

INSTITUTIONAL DEVELOPMENT AND THE ASTANA INTERNATIONAL FINANCIAL CENTER IN KAZAKHSTAN

HORACE YEUNG*, FLORA HUANG**, ZHANYL
BEKMURZAYEVA***, DINA JANAIDAR†****

ABSTRACT

This article investigates the most recent instance of the transplantation of English corporate and financial law into a different legal environment. The Astana International Financial Center (AIFC) in Kazakhstan was launched in 2018. The AIFC has largely built on the institutional model pioneered by the Dubai International Financial Center. This key institutional innovation is the transplanting and operation of laws based on the English common law, independent of their national legal systems (civil law systems, heavily influenced by Islamic tradition, and, in the case of Kazakhstan, also Soviet socialist principles). This article seeks to contribute to the understanding of the system of Kazakhstan, a strategically located but well under-investigated country, and a potentially viable institutional model for other aspiring financial centers. To the best knowledge of the authors, this work is the first ever English academic literature on the development of the AIC.

* Horace Yeung is Associate Professor in Commercial Law at the University of Leicester, United Kingdom. E-mail: horace.yeung@le.ac.uk

** Flora Huang is Professor of Law and Business at the University of Derby, United Kingdom

*** Zhanyl Bekmurzayeva is Deputy Head of the Center for Applied Research and International Partnership at the Academy of Public Administration under the President of Republic of Kazakhstan, Kazakhstan

**** Dina Janaidar is Senior Lecturer in Law at KAZGUU University, Kazakhstan. The authors would like to acknowledge the feedback received from the Company, Commercial and Financial Law Research Cluster meeting at the University of Leicester in July 2018, and a webinar organized by the Academy of Public Administration under the President of Republic of Kazakhstan in November 2018. Special thanks to Michael Blair QC of the AIFC Legal Advisory Council, as well as Christopher Campbell-Holt and Aisha Manapova of the AIFC Court and their team, must be noted for their valuable time to review an earlier draft of this article and for their very helpful comments. The authors also would like to acknowledge the financial support from the EU Erasmus+ program and the University of Leicester's International Seed Fund, College Research Development Fund, and Academic Study Leave Policy to facilitate our bilateral research trips. Last but not least, the excellent work of the Editorial Team at the Washington University Global Studies Law Review must be gratefully acknowledged. The views expressed in this article do not represent those of our employing institutions and the AIFC. All errors are our own.

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I. INTRODUCTION

Kazakhstan, formerly part of the Soviet Union, declared independence on 16 December 1991. It is the largest and, thanks to its natural resources, wealthiest country in Central Asia. The Governor of the Astana International Financial Center (AIFC), formerly chief of the National Bank of Kazakhstan, Kairat Kelimbetov referred to Kazakhstan now as “another Singapore in Central Asia, the most competitive economy among all post-Soviet nations”.¹ Traditionally, the political and economic center of the country has been in Almaty. In 1997 Kazakhstan's President Nursultan Nazarbayev moved the capital from Almaty in the southeast of the country to the newly-named Astana (previously called Akmola; now Nur-Sultan), which was then “an empty patch of land by the Ishim River best known as a former gulag prison camp for the wives of Soviet traitors”.² Despite unfortunately being given the label of “the world's weirdest capital city”,³ Nur-Sultan is definitely up-and-coming, especially with the development of the AIFC. The AIFC is envisaged to be a financial hub for Central Asia and beyond. It operates within a special legal regime different from the one pre-existing in Kazakhstan, regulating the legal relationships between AIFC participants and third parties and is aimed at the development of the financial market.

This article seeks to explore how different institutional arrangements, believed to be modelled on a Dubai experience, will serve to support the development of the AIFC. This key institutional innovation is the transplanting and operation of laws based on the English common law, independent of their national legal systems (civil law systems, heavily influenced by Islamic tradition, and, in the case of Kazakhstan, also Soviet socialist principles). This choice apparently sits well with the belief under the law and finance scholarship that legal institution is essential in financial development. However, this article argues that, with its pre-existing national shareholder protection regime highly praised by the World Bank's Doing Business Report (ranked the first out of 190

1 Vladislav Inozemtsev, *Why Kazakhstan Holds the Keys to the Global Economy*, INDEPENDENT, (Nov. 9, 2015), <https://www.independent.co.uk/voices/why-kazakhstan-holds-the-keys-to-the-global-economy-a6727391.html>.

2 Daisy Carrington, *Astana: The World's Weirdest Capital City*, CNN, (July 13, 2012), <https://edition.cnn.com/2012/07/13/world/asia/eye-on-kazakhstan-astana/index.html>. It is worth noting that in honor of their long-standing president who has stepped down recently, Astana was renamed to Nur-Sultan in March 2019. It is at present uncertain if the AIFC is to be renamed to Nur-Sultan International Financial Center in the future. But retaining the name of AIFC can still make sense as Astana means “capital city” in local language.

3 *Id.*

countries), the transplantation may not have necessarily led to better law. Also, this article notes that attention should be particularly put on enforcement, amidst the concern of “transplant effect”. Two possible types of transplantation can perhaps be distinguished, a mild and gradual form which entails predominantly black letter laws and a more radical and acute form like Dubai and the AIFC, which entails the borrowing of effectively an entire legal system (we sometimes call it the Dubai model/experience in this article).⁴ The latter is what the AIFC has adopted, and the concern of such an extensive scale of legal transplantation is inevitably prevalent.

The first part, after this introduction, will consider the economic, financial and political motivations of establishing the AIFC. Then, it will discuss the development thus far of the AIFC. The third part, the key part of this article, will seek to inquire whether the AIFC possesses a notable institutional advantage as opposed the rest of Kazakhstan, by considering the general trajectory of legal development in corporate and financial law, as well as certain specific mechanisms of shareholder protection. To do this, there are two dimensions of comparison. The first dimension will involve comparing the AIFC rules and regulations with their UK counterparts to reveal the degree of legal transplantation. The second dimension will involve comparing the AIFC rules and regulations with their domestic counterparts to explore a potential regulatory gap between the two systems. In particular, the article seeks to ascertain if there is a wholesale or partial legal transplantation. If it is the former, the AIFC should in principle provide comparable protection of investor rights as witnessed in the UK; if it is the latter, how the UK regime complements the domestic regime can be an issue. The fourth part, before a final conclusion is made, will ask if the AIFC is going to be a success by drawing on some prior experiences elsewhere in the world, notably Dubai. To the best knowledge of the authors, this work is the first ever English academic literature on the AIFC. Overall, this work seeks to contribute to the understanding of the system of Kazakhstan, a strategically located but well under-investigated country, and a potentially viable institutional

4 For example, the Cadbury Report was the first time ever that the need for flexibility and experimentation in corporate governance was considered by coming up with the approach of “comply or explain.” This approach has had a profound impact on worldwide corporate governance, not just on common law systems. See Financial Reporting Council, *COMPLY OR EXPLAIN: 20TH ANNIVERSARY OF THE UK CORPORATE GOVERNANCE CODE (2012)*, https://www.frc.org.uk/getattachment/06870154-78a0-44f5-a1c5-48b42f860049/FRC-Essays_Comply-or-Explain.pdf. This is consistent to the prediction of Hansmann and Kraakman, who once famously said that convergence in most aspects of the law and practice of corporate governance over time towards the Anglo-American model might well be witnessed. See Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 *GEO. L.J.* 439 (2001).

model for other aspiring financial centers.

II. A NEW FINANCIAL CENTER IN KAZAHSTAN? SOME ECONOMIC, FINANCIAL AND POLITICAL BACKGROUND

Kazakhstan is the largest country in Central Asia and the ninth largest in the world. The country's mineral resources and arable lands have long been the major pillars of its economy. Kazakhstan also has a strategic location. Despite being a landlocked country, it links the large and fast-growing markets of China and South Asia and those of Russia and Western Europe by road, rail, and a port on the Caspian Sea. According to the World Bank, Kazakhstan moved from lower-middle-income to upper-middle-income status in 2006.⁵ The country is currently Central Asia's largest economy. For a comparison with its neighboring countries, see Table 1. Its per-capita Gross Domestic Product (GDP) of US\$9,331 in 2018 was only below that of Russia, comparable to China, but by far higher than the remaining Central Asian Countries.

Table 1 – Economic Indicators of Kazakhstan and Surround Countries in 2018

Country	GDP (US\$ bn)	GDP per Capita (US\$)
China	13,608.15	9,770.8
Russia	1,657.55	11,288.9
Kazakhstan	170.54	9,331.0
Uzbekistan	50.50	1,532.4
Azerbaijan	46.94	4,721.2
Turkmenistan	40.76	6,966.6
Kyrgyzstan	8.09	1,281.4
Tajikistan	7.52	826.6

Data Source: World Bank

The energy sector has been the main driver of economic growth. It is estimated that oil and gas contribute around 30% of GDP, 70% of exports

and 20% of budget revenues.⁶ As of 2016, Italy, China and Russia were the three largest trading partners of Kazakhstan (accounting for over 40% of the Kazakh exports).⁷ The top exports were crude petroleum, refined copper, radioactive chemicals, petroleum gas, and ferroalloys. According to the National Bank of Kazakhstan, in 2016, “the gross inflow of the foreign direct investments (FDI) in Kazakhstan reached new heights, growing 40% compared to 2015 and surpassing the previous record from 2008.”⁸ The main recipients of FDI were the mining industry, geological exploration and processing. The top four investors include the Netherlands, the US, Switzerland, and France.

In order to realize the country’s growth potential, ongoing structural and institutional reforms are underway, including the “100 Concrete Steps” program and the privatization agenda, which “aim[s] to reduce the role of the state in the economy and facilitate the development of a vibrant, modern and innovative tradable non-oil sector.”⁹ In March 2015, President Nazarbayev unveiled a comprehensive national plan to put forward five key institutional reforms, known as the “100 Concrete Steps”.¹⁰ Step 70 outlines the commitment to establishing the AIFC. The AIFC is intended to serve as a financial hub for the Central Asian region. It will enjoy a special status recognized by law, including notably an independent legal system based on English legal principles.

