



CONSULTATION PAPER NO. 8
May 2019

PROPOSED AIFC EMPLOYMENT REGULATIONS

CONSULTATION PAPER NO. 8 PROPOSALS RELATING TO AIFC EMPLOYMENT AMENDMENT REGULATIONS

Why are we using this paper?

1. The draft of the *AIFC Employment Amendment Regulations* (the “Proposed Regulations”) was developed under paragraph 3 of article 4 of the Constitutional Statute of the Republic of Kazakhstan *On the Astana International Financial Centre 2015* and under subparagraph 3) of paragraph 9 of *The Structure of the Bodies of the Astana International Financial Centre*, adopted by resolution of the Management Council on 26 May 2016, as amended by resolution of the Management Council, *The Amendments and supplementations to the Structure of the Bodies of the Astana International Financial Centre*, adopted on 9 October 2017.
2. The Consultation Paper presents the Proposed Regulations to be adopted by the Governor of the AIFC with the rationale to improve the legal framework of minimum employment standards in AIFC.
3. This Consultation Paper No. 8 (“Consultation Paper”) seeks public comments on the Proposed Regulations.

Who should read this paper?

4. This Consultation Paper may be of interest to the current and prospective AIFC Participants, as well as all the AIFC Bodies and their organisations, individuals employed by AIFC Participants or AIFC Bodies or individuals seeking to be employed by AIFC Participants or AIFC Bodies, as well as legal advisors and human resources departments of the abovementioned entities, and generally, to all interested in providing their feedback to the Proposed Regulations.

How to provide comments

5. AIFC encourages interested parties to provide their views and comments in writing on the issues outlined in the Consultation Paper, using the table of comments provided in Annex B.
6. All comments should be provided to the following person:

Ms Aray Ospanova
AIFC Authority
55/16 Mangilik El ave., Block C 3-3
Nur-Sultan 010000, Kazakhstan
or emailed to a.ospanova@aifc.kz
7. You may as well identify your organisation in the provided comments.
8. By submitting your comments to the AIFC Authority you expressly consent to the processing by the AIFC Authority of the personal data pertaining to you, including, but not limited to the collection, recording, organisation, storage, adaptation or alteration, retrieval, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of thereof, as per the *AIFC Data Protection Regulations 2017*.
9. The AIFC Authority reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. Comments supported by reasoning and evidence will be given more weight by AIFC Authority.

What happens next?

10. The deadline for providing comments on the proposals in this Consultation Paper is 28 June 2019.

11. Once we receive your comments, we will consider if any further refinements are required to the Proposed Regulations annexed to this Consultation Paper at Annex A. Once the task is complete, the draft of the Proposed Regulations will be further processed in accordance with the requirements, stipulated in the *AIFC Regulations on AIFC Acts 2017*.
12. The Proposed Regulations are in draft form only and are, therefore, subject to change following consultation as mentioned above. Consequently, you should not act on it until the Proposed Regulations are formally enacted.

Defined terms

13. Defined terms are identified throughout this Consultation Paper by capitalisation of the initial letter of a word or each word in a phrase and are defined in *AIFC Employment Regulations*. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

AMENDMENTS TO AIFC EMPLOYMENT REGULATIONS

14. This Consultation Paper aims to explain the proposed amendments to the existing AIFC Employment Regulations (the “Regulations”). The proposed amendments to the Regulations retain the structure and contents of the Regulations, but in a number of instances existing principles are expanded or refined. The proposed amendments affect the following sections:
 - I. Section 18 - Pay Days
 - II. Section 27 - Vacation Leave
 - III. Section 29 - Taking vacation leave
 - IV. Section 32 - Entitlement to leave on National Holidays
 - V. Section 37 - Maternity Leave
 - VI. Section 40 - Right to return to work
 - VII. Section 63 - Pensions for Kazakhstan nationals
 - VIII. Section 64 - End-of-service gratuity
 - IX. Schedule 1 - Interpretation

