

# Specifics of Winding Up, Strike Off and Suspension of Activities of Companies in the Astana International Financial Centre

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We continue a series of publications relating to the legal aspects of activities in the Astana International Financial Centre ("**AIFC**"). The following publications were previously posted on **zakon.kz**:

- Specifics of setting up and registering companies in the AIFC [1];
- Procedure for registration and licensing of private companies in the AIFC [2];
- AIFC versus national legislation of the Republic of Kazakhstan [3];
- 10 questions to a lawyer about registration of companies in the AIFC [4];
- 10 questions to a lawyer about redomiciliation of companies to the AIFC [5];
- Specifics of legal regulation of trusts under the laws of the AIFC [6];
- 10 questions to a lawyer about licensing (authorization) in the AIFC [7];
- Specifics of regulation of labor relations in the AIFC [8];
- Specifics of legal regulation of personal data protection in the AIFC [9].

There are many companies among our clients, which successfully carry out their activities in the Republic of Kazakhstan ("**Kazakhstan**") and the AIFC. However, sometimes owners of companies decide on winding up. In such cases, a company needs to undergo all procedures established by legislation for registration of termination of activities and strike off. Many people know about this using the example of limited liability partnerships in Kazakhstan. More recently we have received many queries relating to winding up of private companies ("**Company**") in the AIFC, in which connection we believe that readers will be interested to learn about practical aspects of winding up of the Company in the AIFC.

At the time of writing this article, more than 3,000 organizations were registered in the AIFC. Starting from the date of official opening of the AIFC in 2018 and until August 2024, there were 61 cases of winding up.

In this article, we will highlight the key specifics of winding up, striking off and suspending the activities of the Company. Authors will answer disputable questions, which legal practitioners often encounter, and share relevant information and lifehacks. Our special gratitude to Mr. Miras Ossipov, Chief Specialist of the AFSA Registration Department, for his advice on this article.

## 1. Key Concepts and Definitions

First of all, it is quite necessary to define the key concepts. The AIFC acts regulating the issues of winding up include the **AIFC Insolvency Regulations ("IReg")** [10] and the **AIFC Insolvency Rules ("IRules")** [11].

The term "*insolvency*" means inability to pay, bankruptcy, incapacity [12].

"*Winding up*" means termination of activities of a company, its liquidation. The name and text of **Manual Going to liquidation within the AIFC Insolvency Rules and Regulations** [13] ("**Instructions**") uses the word "liquidation". According to the AIFC laws, "*winding up*" means the Company liquidation.

The applicable acts regulating corporate issues also include the **AIFC Companies Regulations** [14] ("**CReg**") and the **AIFC Companies Rules** [15] ("**CRules**"). They may be translated as the AIFC regulations about companies and the AIFC rules about companies.

The tax regime in the AIFC territory is determined by the Tax Code ("**Tax Code**") [16] with certain exceptions established by Article 6 of the AIFC Constitutional Law [17]. Accordingly, tax obligations are performed by taxpayers in accordance with the Tax Code.

## 2. Types of Company Winding Up

The AIFC laws provide for the following types of Company winding up: compulsory winding up and voluntary winding up (Article 23 of IReg).

The Company may be wound up by court if:

- 1) Company has resolved that it be wound up by the court; or
- 2) Company is unable to pay its debts; or
- 3) moratorium under section 9 of IReg comes to an end and there is no voluntary arrangement approved in relation to the Company; or
- 4) court is authorized to make the order under any other AIFC Regulations or any AIFC Rules; or
- 5) court is of the opinion that it is just and equitable that the Company should be wound up (Article 49 of IReg).

For comparison, the Kazakhstan legislation provides for a general liquidation procedure established by Article 50 of the Civil Code [18], pursuant to which legal entities are liquidated on a voluntary basis in case a company has enough funds for settlements with creditors or the participants are ready to pay off the debts on account of additional financing of the company (Article 58.7 of the Tax Code).

According to the Kazakhstan legislation, if the company's property is not sufficient to pay debts to the creditors, liquidation must take place applying the bankruptcy procedure. Bankruptcy is established based on the debtor's application to court or an application from the creditors or other persons authorized by law. In case value of property of the legal entity, with respect to which a judgment on liquidation has been issued, is insufficient to satisfy the creditors' claims, the liquidation commission must apply to court for recognition of such legal entity as a bankrupt to conduct the bankruptcy procedure in accordance with the rules established by law (Article 4 of the Bankruptcy Law of Kazakhstan [19]).

In light of the fact that the AIFC acts are based on the principles of English law serving as a basis for the work of many world financial centres, we also propose considering regulation of the winding up procedure in the winding up guide of the Abu Dhabi Global Market ("**Abu Dhabi Global Market**"), which specifies that the process of liquidation or "*winding up*" ends a company's existence and guarantees that its property is managed in the interests of creditors and participants. Once the winding up is completed, a company will be wound up and struck off. In the course of winding up the company's assets are used to repay the debts, obligations and winding up costs. Any remaining value is distributed among the participants [20].

Please note that this article does not consider the procedures for compulsory winding up of the Company and voluntary winding up with the participation of creditors, nor we consider any separate issues relating to completion of all obligations with the counterparties of the Company, including notification and/or signing of agreements on cancellation of contracts, repayment of debts (if any), collection and formalization of all financial documents, comparative check of personal accounts of the Company as to presence of all forms of tax reports and paid tax

obligations, or verification of encumbrances imposed in the course of enforcement proceedings.

