

**M.Z. Kenzhaliyev** Turan University, Kazakhstan, Almaty  
e-mail: Madi.kenzhaliyev@gmail.com**LEGAL REGULATION  
OF THE INTERNATIONAL FINANCIAL CENTERS –  
COMPARATIVE ANALYSIS OF INTERNATIONAL  
AND KAZAKHSTANI EXPERIENCE**

International financial centers (IFCs) became a driving force and an integral part of the modern global economics. Due to their vital importance in the attraction of the international investors, states are very interested in creating and developing their cities as an international financial center. Many researches have been conducted to analyze the IFCs and the factors contributing to its effectiveness, however, most of the studies have been made by the financial and economical scholars. So, the novelty of the given research is that it is done within the framework of juridical science, considering the aspects of legal regulation of the financial centers and those historical and modern legal methods which have been used to develop cities as financial centers. Our research suggests that there is a direct link between success of the city as a financial center and its effective legal regulation. So, our objective was to identify historical stages of the development of IFCs and distinguish its own unique method of legal regularization on the global scale as well as within Kazakhstan.

**Key words:** AIFC, RFCA, DIFC, special economic zone, special financial zone, legal regulation, constitutional regulation, patternless legal regulation, special legal regime.

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e-mail: Madi.kenzhaliyev@gmail.com**Халықаралық қаржы орталықтарының құқықтық реттеуі – халықаралық және қазақстандық тәжірибенің салыстырмалы талдауы**

Халықаралық қаржы орталықтары (ХҚҚ) қазіргі жаһандық экономиканың қозғаушы күші мен құрамдас бөлігіне айналды. Халықаралық инвесторларды тартудағы маңыздылығына байланысты мемлекеттер өз қалаларын халықаралық қаржы орталығы ретінде құруға және дамытуға өте мүдделі. ХҚҚ және оның тиімділігіне ықпал ететін факторларды талдау үшін көптеген зерттеулер жүргізілді, алайда зерттеулердің көпшілігін қаржы-экономикалық ғалымдар жасады. Сонымен, берілген зерттеудің жаңалығы оның қаржы орталықтарын құқықтық реттеу аспектілерін және қалаларды қаржы орталығы ретінде дамытуда қолданылған тарихи және заманауи құқықтық әдістерді қарастыра отырып, заң ғылымының аясында жасалғандығында. Біздің зерттеулеріміз қаланың қаржы орталығы ретіндегі жетістігі мен оның тиімді құқықтық реттелуі арасында тікелей байланыс бар екенін көрсетеді. Сонымен, біздің мақсатымыз ХҚҚ дамуының тарихи кезеңдерін анықтау және әлемдік ауқымда, сондай-ақ Қазақстан аумағында құқықтық реттеудің өзіндік бірегей әдісін ажырату болды.

**Түйін сөздер:** АХҚО, РҚОА, ДХҚО, ерекше экономикалық аймақ, арнайы қаржы аймағы, құқықтық реттеу, конституциялық реттеу, формасыз құқықтық реттеу, ерекше құқықтық режим.

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Университет Туран, Қазақстан, г. Алматы  
e-mail: Madi.kenzhaliyev@gmail.com**Правовое регулирование международных финансовых центров – сравнительный анализ международного и казахстанского опыта**

Международные финансовые центры (МФЦ) стали движущей силой и неотъемлемой частью современной мировой экономики. Из-за их важности в привлечении международных инвесторов государства очень заинтересованы в создании и развитии своих городов в качестве международных финансовых центров. Было проведено множество исследований для анализа МФЦ и факторов, влияющих на их эффективность, однако большинство исследований

было проведено в рамках финансовой и экономической науки. Тем самым, новизна данного исследования заключается в том, что оно выполнено в рамках юридической науки с учетом аспектов правового регулирования финансовых центров и тех исторических и современных правовых методов, которые применялись для развития городов как финансовых центров. Наше исследование свидетельствует о том, что существует прямая связь между успешностью города как финансового центра и его эффективным правовым регулированием. Также, нашей задачей было выявить исторические этапы развития МФЦ и выделить уникальные методы правового его регулирования как в глобальном масштабе, так и в рамках Республики Казахстан.

**Ключевые слова:** АМФЦ, РФЦА, ДМФЦ, особая экономическая зона, специальная финансовая зона, правовое регулирование, конституционное регулирование, бесформенное правовое регулирование, особый правовой режим.

## Introduction

London, New York, Singapore, Hong Kong and other metropolises became the concentration of large international capital due to the fact that they are very attractive to large businesses and investors. These cities came a long way before they achieved the status of the leading international financial centers (thereafter IFCs). Although, there are other examples, such as ‘Amsterdam in XVIII century and Beirut in XX century’ (Douglas, 2009), the cities which used to be the global financial centers during the respective period of time, however, they could not maintain their dominant positions till the day. Basically, the studies of given financial centers were conducted by the economic and financial sciences, while the representatives of the social sciences, including jurisprudence, paid little to no attention for the development of the IFCs. Therefore, most of the scholars took into consideration and analyzed only economic and financial factors which contributed to the rise of different financial centers. However, our research suggest that effective *legal regulation* is extremely important for the development of the international financial centers in the long perspective.