While the AIFC will be established in Nur-Sultan, Almaty is a pre-existing national financial center in Kazakhstan. The city was the country’s capital until 1997 when President Nazarbayev decided to relocate to Astana. The Kazakhstan Stock Exchange (KASE), founded on 17 November 1993, is based in Almaty. At the beginning 2017, it had a market capitalization of US \$42 billion and 98 listed companies. Although

6 Department of International Trade UK, *DOING BUSINESS IN KAZAKHSTAN: KAZAKHSTAN TRADE AND EXPORT GUIDE* (2016), <https://www.gov.uk/government/publications/exporting-to-kazakhstan/exporting-to-kazakhstan>.

7 Observatory of ECON. Complexity, *KAZAKHSTAN* (2017), <https://atlas.media.mit.edu/en/profile/country/kaz/>.

8 Zhazira Dyussebekova, *Kazakhstan Attracts Record Amount of Foreign Investment in 2016*, *THE ASTANA TIMES*, (Apr. 18, 2017), <https://astanatimes.com/2017/04/kazakhstan-attracts-record-amount-of-foreign-investment-in-2016/>.

9 World Bank, *KAZAKHSTAN’S ECONOMY IS RISING: IT IS STILL ALL ABOUT OIL 1* (2017), <http://documents.worldbank.org/curated/en/563451512743145143/pdf/121975-WP-PUBLIC-ADD-SERIES-KAZCEUFINALENG.pdf>.

10 The five key institutional reforms are i) creation of professional civil service; ii) ensuring the rule of law; iii) industrialization and economic growth; iv) identity and unity; and v) establishing an accountable state. For the full version of the “100 Concrete Steps” in English, See Consulate General of the Republic of Kazakhstan in Sydney, *THE 100 CONCRETE STEPS SET OUT BY PRESIDENT NURSULTAN NAZARBAYEV TO IMPLEMENT THE FIVE INSTITUTIONAL REFORMS* (2017), <http://mfa.gov.kz/en/sydney/content-view/100-konkretnyh-sagov-sovremennoe-gosudarstvo-dla-vseh>.

relatively small¹¹, the KASE is much larger than Central Asia's other exchanges. In comparison to the KASE's market capitalization, the Tashkent Stock Exchange, for example, had a total market cap of US\$2.1 billion, and the Kyrgyz Stock Exchange, a cap of US\$255m.¹² The KASE plays an important role in the (partial) privatization of the country's state sector through the "People's Initial Public Offerings" campaign.¹³ Kazakhstan has launched a series of initial public offerings since 2012 in order to improve liquidity in its stock market and allow some of its people to own shares in its major companies. KazTransOil was the first state company to float its shares in November 2012. Subsequently, the campaign was planned to expand to a number of other state companies.¹⁴

According to Charman, despite the privatization program, the majority of large enterprises have remained in state hands.¹⁵ The continuing dominance of the state took Kazakhstan to a "state-led liberalized market economy" model.¹⁶ In this model, the market would provide the coordination mechanisms for the growing private sector, but the state sector would retain ownership and control in sectors of strategic interests. "Soon after independence, the governments of Central Asia recognized that the transition to a market economy would require the supportive development of their banking and financial system, involving considerable capacity building in a sector that needed to be reestablished virtually from scratch."¹⁷ As mentioned, the KASE was established in 1993 to provide an additional source of finance for the economy. In 1994, Kazakhstan had

11 At the same time, as a comparison, the Moscow Stock Exchange had a market cap of US\$643 billion and 245 companies. Data from the World Federation of Exchanges.

12 *Uzbekistan's Financial Markets Development Concept Proposed for Public Consultation*, TASHKENT TIMES, July 24, 2017, <http://tashkenttimes.uz/finances/1206-uzbekistan-s-financial-markets-development-concept-proposed-for-public-consultation>; *Kyrgyzstan Market Capitalization: Kyrgyz Stock Exchange*, CEIC (2019), <https://www.ceicdata.com/en/kyrgyzstan/kyrgyz-stock-exchange-market-capitalization/market-capitalization-kyrgyz-stock-exchange>.

13 Dmitry Solovyov, *Kazakhstan to Offer KMG EP Stake in "People's IPO"*, REUTERS, March 1, 2011, <https://uk.reuters.com/article/us-kazakhstan-ipo/kazakhstan-to-offer-kmg-ep-stake-in-peoples-ipo-idUKTRE72019020110301>.

14 Alex Waters, *IPOs Come to Kazakhstan: Kazakh Public to Invest in Nation's Prosperity*, EDGE KAZAKHSTAN (2012), <https://www.edgekz.com/ipos-come-kazakhstan-kazakh-public-invest-nations-prosperity/>. The list included KEGOC, Air Astana, KazMorTransFlot, Samruk-Energo, KazTransGas, Kazakhstan Temir Zholy, KazTemirTrans, KazAtomProm, KazMunayGas, etc.

15 Ken Charman, *Kazakhstan: A State-led Liberalized Market Economy?*, in *VARIETIES OF CAPITALISM IN POST-COMMUNIST COUNTRIES* 165 (David Lane & Martin Myant eds., 2007).

16 *Id.*

17 Tunc Uyanik & Carlo Segni, *Evolution of the Banking Sector in Central Asia*, in *FINANCIAL TRANSITION IN EUROPE AND CENTRAL ASIA: CHALLENGES OF THE NEW DECADE* 97 (Lajos Bokros et al. eds., 2001).

184 banks, six of which were state-owned.¹⁸ In 2000, only 48 Kazakh banks remained. As of 2017, Kazakhstan has 34 commercial banks.¹⁹ The five largest banks held assets worth approximately US\$45.6 billion, or about 58.5% of the banking sector's total assets.²⁰ According to the Economist's Intelligence Unit, the Kazakh banking sector has struggled to overcome the legacy of the global financial crisis in 2008. This has led to four of the largest financial institutions defaulting on their debt and has prompted government bail-outs to prevent systemic collapse.²¹ According to the investigation by Claessens and colleagues of seven former CIS countries²², in Kazakhstan (also true for the Kyrgyz Republic), the plan behind these bailouts "was to develop the privatization program and the stock market in parallel."²³ In this case, during privatization the stock market was built around public offerings of companies whose majority ownership was sold to strategic investors, and then a small percentage of the listed shares were also sold on the market, creating broader ownership. The benefits of well-developed stock markets, especially to transition economies like Kazakhstan, are neatly summarized by Claessens and colleagues.²⁴

They enhance economic performance by enabling growing companies to raise capital at lower costs...companies in countries with developed equity markets are less dependent on bank financing, which can reduce the risk of a credit crunch [and create] a less risky financial structure...stock markets can increase the efficiency of corporations' investment and management by enhancing their governance. Overall, a mix of bank-intermediated funds and stock markets can enhance growth.²⁵

¹⁸ *Id.* At 97-99

¹⁹ Henry Foy, *Kazakh banks look for strength through consolidation*, FINANCIAL TIMES (May 22, 2017), <https://www.ft.com/content/e63727e0-3cb4-11e7-821a-6027b8a20f23>.

²⁰ The five banks are HalykBank, KazKommertsBank, Tsesna Bank, Sberbank-Kazakhstan and ATF Bank.

²¹ *Kazakhstan Financial Services*, ECONOMIST'S INTELLIGENCE UNIT, July 7, 2017, <http://www.eiu.com/industry/article/785686862/kazakhstan-banking-sector-risk/2017-07-07>.

²² These included Armenia, Azerbaijan, Kazakhstan, the Kyrgyz Republic, Russia, Ukraine, and Uzbekistan.

²³ Stijn Claessens et al., *Stock Markets in Transition Economies*, in FINANCIAL TRANSITION IN EUROPE AND CENTRAL ASIA: CHALLENGES OF THE NEW DECADE 107, 110 (Lajos Bokros et al. eds., 2001).

²⁴ *Id.*

²⁵ *Id.*

Many observers tend to attribute the country's impressive growth performance to the favorable prices of Kazakhstan's abundant mineral resources.²⁶ However, in the view of Akimov and Dollery, it would be wrong to believe that this constitutes the whole story.²⁷ In contrast to other resource-rich economies such as Russia, Kazakhstan undertook aggressive and carefully designed reforms in the financial sector as well as a general liberalization of its economy. This has ensured the more efficient use of its mineral resources and better economic performance.

Looking forward, Kazakhstan is set to benefit from China's Belt and Road Initiative (BRI). When the Chinese President Xi Jinping visited Central Asia and Southeast Asia in Autumn 2013, he raised the initiative of jointly building the Silk Road Economic Belt and the 21st Century Maritime Silk Road (and hence the initial name, One Belt One Road, in short OBOR). According to the State Council of China, BRI can help promote the economic prosperity of the countries along the routes and regional economic cooperation, strengthen exchanges and mutual learning between different civilizations, and promote world peace and development.²⁸ Under BRI, the economic relations between Kazakhstan and China have been closer than ever. Following the visit of the Chinese Premier Li Keqiang in December 2014, a new package of economic deals totaling US\$14 billion was unveiled.²⁹ Joint projects on key sectors, such as mining, oil and gas, construction, chemical and light industry, and transport have been launched. One example is the oil and gas development project in Aktyubinsk region of Kazakhstan. Oil pipelines have been built to allow direct oil exports to China, including the pipeline running from Kazakhstan's Caspian shore to Xinjiang of China. Major participants in the project include the China National Petroleum Corporation and the Kazakh oil company KazMunayGas. Another example is the China-Kazakhstan Khorgos Frontier International Cooperation Center, which is the first trans-border international free trade zone in the world.³⁰ Ensuring that

26 Alexandr Akimov & Brian Dollery, *Financial System Reform in Kazakhstan from 1993 to 2006 and its Socioeconomic Effects* 44, 47 EMERGING MARKETS FIN. & TRADE 81 (2008).

27 *Id.*

28 National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, ACTION PLAN ON THE BELT AND ROAD INITIATIVE (2015),

http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm.