### 3. Preparatory Stage for the Company Winding Up

At the preparatory stage, it is necessary to do the following:

- 1) to execute relations with the persons responsible for winding up (liquidator, law firm and/or accounting firm);
- 2) to determine a person who will be granted the right of the first signature for the banking documents and authorize him/her at the bank (unless this is the liquidator);
- 3) to determine the registered address of the Company, place for storage of documents in the course of winding up, procedure for submission to the archive and destruction of documents remaining after winding up [21];
- 4) to settle the issues relating to cancellation of labor relations with the Company employees. The employment contracts may be cancelled either before or after the winding up process begins. The procedure for cancellation of the employment contracts, notice periods, amount of compensation, etc. [22] will depend on the ground for cancellation of labor relations;
- 5) to issue a corporate electronic digital signature, because communications with the tax authority are mainly maintained by way of electronic channels (taxpayer's webroom [23], platform for electronic applications [24]).

Furthermore, for the purposes of the Company winding up it is necessary to notify the Astana Financial Services Authority, AFSA ("**Regulator**"), by sending relevant forms [25]. This requirement covers the Companies, which hold a license for the regulated types of activities in accordance with the General Rules [26] and Financial Services Framework Regulations [27].

Voluntary winding up may take place only in case the Company is solvent. To confirm this fact, the Company directors must make a declaration of solvency ("**Declaration**") to the effect that they have made a full inquiry into the Company's affairs and that, having done so, they have formed the opinion that the Company will be able to pay its debts in full, together with interest at the official rate, within the period, not exceeding 12 months from the commencement of the winding up specified in the Declaration. The Declaration must contain an updated report on the Company's assets and obligations. The Declaration is adopted by a simple majority of votes of the members of the Board of Directors (Article 31 of IReg).

If the directors have made the Declaration, but the liquidator of the Company is of the opinion that the Company will be unable to pay its debts in full within the period stated in the Declaration, the liquidator must call a meeting of creditors for a day not later than 28 days, where the liquidator must submit a statement of the Company's affairs. In this case, further winding up must take place according to the procedure stipulated for the creditors voluntary winding up (Articles 35 and 36 of IReg).

The Declaration must be made (a) within 5 weeks immediately before the day the resolution for winding up is passed; or (b) on that day, but before the passing of the resolution (Article 31(2) of IReg).

*"If the majority of directors do not make a declaration of solvency or the company is insolvent, the shareholders can still vote for a voluntary liquidation. This type of liquidation is called a creditors' voluntary liquidation. To vote for a voluntary liquidation, the shareholders must hold a general meeting of the company and pass a resolution for voluntary winding up"* (paragraph 1.2 of the Instructions).

The participants must hold a general meeting of participants ("**GMP**") and pass a resolution on voluntary winding up, and appoint one or more liquidators of the Company (Article 32 of IReg). According to the general rule, such resolution may be passed by a simple majority of participants (*Ordinary Resolution*), unless otherwise established by the Company charter. Starting from this moment, winding up will be called the *members voluntary winding up* [28].

The Company must immediately notify the Companies Registrar ("**Registrar**"), attaching a resolution on voluntary winding up and the Declaration. Furthermore, the Company must notify a relevant territorial tax authority at the place of its location within 3 business days after passing the resolution on voluntary winding up (Article 58.1 of the Tax Code).

In addition, the Company must, within 14 days after the day it passes the resolution on winding up, give notice of the resolution by an advertisement (Article 27 of IReg). The AIFC acts do not disclose the content of such advertisement and the mass media where it must be published. We believe that such advertisement may be made by the liquidator by analogy with requirements to the appointed publications [30] or under the general rules in printed periodicals distributed across the entire territory of Kazakhstan, for example, in *Yuridicheskaya Gazeta* (Article 50.3 of the Civil Code).

#### **4. Status of an Official Liquidator and Insolvency Practice**

It is worth separately considering the status of a person registered as an official liquidator in accordance with IReg ("**Official Liquidator**"), because this topic gives rise to many questions legal practitioners have. According to some counsel, in case of voluntary winding up it is mandatory to engage the Official Liquidator, while others tend to believe that no Official Liquidator is required in this case.

The Public Register contains the list of Insolvency Practitioners ("**Insolvency Practitioner**") and Official Liquidators [31]. If there are no questions relating to Insolvency Practitioners, the AIFC acts give no clear answer to the question of who the Official Liquidator is and whether it is necessary to engage the Official Liquidator in case of voluntary winding up. To date, there are 13 people of whom 7 are registered in Kazakhstan.

*"In a Members Voluntary Winding Up, the Company in general meeting must appoint 1 or more liquidators for the purpose of winding up the Company's affairs and distributing its assets. On the appointment of a Liquidator for the Company, all the powers of the directors cease, except so far as the Company in general meeting, or the Liquidator, approves their continuance"* (Article 32 of IReg). It is important that neither Chapter 2 of IReg, Articles 26-36 (Section "Voluntary Winding Up"), nor Chapter 3 of IReg, Article 37-43 ("Creditors Voluntary Winding Up") mention any official Liquidators.

A Person must not be appointed or act as a Receiver, Administrative Receiver or Liquidator of the Company, unless the Person is registered as the Insolvency Practitioner under this Part (Article 87(1) of Part 9 of IReg "Insolvency Practitioners") [32].

Unless a Person who is the Insolvency Practitioner is further registered as the Official Liquidator under this Part, the Person must not be appointed as:

- 1) liquidator under Section 57 (Choice of Liquidator by Court or meetings of creditors and contributories); or
- 2) provisional liquidator under Section 58 (Appointment of Provisional Liquidator) (Article 87(2) of Part 9 of IReg).

Registration of the Insolvency Practitioner as the Official Liquidator constitutes an acknowledgement by the Insolvency Practitioner that the Insolvency Practitioner will accept any appointment made by court as a liquidator or provisional liquidator of the Company in accordance with any rules of procedure that may be made by the court (Article 87(3) of Part 9 of IReg).

The persons pretending to get the status of the Insolvency Practitioner and/or Official Liquidator must meet certain criteria, which may include the requirements relating to qualifications, experience and propriety of applicants (Article 88(1) of IReg). The Registrar must keep and publish registers of Insolvency Practitioners and Official Liquidators. Thus, it is stated that the

Official Liquidator is engaged by court. However, there is no information that the Official Liquidator must be engaged in case of voluntary liquidation.

