

CONSULTATION PAPER NO.14
On Proposed AIFC General Legal Framework Amendment Regulations

Introduction

1. Why are we issuing this paper?

The Astana International Financial Centre Authority (the “AIFC Authority”) has issued this Consultation Paper to invite public feedback and comments on the proposed AIFC General Legal Framework Amendment Regulations (the “Amendments”).

The proposed Amendments aim at defining the boundary of between the application of AIFC Acts and the legislation of the Republic of Kazakhstan in relation to the matters arising under the Acting Law of the AIFC.

2. Who should read this paper?

This Consultation Paper may be of interest to the current and prospective AIFC Participants, as well as all the AIFC Bodies and their organisations, as well as legal advisors of the abovementioned entities, and generally, to all interested in providing their feedback to the Proposed Framework.

3. How to provide comments?

AIFC Authority encourages interested parties to provide their views and comments in writing on the issues outlined in the Consultation Paper.

All comments should be provided to the following person:

Aigerim Tasbolatkyzy
Deputy Director of Legal Development Department
Tel: +7 7172 64 74 43
e-mail: LegalDevelopment@aifc.kz

You may as well identify your organisation in the provided comments.

By submitting your comments to the AIFC Authority you expressly consent to the processing by the AIFC Authority of the personal data pertaining to you, including, but not limited to the collection, recording, organisation, storage, adaptation or alteration, retrieval, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of thereof, as per the AIFC Data Protection Regulations 2017.

The AIFC Authority reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. Comments supported by reasoning and evidence will be given more weight by AIFC Authority.

4. What happens next?

The deadline for providing comments on the proposals in this Consultation Paper is 12 January 2023.

Once we receive your comments, we will consider if any further refinements are required to the Proposed Framework annexed to this Consultation Paper at Annex 1 and 2. Once the task is complete, the draft of the Proposed Framework will be further processed in accordance with the requirements, stipulated in the AIFC Regulations on AIFC Acts 2017.

The Proposed Framework is in draft form only and is, therefore, subject to change following consultation as mentioned above. Consequently, you should not act on it until the Proposed Framework is formally enacted.

Legislative proposal

Annex 1 – Policy paper on Proposed AIFC General Legal Framework Amendment Regulations
Annex 2 – Proposed amendments to the AIFC Regulations on AIFC Acts

**Policy Paper
on proposed AIFC General Legal Framework
Amendment Regulations 2022**

Status quo

1. One of the unique features of the AIFC is its special legal regime, which is a free-standing commercial law system designed to enable an independent financial centre to provide a high level of legal certainty for AIFC Participants. This enables AIFC Participants to operate within secure independent regulation and common law based legal system that ensures investment protection. Moreover, a favourable business environment and operational incentives help reduce expenses and make the cost of doing business in the AIFC attractive to clients and increase their competitiveness. Establishment of a transparent and clear legal regime based on world best practices was vital for ensuring the global commercial community's confidence in the AIFC.
2. In accordance with the Constitutional Statute "On the Astana International Financial Centre", the Acting Law of the AIFC is based on the Constitution of the Republic of Kazakhstan and consists of:
 - 1) the Constitutional Statute; and
 - 2) AIFC Acts, which are not inconsistent with the Constitutional Statute and which may be based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres, adopted by the AIFC Bodies in the exercise of the powers given by the Constitutional Statute; and
 - 3) the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by the Constitutional Statute and AIFC Acts.
3. Accordingly, the uniqueness of the AIFC's special legal regime is mostly related to the AIFC Acts, which are tailored in English specifically for doing business in the AIFC and incorporate the best commercial and corporate practices that had evolved over centuries in common law jurisdictions.
4. At the same time, AIFC Acts are supplemented by the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by the Constitutional Statute and AIFC Acts. A boundary between the application of AIFC Acts and the legislation of Kazakhstan is prescribed further in the AIFC Regulations on AIFC Acts, which describe their objectives as including: "(a) defining the system of Acting Law of the AIFC and AIFC Acts; and (b) providing certainty about the rights, liabilities and obligations of Persons in relation to civil and commercial matters arising in the AIFC; and (c) allowing Persons, in certain circumstances, to adopt the law of another Jurisdiction in relation to civil and commercial matters arising within the AIFC."
5. Section 40(1) of the AIFC Regulations on AIFC Acts presently reads, "Because, by virtue of article 4 of the Constitutional Statute, AIFC legislation is able to apply in the AIFC despite any Acting Law of Kazakhstan on civil or commercial matters, the rights and liabilities between Persons in any civil or commercial matter are to be decided according to the relevant law for the time being in force in the Jurisdiction chosen in accordance with subsection (2)."
6. Section 40(2) of the AIFC Regulations on AIFC Acts establishes a hierarchy under which the Acting Law of the Republic of Kazakhstan applies only if all the previous four possible laws mentioned in the subsection are not applied. Section 40(2) reads as follows:

"(2) The Jurisdiction chosen is to be the Jurisdiction first ascertained under the following paragraphs:

 - (a) so far as there is a regulatory content, the AIFC Acts or any other law in force in the AIFC; failing which,

- (b) the law of any Jurisdiction other than the AIFC expressly applying under any AIFC Act; failing which,
- (c) the laws of a Jurisdiction as agreed between all the relevant Persons concerned in the matter; failing which,
- (d) the laws of any Jurisdiction that appears to the Court or Arbitrator to be the Jurisdiction most closely related to the facts of and the Persons concerned in the matter; failing which,
- (e) the Acting Law of Kazakhstan.”.

Problem

7. With the existing boundary between the application of AIFC Acts and the legislation of the Republic of Kazakhstan prescribed in the Constitutional Statute and the AIFC Regulations on AIFC Acts, there would seem to be some uncertainty about the application of National legislation in the AIFC and in relation to the AIFC Participants.
8. In particular, section 40(2)(a) of the AIFC Regulations on AIFC Acts only deals with the relationships with a “regulatory content”, which in practice exist solely between the regulator and regulated AIFC Participant. However, section 40(2) is silent on the boundary between the application of AIFC Acts and legislation of Kazakhstan to civil, commercial and other relationships (e.g., employment, data protection, corporate, etc. that do not have a “regulatory content”) arising between AIFC Participants, AIFC Bodies and AIFC Participants, AIFC Participants and third parties.

This creates an ambiguity as to whether Kazakh national legislation (or certain of its provisions) applies to AIFC Participants operating in and from the AIFC at all in matters not governed expressly by AIFC Acts.

9. In some AIFC Acts the rule-makers tried to explicitly determine the application of Kazakh national legislation.
10. For example, under Article 7 of the *AIFC Arbitration Regulations 2017*, the requirements of the Arbitration Law of the Republic of Kazakhstan **do not apply** to arbitrations conducted under those Regulations.
11. Furthermore, section 63 of the *AIFC Employment Regulations 2017* states that, if an Employee is a Kazakhstan National, the Employer must enrol the Employee in the Employee’s Kazakhstan pension scheme **in accordance with the legislation of Kazakhstan**.
12. These last 2 provisions are examples of AIFC legislation expressly providing that Kazakh national legislation does not apply in relation to the AIFC, as in former case, or expressly applying Kazakh national legislation, as in later case.

However, the issue of uncertainty described above still remains in other AIFC General Legal Framework Acts, such as the AIFC Data Protection Regulations, AIFC Companies Regulations, etc.

13. Another issue is that the meaning of “regulatory content” in section 40(2)(a) of the AIFC Regulations on AIFC Acts is not clear.

Moreover, it is not appropriate for regulatory matters to be dealt with in section 40 of the AIFC Regulations on AIFC Acts. The choice of law rules about regulatory matters should be different to the choice of law rules for civil and commercial matters. For example, it is not appropriate for the parties, or the Court or an Arbitrator, to be free to choose to apply the law of another Jurisdiction as the default law for a regulatory matter. Therefore, regulatory matters should be dealt with only in accordance with AIFC law or the law of another Jurisdiction so far as that law is applied by an AIFC Act.

