, in order to enable the AIFC to have a solid legal foundation for the operation of the financial centre. As it was critical that the general legal regime should be capable of supporting the financial services regime of the financial centre, our review included an assessment of the potential points of interaction between each area of law and the anticipated requirements of the financial services regime.

OUR METHODOLOGY

Our review involved an extensive comparative analysis of the general laws of a number of high-profile financial centres in order to compare and contrast the different approaches that could be taken to the development of the laws of a financial centre. Our aim was to identify the laws of jurisdictions that could provide a useful starting point for the drafting of the AIFC's general laws. As Michael mentioned, the AIFC wanted a system based on the highest international standards, applying principles of English common law. We, therefore, took this objective into account throughout the review process.

For each jurisdiction, we analysed the structure of the legal framework and compared how they addressed a range of different general legal topics. This involved reviewing 15 specific areas of law, including for example companies and partnership laws, the laws governing contracts and obligations, data protection, insolvency, netting, and security, employment law and dispute resolution. The scope of the laws covered reflected a desire to identify the core body of laws necessary to govern the commercial activities of participants in a financial centre.

When we were comparing different legislative approaches, we considered three key factors:

First: is the law fully or partially codified, and does it incorporate the law of another legal system (such as English law)? Our review included regimes that were fully codified, where all the relevant laws were set out in one place. We also considered the regimes of financial centres where the rules were partially codified but also incorporated English common law into their regime, including a substantial body of English statute which was incorporated by reference.

Second: how complex is the legal system to navigate and understand? We were mindful that the AIFC would be starting from scratch, and would be seeking to attract participants and investors from a wide range of domestic Kazakh and international firms. We, therefore, expressed a preference in our review of legal systems that were clearly set out, concise and with minimal internal cross-references between different regulations and rules.

Third: how easy are the rules to access? Some jurisdictions make it easy to identify and access all of the laws and regulations supporting their financial centres, by having them set out on a website. By comparison, some jurisdictions' laws are fragmented across a wide range of sources, which are not always easy to access. This is particularly the case where, in order to access the most up to date, consolidated versions of a law, it is necessary to use a third-party legal knowledge provider, often involving a fee.

OUR CONCLUSIONS

Our report ran to nearly 160 pages and compared a wide range of factors. In the end, we recommended the adoption of a model that had the following features:

- It should be fully codified at the outset. That is, all of the relevant rules should be set out in writing. Potential centre participants will want to be able to review all of the relevant laws that they may need to comply with before deciding to commence operations in the AIFC. A centrally-maintained, codified body of law would, therefore, be straightforward to access and to understand.
- It should be self-standing. That is, whilst the law may be based on English law principles, it should not operate so as to incorporate by reference English law statutes or common law into the AIFC's law. Nor indeed, should it seek to incorporate any other country's law. It might seem initially attractive to the prospective draftsmen of the law to be able to simply include regulations that purport to incorporate relevant aspects of the laws of a more developed financial system.

This would short-cut the drafting process, as it would not be necessary to set out rules and principles that are enshrined elsewhere. However, we felt that such an approach could have a number of disadvantages: first, it would mean that to understand the relevant rules on a particular topic, a reader would need to review both the rules of the financial centre and also check what the rules of the incorporated legal system say – this could result in an increasing need for firms to obtain legal advice in order to be sure that they are not missing some rule or requirement that they need to understand in order to operate in the centre – thereby creating additional costs for prospective participants; second, it would mean that changes in law or policy elsewhere could affect the rules applicable in the financial centre, meaning that the financial centre would not be in full control over its legal regime; and third, there is a material risk of inconsistencies arising between the codified rules of the financial centre and the laws incorporated by reference – such inconsistencies could exist from the outset, but would be increasingly likely to arise as the respective rules of each jurisdiction developed. It could reduce the flexibility and adaptability of the regime of the financial centre, as there would be a greater burden on the law-making authorities to check how new rules and regulations may be affected by any foreign law incorporated by reference within the regime. Consequently, we

proposed a self-standing and codified regime, so that participants need only look to the written rules of the AIFC authorities to understand the rules applicable in the AIFC.

It should be structurally non-complex. That is, the regulations and rules should have minimal cross-references; they should be comparatively short and should be easy to read and understand.

Finally, it should be easily accessible. That is, the rules should be accessible from a central source, in a clear and easy to read format.

We applied these recommendations by reference to the overall framework for the AIFC's regime and also in relation to each of the 15 specific areas of law that we compared across the various jurisdictions, in order in each case to identify a recommended starting model for the AIFC to use to develop its own law.

In each case, we also identified specific factors and issues to take into account when drafting the AIFC's laws, so as to ensure that they could best support the financial services regulations and rules that would be developed in parallel with the general laws.