It is also important to note that within the past two decades the Republic of Kazakhstan, the Russian Federation and the United Arab Emirates all made an attempt to establish an international financial center using different methods of legal regulation. However, the Moscow Financial Center (Balaboshina, 2020) and the Regional Financial Center of Almaty (Temirkhanov, 2015) did not achieve the expected results. Scholars struggle to identify specific reasons for the failure of the given financial centers. Thus, one of the main issues that we can specify is scarcity of studies conducted on the classification of different methods of legal regulation and the way it could be implemented for the development of IFCs.

Moreover, our research substantiates that at different periods of time various methods of legal regulations were used by the states, so the analysis of each stage contributes for the better understanding of the peculiarities of each method including their advantages and disadvantages.

Consequently, one of the main objectives of the research is an attempt aimed at establishing *main historical stages* of legislative regulation of the international financial centers in the world as well as in Kazakhstan. The given research is also an attempt to identify those *legal methods* which correspond for each historical stage. At the same time, we seek to determine the unique characteristics of each legal method separately. Albeit, the Republic of Kazakhstan already made the second attempt to create an international financial center and started to implement the latest method – *constitutional regulation* of international financial centers, nevertheless, there is a controversy within the economic and especially legal scholars regarding the effectiveness of the measures taken by the state leadership. Accordingly, there is a necessity for the thorough study of the legal methods of regulation, particularly, by taking into consideration the international experience.

The substantial part of the research paper is devoted for the study of the legislative regulation of the financial centers in Kazakhstan and other states, such as the UAE, the Netherlands, the United Kingdom, the USA and the Russian Federation. Accordingly, for these purposes it was important to conduct a comparative legal analysis between those countries. For the same reason we used a legal modeling approach, since the international experience provided necessary background to contemplate the development of the IFC in the Republic of Kazakhstan. Finally, the legal forecasting method provided an insight for the understanding future perspectives of the Astana International Financial Center.

## Methodology

In order to conduct comprehensive analysis of both historical stages and legal regulation of the financial centers in the world and in Kazakhstan we employed various general as well as specific scientific methods of research. Particularly, dialectical method was used within the framework of the given work. At the same time, in order to examine the historical development of the financial centers it was necessary to utilize the historical approach of study.

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## Results

Generally, the conducted research suggests that at the different stages of development of the IFC, it has exploited diverse methods for the normative regulation of its activities. Economic, financial and legal scholars explored only the historical development of the financial centers, however there are no researches dedicated for the stages of historical evolution of the IFC's. At the same time, since the emergence of the financial centers its legal regularization considered as part of its economic and financial history and it has not become the special subject of studying of the social sciences, including jurisprudence. Hence, given research is the first attempt for historical overview of the IFC which identifies the main historical stages for the legal regulation of the emergence and development of the international financial centers.

Different scholars use various approaches to identify the historical stages for the emergence and the development of the international financial centers. Hence, some authors point that creation of first IFCs started in the XVII century (Klimachev 2011: 160; Ponomarenko 2017: 92), claiming that it is linked with the first stock exchanges of Europe, while others suggest that this process started even

earlier during the XIII century (Krutovskaya 2017: 49), when the Magna Carta was signed in the Great Britain.

Thereby, the existing studies provide a general background regarding the history and the evolution of the financial centers over the years, which allowed us to identify the legal methods that were used during the respective time period of the history to regulate activities of the IFCs. Hence, we can specify four main historical stages of the progressing legislative regulation of the financial centers.

The first stage (from ancient times – till XIII century) – is the «period of prehistory» of the IFC regulation.

The ancient cities are considered by many scholars as the prototypes of the state, thereby, they were called «city-states» (Morozova 2019: 34). As the cities increase in size, so does the amount of business transactions between citizens and merchants. Generally, city-states performed vast different functions including the functions of «interstate product exchange as well as commodity exchange» (Morozova 2019: 34). At the beginning, trade operations within the city were regulated based on the customary law (Sovetskaya Entsiklopediya 1984: 211) of the specific community. Hence, the legislative norms of the given period sanctioned the demand for the emergence of the trade centers, while the public interest maintained such demand.

Accordingly, the initial stage of the legal regulation is characterized by the method of traditional self-regulation based on the local customary law.

The second stage (starts with the adoption of Magna Carta Libertatum (the Great Charter of Rights) in 1215 г. – and lasts till the beginning of the XVII century). «The emergence of the cities as international financial centers started in medieval, specifically in 1215» and associates it with the adoption of the Magna Carta in the mentioned year – states Krutovskaya (2017: 49).

According to various scholars, given document «forms a symbol for liberty today» (Bozhinovski 2015: 176).

“The few guarantees stipulated in this document represent the corner stone of the principle of Rule of Law in the modern world as well, because it envisages guarantees, such as trial by jury, access to swift justice, protection from arbitrary imprisonment and other civil liberties which are incorporated in the modern international documents» (Bozhinovski, 2015: 176). «The rule of law principle stipulated in Magna Carta is the cornerstone of the modern judiciary as a third and independent branch of

government and guarantees fair trial to all with maximum respect of their civil rights and liberties» (Bozhinovski 2015: 176).

Correspondingly, the given stage is characterized with the “unsystematic” or “patternless” method of legal regulation of the financial activities. It was due to the fact that during this period of time states, as well as the local administrations, did not attempt to develop cities as a trading or financial center.