29 Hong Kong Trade and Development Council, KAZAKHSTAN: MARKET PROFILE (2019), <http://china-trade-research.hktdc.com/business-news/article/The-Belt-and-Road-Initiative/Kazakhstan-Market-Profile/obor/en/1/1X000000/1X0A374B.htm>.

30 Xinhua, *China-Kazakhstan Zone Creates Jobs, Stimulates Trade*, CHINA DAILY, July 3, 2017, http://europe.chinadaily.com.cn/business/2017-07/03/content_29968418.htm.

Kazakhstan has the right institutional setting to capture all these opportunities arising from BRI will be influential in determining the country's future economic growth. It is widely believed that the AIFC seeks to attract more foreign investment for the country from its prime position in BRI, with the backing of China.³¹

III. ASTANA INTERNATIONAL FINANCIAL CENTER

The AIFC began operation in January 2018, but an official international launch took place later on 5 July in the same year.³² It is a good example of a combination of both the country's institutional and structural reform, and China's increasing involvement in the country's economy under BRI. As discussed, the AIFC is part of President Nazarbayev's "100 Concrete Steps" to implement five institutional reform goals. In December 2015, President Nazarbayev signed the Constitutional Statute "On the AIFC" 2015 (amended on 22 December 2017) which provides a legal framework for its establishment and operation. According to this legal framework, the governing law of the AIFC is based on the Constitution of the Republic of Kazakhstan and will have a special legal regime, consisting of its own laws and its own independent judicial system and jurisdiction which will be based on English common law, and standards of leading international financial centers.³³ The current laws of Kazakhstan apply to the extent that they do not conflict with the laws adopted by the AIFC. It is believed that the AIFC legal system has similarities with the principles and standards of the Dubai International Financial Center in Dubai, the UAE.³⁴

The core businesses within the AIFC are expected to include capital market, asset management, private banking, Islamic finance, and financial technology. To attract companies and talents from across the world, other than a robust legal framework, there is a preferential tax regime and a simplified visa regime.³⁵ For example, there will be a 50-year waiver for corporate tax, individual income tax, property tax, and land tax until the end of year 2066. Citizens of countries of the OECD, Malaysia, the UAE,

³¹ Olzhas Auyezov, *Seeking Belt Buckle Role, Kazakhstan Launches China-backed Financial Hub*, REUTERS, July 5, 2018.

³² Kazakhstan's President Nursultan Nazarbayev attended the grand international opening of the AIFC on 5 July 2018. *Id.*

³³ AIFC art. 4(1).

³⁴ Philip Kim, *The Astana International Financial Centre: AIFC Court and International Arbitration Centre Legal Systems to be Based on English Common Law*, KLUWER ARBITRATION BLOG (August 6, 2017), <http://arbitrationblog.kluwerarbitration.com/2017/08/06/astana-international-financial-centre-aifc-court-international-arbitration-centre-legal-systems-based-english-common-law/>.

³⁵ Articles 6 and 7 of the Constitution of the AIFC.

Singapore, and Monaco, as well as a few other countries enjoy visa-free entry to Kazakhstan for a period of 30 days. The core administrative and regulatory structures of the AIFC include the Management Council, the AIFC Authority, Astana Financial Services Authority, the AIFC Court, and the International Arbitration Center.³⁶

The AIFC has been actively seeking foreign expertise in ensuring that the implementation of its legal and regulatory framework is in line with the best international practices and standards. Its Legal Advisory Council is composed of leading lawyers in the field to perform a consultative and advisory role. The Council is chaired by Michael Blair QC, a specialist on financial services and financial services regulation. Blair used to serve as General Counsel to the Board of the (then) Financial Services Authority in the UK from 1998-2000, and as head of the legal function in its previous incarnation, the Securities and Investments Board, from 1987-97. The other nine members sitting on the Council are all senior lawyers from international leading law firms, predominantly based in London. This does not come as a surprise as the AIFC Court has adopted an English common law system. When adjudicating disputes, the AIFC Court will apply the procedures provided in the AIFC Court Regulations 2017 and AIFC Court Rules 2018 and will take into account “judgements of the courts of other common law jurisdictions”.³⁷

The AIFC has not been shy in drawing on experience and expertise around the world. NASDAQ has been selected to provide certain market technology to the AIFC Exchange.³⁸ It has been predicted that the London Stock Exchange would have a prominent role in supporting the AIFC to develop a strong foundation of corporate governance and an even stronger regulator.³⁹ A tripartite agreement has been signed among the AIFC, the City of London and the London Stock Exchange to train personnel at the AIFC Exchange.⁴⁰ The US and the UK have long been regarded as the preferred host countries for the professional development programs of the

³⁶ For a description of their respective roles and functions, refer to website of the AIFC, <https://aifc.kz/>.

³⁷ Article 13(6) of the Constitution of the AIFC.

³⁸ NASDAQ, ASTANA INTERNATIONAL FINANCIAL CENTER JSC AND NASDAQ SIGN TECHNOLOGY DEAL FOR NEW AIFC EXCHANGE (2017), <http://ir.nasdaq.com/releasedetail.cfm?releaseid=1028105>.

³⁹ Law Society of England and Wales, THE NEW ASTANA INTERNATIONAL FINANCIAL CENTRE (2016), <https://communities.lawsociety.org.uk/kazakhstan/the-new-astana-international-financial-centre/5054192.article>.

⁴⁰ *Kazakh-British Investment Forum Participants Sign Agreements, Enhance Cooperation*, ASTANA TIMES, November 10, 2017, <https://astanatimes.com/2017/11/kazakh-british-investment-forum-participants-sign-agreements-enhance-cooperation>.

AIFC.⁴¹ As indicated by Sayasat Nurbek, former Managing Director of the AIFC, whilst it is inevitable to rely on foreign personnel initially, they have the tasks to train local specialists in the long run.⁴²

The AIFC has also worked closely with various parties in China. It is envisaged that the Chinese and Kazakh sides are determined to develop the AIFC into the regional financial services hub of BRI.⁴³ The AIFC and the Shanghai Stock Exchange signed a Memorandum of Understanding and Cooperation in 2016.⁴⁴ The Chinese side became a strategic partner of the AIFC and pledged to provide support to the AIFC to establish a stock exchange. The cooperation between the two sides deepened in June 2017 when the Shanghai bourse signed an agreement to become a primary shareholder of the stock exchange within the AIFC. It was reported that the Shanghai bourse took a 25% stake in their Kazakh counterpart.⁴⁵ Furthermore, a Memorandum of Understanding and Cooperation was signed between the AIFC and China's Tsinghua University. It is envisaged that they will engage in cooperative educational and research activities for the mutual benefit of both institutions, including training programs and joint research programs for the AIFC's employees.⁴⁶ Also, Hangzhou Electronic Commerce Industry Park in China signed a Letter of Intent and agreed to explore the possibility of creating a joint park for the development of the e-commerce industry in the territory of the AIFC.⁴⁷

IV. THE IMPORTANCE OF INSTITUTIONAL AND CAPACITY BUILDING

Institutional economics, which has existed for nearly a century, is a branch of scholarship which explores the role of institutions in economic activities and growth. Different types of institutions have been reviewed by scholars, including but not limited to finance, law, politics, trade, culture, technology, education, colonial origin, etc.⁴⁸ For the relationship

41 *AIFC launched Professional Development Program in US*, KAZINFORM (Oct 18, 2016), http://lenta.inform.kz/en/aifc-launched-professional-development-program-in-us_a2963713.

42 *Id.*

43 ASTANA FIN. SERVS. AUTH., ANNUAL REPORT 7 (2018).

44 *AIFC, Shanghai Stock Exchange Ink Memorandum of Cooperation*, KAZ INFORM (Sept. 20, 2016), https://www.inform.kz/en/aifc-shanghai-stock-exchange-ink-memorandum-of-cooperation_a2951103.

45 *Shanghai Stock Exchange to Become Shareholder of New AIFC Stock Exchange*, KAZ. NEWS GAZETTE (June 22, 2017), <https://kazakhstannewsgazette.com/shanghai-stock-exchange-to-become-shareholder-of-new-aifc-stock-exchange/>.

46 *AIFC to Become Regional Business Hub – Kairat Kelimbetov*, KAZ INFORM (May 13, 2017), https://www.inform.kz/qz/aifc-to-become-regional-business-hub-kairat-kelimbetov_a3026005.

47 *AIFC, HECIP Talk Over E-Commerce Devpt. in Kazakhstan*, KAZ INFORM (Oct. 27, 2017), https://www.inform.kz/en/aifc-hecip-talk-over-e-commerce-devpt-in-kazakhstan_a3079270.

48 For a comprehensive review of the scholarship in this area, see Flora Huang & Horace

between law, finance and growth, the explanation can be that law helps to deepen the financial markets, thereby facilitating economic growth.⁴⁹ Claessens and colleagues have explained the advantages of equity finance and its role in economic growth.⁵⁰ The “Law and Finance” scholarship seeks to explore the correlations between law and financial development.⁵¹ La Porta and colleagues examined legal rules covering the protection of corporate shareholders and creditors, the origin of these rules and the quality of their enforcement in 49 countries.⁵² They alleged that the legal environment, including both legal rules and their enforcement, matters for the size and extent of a country’s capital market.⁵³ It is because a good legal environment protects the potential financiers against expropriation by entrepreneurs. Investors are willing to surrender funds in exchange for securities and therefore expand the scope of capital markets. Based on their findings, they claimed that civil law countries with weaker “investor protection have smaller and narrower capital markets.”⁵⁴ By building on La Porta and colleagues’ research design, John Armour and colleagues, despite finding no evidence of a positive impact of legal changes on stock market development, agreed that common law systems are more protective of shareholder interests than civil law ones.⁵⁵

In the view of Posner, common law is conceived of as regulation by judges because common law doctrines are made by judges.⁵⁶ The flexibility of common law courts to use broad standards rather than specific rules in rendering their decisions means that judges are more prepared to “catch” wrongdoings and thereby discourage it.⁵⁷ In contrast, Roe rightly indicates that the distinction between common law and civil law systems is often exaggerated.⁵⁸ Modern securities regulation revolves

Yeung, INSTITUTIONS AND ECONOMIC GROWTH IN ASIA 7–36 (2018).