The role of the Official Liquidator is described in the acts of many international financial centres. These specialists act as impartial third parties, exercising control over the entire process of winding up from the beginning up to the end. For example, the key obligations of a licensed liquidator include in the Dubai International Financial Centre ("**DIFC**"), as follows:

- 1) cooperation with the directors to draft a detailed report on the company's affairs for the creditors, distribution of the remaining funds and liquidated assets among the parties concerned;
- 2) resolution of unsettled claims to a company on the basis of the established legal practice;
- 3) ensuring of satisfaction of rights in accordance with the hierarchy specified in the DIFC Insolvency Law [33].

Let's consider the provisions of Part 5 "Winding Up" of IRules dedicated to winding up of the Company, which has debts. It is worth mentioning that there is no mentioning of the Official Liquidator in the text of this Part of IRules. If a company has debts, the creditors may serve a demand (*statutory demand*) on the Company specifying the amount of debt (Article 5.2 of IRules). The Company is taken to be unable to pay its debts if a creditor to whom the Company is indebted in an amount exceeding USD 2,000 then due has served on the Company a written demand requiring the Company to pay the amount so due and the Company has for 3 weeks afterwards neglected to pay the amount or to agree the conditions in relation to its payment to the reasonable satisfaction of the creditor (Article 50(1)(a) of IReg).

We previously mentioned that one of the grounds for compulsory winding up in court is the circumstance where the Company is unable to pay its debts.

An application to court for winding up of the Company may only be presented by the Company, directors or any creditor or creditors, including any contingent or prospective creditor or creditors (Article 51 of IReg). In general, the above procedure stipulated by the AIFC acts resembles the procedure established in Kazakhstan by the Bankruptcy Law of Kazakhstan, whereby creditors may make an application to court for recognition of a company as a bankrupt.

If the court orders that the Company be wound up, the court must, in the order, appoint a liquidator of the Company. Such person may either continue the liquidation or call meetings of the Company creditors and participants to nominate a person to be a liquidator of the Company (Article 57(1) of IReg). At the first meeting of creditors, among other things, a resolution to appoint the Official Liquidator to be the liquidator or to appoint two or more Official Liquidators as joint liquidators is passed (Article 5.11.1(a) of IRules).

In case of creditors voluntary winding up, the Company may nominate the Insolvency Practitioner as a liquidator (paragraph 1.2 of the Instructions). Accordingly, the Instructions allow to select to appoint the Official Liquidator in case of the creditors voluntary winding up, but do not impose this as an obligation.

The above conclusion is supported by the provisions of Article 5.1.1 of IRules, which mention an exception that voluntary winding up is not subject to application of Article 5.11, which mentions the first meeting of creditors passing a resolution to appoint the Official Liquidator. In light of the fact that this Article does not apply for voluntary winding up, we believe that appointment of the Official Liquidator as a liquidator is the right, but not an obligation of the Company.

Furthermore, a person appointed by the liquidator must be either the Official Liquidator or an employee of the liquidator or the liquidator's firm who is experienced in bankruptcy proceedings (Article 5.38.7; this Article does not apply to voluntary winding up, but applies to the creditors voluntary winding up).

Thus, we believe that the AIFC acts contain contradictions relating to the necessity of engaging the Official Liquidator. At the same time, certain lawyers and the Registrar believe that the Official Liquidator must be appointed in any cases of voluntary winding up, if such winding up takes place in accordance with the procedures stipulated by IReg and IRules. Notably that, if his role in case of the creditors voluntary winding up is to organize the sale of property and settlements with the creditors, if there is voluntary winding up (without creditors), his duty will actually cover only the sale of the company's property and support to the company in the course of a tax inspection and final submission of documents to the Registrar for registration of the winding up.

The approach of the regulator in the Abu Dhabi Global Market may be of certain interest: it specified in relevant acts that all liquidators appointed for voluntary winding up must hold a license of an insolvency practitioner. A solvent company may make:

- 1) application for voluntary winding up upon a resolution of participants; or
- 2) if a company terminated its activities for a period exceeding three (3) months, it may make an application for voluntary strike off. Neither a liquidator, nor an insolvency practitioner is obligated to complete this process [34].

In the AIFC, the Company may also make an application to be struck off if the Company has neither traded, nor done its business in any other manner within the past 3 months. The AIFC representatives informed us of the above term.

## **5. Winding Up Procedure. Description of Required Actions**

Further winding up procedure is generally known to many people. We believe that it is not necessary to describe it in detail in this article. It is only worth mentioning that it must be conducted subject to requirements of Article 58 of the Tax Code, which describes in detail the entire process of interaction with the tax authority in the course of a tax inspection and until its end.

The liquidator assumes the management of the Company's affairs. The list of powers of the liquidator is set out in Article 25 and Schedule 2 to IReg. In voluntary liquidation proceedings, the Company directors must provide information about the Company's affairs to the liquidator and attend interviews with the liquidator as and when reasonably required, look after and hand over the Company's assets to the liquidator, together with all its books, records, bank statements, insurance policies, and other papers relating to its assets and liabilities (please see page 15 of the Instructions).

The liquidator must call the GMP at the end of each year if the winding up process continues for more than one year. The GMP must be called at the first convenient date within 3 months after the end of the relevant year. At this meeting, the liquidator must give the participants an account of the liquidator's activities containing information on all receipts and payments. Such account must also contain information on how the voluntary winding up is conducted and specific details relating to distribution of assets (Article 33 of IReg).

The liquidator prepares a statement of affairs, which is intended to show the Company's position prior to liquidation. It details the Company's assets and liabilities, as well as any fixed or floating charges that are secured against the Company's assets (please see page 15 of the Instructions).