Best Practice

14. The approaches taken by peer financial centres such as ADGM, DIFC and QFC to address cross-jurisdictional issues have been analysed.
15. In the Abu Dhabi Global Market, the ADGM, its Bodies, its Establishments, and their employees and their delegates **shall not be governed, in relation to matters within the jurisdiction of the ADGM** or the Board of Directors, by the laws of the Emirate and the regulations and resolutions of any local governmental body, except as may be provided by a special provision in the Global Market's Regulations.¹ (emphasis added)

Article 3 (1) of UAE Federal Law No.8 of 2004 Regarding the Financial Free Zones provides that the Financial Free Zones and all the operations conducted therein shall be subject to the provisions of Federal Law No. 4 of 2002 regarding the Criminalisation of Money Laundering. Article 3 (2) of the UAE Federal Law further stipulates that these Zones and Financial Activities shall also be subject to all Federal laws, **with the exception of Federal civil and commercial laws**. (emphasis added)

16. Under Article 22.a of Dubai Law No. (5) of 2021 Concerning the Dubai International Financial Centre, the DIFC Bodies and the DIFC Establishments shall carry on their business in or through the DIFC pursuant to this Law, the DIFC Laws, the DIFC Regulations and the legislation in the Emirate applicable to the DIFC.

Article 22.b of the Dubai Law further provides that **with the exception of legislation relating to the environment, health, public safety, and food control** applicable in the Emirate, the DIFC, the DIFC Bodies, the DIFC Establishments, the staff and employees of any of them or the Persons authorised by them, and the land, real estate, and property located in the DIFC, **shall not be governed by the legislation issued by the Government or any local Government** authority in the Emirate, **except to the extent to which such legislation include the DIFC in their provisions by a specific express provision**. (emphasis added)

17. Article 11(3) of the Qatar Financial Centre Law provides that, **unless specified to the contrary** by that Law, the setting up and regulation of businesses and the incorporation of companies or other entities in the QFC and the conduct of such businesses in or from the QFC shall be governed **exclusively** by the provisions of and be regulated as provided by and pursuant to the QFC Law and Regulations.²(emphasis added)

Article 11 (4) of the Qatari Financial Centre Law further excludes the applicability of the jurisdiction of other institutions of the State in relation to companies and other entities which are licensed in accordance with QFC Law and Regulations.

18. The jurisdictional analysis of peer financial centres provided above shows that the ADGM, DIFC and QFC has adopted a general approach which excludes the applicability of specific Federal/State legislation in their jurisdictions in general.

Proposal

19. Considering the approaches taken by ADGM, DIFC and QFC, it is proposed to make amendments to the AIFC Regulations on AIFC Acts, and, in part not covered by these proposed amendments, to include tailored provisions to specific AIFC General Legal Framework Acts.

I. PROPOSED AMENDMENTS TO THE AIFC REGULATIONS ON AIFC ACTS

¹ Law No. (4) of 2013 Concerning Abu Dhabi Global Market, article 22(7).

² Qatar Financial Centre Law No. (7) of 2005, article 11(3).

20. In order to address the questions about the when the AIFC Acts and acting law of Kazakhstan can apply or have to apply in relation to “regulatory matters” and “civil and commercial matters”, it is suggested to make the following amendments to the AIFC Regulations on AIFC Acts. The proposed amendments do not intend to trespass beyond the limits established by Article 4(3) of the Constitutional Statute, nor limit the ability of people to elect to use freedom of choice for those who are not otherwise required to apply the AIFC Law by the AIFC Law itself or acting law of Kazakhstan.

