



GUIDANCE ON THE CONDITIONS OF
STAY OF SECONDED FOREIGN
EMPLOYEES OF AIFC PARTICIPANTS

Astana, Kazakhstan

Definitions used in this Guidance:

Astana International Financial Centre means the territory within the City of Astana with precise borders determined by the President of the Republic of Kazakhstan where the special legal regime in the financial sphere established by the Constitutional Statute applies.

AIFC Participants means legal entities registered under the Acting Law of the AIFC and legal entities recognised by the AIFC.

Employee, of an AIFC Participant or AIFC Body, means an individual who is employed by AIFC Participant or AIFC Body, and is responsible for implementing the primary purposes and objectives of the AIFC Participant or AIFC Body.

Contract of Employment, of an Employee of an Employer, means the Employee's contract of employment with the Employer.

Employer means a person who enters into a contract of hire with an individual under which the individual is an Employee. The individual is the Employer's Employee.

Kazakhstan National means a person who is a national of Kazakhstan.

Kazakhstan means the Republic of Kazakhstan.

Secondment means a period during which an Employee works for an Employer outside the AIFC under a Contract of Employment.

Monthly calculation index is a coefficient for calculation of benefits and other social payments, as well as for the penalties, taxes and other charges in accordance with the Republic of Kazakhstan legislation, established by the law on the budget for the relevant year.

Disclaimer

This Guidance is neither intended to be a legal advice nor should be relied upon. AIFC Participants should, where they consider it necessary, obtain their own legal advice in relation to their specific situations.

This Guidance does not cover each and every aspect of the AIFC Act(s). Should anything in this Guidance be in contradiction with any provision of the AIFC Act(s), the provisions of the relevant AIFC Act(s) shall have prevailing force. Any such contradicting statement of this Guidance shall be treated merely as an example of good practice being taken by the AIFC Participants.

The Guidance selectively addresses questions in relation to Secondment of foreign employees outside the AIFC. It is not intended to replace any legal act therefore important that all relevant AIFC Act(s) are read together in order to have a proper understanding of the definition of Secondment.

I. INTRODUCTION

This Guidance provides further information on the meaning of Secondment of foreign employees who are not Kazakhstan Nationals attached by the AIFC participants outside of the Astana International Financial Centre (hereinafter, the “**AIFC**”).

II. LEGAL FRAMEWORK

The relevant AIFC legislation regarding the Secondment of foreign employees who are not Kazakhstan Nationals under section 10 (Visa) of the AIFC Employment Regulations includes the following:

- a) Constitutional Statute of the Republic of Kazakhstan *On the “Astana” International Financial Centre* dated 7 December 2015 No.438-V ZRK, (hereinafter, the “*Constitutional Statute*”);
- b) Decree of the President of the Republic of Kazakhstan *On determining the boundaries of the territory of the “Astana” International Financial Centre* dated 31 December 2015 No.161;
- c) Law of the Republic of Kazakhstan *On Migration* dated 22 July 2011 No.477-IV, (hereinafter, the “*Migration Law*”);
- d) Order of the Governor of the AIFC *On approval of the terms of, and procedures for, entry into the Republic of Kazakhstan and leaving the Republic of Kazakhstan, for foreign nationals and stateless persons coming to the Republic of Kazakhstan to conduct activities in the “Astana” International Financial Centre* dated 20 December 2017 No.40; and
- e) Code of the Republic of Kazakhstan *On Administrative Infractions* dated 5 July 2014, (hereinafter, the “*Administrative Code*”).

III. APPLICATION OF THIS GUIDANCE

This Guidance applies to:

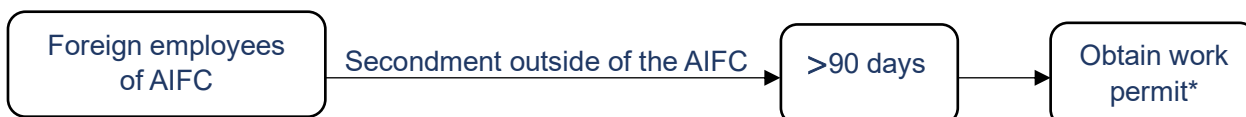
- a) AIFC Participants who Second foreign employees who are not Kazakhstan Nationals outside of the AIFC; and
- b) foreign employees who are not Kazakhstan Nationals Seconded by the AIFC Participants.

IV. TERMS AND CONDITIONS FOR LAWFUL SECONDMENT

The Employer is permitted to Second a foreign employee outside of the AIFC territory without obtaining a work permit if the total length of Secondment does not exceed the limit of 90 (ninety) days during 1 (one) calendar year in accordance with paragraph 3 of article 37-1 of the Migration Law.



The Employer is not permitted to Second a foreign employee outside of the AIFC territory unless the Employer obtains the work permit for an additional region if the total length of Secondment exceeds the limit of 90 (ninety) days during 1 (one) calendar year. The obtained work permit is not transferable to other Employers and is valid only in the region where the work permit is obtained.



*Upon obtaining a work permit, the Employer must report a departure of foreign employees to other regions of the Republic of Kazakhstan and change of temporary address to the relevant migration authority. The Employer must submit a notification within 3 business days.

What is a work permit?

Work Permit is an official document issued by the local executive body that allows the Employer to attract foreign employees who are not Kazakhstan Nationals to the Republic of Kazakhstan.

Failure to comply with the condition of stay leads to administrative censure of the Employer (AIFC Participant) and the Employee (the foreign employee of the AIFC Participant who are not Kazakhstan Nationals).

Administrative Censures:

In relation to the Employee –	
In accordance with article 517 of the Administrative Code (Breach of the legislation of the Republic of Kazakhstan in the field of migration of population by a foreign person or stateless person)	
TYPE OF ADMINISTRATIVE OFFENCE	ADMINISTRATIVE IMPOSITION IN MONTHLY CALCULATION INDEX (MCI)
Delayed departure from the country within the time limits established by law: <ul style="list-style-type: none"> - up to 3 days - from 3 to 5 days - from 5 to 10 days - over 10 days 	warning 10 MCI 15 MCI 25 MCI (or deportation)
REPEATED VIOLATION WITHIN A YEAR AFTER A PENALTY WAS IMPOSED	15 MCI (or deportation)
Carrying out work activities without a work permit (when applicable), non-compliance with the activities carried out with the purposes specified in a visa.	25 MCI (either arrest for 10 days or deportation)

In relation to the Employer who fails to obtain work permit –	
In accordance with article 518 of the Administrative Code (Breach of the legislation of the Republic of Kazakhstan in the field of migration of population by individuals or legal entities accepting foreign persons and stateless persons)	
TYPE OF ADMINISTRATIVE OFFENCE	ADMINISTRATIVE IMPOSITION IN MONTHLY CALCULATION INDEX (MCI)
Delayed notification of a migration service about arrival of a foreign person or stateless person, as well as failure to take measures to issue documents for the right of stay of foreigners and their timely departure from the Republic of Kazakhstan	10 MCI /small-sized business entity 15 MCI /medium-sized business entity 20 MCI /large-sized business entity
REPEATED VIOLATION WITHIN A YEAR AFTER A PENALTY WAS IMPOSED	40 MCI /small-sized business entity 70 MCI /medium-sized business entity 100 MCI /large-sized business entity prohibition on issuing invitation letters