In light of the fact that the tax inspection is conducted according to the rules established by the Tax Code, pursuant to which it is necessary to draft an interim liquidation balance sheet, we believe that the liquidator must draft the liquidation balance sheet in addition to the statement of affairs and submit it for approval to the GMP (by analogy with Article 50.4 of the Civil Code).

The Company must apply to the territorial tax authority within 3 business days of the date of approving the interim liquidation balance sheet and submit the following documents: (i) application for a tax inspection; (ii) winding up tax reporting; and (iii) tax application for VAT de-registration (Articles 58.2, 85.1 and 85.7 of the Tax Code).

The tax inspection must be commenced by the tax authority not later than 20 business days after receiving the application from the Company for the tax inspection (Article 58.5 of the Tax Code). However, in practice, a documentary inspection is often commenced at a later date. The inspection takes on average 4-6 months and such time depends on the current workload of employees of the Audit Department of the Tax Administration. The tax authority applies all statutorily allowed grounds for extension of the period of inspection.

The procedure and scope of information, which may be requested by a representative of the authorized agency for inspection, are determined by an inspection officer personally. Such information mainly includes a copy of the accounting system of a taxpayer, selective, subsequent submission of the originals of primary documents, analytical disclosures and details of financial accounts, filling out of work registers of the tax reconciliation checks, provision of explanations/clarifications on the performed tax accounting calculations.

If the winding up of the Company is not concluded within 1 year, the liquidator must give a report to the Registrar (Article 69 IReg).

Once the inspection is completed, the tax authority will draft a tax inspection results certificate. In case of detecting, following the inspection results, that there is a tax debt, such debt must be repaid by the Company. If the Company has no funds on its bank accounts, the debt must be repaid by the Company participants (Article 58.7 of the Tax Code). The subsequent 30-day period from the date of issuing the tax inspection results certificate is a period for claim-related work, during which it is possible to challenge and change the conclusions of the inspecting officers.

We previously mentioned that a tax inspector will determine the total amount of additional payments and fines (if any) and will reflect them in the tax inspection results certificate. The taxpayer's task is to pay all additionally assessed amounts (upon consent). The inspector's assessments and the taxpayer's payments will be reflected on personal accounts. This is evidence of the fact of performing all obligations for the governmental agency's system.

After paying all debts for mandatory payments and taxes, the Company's authorized person holding the right of the first signature must apply to a bank to close a bank account and obtain a certificate of closed accounts. This certificate is then submitted to the tax authority.

On average, a bank account is closed within 5 days (in certain banks up to 1 month). Furthermore, before closing an account, it is important to settle all issues with the currency control and close all corporate bank cards.

The Company's property in a voluntary winding up must be applied in satisfaction of the Company's liabilities and, subject to that application, must be distributed among the participants according to their rights and interests in the Company, unless the Company's charter provides for otherwise (Article 44 of IReg).

As soon as the Company's affairs are fully wound up, but prior to submission of documents for completion of the winding up, the liquidator must prepare an account of the winding up, explaining how it has been conducted and how the Company's property has been disposed of. When the account has been prepared, the liquidator must call the GMP for the purpose of giving the account to the meeting (Article 34 of IReg). We believe that in this case the GMP must approve the liquidation balance sheet concurrently with approval of the account (by analogy with Article 50.7 of the Civil Code).

A Company under the winding up procedure must submit a liquidation balance sheet within 3 business days of the date of completion of the tax inspection and, in case of presence of the tax debts – of the date of repaying the debts (Article 58.13 of the Tax Code).

It is worth mentioning that the dividends must be distributed at an earlier stage. For example, before approving the preliminary liquidation balance sheet. First, in practice, there were extremely absurd cases where the tax authority decided that the remaining funds on the Company's

accounts were a gift from the participants. Since these amounts (above the amount of the charter capital) were not distributed by the participants, the tax authority decided they were unclaimed amounts, referred them to income and assessed CIT and penalty [35]. Second, in case of distributing them in the end, this will entail the necessity to submit additional tax reporting to the winding up tax reporting and may potentially entail a repeated tax inspection (Article 58.12 of the Tax Code).

Upon expiration of the 30-day period specified above it is necessary to submit an application for abandonment of the Company's personal accounts at the tax authority. The Company's authorized person must apply to the territorial tax authority for abandonment of the taxpayer's personal account and submit the certificates of closed bank accounts. The inspector will put a mark that the bank accounts have been closed, after which personal accounts will be closed. This is an automatic process, and the inspector must introduce the data on the date of closing the Company's bank account to have the personal accounts abandoned.

Interaction with the authorized tax agency comes to an end after closing the taxpayer's personal account. Based on an application from the authorized person of the Company, a certificate is issued, which confirms the absence of debts on budget payments. The said document is not required for submission to the Registrar to complete the winding up procedures and is required only for personal understanding that all taxes have been paid and it is possible to submit documents for further registration of termination of the Company's activities with the registration authority.

To complete the winding up, it is necessary to submit the following documents to the Registrar: (i) notice of termination of activities [36]; (ii) resolution of the GMP on voluntary winding up of the Company; (iii) newspaper containing the advertisement regarding the winding up; (iv) tax inspection certificate; and (v) power of attorney, in case the documents are submitted by a representative.

The certificate of closing the bank accounts and destroying a seal (if any) is not submitted to the Registrar. There is no charge for the winding up. The period to consider the documents by the Registrar is not specified, but on average it takes about 10 business days.

After receiving the application attaching all required documents, the Registrar will verify compliance with the winding up procedure and then notify the Ministry of Justice of Kazakhstan, which will, in turn, automatically check the absence of tax debts and introduce data on registration of termination of the legal entity's activities into the National Register of Business Identification Numbers.

## **6. Simplified Winding Up Through the Strike Off Procedure**

A companies act (CReg) provides for a certain "*strike off*" procedure, which may be translated as to exclude, cross out, liquidate. According to Article 167 of CReg, the Registrar may strike the name of the Company off the register (wind up the Company) if the Registrar has reason to believe that:

- 1) Company is not conducting business or is not in operation;
- 2) Company is contravening the AIFC Companies Regulations; or
- 3) it is prejudicial to the interests of the AIFC for the Company to remain in the register.