A. Defining a “regulatory matter”

21. In general, “regulatory matters” governed by the AIFC Acts are matters related to the regulation of matters under AIFC law by the AIFC Bodies or individuals whose offices are established under the AIFC Bodies (e.g., AFSA, the Registrar of Companies, AIFC Authority Data Protection Commissioner, etc.).
22. In this regard, it is suggested to define “regulatory matters” as follows:
- (i) by reference to relationships to which article 4(3) of the Constitutional Statute applies, between an AIFC Participant or an Employee of an AIFC Participant and an AIFC Body or an Employee of an AIFC Body; and
 - (ii) by providing power for an AIFC Act to declare that a matter is, or is not, a “regulatory matter”.
23. In other words, a “regulatory matter” would include:
- (i) a matter related to the regulation of matters under AIFC law by AIFC Bodies (e.g. a matter related to financial services regulation by the AFSA or a matter related to the exercising of control or supervision by the AFSA over activities of AIFC Participants or the taking of measures in relation to them); and
 - (ii) any provision of an AIFC Act that is declared by the AIFC Act to be a “regulatory matter” or a matter related to a regulatory matter. These declarations would generally be short, general, tailored provisions and would be included in individual AIFC Acts.
24. However, a “regulatory matter” would not include any other matter related to, or arising under, a relationship to which article 4(3) of the Constitutional Statute does not apply, including, for example, a relationship arising under the Acting Law of the Republic of Kazakhstan between a state authority and an AIFC Participant or an Employee of an AIFC Participant, such as ecology regulation, fire safety regulation, or national security regulation by relevant state authorities of Kazakhstan.

Al “regulatory matter would also not include a matter declared by an AIFC Act not to be a regulatory matter or not to be a matter related to a regulatory matter.

B. Choice of law rules in relation to regulatory matters

25. Given that the choice of law rules about regulatory matters should be different to the choice of law rules for civil and commercial matters, it is suggested that a separate section should be included in the AIFC Regulations of AIFC Acts providing that regulatory matters should be dealt with only in accordance with the following laws:
- (a) AIFC Acts;
 - (b) the Acting Law of the Republic of Kazakhstan, but only so far as that law is expressly applied, with or without modification, by an AIFC Act;
 - (c) the law of any Jurisdiction (other than the Republic of Kazakhstan or the AIFC), but only so far as that law is expressly applied, with or without modification, by an AIFC Act.

C. Defining “civil and commercial” matters

26. A 'civil' matter is, broadly speaking, a matter covered by civil law, that is, a matter covered by private law (i.e., the law concerned with civil or private rights and remedies), as opposed to public law (e.g., criminal law, administrative law or military law) or international law. This is the sense in which 'civil' is used in article 4(3) of the Constitutional Statute.

At the same time, a 'commercial' matter is, broadly speaking, a matter covered by commercial law (i.e., the laws governing commercial transactions, such as laws governing the sale of goods, negotiable instruments, banking, insurance, and bills of lading).

27. In this regard, it is suggested to define "civil and commercial matters" as follows:
- (i) by reference to relationships to which article 4(3) of the Constitutional Statute applies, between any of the following:
 - (a) AIFC Participants;
 - (b) an AIFC Participant and an Employee of the AIFC Participant or another AIFC Participant;
 - (c) Employees of AIFC Participants;
 - (d) AIFC Bodies;
 - (e) an AIFC Body and an Employee of the AIFC Body or another AIFC Body;
 - (f) Employees of AIFC Bodies;
 - (g) an AIFC Body and another Person in relation to the procurement of goods, works or services; and
 - (ii) by providing power for an AIFC Act to declare that a matter is, or is not, a "civil or commercial" matter.
28. In other words, "civil and commercial matters" would include:
- (i) a matter (other than a regulatory matter) related to, for example, securities, insurance, banking, Islamic finance, financial technologies, electronic commerce, and financial and professional services; and
 - (ii) any provision of an AIFC Act that is declared by an AIFC Act to be a civil or commercial matter, or a matter related to a civil or commercial matter. These declarations would be included in individual AIFC Acts and are described in Part II (Proposed amendments to the specific AIFC General Legal Framework Acts).