I. Section 18 - Pay Days

15. The current Regulations approach to the calculation of the Basic Pay and Daily Wage implies consideration of the total number of calendar days. At the same time, the definition of the Daily Wage implies payment for work done or services provided during the Business Day. The Proposed Regulations introduce the approach applicable under the English Law where the calculation of the Basic Pay and Daily Wage is made for the total number of business days (normal working days) in the year. Moreover, the common national practice applied in Kazakh companies, as well as international companies operating in Kazakhstan, should be decently taken into consideration.
16. The current Regulations specify payment of Vacation Pay at the same time as payment of the Basic Pay. In accordance with the best international practice vacation pay should be paid prior to the start of the vacation leave. That said, in accordance with the International Labour Organisation (“ILO”) Convention No.132 (Holidays with Pay) “the holiday remuneration must be paid in advance of the holiday”. The proposed amendments add a separate provision on payment of Vacation Pay.

- Q1. Do you agree that total number of business days must be considered when calculating the Basic Pay and Daily Wage?**
- Q2. Do you have any concerns on payment of Vacation Pay prior to start of the vacation leave?**

II. Section 27 – Vacation leave

17. Whether the Vacation Leave is paid or not is not specifically regulated in the current Regulations. The Proposed Regulations suggest the wording “paid vacation leave” in subsection 27(1) to add some

clarification, leaving the decision on the amount of Vacation Pay to the discretion of the Employer.

18. The Proposed Regulations decrease the minimum duration of vacation leave to be taken by the Employee from 1 week to 3 business days. This amendment is proposed with the aim to optimise HR administration paperwork and provide flexibility for the Employees and the Employer in the planning of vacation leaves.

- Q3. Do you have any concerns on the clarification regarding payment of vacation leave?**
Q4. Do you have any concerns on the decrease of the duration of the minimum vacation leave for the Employee?

III. Section 29 – Taking vacation leave

19. The Proposed Regulations change the notice period that Employee has to respect before vacation leave arrangement. 7 calendar days of notice were replaced by 5 Business Days to ensure that both the Employer and the Employee are comfortable, and vacation leave paperwork and vacation pay are processed in due times.
20. The proposed Regulations also increase the notice period which Employer must respect in case if the Employer requires Employee to take the vacation leave on a specified date. 7 calendar days of notice were replaced by 15 Business Days.

- Q5. Do you have any concerns about the change of notice period the Employee must comply to arrange vacation leave?**
Q6. Do you have any concerns about the increase of the notice period that Employer must comply if Employer requires Employee to take vacation leave?

VI. Section 32 – Entitlement to leave on National Holidays

21. The wording in section 32(a) of the current Regulations is somewhat misleading since business days normally exclude National Holidays. The Proposed Regulations clarify that the Employee is entitled to leave on a National Holiday that falls on the days of the week which are normally regarded as business days.
22. Since the Basic Pay and Daily Wage are paid for the business days, and since section 32(c) of the current Regulations provides for payment or day in lieu for work on a National Holiday, section 32(b) in the current Regulations is odd.

- Q7. Do you agree with the proposed clarification regarding the entitlement to leave on a National Holiday?**
Q8. Do you agree that working on a National Holiday must be compensated for rather than a leave taken on a National Holiday?

V. Section 37 – Maternity leave

23. The Proposed Regulations guarantee 12 months as a minimum period of maternity leave with possible extension of this period stipulated by the Contract of Employment.

- Q9. Do you agree with the extension of maternity leave period?**

VI. Section 40 – Right to return to work

24. The Proposed Regulations offer the right of the Employee on maternity leave to return to work early subject to a 1 month written notice or any shorter period of notice that the Employer agrees to accept.
25. The Proposed Regulations introduce the obligatory benefit for 30 minutes feeding break in every 2 hours

of continuous work to Employee who has the child up to 1.5 years of age. Providing feeding breaks encourages female Employees to return to work earlier and is one of the minimum standards of the ILO Maternity Protection Convention No. 183 as of 30 May 2000, ratified by the Republic of Kazakhstan on 14 February 2012 in accordance with “№ 554-IV Law of the Republic of Kazakhstan on Maternity Convention No. 183 ratification”, which states that “a woman shall be provided with the right to one or more daily reduction of hours of work to breastfeed her child. These breaks of the reduction shall be counted as working time and remunerated accordingly.”.

- Q10. Do you have any concerns about the right of Employee on maternity to return to work earlier?**
Q11. Do you have any concerns regarding the feeding break benefit Employee is entitled for?