There are similar rules in the Kazakhstan legislation. Thus, there are special grounds and simplified liquidation procedure stipulated by legislation for the absent legal entities and absent debtors (paragraph 2 of the Normative Resolution No. 5 of the Supreme Court [37]). Specifically, according to the Civil Code, the authorized agency (as a rule, the tax authority) may make an application to court in case a legal entity is absent at the place of location or actual address, and founders (participants) and officers whose absence makes the functioning of the legal entity impossible within one year, or carrying out of activities with a gross violation of legislation (Article



49.2 of the Civil Code). In such cases, the legal entity is liquidated immediately after obtaining a court judgment without conducting the tax inspection [38].

The Registrar may conclude that the Company does not do its business or carry out the activities if the annual return or annual confirmation statement in the register of companies is not submitted within the established deadlines or the fee due to the Registrar was not paid within the established deadline.

The Registrar may also strike the Company off the register in case of the creditors voluntary winding up, but the liquidator is inactive or if the Company's affairs have been completely accomplished, however, the reports, which had to be submitted by the liquidator, have not been submitted within at least 6 consecutive months. In this case, the Registrar must publish an advertisement in mass media of the intention to wind up the Company and obtain the AFSA's consent to the above publication if the Company holds a license (Article 167(3) of CReg).

A similar strike off procedure exists in the Dubai International Financial Centre, where the registrar also has the right to strike a company off the register in case the registrar has grounds to believe that the company does not conduct business or is not in operation, as well as in public interests [39].

According to the public sources, the Registrar has already wound up several companies in the AIFC applying the strike off procedure in connection with the fact that the Companies violated the rules of the current AIFC laws (e.g. Artificial Investments Company Ltd. [40, 41] and VERSOR Engineering Ltd. [42, 43] ended their existence this way).

Furthermore, an application for applying the strike off procedure may be made by the very Company (Article 167(4) of CReg). The key advantage of winding up applying the strike off procedure is that the rules stipulated by IReg and IRules do not apply to it and, accordingly, it is not necessary to hire the Official Liquidator. This procedure is also called a simplified winding up, but this does not mean that it will not be necessary to undergo the tax inspection and obtain all required approvals from the Regulator on termination of a license (if the Company's activities have been regulated).

The strike off procedure is normally conducted in case the Company has not been conducting its business, and it has no property and creditors, which meets the sense of Article 167(1)(a) of CReg. If the Company has property or it has carried out any activities, this does not mean that the Company must be wound up only on the basis of the winding up procedure established by IReg and IRules. To wind up the Company applying the strike off procedure, it is sufficient to cancel the contracts with all employees and creditors at the stage of preparing to the winding up, and have no debts and property.

For information, below we will describe the key actions to prepare to the launch of the strike off procedure in the Abu Dhabi Global Market (list is not exhaustive).

Prior to filing an application for striking the Company off the register, it is necessary to firstly perform certain preparatory actions, if applicable:

- 1) make sure that the employees have been dismissed in accordance with relevant requirements;
- 2) cancel or transfer all employees' visas/sponsorships and cancel the company's establishment card and e-channels account;
- 3) cancel the company's P.O. Box;
- 4) cancel any other registrations or permits (e.g. vehicle registration linked to the company) issued by other UAE governmental authorities;
- 5) terminate (or transfer) the lease for your company's registered office address (if not already expired);

- 6) surrender the company's lease registration with the registration authority (if not already expired);
- 7) take down the company's website and cancel utility accounts;
- 8) deal with the company's assets and liabilities [44].

In fact, this resembles to what is happening when preparing to the procedure for voluntary liquidation of legal entities in common jurisdiction of Kazakhstan, which was mentioned by us early in this article.

Please note that, in case of the strike off procedure, it is necessary to observe the Company's 3-month inactivity period as this stems from the sense of Article 167(7) of CReg. We believe that this waiting period may be combined with waiting for the end of the 2-month period after publishing the advertisement before the start of the tax inspection. In fact, by the moment of completion of the tax inspection the 3-month inactivity period of the Company will already end, because the inspection may last from 3 to 6 months.

The simplified procedure starts when the directors make the Declaration. Then the participants must pass a resolution on winding up. The AIFC acts do not provide for appointment of a liquidator in case of the simplified procedure and the liquidator's participation is indeed unnecessary, because the Company does not have property or debts.

Instead of the liquidator, the Company or the participants hire the persons who will be instructed to support the Company in the course of the tax inspection. Such work is normally delegated to the Company Accountant under a civil contract or to an accounting firm. The actions relating to representation of the Company's interests before the Registrar may be delegated to a law firm, actions on submission of documents to the archive – to an archive company providing the services on document sorting, submission to the state archive, and destruction of unnecessary documents. Such persons may be authorized on the basis of a resolution of participants or under a power of attorney from the Chief Executive Officer (CEO), which must be issued in advance at the stage of preparing to the winding up, when labor relations with the CEO are not terminated yet. The option with the power of attorney is more preferable, because the tax authority often asks a representative to present a power of attorney.

According to the consultation of the representatives of the Registrar, to start the strike off procedure it is necessary to submit the following documents to the Registrar: (i) application; (ii) GMP resolution on winding up in accordance with Article 167(1)(4) of CReg; (iii) Declaration; (iv) tax inspection certificate; and (v) power of attorney if the documents are submitted by a representative. The Registrar may also request for submission of additional documents at its sole discretion.

Please note that, according to the general rule, passing of a winding up resolution is not referred to the exclusive competence of the participants, although the Company charter may provide for otherwise. However, we will base ourselves in this procedure on the assumption that such resolution is passed by the directors. We previously mentioned that no liquidator appointment is required.

At the same time, we would like to emphasize the issues, which we deem topical.