49 See, e.g., Ross Levine, *Law, Finance, and Economic Growth*, 8 J. FIN. INTERMEDIATION 8, 32–33 (1999).

50 Claessens et al., *supra* note 23.

51 Mathias Siems, *Legal Origins: Reconciling Law & Finance and Comparative Law*, 52 MCGILL L.J. 55, 57 (2007).

52 Rafael La Porta et al., *Legal Determinants of External Finance*, 52 J. FIN. 1131 (1997).

53 *Id.*

54 *Id.* at 1131.

55 John Armour et al., *Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesis*, 6 J. EMPIRICAL LEGAL STUD. 343, 343 (2009).

56 Richard Posner, *Regulation (Agencies) versus Litigation (Courts) an Analytical Framework*, in REGULATION VS. LITIGATION: PERSPECTIVES FROM ECONOMICS AND LAW 11 (Daniel Kessler ed., 2010).

57 RAFAEL LA PORTA ET AL., *Law and Finance After a Decade of Research*, in HANDBOOK OF THE ECONOMICS OF FINANCE 446 (George Constantinides et al. eds., 2013).

58 Mark Roe, *Legal Origins, Politics, and Modern Stock Markets*, 120 HARV. L. REV. 460, 471 & 481 (2006).

around a regulatory agency operating through a comprehensive regulatory code. This is not an intrinsic common law institutional advantage.

A. Is the AIFC Possessing Better Institutions?

The role of legal institutions in fostering a good business environment is underlined by the World Bank's Doing Business project.⁵⁹ This project provides objective measures of business regulations and their enforcement across 190 economies and selected cities at the subnational and regional level.⁶⁰ The first *Doing Business* report, published in 2003, covered 5 indicator sets and 133 economies.⁶¹ The most recent report in 2018 covers 11 indicator sets and 190 economies.⁶² Amongst which, the Protecting Minority Investors indicator is perhaps the most relevant in light of the law-finance nexus. The minority investor protection index measures the extent of protection from conflicts of interest and shareholders' rights in corporate governance.⁶³ A higher index indicates better protection of investors' interests, the maximum score is 100.⁶⁴ Organization for Economic Co-operation and Development (OECD) high income countries on average get a score of 64.21 in 2018.⁶⁵ Quite contrary to common perception, it is worth highlighting that Kazakhstan occupies the top position among 190 economies in protecting minority investors with a score of 85.⁶⁶ This raises the doubt of whether it makes sense to have a separate set of laws for the AIFC, and whether it makes sense to follow "the laws, the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centers" when the UK and the US, the two leading global financial centers are ranked 15th (with a score of 75) and 50th (with a score of 64.67) in the World Bank index respectively.⁶⁷ The following sections will try to discuss, compare

59 WORLD BANK GRP., *Doing Business 2019* (2018), https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf.

60 *Id.* at ii, 125, and 304.

61 WORLD BANK GRP., *Doing Business in 2004* (2003), <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB04-FullReport.pdf>.

62 WORLD BANK GRP., *supra* note 59.

63 Important parameters include the extent of disclosure, director liability, shareholder rights and suits, etc. *Id.* at 98-103.

64 *Id.* at 98-99.

65 WORLD BANK GRP., *Doing Business 2019: Regional Profile - OECD High Income* (2018), <https://www.doingbusiness.org/content/dam/doingBusiness/media/Profiles/Regional/DB2018/OECD-High-Income.pdf>

66 *Id.* at 180.

67 *Id.* at 212; AIFC art. 4(2).

and contrast the national laws and the AIFC laws so as to further verify the institutional advantages of the AIFC.

B. Trajectory of Legal Development

As shown above, the quality of the legal regime to protect minority investors in Kazakhstan is well recognized and is placed the first in the world according to the World Bank.⁶⁸ The primary legislation to provide this protection is the Kazakh Company Law.⁶⁹ Karagussov has outlined its development since 1990.⁷⁰ Before 1990, there was virtually no corporate law, although the Civil Code of the Russian Soviet Federative Socialist Republic of 1922 and the Civil Code of the Kazakh Soviet Socialist Republic of 1963 had provided a limited degree of regulation in this regard.⁷¹ Starting on May 31st, 1991, the Basics of Civil Legislation of the Union of Soviet Socialist Republics defined “the notion of a commercial organization, distinguished economic partnerships from [other forms of association],, and made provision for regulation of the legal status of separate types of economic partnerships and companies . . .”⁷² Shortly after that, the Law of the Kazakh Soviet Socialist Republic on Economic Partnerships and Joint-Stock Companies was adopted, making a very important starting point for formal corporate regulation in Kazakhstan.⁷³ A turning point then came in 1998 when the regulation of partnerships and companies was separated with the introduction of the Law on Joint-Stock Companies.⁷⁴ In May 2003, the most significant changes to the status of joint-stock companies were witnessed.⁷⁵ The current Kazakh Company Law was adopted, repealing the previous law of 1998. The law has since been amended regularly over time.⁷⁶

According to Ussen and Sadyrbayeva, significant changes were brought about by the 2003 legislation compared to its predecessor.⁷⁷

68 *Supra* notes 64-67

69 The current law is Law No. 415 II of 13 May 2003 of the Republic of Kazakhstan on Joint Stock Companies [hereinafter Kazakh Company Law]. The English version of the law is available via the Legal Information System of the Ministry of Justice Kazakhstan, http://adilet.zan.kz/eng/docs/Z030000415_.

70 Farkhad Karagussov, *Development of Company Law in Kazakhstan*, 24 JURIDICA INT’L 84-95 (2016).

71 *Id.* at 89.

72 *Id.*

73 *Id.* at 90.

74 *Id.*

75 *Id.* at 91.

76 *Id.*

77 Zhaniya Ussen & Saltanat Sadyrbayeva, *Securities Market Reform in Kazakhstan: An*

Firstly, the 2003 law eliminated the distinction of closed and open joint stock companies, meaning all companies may now make a public offering of their shares.⁷⁸ Meanwhile, there is a unified and increased minimum capital requirement, a ten-fold increase from the former threshold for open companies and 500 times more than that for closed companies.⁷⁹ This change was predicted to cause a substantial reduction in the number of joint stock companies.⁸⁰ The 2003 law specified the minimum number of directors, which is three.⁸¹ Amongst them, not less than thirty percent of the company's board of directors' members must be independent directors.⁸² Under prior law, a joint stock company had to form an audit commission to monitor performance of the company.⁸³ The establishment of an internal audit function is now optional.⁸⁴ To foster more corporate transparency, there are now reporting requirements for major transactions and related-party transaction(s).⁸⁵ According to the World Bank, since the introduction of the 2003 law, it has been reviewed and amended regularly to strengthen investor protections by, for example, introducing greater requirements for immediate disclosure of related-party transactions to the public, increasing shareholder rights and role in major corporate decisions, clarifying ownership and control structures and requiring greater corporate transparency.⁸⁶

In relation to securities law, similarly, early regulation was achieved by the Civil Codes of 1922 and 1963.⁸⁷ With the first domestic stock

Outline of Major Legal Developments and Consequences, 2 KAZ. BUS. L. MONITOR 1 (Sept. 2003).

⁷⁸ *Id.* at 1

⁷⁹ *Id.* at 2. Kazakh Company Law, Art. 10. ("The minimum authorized capital of a company is 50,000-fold monthly calculation index, established by the law of the Republic of Kazakhstan on the national Budget for the relevant financial year."). The monthly calculation index (MCI) is a unit 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. As of 2020, each index unit is set at KZT2,651 (around US\$7). eGov Kazakhstan, MINIMUM CALCULATED INDEXES (2019), https://egov.kz/cms/en/articles/article_mci_2012.

⁸⁰ Ussen & Sadyrbayeva, *supra* note 77 at 2. A more appropriate business form for smaller businesses is Limited Liability Partnership, which is regulated by Law No. 220-I of 22 April 1998 of the Republic of Kazakhstan on Limited and Additional Liability Partnerships. Limited Liability Partnerships have a low minimum capital requirement of 100 times of the MCI (further reduced to KZT100 for small businesses). See the Law on Limited and Additional Liability Partnerships, Art. 23(2). See also OECD, OECD INVESTMENT POLICY REVIEWS: KAZAKHSTAN 2012 65 (OECD, 2012).

⁸¹ Kazakh Company Law, Art. 54(5).

⁸² *Id.*

⁸³ *Supra* note 77 at 3.

⁸⁴ Kazakh Company Law, Art. 61(1).

⁸⁵ Kazakh Company Law, Art. 68, 70-73.

⁸⁶ WORLD BANK GRP., DOING BUSINESS REFORMS (2018), <http://www.doingbusiness.org/data/exploretopics/protecting-minority-investors/reforms>.

⁸⁷ *Infra* note 89, at 453-454.

exchange established in 1993, arguably there had not been a strong demand for securities regulation before then.⁸⁸ Suleimenov and Karagoussov have given an overview of the legal development in this area.⁸⁹ In preparation of the establishment of KASE, the *Law on Securities Circulation and the Stock Exchange*, issued on 11 June 1991, was introduced to “regulate the following matters: the issuing of securities, the registration of such issues, licensing intermediary activities in the securities market, and the formation and operation of the stock exchange.”⁹⁰ Subsequently, on 20 March 1994, the President of the Republic of Kazakhstan issued an *Edict on Measures to Form the Securities Market*, “which symbolized a new stage of state regulation of the securities market and securities legislation.”⁹¹ With this Edict, the *Statute on the National Securities Commission* was approved and a public regulator was installed.⁹² A more systematic approach in regulating the market came in 1997 when the Law “on Securities Market” of 5 March 1997 was enacted.⁹³ The current Kazakh securities law was adopted in 2003, repealing the previous law of 1997.⁹⁴ Similarly, the law has since been amended over time to meet the ever-evolving demands in the financial market.⁹⁵

Another important aspect of the regulation is corporate governance. Codes of conduct and codes of best practices as well as self-regulation are now considered as complementary to statutory regulation. The Council of Issuers and the Council of the Association of Financiers (Financial Institutions’ Association) adopted a Code on Corporate Governance in 2005 and amended the Code in 2007.⁹⁶ There have been no updates since then. The Code is voluntary, and listed companies in Kazakhstan are recommended to “incorporate the provisions of the Code in their own

88 KAZAKHSTAN STOCK EXCHANGE, About Us – History (2020), <https://kase.kz/en/history/>.

89 Maidan K. Suleimenov & Farkhad S. Karagoussov, *The Legal Basis for the Securities Market in the Republic of Kazakhstan*, 24 REV. CENT. & E. EUR. L. 451 (1998).