Generally, this stage lasted till the end of the XVI century, up until the moment when the new type of contracts and transactions gained popularity, such as “future contracts”, “forward contracts” and other “derivative security contracts”, which subsequently led to the emergence of the stock exchanges in the cities of medieval Europe. Many scholars claim that the very first city which started the stock exchange market was the Belgian city Antwerp “during the 16th century” (Poitras, 2009: 4). Thereby, the XVI century was marked with the creation and rapid development of the stock markets in major European cities which inevitably led to the necessity of its further legal regulation by the states.

The third stage (from the beginning of the XVII century – until the mid-XX century) – is the period of the “intended” or directed legal regulation of the international financial center’s activities. During this period, the progressive states draw close attention to regulate two main financial institutions which laid the foundation of the IFCs. First of all, it is the stock exchange market, while the second is the central banks. As it was mentioned previously, many scholars believe that these two institutions are the most significant factors which transformed the medieval European cities into the most prosperous financial centers globally.

Apart from the many economic processes which were developing quickly in the Europe, given period is also distinguished with the application of the new method for the normative regulation of the financial transaction. Moreover, the peculiarity of the new approach assumed that national states directly regulated financial institutions as well as new types of derivative security transactions. In other words, the activities of the IFC became the subject of the legislative or parliamentary discussions as well as the judicial revision.

Hence, the development of the Amsterdam, which according to the «...modern standards, ... emerged as the first true international financial center» (Church 2018: 287), started with the adoption of the Charter of the Dutch East Indian Company. The given document was adopted by the highest representative and legislative body of the

Netherlands – General States, on 20 March 1602<sup>1</sup>. So, as the Charter was passed, the Dutch East Indian Company «became the first company to ever to trade its shares on the stock exchanges» (Ryzhenkov 2020: 234). Aside from the regulation of the first stock exchange at the level of the parliament, the courts of the Netherland were pioneers in adjudicating disputes arising out of the derivative security contracts, thus, creating legal precedents. Hence, according to the Petram, «it is therefore interesting to study the sentences of the Court of Holland in detail – in pronouncing judgments on share-trade-related court cases this court’s judges drafted the world’s first securities law» (Petram 2011: 94).

Netherlands was not only pioneering the creation and regulation of the stock market, but also used the innovative approach with regard to the financing of the exchange market. Hence, many scholars insist that Dutch Wisselbank was the first ever Central Bank (Church 2018: 288). The groundbreaking method of legal regulation of the international transactions, securities market as well as the banking system were instrumental in the process of transforming Amsterdam into the largest international financial center during the XVII-XVIII century.

Nevertheless, the Dutch experience was not left unnoticed, so that London followed the same footsteps and established its own Central Bank in 1694 the stock exchange in 1773 (Farrell, 2019). London became the second powerhouse and step by step started to surpass the achievements of Dutch counterpart. The substantial role is attributed to the mentioned two financial institutes and its effective legislative regulation. According to Paul Kennedy – «the creation of the Bank of England in 1694 (at first as a wartime expedient) and the slightly later regularization of the national debt on the one hand and the flourishing of the stock exchange and growth of the «country banks» of the other boosted the supply of money available to both governments and businessmen» (Kennedy 1988: 80).

Similar arguments were presented by the Adam Church (Adam 2018: 289), who wrote that «The strength of the English public credit system, in turn, was supported by the Bank of England, which served as an efficient system through which long-

<sup>1</sup> A translation of the charter of the Dutch East-Indies Company (Verenigde Oostindische Compagnie or VOC): granted by the States General of the United Netherlands, 20 March 1602, Australia on the Map Division of the Australasian Hydrographic Society (2009), available at: [https://rupertgerritsen.tripod.com/pdf/published/VOC\\_Charter\\_1602.pdf](https://rupertgerritsen.tripod.com/pdf/published/VOC_Charter_1602.pdf) (visited 4 August 2021).

term English sovereign debt could be traded and repaid, and guarantees of such debt obligations from Parliament, which were backed by Parliament's power to raise additional taxes from a relatively vast domestic reserve of taxable wealth». Listed factors largely contributed to the rise of the London into the status of one of the biggest financial centers in the world, which it keeps till the day.

Nevertheless, currently, New York is considered to be the largest global financial center, and, as it was the case with the Amsterdam in XVII century and London in century later, the key factors remain the same – the creation of stock exchange and national bank, as well as its effective legal regulation.

Generally, the New York stock exchange existed from 1792, but its official countdown starts from 1817 (Encyclopedia Britannica, 2021). It was also notices that «on a fundamental level, the creation of the Federal Reserve System in 1913, and in particular the Federal Reserve Bank of New York, was a boon for New York, as the city's financial institutions came to have the backing of a lender of last resort» (Church 2018: 301). Nevertheless, the actual rise of the New York corresponds to the period after the second World War.

It is interesting to note that the state regulation of the financial market started in the mid-1930s. It was mainly related to the aftermath of the American Great Depression of the 1929 which «has the most devastating effect to the US due to the imperfection of the state regulation of the stock exchange market» (Moshenskiy, 2015: 670). Hence, the starting point for the future dominance of the New York as a global financial center could be attributed to the legislative reforms initiated under the President Roosevelt and with the “adoption of the several important statutes which regulated the activities of the banks and stock exchange market, namely – Banking Act of 1933, which was also called Glass-Steagall Act, Securities Act of 1933 as well as the Securities Exchange Act 1934 (Moshenskiy 2015: 670).