**First.** For the purposes of convenience, we will cite the original Creg: "*If an application is made by a Company to strike the Company's name off the Register following a voluntary winding up in accordance with the procedures under the AIFC Insolvency Regulations, the Registrar of Companies may strike the Company's name off the Register if the requirements of subsection (5) to (9) of Article 167 Creg are met*" (Article 167(4) of the version of CReg in effect as of 1 September 2024). Based on the content of this Article, we got an impression that the "voluntary winding up" procedure must precede the "strike off" or it is necessary to comply with requirements of IReg relating to appointment of the Official Liquidator. However, as discovered during the consultation with the representatives of the Registrar, they consider the situation with the strike

off without any connection to IReg and the requirement on appointment of the Official Liquidator, because the Official Liquidator's function is not actually required in connection with absence of the Company's property. The only requirement connected with IReg is the necessity to make the Declaration to the Registrar.

**Second.** *An application must be made on the Company's behalf by its directors or a majority of them (Article 167(5) of CReg).*

However, there may be no directors by the moment of making such application if their powers have been terminated. We believe that, in this case, the application may be made by a representative on the basis of a power of attorney from the Company CEO. We mentioned above that it is also necessary to submit the Declaration made by the majority of directors.

**Third.** *Within 7 days after the day that an application is made, the applicant must give a copy of the application to every person who, on the day the application is made, is a participant of the Company, employee of the Company, creditor of the Company, or director of the Company who is not a party to the application (Article 167(6) of CReg).*

It is unclear why this Article mentions the Company employees and creditors. Our understanding is that there should be no employees or creditors at this stage. CReg does not provide for a tax inspection before making the application. If making the application immediately after passing the resolution, the second and third topical issues could have probably been implemented in practice. However, in light of the fact that the Registrar additionally requests for the tax inspection certificate (which is in line with the rules of Article 58 of the Tax Code) contrary to CReg, by the moment of completion of the tax inspection there will be no employees, creditors or directors of the Company.

The Registrar must publish a notice in the appointed publications of the intention to strike the Company's name off the register and wind up the Company. Then at least 3 months must pass from the date of publishing the notice before striking the Company off the register (Article 167(8) of CReg). We believe that this publication is only required in case the Registrar applies compulsory striking of the Company's name off the register in accordance with Article 167(1), but not under the voluntary procedure in accordance with Article 167(4).

If the Registrar strikes the name of the Company off the Register, the Company must be dissolved (Article 167(11) of CReg). We believe that, in this case, there must be registration of termination of activities with the justice authority, which will introduce information into the National Register of Business Identification Numbers.

The interesting distinctive feature of the strike off procedure is that the Company may be restored within 10 years (Article 101(1) of IReg and Article 168(1) of CReg). Thus, the court, following an application of a party concerned, may make an order to place the Company and all other persons in the same position (as nearly as may be) as if the Company's name had not been struck off the register and the Company had not been dissolved (Article 168(5) of CReg). Furthermore, if the court makes an order declaring the dissolution void, any proceeding may be taken that might have been taken if the Company had not been dissolved (Article 101(4) of IReg).

For example, the acts of the Dubai Multi Commodities Centre (DMCC, largest free trade zone in the UAE) contain a similar provision stipulating that, in case of striking a company off the register, liability (if any) of each officer and participant of the company continues and the above persons may be enforced as if the company had not been struck off. If striking a branch off the register, any liabilities purported to be imposed on the branch remain the liabilities of the head company of the branch [45].

## **7. Procedure for Voluntary Winding Up of Branches and Representative Offices**

Provisions of IReg do not apply to the procedure for winding up of branches and representative offices set up in the form of a Recognized Company (Article 83(1)(b) of IReg). Accordingly, the process of voluntary winding up of branches and representative offices must be conducted in

accordance with the general rules of record de-registration of branches and representative offices in Kazakhstan, because this issue is not regulated by the AIFC acts.

Since the issue of winding up of a Recognized Company is also mentioned in CReg, at the final stage the Registrar must strike the name of the Recognized Company off the register. It is not necessary to make the Declaration to the Registrar, because IReg does not apply in this case.

The branches and representative offices may be similarly struck off the register under the compulsory procedure in case of violating the rules of the current AIFC laws (Article 167(1)(b)(c) of CReg). For example, this is how the representative office of HITBEAT MUSIC INC was struck off the register [46, 47].

However, if the point is in insolvency, branches and representative offices may be subjected to compulsory winding up procedure upon a court judgment if they are unable to pay their debts, have been wound up, struck off the register or otherwise ceased to exist as a body corporate under the laws of their place of origin (Articles 82(2) and 83(1)(c) of IReg).

## **8. Suspension of the Company's Activities (Transition into "Dormant Mode")**

If the Company participants do not intend to wind it up and have no intention to carry out any activities for a certain period of time, it is possible to make an application to the Registrar for suspension of activities [48]. In case of resumption of activities, the Company will have to make a relevant application as well [49]. A similar opportunity is stipulated by Article 213 of the Tax Code, which regulates the procedure for suspension (extension, resumption) of submission of the tax reporting by a taxpayer.

The advantages of this option are as follows:

- 1) for the period of suspension of activities, it is not necessary to maintain an office and pay rent, except for certain costs;
- 2) labor relations with all employees are terminated and it is not necessary to pay salary;
- 3) during the period of suspension of activities, it is not necessary to submit any regular reports and pay any taxes;
- 4) Company may resume its activities at any time; and
- 5) in case of deciding to wind up the Company, the tax inspection will not exceed the limitation period.

We believe that, for the purpose of suspension of the Company's activities, it is necessary to cancel labor relations with all employees, including the CEO, in order not to pay salary and, accordingly, taxes, since, according to the sense of Article 213.6 of the Tax Code, an enterprise, which has suspended its activities, must refrain from any activities resulting in origination of an obligation on assessment and payment of taxes and making of other payments to the budget, and social payments.

