

THE CONSTITUTION AS A FOUNDATION OF AIFC SUCCESS

Thank you very much, Mr Chairman

Your excellencies, ladies and gentlemen

I felt very privileged to have been invited to contribute a chapter to the historic book which has just been presented. This is a very important day for Kazakhstan, as the publication of “Kazakhstan Way: Constitutionalism, Person, Peace, and Prosperity” marks the 25 th, silver, anniversary of the Constitution.

Today, I am asked to speak about the Astana International Financial Centre and the important role which the Constitution has played in the development of this unique financial centre in the Central Asian region. In the book, my Chapter covered that topic.

The AIFC is an important component of the country-wide economic and institutional reforms, which are aimed to enhance Kazakhstan’s economic progress and inclusive growth. And my theme today is that in a real sense the AIFC, this new institution with an attractive environment for foreign investors, is a daughter of the Constitution.

The historical record shows clearly what the First President of the Republic wanted for his country in starting the process for the creation of the AIFC. The establishment of the AIFC was one of the major projects in the Plan of the Nation of 2015. The AIFC covers five of the “**100 Steps**”, which together ensure a solid legal foundation at the Constitutional level, an attractive environment, and a sustainable function, for the benefit of new financial centre which the AIFC duly became in the following years.

The set of 100 Steps and the subsequent constitutional framework reveal that the First President had **four aims** relating to the AIFC project.

First, he wanted a Financial Centre that adopted and upheld the best international standards of financial regulation.

Secondly, he wanted a Centre that was infused with the spirit of the common law.

Thirdly, he wished the design of the Centre to draw inspiration from the international financial centres that had recently arisen in the Middle East, and those older markets further East in Hong Kong, Singapore and elsewhere.

Fourthly and lastly, the First President clearly envisaged a Financial Centre which would bring benefits not just to an international clientele, but to the Republic of Kazakhstan as a whole.

The result of these four aims is stated succinctly in the Constitutional Statute on the AIFC.

Let me now look at the part played by the Constitution of Kazakhstan and the Constitutional Statute in embodying that inspiration.

First, the Constitutional Statute of 2015 made the framework for the new AIFC and embedded in the Republic’s legal structure several of the crucial concepts which have been used as the building blocks for

the initiative. I need mention only the concepts of “the Law of the AIFC”, the “Centre Participant” and the “Territory of the AIFC”.

Secondly, there was the process of achieving constitutional certainty about the status of the AIFC. On 9 March 2017, the Constitutional Council of the Republic of Kazakhstan formally reached a conclusion that there was no doubt about the constitutional propriety of the proposal for the AIFC. This was done in the context of a Law passed by the Parliament on 6 March 2017¹. The result of this was that the amendment to the Constitution itself which the AIFC project required was itself verified as fully in compliance with the Constitution of Kazakhstan 1995.

The Constitution requires that the government should support economic development for the benefit of the nation as a whole.² I can see from that provision why it was important to have not only a Constitutional Statute, but also an amendment to the Constitution itself³. It was necessary, *first*, to give full effect to the fundamental principle of supremacy of the system of existing law in Kazakhstan; and, *secondly*, in order to ensure the effective functioning of the newly established AIFC. In the result, therefore the Constitution, as the supreme document of the Nation, and acting as the will of the people,⁴ provides a solid foundation for the successful development of the Country, and the AIFC is a legitimate part of the structure for that development.

The AIFC thus has a sure constitutional foundation on which to function and develop. And the result is a well-designed combination of, *first*, an international financial centre with its own legislative, executive and judicial functions, along with, *secondly*, the certainty that the independent functioning of those AIFC institutions is securely recognised in the law of the Republic itself. In my view, this well-designed combination is a valuable innovation, not only in the region itself but elsewhere. The benefits of it, from the political perspective and from the legal perspective, are substantial. In a sense, therefore, I regard the AIFC as a daughter of the Constitution of Kazakhstan, and that Constitution as a foundation for and a guarantee of the AIFC’s success.

Conclusion

The AIFC is indeed new, and separate, but still essentially Kazakhstani in nature. The Constitutional Statute of 2015 created this segment of the State, and the amendments to the Constitution in 2017 established a firm foundation and a constitutional basis for the functioning and further development of the AIFC. This achievement set a new precedent in the entire region. It created a special legal regime which is flexible and well adapted to serve the financial community, and through which the AIFC is able to provide a unique platform and opportunities. And these are available for the international community and for those who are fortunate enough to live inside the Republic as well. May this “daughter of the constitution” grow up to achieve her full potential.

Michael Blair QC

Chairman, the AIFC Legal Advisory Council 2017 to date.

28 August 2020

¹ The Law was entitled “On amendments and Additions to the Constitution of the Republic of Kazakhstan”, adopted by the Parliament on 13 March 2017.

² Article 1(2) of the Constitution of the Republic of Kazakhstan 1995.

³ With effect from 14 March 2017.

⁴ Article 2 (3.1) of the Constitution.