The fourth stage (from the mid-XX century – till the present day) of the regularization of the IFC could be marked with the emergence of the new approach, which is the ‘constitutional regulation’. The historical account of the given period could be traced with an effort to regulate activities of the financial centers at the constitutional level by the modern states. Within the framework of this research, it is very interesting to note the example of Hong-Kong, which is listed as the fifth largest IFC according to the Z/Yen – a London based research institute that conducts the analysis and ranking of the international financial centers, and starting from

2007 publishes twice a year its Global Financial Centres Index (hereinafter – GFCI)<sup>2</sup>.

One of the substantial factors which contributed to the development of the Hong-Kong as an international financial center could be found in its Constitution. The article 109 of The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China states that “The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre”.

However, the United Arab Emirates could be mentioned as a more notable example, since they have used more comprehensive approach with regard to the constitutional regulation of its financial centers. The UAE were able to invent and implement the new legislative approach, which allowed two of its cities to achieve an excellent result. So, according to the Z/Yen's Global Financial Center Index, Dubai is placed at the 19<sup>th</sup> place, while Abu-Dhabi resides at the 38<sup>th</sup> place among 114 international centers.

Overall, if we look at the historical development of the events, then on 10 January 2004 the Supreme Federal Council of the UAE introduced an amendment to the Constitution of the state. According to the Constitutional Amendment No (1) of 2004, the article 121 of the Basic Law was amended in the following manner: “...the order and the manner of establishing Financial Free Zones and the boundaries within which they are exempted from having to apply rules and regulations of the Union”.

In another words, the leadership of the country was preparing the legislative background for the creation of the independent jurisdiction called – Financial Free Zones within the specific territories of the cities (emirates), with the special legal regime on it.

So, on 27 March 2004 the UAE state adopted Federal Law No (8) “Regarding the Financial Free Zones”, the very first article of which established that “The Financial Free Zone: The Free Zone established in any of the Emirates of the State in which financial activities are carried on”. Hence, the first international financial center was adopted in the emirate of Dubai in accordance with the Federal Decree Number 35 for the year 2004 “To Establish Financial Free Zone in Dubai”. Article one of the

<sup>2</sup> The Global Financial Centres Index available at: <https://www.longfinance.net/programmes/financial-centre-futures/global-financial-centres-index/gfci-29-explore-data/gfci-29-rank/> (visited 8 August 2021).

mentioned Decree stated that “The establishment of financial free zone in the Emirate of Dubai to be named (Dubai International Financial Centre)” (hereinafter – DIFC). So, after the successful development of one IFC then, nine years later, another Federal Decree was adopted – No. (15) of 2013 Concerning Establishing a Financial Free Zone in the Emirates of Abu Dhabi. The first article of the given Decree stated that “a financial free zone shall be established under the name “Abu Dhabi Global Market”.

Thereby, the UAE were the first state to initiate constitutional reforms with an aim of establishing international financial centers. Currently, both of the IFCs suited in the UAE ranked as the leading financial centers in the Middle East according to the GFCI.

Now, the analysis of the Kazakhstani experience shows that it corresponds to the last three stages in the regularization of the activities of the international financial centers, specifically to the “patternless regulation”, “direct regulation” and “constitutional regulation” of the IFCs.

Accordingly, the first stage (from 1990 – till 2006) – complies with the “patternless” or “unsystematic” state regulation of the financial centers in the Republic of Kazakhstan.

So, the main feature of the given period is the accumulation of the legislative base for the normative regulation of the “special economic zones” (hereinafter – SEZ), which in turn are similar to the Financial Free Zones that will be established in the UAE decades later. Moreover, initially, the law named given zones not as a “special” but “free economic zone”. So, the first law was adopted on 30 November 1990 and was called as the Kazakhs SSR Law № 360-XII “Regarding free economic zones in Kazakh SSR”. The first paragraph of the first article established that “special economic zone in Kazakh SSR – is a specially designated territory with precise administrative borders and a special legal regime, created with an aim of attracting foreign capital, progressive international technology and management experience for the accelerated socio-economic development of the territory of the zone”<sup>3</sup>.

The important factor to note that the UAE legislation identifies its financial centers as Free

Financial Zones, but Kazakhstani law does not consider the “special economic zones” as a financial center. Nevertheless, it is important to mention that the law describes the SEZ in Kazakhstan as a territory with a special legal regime. Later, the similar definition will be used in order to describe financial centers in Kazakhstan.

Consequently, the “free economic zones” were renamed into “special economic zones”, nevertheless, the subsequent legal acts adopted in 1996, 2007, 2011 and 2019<sup>4</sup> used the similar definition to describe the SEZ. So, currently, the paragraph 2 of article 1 of the Law of the Republic of Kazakhstan of 3 April 2019 “On special economic and industrial zones” provides following definition of SEZ – as “a part of the territory of the Republic of Kazakhstan with precisely designated borders, on which a special legal regime of a special economic zone is in force for the implementation of priority activities”. Despite the slight changed to the definition of the SEZ, it is still identified as a territory with a special legal regime.