90 *Id.* at 455.

91 *Id.* at 457.

92 *Id.*

93 *Id.* at 460.

94 The current law is Law No. 461 of 2 July 2003 of the Republic of Kazakhstan on the Securities Market [hereinafter Kazakh Securities Law]. The English version of the law is available via the Legal Information System of the Ministry of Justice Kazakhstan, http://adilet.zan.kz/eng/docs/Z030000461_.

95 Throughout the English version of the securities law of Kazakhstan, all revisions are highlighted showing how the law have been revised over time since its adoption in 2003. Kazakh Securities Law, http://adilet.zan.kz/eng/docs/Z030000461_.

96 *Infra* note 98, at 5.

codes and bylaws”.⁹⁷ According to the investigation by the European Bank for Reconstruction and Development (EBRD), “[w]hile the majority of companies formally incorporate the Code in their corporate documents, in practice the implementation of the Code’s principles remains weak.”⁹⁸

As discussed, the AIFC has its own regulatory framework and is independent of all the regulatory instruments mentioned above.⁹⁹ The AIFC Companies Regulations were issued on 20 December 2017, comprising 250 articles.¹⁰⁰ In contrast, the current Kazakh Company Law has 91 articles only.¹⁰¹ On the face of it, the former is far more comprehensive than the latter. The AIFC Market Rules (“MAR”), issued on 17 October 2017, comprises six broad rules (with numerous sub-rules) covering six key areas, including: offer of securities, governance of reporting entities, financial reports, sponsors and compliance advisers, market abuse, and market disclosure.¹⁰² In contrast, the Kazakh securities law is organized quite differently comprising 114 articles. It is worth noting that the MAR has included its own corporate governance code.¹⁰³ Seven general corporate governance principles are contained in MAR 2.2.2 to 2.2.8, with expanded standards contained in Schedule 3 of the MAR. For this, a “comply or explain” approach, as introduced firstly by the UK, is adopted.¹⁰⁴ In making a corporate governance statement in its annual report, the listed company must describe how it has applied the standards set out in MAR Schedule 3, or alternatively explain its reasons for not following them.¹⁰⁵ This is sharply contrasted to with the voluntary approach under the national code explained previously.¹⁰⁶

Considering that it is virtually impossible to compare all these laws in every single aspect using the limited space of this work, the following section will endeavor to examine some selected features of the laws with particular respect to key mechanisms of shareholder protection, which is

⁹⁷ *Id.*

⁹⁸ European Bank for Reconstruction and Development, *CORPORATE GOVERNANCE IN TRANSITION ECONOMIES: KAZAKHSTAN COUNTRY REPORT* (Dec. 2017), <http://www.ebrd.com/documents/legal-reform/kazakhstan.pdf>.

⁹⁹ *Supra* note 33.

¹⁰⁰ AIFC Companies Regulations, available at https://aifc.kz/files/legals/49/file/comreg_v5_2_14.12.2019.pdf

¹⁰¹ *Supra* note 69.

¹⁰² AIFC Market Rules: Rules No. FR0003 of 2017, § 2.2.9 (2017) [hereinafter MAR], available at https://aifc.kz/files/legals/59/file/mar_v6_fr0003_02.07.2019.pdf.

¹⁰³ *Id.* at Schedule 3.

¹⁰⁴ UK Listing Rule 9.8.6; such an influential approach was first introduced by the Cadbury Report in 1992. See e.g., Cally Jordan, *Cadbury Twenty Years On*, 58 VILL. L. REV. 8 (2013).

¹⁰⁵ *Supra* note 103.

¹⁰⁶ The Code is voluntary and applies to Kazakhstan listed companies, which are recommended to incorporate the provisions of the Code in their own codes and bylaws.

widely regarded as the essential foundation of a successful financial market.

C. Selected Mechanisms of Shareholder Protection Compared

One core strategy of company law in controlling the agency problem within a company is to ensure that directors of a company perform their duties honestly and diligently.¹⁰⁷ Director duties are provided in Article 62 of the Kazakh Company Law, with a list of seven total duties for officers and directors.¹⁰⁸ According to Dragneva, the law of Kazakhstan managed to contain in legislation some general standards for the discharge of officer and director duties.¹⁰⁹ The first principle is that an officer is asked to “perform their duties conscientiously and use the methods which best reflect the interests of the company and its shareholders.”¹¹⁰ There are also specific duties in relation to the use the company's assets, integrity of the accounting and financial reporting, company disclosure, and confidentiality of the information about the company's activity.¹¹¹ The 2011 amendments to the Kazakh Company Law added two more duties, making it seven in total, in relation to legal compliance and fair treatment of shareholders together with the need to exercise objective independent judgment on corporate issues.¹¹²

However, despite a list of seven duties, the concept of fiduciary duties is still not a “single integral set of norms of Kazakhstan legislation.”¹¹³ For example, the [Company Law] company law lacks some important aspects of the duty of loyalty, does not establish the duty of care, does not impose the burden of proof on the directors and officers, etc. In addition, it should be understood that the institution of fiduciary duties is perhaps the most

107 JOHN ARMOUR ET AL., *The Basic Governance Structure: The Interests of Shareholders as a Class*, in THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH 79, 80 (Oxford University Press, 3d ed. 68 (2017)

108 Kazakh Company Law, Art. 62. This article has been amended three times since 2003 by Laws of the Republic of Kazakhstan No. 230 dated 19.02.2007; No. 406-IV dated 10.02.2011; and No. 551-IV dated 01.02.2012.

109 Rilka Dragneva, *Legal Regulation of Shareholder Rights in the CIS*, in INVESTOR PROTECTION IN THE CIS: LEGAL REFORM AND VOLUNTARY HARMONIZATION 45, 81 (Rilka Dragneva ed., 2007). An officer is defined as “a member of the board of directors of a joint stock company, its executive body or a person, solely performing the functions of the executive body of a joint stock company”. See art. 1 of Kazakh Company Law.

110 Kazakh Company Law, Art. 62(1)(1).

111 Kazakh Company Law, Art. 62(1) (2-5).

112 Kazakh Company Law, Art. 62.

113 Igor Lukin, *Kazakhstan Business Updates: Reform of Kazakhstan's corporate governance framework*, Dentons (2015), <https://www.dentons.com/en/insights/guides-reports-and-whitepapers/2015/december/7/kazakhstan-business-updates>.

complicated mechanism for application in corporate governance. The most important condition for its effective use is the availability of competent and influential court that has sterling knowledge of the doctrine of fiduciary duties. In Kazakhstan, this condition is absent. It is also necessary to remember that the concept of fiduciary duties is based on the perception of the company's managers as agents, and the shareholders as the owners-principals. Such interpretation is alien to Kazakhstan corporate law.¹¹⁴

In contrast, the AIFC company law is almost an exact reproduction of the 2006 UK Companies Act (CA) covering seven duties.¹¹⁵ As a result, an enlightened shareholder value approach is effectively adopted. A director is asked to “promote the success of the Company for the benefit of its Shareholders as a whole and, in doing so, must have regard, among other matters, to” the interest of various stakeholders.¹¹⁶ However, considering that the CA has over 1,000 sections, it is debatable whether the AIFC company law, with just over 200 articles, has the same degree of coverage. For example, the enlightened shareholder value approach has a disclosure-based enforcement mechanism.¹¹⁷ In the UK, the directors of a company must prepare a strategic report for each financial year of the company.¹¹⁸ The “purpose of the strategic report is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company).”¹¹⁹ However, the same requirement of a strategic report is not seen in the AIFC company law, meaning that an enlightened shareholder value approach is there but may not be enforceable.

Another breakthrough of the CA is arguably the codification of the duty of care and skills.¹²⁰ Traditionally, a subjective standard of care has been imposed in the common law through the English case of *Re City Equitable Fire Insurance*.¹²¹ The advantage of a subjective test is flexibility, but, at the same time, there is no minimum objective standard required of the directors.¹²² One legislative aim is to introduce a dual test of an objective

114 *Id.*

115 AIFC Companies Regulations §§ 77-83 (2017); *see also* Companies Act 2006 c.46, §§ 171-177 (Eng.), <http://www.legislation.gov.uk/ukpga/2006/46/contents>.

116 AIFC Companies Regulations § 78 (2017); *see also* Companies Act 2006 c.46, § 172 (Eng.), <http://www.legislation.gov.uk/ukpga/2006/46/section/172>.

117 *Infra* note 119.

118 *Id.* at 414A(1).

119 CA 2006 s 414C. Companies Act 2006 c.46, § 414C (Eng.), <http://www.legislation.gov.uk/ukpga/2006/46/section/414C>. CA 2006 s 414C.

120 *Infra* note 123.

121 [1925] Ch 407 (UK).