D. Choice of law rules in relation to "civil and commercial matters"

29. A civil or commercial matter arising under the Acting Law of the AIFC would be decided in accordance with the relevant law first ascertained under the following paragraphs:
- (a) the following laws:
 - (i) AIFC Acts;
 - (ii) the Acting Law of the Republic of Kazakhstan, but only so far as that law is expressly applied, with or without modification, by an AIFC Act;
 - (iii) the law of any Jurisdiction (other than the Republic of Kazakhstan or the AIFC) that is expressly applied by an AIFC Act; failing which,
 - (b) the laws of a Jurisdiction agreed between all the Persons concerned in the matter; failing which,
 - (c) the laws of the Jurisdiction that appears to the Court or Arbitrator to be the Jurisdiction most closely related to the facts of, and the Persons concerned in, the matter.

E. Consequential and editorial amendments

30. It is also suggested to amend paragraphs 7(c) and (d) as well as section 39 of the AIFC Regulations on AIFC Acts to align the provisions with the proposal.

II. PROPOSED AMENDMENTS TO THE SPECIFIC AIFC GENERAL LEGAL FRAMEWORK ACTS

31. To complement the general proposal mentioned above, and following the approach taken in the *AIFC Arbitration Regulations 2017* and *AIFC Employment Regulations 2017*, as well as under the proposed amendments to the AIFC Regulations on AIFC Acts, it is suggested that tailored provisions should be included in particular AIFC General Legal Framework Acts to provide declarations along the following lines:

- (a) in relation to **civil or commercial matters**, that “The matters dealt with in these Regulations/Rules are civil or commercial matters for the purposes of section 40 (Application of laws: civil and commercial matters) of the *AIFC Regulations on AIFC Acts 2017*.”;
- (b) in relation to matters **“related” to civil and commercial matters**, that 'For the purposes of these Regulations/Rules, the matters dealt with in the antitrust legislation of the Republic of Kazakhstan are matters related to civil or commercial matters for the purposes of section 40 (Application of laws: civil and commercial matters) the *AIFC Regulations on AIFC Acts 2017*.' Matters **“related” to civil and commercial matters** would cover matters that are clearly not civil and commercial matters, but matters dealt with in national legislation that may be relevant to the operation of civil or commercial matters dealt with in AIFC Acts.

A full review has not yet been undertaken of AIFC Acts in the General Legal Framework to identify the exact provisions needed to give effect to this proposal or the consequential amendments that may be needed. However, the following table provides an indication of some of the provisions that may be needed to clarify the application of National legislation to AIFC Acts in the General Legal Framework.

No.	AIFC Act	Relevant national legislation the application of which shall be clarified
1.	AIFC Companies Regulations AIFC Companies Rules	antitrust legislation of the Republic of Kazakhstan
2.	AIFC Special Purpose Company Rules (SPC Rules)	legislation of the Republic of Kazakhstan with respect to budget
3.	AIFC Data Protection Regulations AIFC Data Protection Rules	informatisation, personal data protection legislation of the Republic of Kazakhstan
4.	AIFC Security Regulations AIFC Security Rules	budget legislation of the Republic of Kazakhstan
5.	AIFC Foundations Regulations	legislation of the Republic of Kazakhstan with respect to accounting and financial reporting
6.	AIFC Trust Regulations	legislation of the Republic of Kazakhstan with respect to accounting and financial reporting
7.	AIFC Employment Regulations	legislation of the Republic of Kazakhstan with respect to employment
8.	AIFC Non-Profit Incorporated Organizations Regulations	legislation of the Republic of Kazakhstan with respect to accounting and financial reporting

Outcomes

32. By implementing the proposed amendments, we will establish more favourable business and regulatory environment and provide more certainty for AIFC Participants.

Strategic Relevance

33. One of the objectives of the AIFC Development Strategy until 2025, adopted by the AIFC Management Council on 2 July 2020, is attracting investment into the economy of the Republic of Kazakhstan by creating an attractive environment for investment in the financial services sphere.

34. The sub-objective “Further Development of the AIFC Jurisdiction” states that “The rule of law is one of the prerequisites when making investment decisions. The AIFC will continue further development of its legal framework, including LegalTech, legal services regulation, constant new niches like public private partnership and others.”.
35. Therefore, further development for the AIFC Legal Framework is one of key strategic priorities of the AIFC.