The second stage (from 2006 till 2015) – it is a time of the directed legal regulation of the first international financial center in Kazakhstan which was called – Regional Financial Center of Almaty city (hereinafter – RFCA).

The initiative to establish such financial center belongs to the first President of the Republic of Kazakhstan – Nursultan Nazarbayev. Such plans “were firstly announced the during the meeting of the Associations of banks of Kazakhstan in 1995, and later during his speech in the Congress of the financiers of Kazakhstan in November 2004” (Isayev 2011). Furthermore, in March 2005 the given initiative was reflected in the President’s Message to the people of Kazakhstan – “Kazakhstan’s strategy of joining the world’s 50 most competitive countries” (hereinafter – the Message). The first part of the article 1.10 was called “Development of Almaty as a regional center of financial services and a business

<sup>3</sup> Law of the Kazakh SSR “On free economic zones in the Kazakh SSR” dated November 30, 1990 No. 360-XII (amended in accordance with the Law of the Republic of Kazakhstan dated 01.18.92; Decrees of the President of the Republic of Kazakhstan, having the force of law, dated October 30, 1995; dated 5.11.95) (invalidated).

<sup>4</sup> Law of the Republic of Kazakhstan dated January 26, 1996 No. 2823 “On special economic zones in the Republic of Kazakhstan” (with amendments and additions as of January 12, 2007) (invalidated), Law of the Republic of Kazakhstan dated July 6, 2007 No. 274-III “On special economic zones in the Republic of Kazakhstan” (with amendments and additions as of 05.07.2011) (invalidated), Law of the Republic of Kazakhstan dated July 21, 2011 No. 469-IV “On special economic zones in the Republic of Kazakhstan” ( with amendments and additions as of May 24, 2018) (invalidated), Law of the Republic of Kazakhstan dated April 3, 2019 No. 242-VI “On special economic and industrial zones” (with amendments and additions as of 04/01/2021.).

hub”, and included following strategy: “Dynamic development of Almaty as the main financial center in Central Asia should be focused on creating favorable conditions and opportunities for large financial institutions in Kazakhstan to become major providers of credit, insurance and other of financial services for major regional business projects”. The given provision became a foundation to create the Regional Financial Center in Almaty city.

Later, the same year the statute was adopted named – the Law of the Republic of Kazakhstan dated 5 June 2006 № 145-III “Regarding the Regional Financial Center of Almaty city”. The very first article defined that RFCA “is a special legal regime governing the relationship between the participants of the financial center and stakeholders, aimed at the development of the financial market of the Republic of Kazakhstan”. Once again, the financial center was described as a legal regime (but this time “special”) which operates at the specific territory. In other words, we can observe a consistency in the way the legislator describes the SEZ and now the financial center as well. Whereas the par.1 of art.12 identified that the “special trading platform of the financial center is the trading platform of the stock exchange, operating in the city of Almaty”.

So, within the framework of implementing the RFCA project, it was planned to create a governing body – the Agency of the Republic of Kazakhstan for the regulation of the activities of the RFCA (hereinafter – the RFCA Agency). Overall, as noted by Isayev, the state conducted large-scale work in order to introduce amendments to the legislation of the country regarding the regulation of the stock exchange market. He also mentions that “the rules establishing the functioning of the stock exchange as a non-profit organization were removed. The scope of activity of RFCA participants on conducting transactions on other stock exchanges has been expanded. Other professional participants were provided with an opportunity to operate on the special trading platform of the RFCA” (Isayev 2011).

The government also attempted for the first time to create a special court in the financial sphere with the possibility of “conducting legal proceedings not only in state (Kazakh) and Russian languages, but also in English language” (Isayev,2011) to attract foreign investors.

Nevertheless, we can conclude that not all the tasks were completed and as the financial expert Murat Temirkhanov indicates, there was a set of specific reasons for the failure of the RFCA project. He asserts that the unfulfillment of the main

provisions of the “Plan for the development of the RFCA till the year 2015” (hereinafter – RFCA Plan) affected severely to the effectiveness of the project as a whole. Hence, he identified following causes, such as:

- lack of a developed local securities market, without which it is impossible to attract foreign investors;
- lack of a developed market for government securities;
- lack of an effective mechanism for public-private partnership;
- failure to achieve indicators when bringing state-owned companies to the stock market (it was planned to place securities for USD 12 billion, while the real indicators were only USD 300 million);
- failure to achieve capitalization indicators of the corporate securities market (it was planned to achieve indicators of 70% of GDP for equity and 80% of GDP for debt capital, though real indicators were at the level of 1% for both indicators);

Therefore, the goals and objectives to develop Regional Financial Center of Almaty according to the RFCA Plan were not fully realized. Step by step, RFCA went to a decline, the amount of its activities also decreased. Subsequently, the Agency for the Regulation of Activities of RFCA was abolished by the Decree Number 25 of the President of the Republic of Kazakhstan from 12 April 2011, with the transfer of its responsibilities to the National Bank of the Republic of Kazakhstan. Eventually, “by the fall of the same year the Agency for the Protection of the Competition terminated the activities of JSC “RFCA” (Tulegenov 2020).