122 PAUL DAVIES & SARAH WORTHINGTON, PRINCIPLES OF MODERN COMPANY LAW

and subjective standard.¹²³ According to the AIFC company law, it is required that a director of a company exercise reasonable care, skill and diligence with (i) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities (objective standard); and (ii) any additional knowledge, skill and experience which the director in fact has (subjective standard).¹²⁴

As for corporate transparency, listed companies are generally required to disclose their financial and operating conditions to the public. This form of information disclosure is generally in the format of annual reports and accounts as well as interim reports. Under Article 4-1 of the Kazakh Company Law, the corporate website of a public company in the public domain should contain the following documents: 1) the charter of the public company; 2) the code of corporate governance; 3) the annual financial statements, confirmed by audit reports; 4) other internal documents, regulating corporate governance issues, including those regulating the activities of the board of directors and its committees, the activities of the corporate secretary, as well as the issues for auditing the public company.¹²⁵ The AIFC company law is not too different in this regard.¹²⁶ Meanwhile, certain transactions undertaken or proposed to be undertaken by a company must be disclosed to shareholders or the prior approval of shareholders should be sought.¹²⁷ This is an example of how mandatory disclosure can work alongside other legal strategies, in this instance, the decision rights of a shareholder.

Such transactions can fall into two categories: major transactions and connected transactions. A major transaction is defined by Article 68 of the Kazakh Company Law. The defining line is normally 25% of the value of the total assets or allotted securities.¹²⁸ If the transaction exceeds this amount, then it will be regarded as a major transaction.¹²⁹ The company is obliged to publish information on the transaction in Kazakh and Russian in the mass media within three working days after the decision to conclude a

478 (Sweet & Maxwell, 2016).

¹²³ CA 2006 s 174. Companies Act 2006 c.46, § 174 (Eng.), <http://www.legislation.gov.uk/ukpga/2006/46/section/174>. CA 2006 s 174.

¹²⁴ AIFC Companies Regulations § 80 (2017).

¹²⁵ Kazakh Company Law art. 4-1.

¹²⁶ AIFC Recognition Rules, 10 AIFC Legal Framework (2019).

¹²⁷ In the context of connected transactions for instance, corporate law resorts to disclosure and shareholder approval as strategies as constrain, see Luca Enriques et al., *Related-Party Transactions, in THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH* 147 (Oxford University Press, 3d ed., 2017).

¹²⁸ Kazakh Company Law, Art. 68(1) (1-2).

¹²⁹ Kazakh Company Law, Art. 68.

major transaction by the company was taken.¹³⁰ However, this is a requirement to disclose only, shareholder approval is not mandated unless the transaction will affect 50% of the value of total assets of the company.¹³¹ If a shareholder disagrees with a major transaction, they have the right to demand redemption of their shares by the company.¹³² In contrast, under MAR 2.3.8, a major transaction (25% of the value of the company) will require shareholder approval.¹³³ As for a connected transaction or related party transaction,¹³⁴ shareholder approval is required both under the Kazakh Company Law and the MAR.¹³⁵

Shareholders' decision-making power can be reflected in their approval or disapproval of major and connected transactions. Another aspect of their power is their ability to appoint directors to represent their interests. It is worth noting that Kazakhstan has provided for mandatory cumulative voting, a type of voting system that helps strengthen the ability of minority shareholders to elect a director, for all companies regardless of their size.¹³⁶ In France, the UK and the US, companies "may adopt a cumulative voting rule, but publicly traded firms rarely do so."¹³⁷ Under the AIFC company law, non-founding directors are to be elected by the shareholders "by Ordinary Resolution, or as otherwise provided by the Articles of Association, for the term that the Shareholders decide."¹³⁸ The law does not, explicitly endorse or prohibit cumulative voting for these elections.¹³⁹

Other than exercising their decision rights (which are normally meaningless to minority shareholder under the basic one-share-one-vote principle), an invaluable tool for shareholders is be their right to sue. Article 63 of the Kazakh Company Law provides for the liabilities of the directors of the company if shareholders suffer damages, caused by their actions or inaction to the company and its shareholders.¹⁴⁰ The shareholder(s), owning (in the aggregate) five or more percent of the voting shares of the company may apply to the chairman of the board of

130 Kazakh Company Law, Art. 70.

131 Kazakh Company Law, Art. 36.

132 Kazakh Company Law, Art. 70(3).

133 MAR, § 2.3.8.

134 Kazakh Company Law, Art. 71; MAR 2.5.2 (2019).

135 Kazakh Company Law Art. 73; MARMAR 2.5.3 (2019).

136 Kazakh Company Law, Art. 54.

137 Luca Enriques et al., *The Basic Governance Structure: Minority Shareholders and Non-Shareholder Constituencies*, in *THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH* 79, 80 (Oxford University Press, 3d ed. 80 (2017)).

138 Art. 75 of the AIFC Companies Regulations

139 *Id.*

140 Kazakh Company Law, Art. 63.

directors with the request to initiate a legal action against the wrongdoing officers.¹⁴¹ Meanwhile, it can be assumed that the AIFC company law will adopt a UK model. As an exception to the rule in *Foss v Harbottle*,¹⁴² a shareholder can bring legal proceedings on behalf of the company against any director for misfeasance committed against the company.¹⁴³ This is called a derivative claim.¹⁴⁴ In contrast, the AIFC company law permits a shareholder (or any other parties who suffered loss) to sue a wrongdoing director directly.¹⁴⁵ This is indeed fairly absurd under the ordinary principle of privity of contract, as there should not be a direct legal relationship between the shareholders (and other parties) and the directors. First, the danger is that this exposes corporate officers to all sorts of liabilities and litigation risks.¹⁴⁶ Second, the application of common law can be confusing.¹⁴⁷ The notable absence of a derivative action is a rare exception of the AIFC's rather wholesale adoption of the UK model. However, the AIFC company law does include an unfair prejudice remedy as seen in the UK.¹⁴⁸ If a company's affairs are being or have been conducted in a way that is unfairly prejudicial to the interests of its shareholders, the court may grant a range of possible relief to the shareholders. Also, like the UK, a just and equitable winding up order is available under the AIFC company law.¹⁴⁹

D. Enforcement of Transported Law

Legal transplant was a term coined by Alan Watson to indicate “the moving of a rule or a system of law from one country to another”.¹⁵⁰ On a general theoretical level, Watson believed that legal transplants between

141 Article 63(1-1) of Kazakh Company Law.

142 *Foss v. Harbottle*, (1843) 67 Eng. Rep. 189; 2 Hare 461. The *Foss* rule sets out the proper claimant principle, which in simple words means, when a wrong is done on a company, only the company itself is the competent party to sue but no other entities such as its shareholders, owing to the separate legal personality of a company.

143 Companies Act 2006, 2006 c. 46 § 260 (2020).

144 *Id.*

145 AIFC Companies Regulation Part 174 (2019).

146 See *Harbottle*, *supra* note 142, which sets out the proper claimant principle with an important, practical rationale. It can eliminate wasteful litigation when a wrong can be put right by only one claim initiated by the company, as opposed to a multiplicity of claims initiated by numerous other parties.

147 A key doubt is, whether certain classic company law cases such as *Foss v. Harbottle* will still have their place in the AIFC jurisprudence. *Id.*

148 Article 175 of the AIFC Companies Regulations; CA 2006 s 994.

149 Article 176 of the AIFC Companies Regulations; UK's Insolvency Act 1986 s 122(1)(g).

150 Alan Watson, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* 21 (2d ed. 1993).

different societies are feasible on the proposition that “there is no exact, fixed, close, complete, or necessary correlation between social, economic, or political circumstances and a system of rules of private law”.¹⁵¹ Systems related to one another through legal transplants might in their similarities and differences indicate the impetus to growth.¹⁵² Today, legal transplants are often mentioned in the broader process of diffusion and infusion of law.¹⁵³ In Twining’s view, instead of a direct one-way transfer, reciprocal influences between legal orders at different levels are more welcome.¹⁵⁴ However, a transfer of legal rules cannot be divorced from their original environment. Legrand and Teubner address that persistence such as how the legal culture, legal mentalities and the deep structures of law will constrain and likely overcome the competitive forces pushing for a global convergence.¹⁵⁵ The success of legal transplants largely depends on the circumstances in which law was imported and the similarities of their legal cultures.¹⁵⁶ As a result, the notion of “transplant effect” is proposed by Pistor and others.¹⁵⁷ Conceiving the formal legal order that evolved in some Western countries is a much more important determinant of legality and economic development than the mere supply of a particular legal code.

Even if a legal action can be initiated, the quality of the judiciary is important in ensuring that there is effective enforcement. In the World Justice Project’s Rule of Law Index, Kazakhstan is ranked 50th out of 113 countries in civil justice, which measures whether ordinary people can resolve their grievances “peacefully and effectively” through the civil justice system.¹⁵⁸ The top three countries are the Netherlands, Denmark

151 Alan Watson, *Comparative Law and Legal Change*, 37 CAMBRIDGE L.J. 313, 313-15 (1978). See also Alan Watson, *Legal Transplants and Law Reform*, 92 L. Q. REV. 79, 80-83 (1976).

152 See Watson, *supra* note 150, at 107.

153 For diffusion of law, see William Twining, *Diffusion of Law: A Global Perspective*, 49 J. LEGAL & PLURALISM & UNOFFICIAL L. 1 (2004). For infusion of law, see Esin Örüçü, *A General View of “Legal Families” and of “Mixing Systems”*, in COMPARATIVE LAW: A HANDBOOK 169 (Esin Örüçü & David Nelken, eds., 2007).

154 Twining, *supra* note 153, at 20.

155 Pierre Legrand, *Comparative Legal Studies and Commitment to Theory*, 58 MOD. L. REV. 262 (1995); and Pierre Legrand, *European Systems Are Not Converging*, 45 INT’L & COMP. L.Q. 52 (Jan. 1996). For a summary of Legrand’s ideas, see Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MOD. L. REV. 11, 14-15 (1998).

156 Otto Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 MOD. L. REV. 1, 12-13 (1974); see also Pierre Legrand, *The Impossibility of “Legal Transplants”*, 4 MAASTRICHT J. EUR. & COMP. L. 111 (1997); and Watson, *supra* note 150, at 27.

157 Daniel Berkowitz et al., *Economic Development, Legality and the Transplant Effect*, 47 EUR. ECON. REV. 165 (2003); and Katharina Pistor et al., *Evolution of Corporate Law and the Transplant Effect: Lessons from Six Countries*, 18 WORLD BANK RES. OBSERVER 89 (2003).