Financial implications

The proposed framework does not require an additional

In this Draft, a blue font and underlining indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

PROPOSED AMENDMENTS TO THE AIFC REGULATIONS ON AIFC ACTS

7. The objectives of these Regulations

- (1) The objectives of these Regulations include:
- (a) defining the system of the Acting Law of the AIFC and AIFC Acts; and
 - (b) providing certainty about the rights, liabilities and obligations of Persons in relation to ~~civil and commercial~~ certain matters arising ~~in the AIFC~~ under the Acting Law of the AIFC; and
 - (c) allowing Persons, in certain circumstances, to adopt the law of another Jurisdiction in relation to ~~civil and commercial~~ certain matters arising ~~within the AIFC~~ under the Acting Law of the AIFC.
- (2) These Regulations do not aim to circumvent the limits established by Article 4(3) of the Constitutional Statute.

39. Limitation on scope of Part 5

- (1) This Part, other than sections 39A, 40 and 41, does not apply to:
- (a) rights and liabilities under negotiable instruments to the extent the rights and liabilities arise out of their negotiable character; or
 - (b) any question of capacity or authority of natural persons, bodies corporate or other entities; or
 - (c) any question of capacity or authority of an agent not appointed under a contract; or
 - (d) any rights or liabilities arising from the creation (however described) or winding up of a body corporate or other entity.
- (2) In relation to any matter that under these Regulations is governed by the law of another Jurisdiction, any rule of the law of that Jurisdiction applying the law of another Jurisdiction in relation to the matter must be disregarded.

39A. Application of laws: regulatory matters

- (1) In this section:
- regulatory matter:*
- (a) includes:

- (i) any matter related to, or arising under, a relationship, to which article 4(3) of the Constitutional Statute applies, between an AIFC Participant (or an Employee of an AIFC Participant) and an AIFC Body (or an Employee of an AIFC Body); or
 - (ii) any matter (including a matter mentioned in paragraph (b)(i)) declared by an AIFC Act to be a regulatory matter or a matter related to a regulatory matter; but
- (b) does not include:
- (i) any matter related to, or arising under, a relationship to which article 4(3) of the Constitutional Statute does not apply, including, for example, a relationship arising under the Acting Law of the Republic of Kazakhstan between a state authority and an AIFC Participant or an Employee of an AIFC Participant; or
 - (ii) any matter (including a matter mentioned in paragraph (a)(i)) declared by an AIFC Act not to be a regulatory matter or not to be a matter related to a regulatory matter.
- (1A) For the purposes of subsection (1) a “regulatory matter” means a matter with a regulatory character arising under the Acting Law of the AIFC , such as:
- (a) a matter related to the regulation of financial services and related activities in the AIFC by the AFSA;
 - (b) a matter related to the registration, recognition and licensing of AIFC Participants by the AFSA;
 - (c) a matter related to the keeping of registers of AIFC Participants by the AFSA;
 - (d) a matter related to the exercising of control or supervision by the AFSA over activities of AIFC Participants or the taking of measures in relation to them;
 - (e) a matter related to the organisation or procedures of an AIFC Body in its control or supervision of activities of AIFC Participants;
 - (f) a matter related to undertaking measures by the AIFC Authority in relation to AIFC Participants, on the basis and according to the procedure determined by the Council; and
 - (g) the exercise of other powers of the AIFC Authority or the AFSA conferred by the Management Council under article 11(4).10 and 12(3).6 of the Constitutional Statute.
- (2) The law applicable to a regulatory matter is the law arrived at under (a) to (c) of this subsection:
- (a) AIFC Acts;
 - (b) the Acting Law of the Republic of Kazakhstan, but only in so far as that law is expressly applied, with or without modification, by an AIFC Act;
 - (c) the law of any Jurisdiction (other than the Republic of Kazakhstan or the AIFC), but only in so far as that law is expressly applied, with or without modification, by an AIFC Act.