Hence, the third stage starts in 2015 with the creation of the Astana International Financial Center and with its constitutional regularization. Albeit, the official opening of the center was conducted only on 5 July 2018 (Goncharenko 2018: 111). So, it is important to note that this time leadership of the country decided to implement the new project by taking into account two factors – firstly, it is the negative previous experience of the RFCA, and secondly – by contemplating the relevant international experience, which meant that “this time the project was much more ambitious, encompassed a larger number of areas of cooperation and required significant changes in legislation” (Baskakova, 2017: 91).

So, in 2015 “as part of the election campaign, the President announced the idea to establish new financial center” (Baskakova 2017: 91). On 20 May 2015 the given idea was then reflected at the new state plan – “Nation’s Plan – The 100 concrete

steps to implement five institutional reforms” (hereinafter – Nation’s Plan). It was established to create a new international financial center, but this time in the capital of the Kazakhstan – Astana city (currently renamed to Nur-Sultan). It is important to note that almost five steps of the Nation’s Plan were dedicated to create the new IFC (24<sup>th</sup> step and steps from 70 till 73).

Within the framework of implementing the Nation’s Plan the Constitutional Statute was adopted 7 December 2015 No. 438-V “On the Astana International Financial Center” (hereinafter – the Constitutional Statute on AIFC). Two years later, Constitutional amendments took place to assign constitutional status for the new financial center. So, in accordance with the Law of the Republic of Kazakhstan from 10 March 2017 No. 51-VI “On Amendments and Additions to the Constitution of the Republic of Kazakhstan”, the second article of the Basic Law was supplemented with paragraph 3-1. Given paragraph stated that: “Within the city of Nur-Sultan, a special legal regime in the financial sphere may be established in accordance with constitutional law”. While the paragraph 1 of article of the Constitutional Statute on AIFC established that AIFC “...means the territory within the City of Nur- Sultan with precise borders determined by the President of the Republic of Kazakhstan where the special legal regime in the financial sphere established by this Constitutional Statute applies”.

## Discussion

As it was mentioned previously, in an attempt to identify the emergence of the international financial centers, most scholars link their development with the first stock exchanges which operated on the territory of various European cities. Without questioning such approach, we want to draw an attention to the fact that economic and financial researchers overlook the stage of prehistory of the IFC, specifically, the period of time which preceded the actual date or event, which took place before the cities turned into the IFCs. The stage of prehistory has an extreme importance for the understanding of the development of IFCs and could not be separated or taken outside the framework of the timeline of the IFC. Therefore, the stage of “prehistory” of the IFC should be included into its historic evolution and development, since the given period creates the necessary environment for the emergence of the first international financial centers. So, from the given perspective, it is very interesting to look at the researches on the first corporations and their role in

the development of the first international financial centers – such as Dutch East India Company which was established in XVII century in Amsterdam, or «Societates publicanovum» – corporations in the ancient Rome, German mining associations «Gewerkschaften» of the XII century, with the Genoese bank of St. George of 1407 (Gurmin 1913: 133-136). All of the mentioned corporations contributed to the formation and evolution of the financial centers on the territory of the European states.

Generally accepted principle is that at the inception of the ancient cities and civilization the main source of the law was – customs, whereas one of the first sources of the public-legal regulator was a customary law of the specific community. Hence, it is apparent that during this period trade, economic and monetary (financial) relations were based on the norms of the customary law.

Therefore, the initial stage for the regularization of the future financial centers is characterized with traditional self-regulation and application of customary law as a basis for the official legalization of the financial activities.

It is important to note that customary law till the day remains as one of the most effective regulators of the activities of the financial centers both on the domestic level (as local customs) as well as at the international level (norms of the international customary law, *lex mercatoria*). So, the uniqueness of the customary law could be found in the nature and the process of its development. It is not only one of the first forms of the social regulators, but at the same time it is the most natural form of the regulatory power which is based at the authority of the society and public opinion. Therefore, it has a feature of being a “natural” type of the social regulator which affects the behavior of people as “nature itself”. As a result, the participants of the social relations accept such norms not as an enforced mandatory rule, but rather as inherited norms and values for social conduct. Thus, such peculiarities of the customary law were the reason for scholars to overlook them as a part and initial stage for the development of the international financial centers.

During the second period, we can observe the unsystematic or “patternless” regularization of the IFCs which was generally expressed by the variety of different normative methods, used not only within the framework of specific cities and states but as well on an international level.

So, during this period, IFCs were not regulated directly, but rather indirectly, since there was no specific goal to establish and develop an international

financial center per se, hence, there was no general strategy for such purposes. The most important issue was to provide the safety, consistency and permanence of economic, financial and monetary relations within the city. So, as the demand for the given necessities increased, the demand for a legal regulation rose as well. However, the states did not view a legal regulation of economic activities as the primary objective, rather, it was part of the overall plan for the development of the cities and their infrastructure.

Generally, third stage could be described as the time when states stimulated their legislative functions through the Parliaments, which resulted in the adoption of legal acts aimed at the regulation of the activities of the international financial centers (mainly the banking activities and stock exchange markets). From the experience of metropolises as Amsterdam, London and New-York, it was apparent that the effective regulation of the financial institutions, as a stock market and central bank, led to the rise of set cities into the status of the leading international financial center, while in case of New-York and London, both of “New York and London claim the first and second major and largest centers in the world stage” (Vo and Nguyen 2020: 186).