158 World Justice Project, RULE OF LAW INDEX 2017-2018, 38 (2018), https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_0.pdf. The Index measures whether civil justice systems are accessible; affordable; and free of discrimination, corruption, and improper influence by public officials. *Id.*

and Germany.¹⁵⁹ The UK is in the 14th position. Pressure to improve the judicial system in Kazakhstan has been constantly recognized.¹⁶⁰ Experts from the UK have been notably involved in the legal structures of the AIFC thus far. For example, Lord Woolf CH was the inaugural Chief Justice of the AIFC Court. Lord Woolf CH, formerly Lord Chief Justice in the UK, was also the first President of the Qatar Financial Center Civil and Commercial Court (which arguably has also drawn on the Dubai model).¹⁶¹ The other eight Justices in the AIFC Court have an English law background.¹⁶² Furthermore, the demand for an English legal education/training has been witnessed locally. For example, in early 2016, the AIFC approached the Law Society of England and Wales through the Embassy of Kazakhstan in the UK to discuss a potential judicial training program for judges and senior court staff from Kazakhstan.¹⁶³ The Law Society staff subsequently designed a bespoke judicial training program, which was funded by their national Bolashak Scholarship Fund in Kazakhstan.¹⁶⁴ This training was delivered from April to September 2017 in the UK.¹⁶⁵ On the face of it, the AIFC Court will provide a more trustworthy system to resolve civil and commercial disputes than the Kazakh courts, especially for foreign investors.¹⁶⁶

¹⁵⁹ *Id.* at 44.

¹⁶⁰ Kyle Davis, *Purging the System: Recent Judicial Reforms in Kazakhstan*, 8 U.C. DAVIS J. INT'L L. & POL'Y 255 (2002). This is also an important theme of the "100 Concrete Steps," as shown by". Step 16 which outlines "the transition [in Kazakhstan] from the five-level justice system (first, appeal, cassation, supervising and re-supervising) to a three-level (first, appeal and cassation) system. The aim is to strengthen foreign and domestic investors' trust in Kazakhstan's court system." Malika Rustem, *Kazakhstan Unveils 100 Concrete Steps to Implement Institutional Reforms*, ASTANA TIMES (May 28, 2015), <https://astanatimes.com/2015/05/kazakhstan-unveils-100-concrete-steps-to-implement-institutional-reforms/>.

¹⁶¹ Gabe Kirchheimer, *Kazakhstan Adopts English Law to Inspire Investor Confidence*, BLOOMBERG (Oct 22, 2018), https://sponsored.bloomberg.com/news/sponsors/aifc/kazakhstan-adopts-english-law-to-inspire-investor-confidence/?adv=19268&prx_t=hCIEAAAAAAFEANA. The current Chief Justice is Lord Mance, a retired UK Supreme Court judge. See AIFC, WHO WE ARE (2020), <https://court.aifc.kz/who-we-are/chief-justice/the-rt.-hon.-the-lord-mance/>.

¹⁶² *Id.*

¹⁶³ Law Society of England and Wales, *Final Evaluation Report, Presented in Astana, Of the Law Society's Kazakh Judicial Training Programme* (2018), <https://communities.lawsociety.org.uk/download?ac=29534>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Sir Jack Beatson, *The AIFC Court and The Common Law Method of Resolving Commercial Disputes and Issues Arising from Regulatory Decisions*, AIFC COURT (24 Apr. 2018), <https://aifc-court.kz/lecture-the-aifc-court-and-the-common-law-method-of-resolving-commercial-disputes-and-issues-arising-from-regulatory-decisions>. For a vision of what the AIFC Court intends to achieve, see Lord Woolf CH and Christopher Campbell-Holt, *A VISION OF THE AIFC COURT* (2019); AIFC It is worth noting that the very first case of the AIFC Court took place in 2019. See *Aurora AG Limited v. Star Asian Mining Company LLP*, CASE No: AIFC-C/SCC/2019/0001 (2019). As of November 2019,

Further, the International Arbitration Center (“Center”) of the AIFC will provide an alternative dispute resolution platform for them.¹⁶⁷ Like the Court., the Center has drawn on the reputation of leading UK lawyers. For example, the Chairman of the International Arbitration Center is Barbara Dohmann QC who has been one of the UK’s leading commercial barristers and an international arbitrator for many years.¹⁶⁸ Meanwhile, the importance of arbitration has been recognized nationally. On 8 April 2016, the new Arbitration Law was enacted in Kazakhstan.¹⁶⁹ This law was adopted in response to the request of President Nazarbayev, who “noted that ‘comprehensive development of arbitration is necessary for effective investment activity’ and in this connection instructed that a uniform law on arbitration be developed.”¹⁷⁰ Before that, domestic and international arbitrations were regulated by two different laws.¹⁷¹ According to the EBRD, the new Arbitration Law is a step forward in the regulation of arbitration in Kazakhstan, but at the same time “raise[s] concerns among investors because it allows a party to unilaterally withdraw from an arbitration agreement, prohibits foreign investors from choosing foreign law to govern a contract with a state-owned company, and introduces a licensing system for arbitration agreements with state bodies or state-owned companies.”¹⁷² On the other hand, the AIFC Arbitration Regulations 2017 include procedures for expedited arbitrations, the appointment of emergency arbitrators, and resolution of investment treaty disputes.¹⁷³

Generally speaking, company and financial law is an area of private

it remains the only case ever decided there. See the website of the AIFC Court, <https://court.aifc.kz/judgments> and <https://aifc.kz/uploads/02-1%20AIFC%20Court%20Book%202019%20ENG.pdf>

¹⁶⁷ Barbara Dohmann QC, *An Introduction*, International Arbitration Centre, <https://iac.aifc.kz/an-introduction/>.

¹⁶⁸ IAC, WHO WE ARE (2020), <https://iac.aifc.kz/who-we-are/>.

¹⁶⁹ The current law is Law No. 488-V. of 8 April 2016 of the Republic of Kazakhstan on Arbitration. The English version of the law is available via the Legal Information System of the Ministry of Justice Kazakhstan, <http://adilet.zan.kz/eng/docs/Z1600000488>.

¹⁷⁰ Aigoul Kenjebayeva & Nurzhan Albanov, *A New Law “On Arbitration”: Key Issues Undermining the Investment Attractiveness of Kazakhstan*, EXPERT GUIDES (2016), <https://www.expertguides.com/articles/a-new-law-on-arbitration-key-issues-undermining-the-investment-attractiveness-of-kazakhstan/arruxdra>.

¹⁷¹ Law No 23-III of 28 December 2004 (covering International Arbitration); Law No 22-III of 28 December 2004 (covering Arbitral Tribunals for domestic arbitration); *Kazakhstan’s new arbitration law – Uncertainties about the choice of international arbitration*, KINSELLAR (Oct. 2016), <https://www.kinstellar.com/locations/news-deals-insights/detail/98/390/kazakhstan-new-arbitration-law-uncertainties-about-the-choice-of-international-arbitration>.

¹⁷² European Bank for Reconstruction and Development, *Strategy for Kazakhstan* (5 Jul. 2017), <http://www.ebrd.com/documents/strategy-and-policy-coordination/strategy-in-kazakhstan.pdf>.

¹⁷³ Art. 49(1) of the AIFC Arbitration Regulations 2017.

law that will rarely attract criminal liabilities which justify public enforcement.¹⁷⁴ An exception is white-collar crimes like insider trading.¹⁷⁵ Furthermore, in the case of weak economic incentives for private parties to sue and limited access to information, regulators may be compelled to step in the shoes of private individuals who are reluctant to seek recourse through the court systems.¹⁷⁶ The new Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan (taking over from the National Bank of Kazakhstan since 1 January 2020) is the main regulatory body for the securities market. ¹⁷⁷ Its enforcement actions are published online.¹⁷⁸ The Kazakh government efforts in regulating the Kazakh capital market have been fully noted by the EBRD.¹⁷⁹ On the other hand, the AIFC has its own independent regulator, the Astana Financial Services Authority.¹⁸⁰ It is still early to make an assessment of its enforcement capacity.¹⁸¹

V. WILL THE AIFC BE A SUCCESS?

174 See generally Ernest Weinrib, *THE IDEA OF PRIVATE LAW* (OUP, 2012); yet Keay argues that there is a need for the public enforcement to enhancement, for example, corporate governance. See Andrew Keay, *The Public Enforcement of Directors' Duties: A Normative Inquiry*, 43 *COMMON LAW WORLD REVIEW* 89 (2014).

175 Article 56-1 of the Kazakh Securities Law; MAR 5.3. A person found guilty of unlawful use of insider information can be subject to a penalty in the amount of up to 500 MCI. If the same actions caused major damage (major damage is equal to or more than 10,000 MCI), the responsible natural persons can be subject to criminal liability and imprisonment. See Article 230 of the Criminal Code of Kazakhstan. Kazakhstan's criminal legislation, including the Criminal Code, applies to all AIFC participants. So, the penalty should be the same under either regime, when the matter will be decided by the national court system. See the Constitution of the AIFC, Art. 13(4) and the AIFC Court Regulations 2017, Art. 26(4); with the latter, for example, stating that the AIFC Court “does not have jurisdiction in relation to any disputes that are of a criminal or administrative nature”.

176 La Porta et al., *What Works in Securities Laws?*, 61 *JOURNAL OF FINANCE* 1, 2-3 (2006).

177 Decree No 203 issued by the President of the Republic of Kazakhstan dated 11 November 2019 “On further improvement of state administration system of the Republic of Kazakhstan”.

178 The sanction and measures of influence, AGENCY FOR REGULATION AND DEVELOPMENT OF THE FINANCIAL MARKET OF THE REPUBLIC OF KAZAKHSTAN (2020), <http://www.finreg.kz/?docid=3235&switch=english>.

179 European Bank for Reconstruction and Development, *Commercial Laws Of Kazakhstan: As assessment by the ERBD* (Mar. 2014), <http://www.ebrd.com/documents/legal-reform/kazakhstan-country-law-assessment.pdf>. Meanwhile, the EBRD also noted that reforms this far have been “rather restrictive...possibly hampering development of such market.”