For information, it is worth mentioning that, from the standpoint of labor law, there is an opportunity to apply the employee's unpaid leave, but we do not recommend using it in this case, because an application for an unpaid leave must come from an employee, and, in turn, the employee may early return from such leave at any time. Furthermore, in this case, an employer retains an obligation to insure the employees, including those who are on leave. Thus, we believe that the most practical option is termination of labor relations with all employees.

Please note that this article does not consider preparatory actions, which the Company must perform to transit into a "dormant mode". For the purposes of suspension of activities, it is necessary to additionally notify the Regulator and obtain its consent. This requirement applies to the Companies holding licenses for the regulated activities.

The Company must comply with the procedures established by the Tax Code. Thus, a tax application must be made after dismissing all employees, paying their salaries, deducting all taxes and submitting regular forms of reports on employees.

According to Article 213.1 of the Tax Code, a taxpayer must submit the following documents to the tax authority at the place of its location:

- 1) tax application for the upcoming period (form of the tax application is approved by the Order No. 160) [50];
- 2) tax reporting from the beginning of the tax period until the date of suspension of activities specified in the tax application.

If the time for submitting the regular tax reporting occurs after making the tax application, such reporting must be submitted before the date of making the tax application. The tax application must specify a period, for which submission of the reporting will be suspended. Such period may not exceed 5 years.

However, in practice, the tax authority does not normally approve the five-year period of suspending the reporting at once. The accountants normally recommend firstly making an application for 1 year and making a new application until expiration of the period of suspension of activities for suspension of activities for the rest period. The probability of approval of an application made for the period of suspension of activities for 1 year will be higher than that of an application made for 3 years at once.

To extend the suspension of activities, it will be necessary to have an electronic digital signature (EDS) of the Company CEO. The Kazakhstan legislation does not prohibit making a tax application on paper signed by an authorized person (e.g. on the basis of a power of attorney); however, the practice shows that the tax authority refuses to accept the paper documents in every possible way and request for making applications through the taxpayer's webroom, for which purpose it is necessary to have the EDS. Therefore, it is necessary to take care of this issue in advance, so that the EDS be timely extended (re-issued) on the website of National Certification Authority of Kazakhstan [51] or the CEO will have to obtain a new EDS, which may be difficult in practice in case of cancelling labor relations with the CEO.

If the above documents have been provided in full and the taxpayer has no tax debts, the tax authority must approve suspension of submission of the tax reports within 3 business days of the date of receiving the tax application.

Information on suspension of activities must be published on the Internet resource of the tax authority not later than the date of passing such resolution and serves as a basis for not submitting the tax reporting for a period specified in the tax application [52].

Resumption of activities is also conducted through making of a tax application for resumption of activities in the taxpayer's webroom. The time required to consider such application is 3 business days.

A taxpayer may make the mentioned tax application for extension of suspension of activities for a new period, which must be specified in the application, not later than the date of completion of the period of suspension of activities. The total period of suspension of submitting the tax reporting subject to its extension must not exceed the limitation period (5 years). The extension is conducted for a period specified in the tax application subject to the total period (213.1 of the Tax Code). Accordingly, it is possible to make tax applications for extension several times; however, the total period must not be greater than 5 years.

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The information in this article shall not be treated as a legal advice. It shall only be intended for general information purposes. Please note that the AIFC acts are often amended and, accordingly, provisions of the AIFC acts could have been amended after the date of this publication.