Although, local governments and city authorities continued to adopt laws during this period as well. Nevertheless, this time their legislative activities were supposed to correspond the Parliaments work and had to not contradict their acts.

Overall, fourth stage could be characterized as the time when the countries started to focus on the legal regularization of the various activities of the IFCs and to regulate them with the adoption of the legal acts which have the highest legal force as the Constitutional provisions or in the forms of the acts which have the Constitutional significance.

So, the official state regularization of the IFC became an integral part of establishing and developing a financial center of any level. Moreover, without fulfilling given requirements increased the probability for negative consequences, such as delay in start of its activities or even cancellation of its results. Hence, Douglas V. Arner noted that “At the most basic level are the institutional underpinnings of governance and public order, property rights and their protection, contract enforcement and commercial dispute resolution, and human capital development. Without these, successful financial centres can fail (e.g., Amsterdam in the 18th century, Beirut in the 20th)” (Arner 2009: 198). The Moscow International Financial Center (hereinafter – MIFC) could be noted as another example. The

Russian Federation’s leadership had high hopes toward the given projects, nevertheless, “they are still not implemented” (Balaboshina 2020). Several Russian scholars mentioned, that despite all of the measures that have been taken by the government for the “development of the infrastructure and the legislation, the stimulation has rather a nature of eliminating most difficult problems of the financial system instead of creating a clear system of incentives for favorable investment climate” (Anikin 2019: 3).

It is important to mention that the use of constitutional method of regulating the IFC nowadays does not necessarily mean that it is the ultimate way for developing cities as a financial center. However, the experience of Hong Kong, as well as two cities of the UAE – Dubai and Abu-Dhabi, suggests that the given method is considered to be as very effective approach which shall be used in conjunctions with other legislative measures which have been used in the course of previous historical stages to supplement the constitutional method of the regulation of IFCs.

The historical analysis suggests that development of the international financial centers in the modern Kazakh state started even before it became an independent state and passed through three different stages as the first Special Economic Zone to the first regional financial center in Almaty and ultimately transformed into the Astana International Financial Center.

Albeit, there were no exact financial centers on the territory of the post-communist country. Nevertheless, we can observe that during given period the necessary legal framework has been prepared, also the Kazakh state accumulated required legislative experience which was later used as the background for the first prototypes of international financial centers.

So, the first stage was the time when the initial process for the creation and legal regulation of the special economic zones, which still exist on the territory of Kazakhstan, started. Generally, SEZs were not only the predecessors of the future financial centers in Kazakhstan but also its first “prototypes”. We can draw that conclusion from the analysis of the legislative definition of the term “special economic zones” and the AIFC. In the first case it is identified as “a part of the territory of the Republic of Kazakhstan with precisely designated borders, on which a special legal regime of a special economic zone is in force for the implementation of priority activities”. While the legislative definition of the AIFC is established as “the territory within the City of Nur-Sultan with precise borders determined by

the President of the Republic of Kazakhstan where the special legal regime in the financial sphere established by this Constitutional Statute applies”.

At the same time, two important factors shall be noticed regarding the SEZ in Kazakhstan. First of all, unlike the UAE, none of the special economic zones in Kazakhstan are considered as a financial center. So, currently, there are 13 active SEZs that operate in different regions of the country (Kazakh Invest 2021). Correspondingly, AIFC is also not considered as a type of the SEZ.

This is a period of the directed legislative regulation of the IFCs which started in 2006 with the inception of the Regional Financial Center of Almaty city and ended with its liquidation in 2011. So, within five years of its existence, most of the scholars agree that RFCA did not fulfill its main objectives. Economic specialists have identified many different reasons for the failure of the financial center, however, due to the fact that it was a comprehensive project which involved realization of various plans, it is difficult to pinpoint the key problems which led to the disappointing results.

In this regard, there are two key factors which negatively influenced the activities of the first financial center in Kazakhstan. First of all, economic reasons should be mentioned, specifically global economic processes. Hence, the year 2008 marked the global financial crises which substantially affected the economy of the Republic of Kazakhstan, which instead affected the plans of the state to further implement the project. Moreover, according to the Advisor of the Chairman of the National Bank of the Republic of Kazakhstan – Aidarkhan Kusainov, the inability of the RFCA to attract the large number of international investments is related to the “small size of the Kazakhstani national companies as well as its low turnover” (Tulindinova 2017).

Secondly, it is a legislative reason. For instance, paragraph 1 of the article 3 of the Law on RFCA identified a following main objective of the center: “...development of the securities market, ensuring its integration with international capital markets, attracting investments into the economy of the Republic of Kazakhstan through the securities market and providing access for foreign issuers to a special trading platform of the financial center”. As it is apparent from the statute that all of the objectives of the RFCA solely related to the regulation of the stock market. However, the international experience suggests that in order to develop a successful financial center it also requires the effective normative regulation of the Central Bank as well, or in case of Kazakhstan – the National

Bank. Another important factor is that the law does not include the comprehensive development of the Almaty city, since it is a rather difficult task to attract foreign investments without developing the legislative basis for the regulation of other financial activities, without access to the highly qualified judicial system as well as without the preferential currency, tax, visa regime and etc.