180 Astana Financial Services Authority, <https://afsa.aifc.kz/>.

181 The authors of this article have asked three members of the AIFC Legal Advisory Council during a panel discussion in the AIFC Finance Days on 1-4 July 2019 regarding the transparency of enforcement data, both public and private. They were unable to give a direct answer but at the same time said that, “It may take some time for a new financial center to mature.” Panel Discussion Question with [Three Members of the AIFC Legal Advisory Council], AIFC Finance Days (Jul. [1-4], 2019).

As of the beginning of 2020, around a year and a half since its global launch, the Astana International Exchange has witnessed 48 listings (including equity and debt).¹⁸² “Kazatomprom (KAP), the state-owned uranium production company of Kazakhstan made history by becoming the first initial public offering of a large Kazakh company in more than a decade.”¹⁸³ Furthermore, 86 companies are registered with the AIFC to operate in and take advantage of their unique institutional structures.¹⁸⁴ From an institutional perspective, the AIFC is not the first ever separate and distinct regulatory system within a single country. For the case of Hong Kong, Huang and Yeung argue that the “One Country Two Systems” ideology has enabled Hong Kong to maintain a common law system and a separate corporate and financial law regime, both independent of China, and that this institutional advantage has been the foundation of the city’s success.¹⁸⁵ For example, at the time of reunification on 1 July 1997, China did not even have a proper set of securities law yet.¹⁸⁶ It is in a sharp contrast with Hong Kong who has formally regulated its market since 1974.¹⁸⁷ More precisely, the institutional concept of the AIFC is indeed modelled on the experience in Dubai.¹⁸⁸ The Dubai International Financial Center (DIFC) is a geographic and legal jurisdiction within the emirate of Dubai (part of the federation of the UAE).¹⁸⁹ In 2004 the UAE constitution was amended to allow an emirate to establish a “financial free zone”, a separate legal, geographic and judicial jurisdiction.¹⁹⁰ Federal Law No. 8 of the UAE allows a free zone to be established by Federal Decree, with Federal Decree No. 35 later

182 AIX Official List (last visited 1 Feb. 2020), <https://www.aix.kz/listings/listed-companies/>.

183 Ariel Cohen, *Kazatomprom IPO with Astana International Financial Center (AIX) Shows Global Appetite for Uranium*, FORBES, (27 Nov. 2018), <https://www.forbes.com/sites/arielcohen/2018/11/27/kazatomprom-ipo-with-astana-international-financial-center-aix-shows-global-appetite-for-uranium/>.

184 *Public Register*, ASTANA FINANCIAL SERVICES AUTHORITY (last visited 9 Feb. 2020), <http://afsa.kz/public-register>.

185 Horace Yeung & Flora Huang, “One Country Two Systems” as Bedrock of Hong Kong’s Continued Success: Fiction or Reality?, 38 B.C. INT’L & COMP. L. REV. 191 (2015). In a meeting with Sayasat Nurbek, former Managing Director of the AIFC, in September 2017, he told the authors of this article that Hong Kong is a model that the AIFC has drawn upon. Interview with Sayasat Nurbek, Former Managing Director, AIFC (Sep. 14, 2017).

186 China’s first securities law was adopted at the Sixth Session of the Standing Committee of the Ninth National People’s Congress on 29 December 1998.

187 The Securities Ordinance and the Protection of Investors Ordinance became effective in this same year. See Securities and Futures Commission, SECURITIES REGULATION IN HONG KONG 11 (2002).

188 *E.g.*, the 100 Concrete Steps, *supra* note 10 (explanation of Step 24).

189 *Infra* note 193, 4-5.

190 *Id.*

specifically establishing the DIFC.¹⁹¹ All activity within the DIFC is governed by the laws of the DIFC, with the exception that federal criminal law applies within the center.¹⁹² The DIFC has adopted a full set of laws largely based on that of the UK.¹⁹³ Similar to the AIFC, the DIFC has a separate court system, the DIFC Courts, and an independent regulator, the Dubai Financial Services Authority to deal with all matters in the DIFC.¹⁹⁴ The members of the DIFC Courts are generally non-resident senior members of the judiciary from the UK and other British common law jurisdictions.¹⁹⁵

The DIFC is referred to by the Financial Times as the region's leading hub for financial firms.¹⁹⁶ In 2016, more than a decade since its establishment, there were 1,648 active registered firms operating in the DIFC, employing a strong workforce of over 20,000 people and generating US\$115 million profits for the government-owned free zone.¹⁹⁷ In the view of Strong and Himber, the DIFC has established a new precedent, that any countries may install world-class legal institutions to help development.¹⁹⁸ Meanwhile, there are still certain hindrances, such as the financial dependence of the DIFC courts and the extent of application of a-national Shari'a principles, especially with respect to Islamic banking and finance.¹⁹⁹ These two hindrances are indeed shared by the AIFC when Kazakhstan itself is an Islamic country and the AIFC is determined to develop Islamic finance. More recently, it is reported that friction has arisen on potential conflicts of jurisdiction between the domestic Dubai courts and the DIFC Courts, thereby denting the confidence in the Dubai model.²⁰⁰ Despite this, the apparent initial success of the DIFC has led to a nearby imitator. The Qatar Financial Center was established in 2005 to assist in diversifying Qatar's economy to become less reliant on oil and

191 *Id.*

192 *Id.*

193 International Monetary Fund, UNITED ARAB EMIRATES-DUBAI INTERNATIONAL FINANCIAL CENTRE 4 (2007), <https://www.imf.org/external/pubs/ft/scr/2007/cr07365.pdf>.

194 *Id.* at 5.

195 *Id.* at 4-5.

196 Simeon Kerr, *Dubai International Financial Centre Grows 14% in 2016*, FINANCIAL TIMES (Feb. 20, 2017) <https://www.ft.com/content/5c836cf2-54be-31cc-b743-821158cad970>.

197 *Id.*

198 Michael Strong & Robert Himber, *The Legal Autonomy of the Dubai International Financial Centre: A Scalable Strategy for Global Free-Market Reforms*, 29 ECON. AFF. 36 (2009). <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0270.2009.01891.x>

199 Alejandro Carballo, *The Law of the Dubai International Financial Centre: Common Law Oasis or Mirage within the UAE?*, 21 ARAB L.Q. 91 (2007).

200 Simeon Kerr, *Legal Wrangles Dent Dubai's Image as Region's Financial Centre*, FINANCIAL TIMES (Oct. 13, 2017), <https://www.ft.com/content/8d4f047e-87df-11e7-8bb1-5ba57d47eff7>.

gas.²⁰¹ Needless to say, it is a separate jurisdiction based on an English system like the DIFC.²⁰² A newer imitator was the Abu Dhabi Global Market, again based on the Dubai model, which opened for business in late October 2015.²⁰³ According to Wilson, competition can be helpful to financial development in the region.²⁰⁴ It has been predicted that the top regional financial center for managing Middle Eastern investments is essentially a two-horse race between Dubai and Qatar.²⁰⁵ This largely shows that the institutional innovation pioneered by the two early adopters has worked, and the AIFC has every reason to be hopeful about its future.

VI. CONCLUSION

As the economic leader in the Central Asian region, Kazakhstan is well placed to develop a world class regional financial center. The decision to establish the AIFC, despite a pre-existing commercial and financial center in Almaty, clearly confirms the commitment of the country to do so. Kazakhstan has drawn on the Dubai experience to make sure that the AIFC will fly high. However, if one believes in the relationship between institutions and financial development, an obvious question will be what makes the AIFC different from other parts of Kazakhstan, let us say, Almaty. As shown in this article, the AIFC has a mostly verbatim reproduction (with some exceptions such as the unavailability of derivative actions) of various UK legislations in its rulebooks and they have English judges to reside in their AIFC Court. All these are primarily intended to reconstruct a familiar business and legal environment that foreign investors can trust so that they are comfortable enough to take their money and business to Kazakhstan. One determining factor will be whether there is a credible degree of shareholder protection. As discussed, Kazakhstan is currently recognized by the World Bank as having the best minority shareholder protection regime in world. Arguably, there is not much more to learn from the UK system in terms of written rules. In other words, quite surprisingly, the AIFC does not indeed have a particularly

201 International Monetary Fund, QATAR: SELECTED ISSUES 7 (2019), https://www.elibrary.imf.org/doc/IMF002/26099-9781498317863/26099-9781498317863/Other_formats/Source_PDF/26099-9781498317917.pdf.

202 *Id.*

203 Tara Gally, *Abu Dhabi's Financial Hub Plans may Take Time to Gather Momentum*, FINANCIAL TIMES (Oct 7, 2015).

204 Rodney Wilson, *The Development of Islamic Finance in the Gulf Cooperation Council States*, in THE TRANSFORMATION OF THE GULF 146, 160 (David Held & Kristian Ulrichsen eds., 2012).

205 Melissa Hancock, *Pace of Regional Rivalry Quickens*, FINANCIAL TIMES (Oct. 19, 2012), <https://www.ft.com/content/bb9e38e6-187b-11e2-8705-00144feabdc0>.

impressive set of company and financial law rules when compared to the rest of Kazakhstan. Also, the adapted legal transplantation in the AIFC as opposed to a wholesale transplantation from the UK means that it remains to be seen how certain laws are to be interpreted, applied and enforced.²⁰⁶ Further, a robust legal system should comprise both legal rules and enforcement.²⁰⁷ The AIFC Court is expected to mirror their Dubai counterpart, which is “renowned for their investor-friendly approach”.²⁰⁸ It is the whole regulatory package that will presumably make the AIFC work in the future. This is perhaps an important point that other aspiring financial centers should bear in mind, should they want to adopt the Dubai/Qatar/Abu Dhabi/Astana model.

206 See AIFC Companies Regulations, art. 174.

207 John Coffee, *Law and the Market: the Impact of Enforcement*, 156 U. PA. L. REV. 229 (2007).

208 Kerr, *supra* note 200.