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- [1] Specifics of setting up and registering companies in the territory of the AIFC [https://online.zakon.kz/Document/?doc\\_id=37939136](https://online.zakon.kz/Document/?doc_id=37939136).
- [2] Procedure for registration and licensing of private companies in the AIFC [https://online.zakon.kz/Document/?doc\\_id=33673225](https://online.zakon.kz/Document/?doc_id=33673225).
- [3] AIFC versus national legislation of the Republic of Kazakhstan [https://online.zakon.kz/Document/?doc\\_id=39030322](https://online.zakon.kz/Document/?doc_id=39030322).
- [4] 10 questions to a lawyer about registration of companies in the AIFC [https://online.zakon.kz/Document/?doc\\_id=33346889](https://online.zakon.kz/Document/?doc_id=33346889).
- [5] 10 questions to a lawyer about redomiciliation of companies to the AIFC [https://online.zakon.kz/Document/?doc\\_id=36380008](https://online.zakon.kz/Document/?doc_id=36380008).
- [6] Specifics of legal regulation of trusts under the laws of the Astana International Financial Centre [https://online.zakon.kz/Document/?doc\\_id=37465919&pos=6;-108#pos=6;-108](https://online.zakon.kz/Document/?doc_id=37465919&pos=6;-108#pos=6;-108).
- [7] 10 questions to a lawyer about licensing (authorization) in the AIFC [https://online.zakon.kz/Document/?doc\\_id=35411693](https://online.zakon.kz/Document/?doc_id=35411693).
- [8] Specifics of regulation of labor relations in the Astana International Financial Centre [https://online.zakon.kz/Document/?doc\\_id=34812020](https://online.zakon.kz/Document/?doc_id=34812020).
- [9] Specifics of legal regulation of personal data protection in the Astana International Financial Centre [https://online.zakon.kz/Document/?doc\\_id=36038815](https://online.zakon.kz/Document/?doc_id=36038815).
- [10] AIFC Insolvency [Regulations](#) No. 14 dated 20 December 2017 (amended as of 6 August 2019, in effect since 7 August 2019).
- [11] AIFC Insolvency [Rules](#) (IR) No. GR0008 dated 29 December 2017 (amended as of 2 December 2018, in effect since 1 March 2019).
- [12] For example, please see the translation suggested by Multitran <https://www.multitran.com/m.exe?l1=1&l2=2&s=insolvency>.
- [13] AIFC [Manual](#) Going to liquidation within the AIFC Insolvency Rules and Regulations (as of 24 June 2024).
- [14] AIFC Companies [Regulations](#) No. 2 dated 20 December 2017 (amended as of 28 December 2022, in effect since 1 January 2023).
- [15] AIFC Companies [Rules](#) (COR) No. GR0004 dated 29 December 2017 (amended as of 17 October 2021, in effect since 1 January 2022).
- [16] Code No. 120-VI of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the Budget (Tax Code)" dated 25 December 2017 (amended as of 31 March 2024).
- [17] Constitutional Law No. 438-V of the Republic of Kazakhstan "On the Astana International Financial Centre" dated 7 December 2015 ("**AIFC Constitutional Law**").
- [18] Civil Code of the Republic of Kazakhstan (General Part) adopted by the Supreme Council of the Republic of Kazakhstan on 27 December 1994 (amended as of 22 July 2024) ("**Civil Code**").
- [19] [Law](#) No. 176-V of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy" dated 7 March 2014 (amended as of 8 June 2024) ("**Bankruptcy Law**").
- [20] Please see paragraph 2.2 of the Voluntary Liquidation [Guidance](#): <https://en.adgm.thomsonreuters.com/rulebook/what-happens-when-companys-affairs-are-fully-wound>.
- [21] [Law](#) No. 326-1 of the Republic of Kazakhstan "On National Archive Fund and Archives" dated 22 December 1998 (amended as of 8 June 2024).
- [22] Article 130.2.2 of the Social [Code](#) No. 224-VII of the Republic of Kazakhstan dated 20 April 2023 (amended as of 8 June 2024).
- [23] Taxpayer's webroom <https://cabinet.kgd.gov.kz/knp/main/index>
- [24] Platform for electronic applications <https://eotinish.kz/ru>
- [25] Forms: [Application](#) to modify or withdraw a License to carry on Regulated Activities and [Application](#) form to modify or withdraw an Approved Individual's registration.
- [26] AIFC General [Rules](#) No. FR0001 dated 17 October 2017 (amended as of 9 December 2022, in effect since 10 December 2022).
- [27] AIFC Financial Services Framework [Regulations](#) No. 18 dated 20 December 2017 (amended as of 28 December 2022, in effect since 1 January 2023).
- [28] The IREG uses the term "members", because this act applies to different organizational legal forms of legal entities. For the purposes of convenience, we will replace it with "participants".
- [29] Form of the AIFC [Application](#) of Voluntary Winding Up.
- [30] The **Appointed Publications** mean a notice or any other document if (a) it has been published on the website, written in the English language, which is determined by the Registrar; or (b) it has been published in a newspaper common to the whole republic and issued in the English language in Kazakhstan, and in a newspaper in a country where the relevant company or any other corporate body has its principal place of business.
- [31] [List](#) of Insolvency Practitioners and Official Liquidators.
- [32] Form: AIFC [Application](#) for registration as the Insolvency Practitioner.
- [33] Corporate Liquidation in the DIFC: <https://www.mpelitesconsulting.com/liquidation-insolvency/difc-company-liquidation/>.
- [34] Please see paragraphs 1.13, 2.4 and 2.7 of the Voluntary Liquidation [Guidance](#): <https://en.adgm.thomsonreuters.com/rulebook/what-happens-when-companys-affairs-are-fully-wound>.
- [35] For example, please see the judgment No. 7527-21-00-2/2912 of the Specialized Inter-District Economic Court of Almaty dated 28 April 2021.
- [36] Form: [Notification](#) of the termination of the activity.
- [37] Normative [Resolution](#) No. 5 of the Supreme Court of the Republic of Kazakhstan "On Judicial Practice of Liquidating the Absent Legal Entities and an Absent Debtor and Legal Entities Carrying Out Their Activities in Gross Violation of Legislation" dated 18 June 2004.
- [38] For example, please see the judgment No. 7527-23-00-2/8771 of the Specialized Inter-District Economic Court of Almaty regarding the case dated 4 September 2023.
- [39] Please see Articles 88 and 89 of the DIFC Companies Law 2003: <https://dfsae.thomsonreuters.com/entiresection/6215>.
- [40] Notice of intention to strike off the register: <https://orderly.myafsa.com/articles/afsa-notice-afsa-o-ec-2023-1025-on-striking-artificial-investments-company-ltd-off-the-register>.
- [41] Public register <https://publicreg.myafsa.com/details/200240900223/>.
- [42] Notice of intention to strike off the register: <https://orderly.myafsa.com/articles/afsa-notice-afsa-o-ec-2023-0891-on-strike-off-versor-engineering-ltd>.
- [43] Public register <https://publicreg.myafsa.com/details/210340900050/>.
- [44] Strike off your limited company: <https://www.adgm.com/operating-in-adgm/obligations-of-adgm-registered-entities/closing-down-your-company>.
- [45] Please see Article 168 of the DMCC Company [Regulations](#) 2020: <https://dmcc.ae/members/support/knowledge-bank/compliance-and-regulations>.
- [46] Notice of intention to strike off the register: [https://orderly.myafsa.com/articles/afsa-notice-afsa-o-ec-2023-0603-\(hitbeat-music-inc.\)?search=router.query.search](https://orderly.myafsa.com/articles/afsa-notice-afsa-o-ec-2023-0603-(hitbeat-music-inc.)?search=router.query.search).
- [47] Public register: <https://publicreg.myafsa.com/details/211042900093/>.
- [48] Form: AIFC [Application](#) to suspend activity.
- [49] Form: AIFC [Application](#) on resumption of activities.
- [50] [Order](#) No. 160 of the Minister of Finance of the Republic of Kazakhstan "On Approval of the Tax Application Forms" dated 12 February 2018 (amended as of 22 November 2023).
- [51] National Certification Authority of the Republic of Kazakhstan <https://pki.gov.kz>.
- [52] Search for dormant companies <http://kgd.gov.kz/ru/app/sono-taxdeclaration-search-web>.