Therefore, we can identify two major differences between currently existing Astana International Financial Center and liquidated Regional Financial Center of Almaty city. Firstly – it is that RFCA was regulated at the level of ordinary legal acts, whereas the AIFC has a “constitutional status”, since it is regulated by the norms which have the highest legislative power – the Constitution and Constitutional Statute on the AIFC. Secondly, it is the difference in the approaches for developing both financial centers. In case with the RFCA, the authorized body for the implementation of the provisions of the Law on RFCA was a narrow-profile state body – the Agency of the Republic of Kazakhstan for the regulation of the activities of the RFCA (hereinafter – the Agency). The given Agency was directly subordinate and accountable to the President of the state. So, it is apparent that realization of the large-scale project is a difficult undertaking and the state is highly criticized for the ineffective implementation of such initiatives. It was even noted by the current President of the Republic of Kazakhstan – Kassym-Jomart Tokayev during the joint session of the Parliament of Kazakhstan (Kazinform 2020).

The given thesis is supported by the numerous scientific studies on the inefficiency of the state regulation of large projects, so the Howard Beales specified three major reasons for it: 1) State regulation presents special issues, problems, and controversies; 2) Regulatory expenditures are large, but difficult to trace; 3) Weak system of checks and balances (Beales 2017: 5-7).

Although, all of the mentioned issues could be related to the Astana International Financial Center as well. However, the main difference is that this time the Kazakh state applied a large-scale approach, taking into account an international experience and with the involvement of international specialists. Despite the fact that main body of the AIFC – Management Council is headed by the President of the state, other bodies of the financial center are independent from the state in their activities, within the powers granted to them by the Constitutional Statute on the AIFC. The given norm of the statute provides more effective tool for the implementation of the project,

which could be noticed in the example with the courts of two financial centers. For instance, one of the responsibilities of the Agency for the regulation of the RFCA was to establish a specialized court in Almaty according to the Decree of the President of the Republic of Kazakhstan dated August 17, 2006 N 158 “On the formation of a specialized financial court in the city of Almaty”. The given Decree is still active, nevertheless, the court has never been created, whereas the Court of the AIFC is an active body which operates since 2018. Nine of the judges were appointed to the court and they have already adjudicated 16 financial disputes.

The final stage corresponds to the constitutional regulation of the Astana International Financial Center. As it has been mentioned earlier, after the unsuccessful attempt to establish a financial center in Almaty, this time state’s leadership took into consideration the international experience, specifically the United Arab Emirate’s experience. Two provisions of the Nation’s Plan – 24<sup>th</sup> and 71<sup>st</sup> directly referred to the UAE as a prime example to create a financial center.

Therefore, within the framework of implementing the Nation’s Plan the Constitutional Statute on the AIFC was adopted. The paragraph 1 of article 9 of the given Statute stated that main bodies of the AIFC shall be – Management Council, the Governor, AIFC Authority, the Astana Financial Services Authority, AIFC Court and the International Arbitration Center. Apart from that, par.1 art.4 of the Constitutional Statute on AIFC established that acting law of the financial center shall be based on the Constitution of the Republic of Kazakhstan and shall consist of, Constitutional Statute on AIFC and AIFC Acts, which may be based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centers. The given norm is an unprecedented step, since Kazakhstan is the first post-Soviet country which integrated the common law system into the national legislation, which for a long time is a part of the civil law system. Furthermore, another legislative novelty is the fact that English language obtained an official status in accordance with the article 15 of the Constitutional Statute – becoming the official language of the AIFC.

Although, currently, it is very difficult to assess the effectiveness and successfulness of the AIFC since it’s been operating only for three years. However, one of the objective criteria which could be employed is the rating of the Global Financial Center Index of the Z/Yen. According to their report, from the start of its functioning in 2018 the global

rating of the AIFC has increased from 548 points to 631, whilst it climbed from initial 88<sup>th</sup> place to 51<sup>st</sup> place, which also could be viewed as a successful upward trend..

### Conclusion

The research of the international experience on the regularization of the international financial center shows that development of the stock exchange market and banking system, as well as their effective legislative regulation, was of a key importance for the cities such as Amsterdam, London and New-York to become the leading international financial centers during different periods of history. As for London and New York, they still remain as the largest financial centers till the day by attracting investors around the globe. Therefore, cities from developing countries have a very difficult task to compete with established IFCs to gain a reputation among the business community as a safe and lucrative destination for investors. Correspondingly, to achieve such goal it is critical not only to advance the work of the stock market and banking system but also to improve the national legislation in accordance with an international standard.

Currently, it is too early to state that the constitutional method of the regulation has gained an international recognition as well as proving itself as one of the most effective approaches for developing cities as an international financial center. Also, implementation of the given method has its own complexities due to the necessity of conducting constitutional reforms with an objective of introducing amendments to the Basic Law of the state, which could be a very difficult, time-consuming and expensive process. However, experience of Hong Kong, the United Arab Emirates and arguably Kazakhstan suggests that this approach could be applied in a very successful manner to quickly accomplish the goal of establishing an international financial center. Moreover, the unsuccessful first attempt to create financial center in Almaty and in Moscow exposed the limitations of the direct legislative method, which was effectively used during the previous stage of normative regulation of the IFC activities.

At the same time, it is important to mention that additional studies shall be conducted to further analyze the difference in the legal regulation between cities as London, New-York as well as the new types of financial centers which exist in the UAE, Qatar, China, Singapore and other developing states.

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