- (3) This section does not affect the operation of, and is subject to, any other provision of these Regulations, or any provision of another AIFC Act, that permits or requires, or makes provision in relation to, the application of a law of a Jurisdiction (other than the AIFC).

40. Application of laws: civil and commercial matters

- (1) In this section:

civil or commercial matter.

- (a) includes:

- (i) any matter related to, or arising under, a relationship, to which article 4(3) of the Constitutional Statute applies, between any of the following:

(A) AIFC Participants;

(B) an AIFC Participant and an Employee of the AIFC Participant or of another AIFC Participant;

(C) Employees of AIFC Participants;

(D) AIFC Bodies;

(E) an AIFC Body and an Employee of the AIFC Body or of another AIFC Body;

(F) Employees of AIFC Bodies;

(G) an AIFC Body and another Person in relation to the procurement of goods, works or services; or

- (ii) any matter declared by an AIFC Act to be a civil or commercial matter or a matter related to a civil or commercial matter; but

- (b) does not include:

(i) a regulatory matter; or

(ii) any matter (including a matter mentioned in paragraph (a)(i)) declared by an AIFC Act not to be a civil and commercial matter or a matter related to a civil or commercial matter.

- (1A) For the purposes of subsection (1), a “civil or commercial matter” means a matter with a civil or commercial character arising under the Acting Law of the AIFC), such as the making or performance of contracts, delivery of goods and services, civil liability, legal entities and the like, whether or not relating to:

- (a) securities;

- (b) insurance;
- (c) banking;
- (d) Islamic finance;
- (e) financial technologies;
- (f) electronic commerce;
- (g) financial services and related activities.

regulatory matter has the meaning given by section 39A(1) (Application of laws: regulatory matters).

~~(1)(2)~~ Because, by virtue of article 4 of the Constitutional Statute, AIFC legislation is able to apply in the AIFC despite any Acting Law of Kazakhstan on civil or commercial matters, the rights and liabilities between Persons in any civil or commercial matter are to be decided according to the relevant law for the time being in force in the Jurisdiction chosen in accordance with subsection (2). The law applicable to a civil or commercial matter which falls to be determined within, or by virtue of, the Acting Law of the AIFC is the law arrived at in accordance with subsection (3).

~~(2)(3)~~ For the purposes of subsection (2), the Jurisdiction law applicable to a civil or commercial matter is to be ~~the Jurisdiction~~ the law first ascertained under the following paragraphs:

~~(a)~~ so far as there is a regulatory content, AIFC Acts or any other law in force in the AIFC; failing which,

(a) the following laws:

(i) AIFC Acts;

(ii) the Acting Law of the Republic of Kazakhstan, but only in so far as that law is expressly applied, with or without modification, by an AIFC Act;

(iii) the law of any Jurisdiction (other than the Republic of Kazakhstan or the AIFC) but only in so far as that law is expressly applied, with or without modification, by an AIFC Act; failing which,

~~(b)~~ the law of any Jurisdiction (other than the Republic of Kazakhstan or the AIFC) that is expressly applied by an AIFC Act; failing which,

~~(e)(b)~~ the laws of a Jurisdiction agreed between all the relevant Persons concerned in the matter; failing which,

~~(d)(c)~~ the laws of ~~any~~ the Jurisdiction that appears to the Court or Arbitrator to be the Jurisdiction most closely related to the facts of, and the Persons concerned in, the matter; ~~failing which,~~

~~(e)~~ the Acting Law of Kazakhstan.

- (4) This section does not affect the operation of, and is subject to, any other provision of these Regulations, or any provision of another AIFC Act, that permits or requires, or makes provision in relation to, the application of a law of a Jurisdiction (including the Law of the AIFC).

SCHEDULE 1. INTERPRETATION

1. Definitions

In these Regulations:

...

AIFC Participants has the meaning given by article 1(5) of the Constitutional Statute.

...

Employee has the meaning given by *the AIFC Employment Regulations 2017*.

...