VII. Section 63 – Pensions for Kazakhstan nationals

26. Current Regulations exclude Kazakh Nationals from entitlement to an end-of-service gratuity, since Kazakh National Employees are enrolled in the obligatory pension scheme under Kazakhstan legislation. The Proposed Regulations provide Kazakh Nationals with the right for the end-of-service gratuity to promote equality of rights of all Employees.

- Q12. Do you have agree that all Employees should be entitled to an end-of -service gratuity?**

VIII. Section 64 – End-of-service gratuity

27. A better wording is suggested in the Proposed Regulations regarding the calculation of daily rate without changing the meaning of the whole provision.

- Q13. Do you agree with the new wording?**

IX. Schedule 1 – Interpretation

28. The Proposed Regulations refine the definition of “Business Day” adding clarification on National Holidays in compliance with the established norms in Kazakhstan.
29. The Proposed Regulations introduce new defined term “Vacation Pay”.

- Q14. Do you have any concerns about the change of “Business Day” definition?**
Q15. Do you agree the new term “Vacation pay” is necessary to be introduced?

LEGISLATIVE PROPOSAL

30. This legislative proposal contains the following:
- (a) Proposed Regulations (in Annex A);
 - (b) a table of comments to provide your views and comments on the Consultation Paper (at Annex B).



**AIFC EMPLOYMENT
AMENDMENT REGULATIONS 2019**

AIFC REGULATIONS No. __ of 2019

**_____ 2019
Nur-Sultan, Kazakhstan**

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PART 1: GENERAL

1. Name

These Regulations are the *AIFC Employment Amendment Regulations 2019*.

2. Commencement

These Regulations commence on __ _____ 2019.

3. Legislative authority

These Regulations are adopted by the Governor under paragraph 3 of article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

4. Interpretation

Terms used in these Regulations have the same meanings as they have, from time to time, in the AIFC Employment Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

PART 2: AMENDMENTS OF AIFC EMPLOYMENT REGULATIONS 2017

5. This Part amends the *AIFC Employment Regulations 2017*.
6. In section 18 (Pay days) –
 - (a) omit subsection (2), substitute:

“(2) The Basic Pay during a year must be calculated taking into account the total number of Business Days in the year.”;
 - (b) omit subsection (4), substitute:

“(4) The Employee’s Basic Pay for a Pay Period (other than any pay for vacation leave) must be paid within 5 Business Days after the end of the Pay Period.”;
 - (c) after subsection (4) insert:

“(4A) The Employee must be paid vacation leave pay for any vacation leave no later than 5 Business Days before the day the vacation leave starts.”;
 - (d) omit subsection (5), substitute:

“(5) For these Regulations, an Employee’s Daily Wage during a year must be calculated taking into account the total number of Business Days in the year.”.
7. In section 27 (Vacation leave) –
 - a) omit subsection (1), substitute:

“(1) Subject to section 30, an Employee is entitled to paid vacation leave for a minimum period of 20 Business Days per year or, if the Employee is entitled to vacation leave for a longer period under the Employee’s Contract of Employment, for that longer period.”;
 - b) omit subsection (4), substitute:

“(4) An Employer must allow an Employee who is entitled to vacation leave to take it in periods of 3 Business Days or more.”.
8. In section 29 (Taking vacation leave) –
 - (a) omit subsection (1), substitute:

“(1) If an Employee wishes to take vacation leave, the Employee must give the Employer at least 5 Business Days prior written notice, specifying the days on which leave is to be taken. The Employee’s entitlement to take vacation leave on those days is subject to any requirement imposed by the Employer under subsection (2).”;
 - (b) omit subsection (2), substitute:

“(2) An Employer may require an Employee to take vacation leave on specified days by giving at least 15 Business Days prior written notice to the Employee.”.
9. In section 32 (Entitlement to leave on National Holidays) –
 - (a) omit subsection (1), substitute:

- “(1) An Employee is entitled to leave on National Holidays that fall on the days of the week normally regarded as Business Days.”
- (b) omit subsection (2);
- (c) renumber subsection (3) as subsection (2).
10. Omit section 37(1) (Maternity leave), substitute:
- “(1) An Employee is entitled to maternity leave for a minimum period of 12 months. The Employee’s Contract of Employment may provide for the minimum period of maternity leave to be extended.”.
11. In section 40 (Right to return to work) –
- (a) omit the section heading, substitute:
- “40. Right to return to work and feeding breaks”;
- (b) omit subsection (2), substitute:
- “(2) An Employee on maternity leave is entitled to return to work:
- (a) at the end of the maternity leave; or
- (b) earlier, with prior written notice of at least 1 month to the Employer (or any shorter period of notice that the Employer agrees to accept).
- The Employee is entitled to return to the same role, or a suitable alternative role, on the same terms and conditions, and with same seniority rights, that she would have had if she not taken the maternity leave.”.
- (c) after subsection (3), insert:
- “(4) If a female Employee is caring for a child (or children) younger than 18 months old, the Employee is entitled to feeding breaks of 30 minutes in every 3 working hours. The Employee is entitled to be paid at 100% of the Employee’s Basic Pay for the feeding breaks.”.
12. Omit section 63 (Pension for Kazakhstan nationals), substitute:
- “If an Employee is a Kazakhstan National, the Employer must enrol the Employee in the Employee’s Kazakhstan pension scheme in accordance with the legislation of Kazakhstan.”.
13. Omit section 64(3) (End-of-service gratuity), substitute:
- “(3) The daily rate for the Employee’s Basic Pay is calculated by reference to the Basic Pay payable to the Employee by the Employer as at the date of termination of the Employee’s employment.”.
14. In section 1 (Definitions) of SCHEDULE 1: INTERPRETATION, omit definition of “Business Day”, substitute:
- “Business Day, for an Employee of an Employer, means a normal business day for the Employer other than National Holidays as defined in the Employee’s Contract of Employment”.
15. In section 1 (Definitions) of SCHEDULE 1: INTERPRETATION, after definition of “Processing” insert:
- “Vacation pay means the daily wage payable during the vacation leave.”.

Annex B

Format for providing public comments to AIFC Authority on Consultation Paper No.8 of 2019
AIFC EMPLOYMENT AMENDMENT REGULATIONS



Note 1: AIFC Authority reserves the right to publish, including on its website, any comments you provide. However, if you wish to remain anonymous, you must expressly request at the time of making comments that this should be the case.

Note 2: The column ‘comments on proposed policy’ relates to the policy explained in the Consultation Paper (“CP”). The column, ‘comments on proposed legislation’ refers to the draft legislation reflecting the proposed policy.

Note 3: It is possible that you may not have any comments, either on the proposed policy or legislation or may have comments on one and not the other. You may leave a blank column if you either agree to the proposed position, or you have no concerns relating it.

Note 4: If there are any ambiguities relating to the proposed policy or legislation, you may raise those in your comments.

Name of individual/entity providing comments	
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No.	Comments on proposed policy	Comments on proposed legislation
Q1. Do you agree that total number of business days must be considered when calculating the Basic Pay and Daily Wage?		
Q2. Do you have any concerns on payment of Vacation Pay prior to start of the vacation leave?		
Q3. Do you have any concerns on the clarification regarding payment of vacation leave?		
Q4. Do you have any concerns on the decrease of the duration of the minimum vacation leave for the Employee?		
Q5. Do you have any concerns on the change of notice period the Employee must comply to arrange vacation leave?		

No.	Comments on proposed policy	Comments on proposed legislation
Q6. Do you have any concerns about the increase of the notice period that Employer must comply if Employer requires Employee to take vacation leave?		
Q7. Do you agree with the proposed clarification regarding the entitlement to leave on a National Holiday?		
Q8. Do you agree that working on a National Holiday must be compensated for rather than a leave taken on a National Holiday ?		
Q9. Do you agree with the extension of maternity leave period?		
Q10. Do you have any concerns about the right of Employee on maternity to return to work earlier?		
Q11. Do you have any concerns regarding the feeding break benefit the Employee is entitled for?		
Q12. Do you have agree that all Employees should be entitled to an end-of-service gratuity?		
Q13. Do you agree with the new wording?		
Q14. Do you have any concerns about the change of “Business Day” definition?		
Q15. Do you agree the new term “Vacation pay” is necessary to be introduced?		