Following the delivery of our report, it was presented to the Legal Advisory Council, where our recommendations were endorsed. It was then the task of the AIFC's legal drafting team to write each of the Regulations and Rules falling within the general legal framework. As Michael has explained, the Legal Advisory Council scrutinised and suggested amendments to the draft regulations and rules before approving them for submission to the Governor for their eventual adoption.

CONTENT OF THE GENERAL LEGAL FRAMEWORK

As you will see from the slide, the General Legal Framework covers a wide range of legal topics. On the following slides, I have grouped some of these Regulations by topic.

CORPORATE STRUCTURES

As you will see on the slide, the General Legal Framework contains a range of Regulations and Rules governing the establishment and operation of a wide range of corporate structures. Whilst most centre participants are likely to be established as companies, there are regulations for alternative structures, which are likely to be of use in connection with professional service providers, fund structures and non-profit organisations. Having these alternative regimes set out from the outset will provide flexibility to enable firms to find the most suitable basis for operating within the AIFC and managing their corporate liability for such operations.

CONTRACT AND LIABILITY

There are a range of Regulations and Rules governing the various ways in which parties may contract or otherwise create obligations between each other. These include the following:

- The Contract Regulations essentially represent a codification of the key principles of English contract law. These Regulations will provide the legal underpinning for the majority of the commercial and financial transactions that will be governed by the AIFC law.
- The Implied Terms in Contracts and Unfair Terms Regulations provide certain safeguards for parties to contracts and specific protections against customers from being made subject to unfair terms resulting from their lack of bargaining or negotiating power.
- The Regulations on Obligations are effectively a codified distillation of the key principles of the English common law of tort and specifies the basis on which a party may owe non-contractual obligations to another party, and how they might be liable to that other party for breaching those obligations. This includes the concepts of negligence, misrepresentation and deceit, together with a range of other economic torts, such as unlawfully interfering in a contract. These Regulations also set out the defences to claims for breaches of various obligations.
- The Regulations on Damages and Remedies set out the basis on which remedies may be awarded in respect of breaches of obligations.

This collection of rules is critical to enabling commercial business and financial services to be provided in the AIFC. Let's take the example of a person who has received financial advisory services from the AIFC participant where that service has been badly performed, resulting in the customer losing money. The regulator (AFSA) will be interested in determining whether the advisor has broken any regulatory requirements set out under the Financial Services Framework Regulations. However, the customer will also want to understand whether he or she has a remedy in law for the loss, which will involve an assessment of the terms of the contract on which the service was provided to see if a contractual breach can be established. It may also involve checking whether the contract includes any provisions (such as an exclusion of the adviser's liability) that is unfair, and which should, therefore, be disapplied as an unfair term. The customer may also wish to determine whether in addition to or in the alternative to, any contractual remedy, the adviser may be liable on the grounds that the advice was negligent. If the adviser is found to be liable, it will then be necessary to apply the rules to determine the appropriate remedy for the customer. These new Regulations will be the first port of call for those seeking to address these questions.

OTHER LAWS NECESSARY FOR FINANCIAL TRANSACTIONS

The general legal framework also contains a range of laws that essentially address what happens when things go wrong – that is, primarily, where a company becomes insolvent. These include Insolvency Regulations, setting out the insolvency regime, the powers of the insolvency practitioners and the process for winding up companies or putting them into administration. Netting Regulations provide a basis for the netting of obligations under financial transactions and the protection of netting agreements in the event of an insolvency. Security Regulations establish the regime for the granting and taking of security interests, the processes for perfecting security interests and the order of priority between security interests. Finally, Payment System Settlement Finality Regulations establish a regime for the protection of the finality of payments made via certain payment systems in the event of an insolvency of a participant in one of those payment systems.

These protective rules are essential for a properly functioning financial system, as they provide clarity and comfort as to the rules that will apply in the event of the default of one of the participants in the system. Such rules are needed to preserve the orderly operation of the system notwithstanding

such defaults, as they protect certain transactions and provide a regime that seeks to minimise the detrimental impact on the creditors of the defaulter.

OTHER RIGHTS

And finally, we have a range of other Regulations covering matters that any legal regime for a financial centre would need, including rules governing: property and the transfer of property; data protection; and employment laws, governing the essentials of the relationships between employees and their employers.

NEXT STEPS

To conclude, it is worth noting that, whilst a lot of work has gone into the development of the General Legal Framework, it is just the start. Like any legal system, the General Legal Framework will evolve over time, as:

- New rules are added to cover additional topics and areas that it is perceived could benefit from regulation;
- As the AIFC Courts develop a body of case law interpreting the various rules in the context of specific situations;
- And as existing rules are updated and amended to reflect evolving policy and practices of the AIFC authorities.

But in the meantime, the AIFC has a detailed and expansive body of law to support its commercial operations.

I hope that has been a helpful introduction to the General Legal Framework.