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AIFC

UK-KAZAKHSTAN CORPORATE GOVERNANCE WORKING GROUP REPORT

April 2020

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About Astana International Financial Centre (AIFC)

Astana International Financial Centre (AIFC) is a new financial hub for Central Asia, the Caucasus, the Eurasian Economic Union (EAEU), the Middle East, West China, Mongolia and Europe.

The AIFC's mission is to contribute to the sustainable economic development of Kazakhstan and the region, by fostering innovation, financial solutions and services, establishing an environment that delivers fair and transparent financial and capital markets, in which individuals and institutions act with integrity.

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CONTENTS

FOREWORD

The Astana International Financial Centre (AIFC) continues to make progress towards developing a capital markets hub to service the needs of companies and investors in Central Asia. As we start a new decade, the AIFC has the opportunity to strengthen its commitment to high standards of corporate governance to maintain its momentum and further enhance the attractiveness of its capital markets to issuers and investors alike.

We believe that good corporate governance practices by companies listed on the Astana International Exchange (AIX) and companies operating within the AIFC, are critical to the AIFC's long-term success and reputation. The UK is recognised as one of the global leaders when it comes to good corporate governance practices and regulation, building on the seminal Cadbury Code, which was launched over 25 years ago on 1 December 1992.[1]

For several years, the UK-Kazakhstan Corporate Governance Working Group has been meeting in both Nur-Sultan and London to share views on relevant corporate governance issues in order to assist the AIFC in developing a progressive approach towards implementing good corporate governance. This has been made possible by support from the UK Foreign and Commonwealth Office Prosperity Fund for which the Working Group is grateful.[2]

This high-level report summarises the UK's experience in progressing and developing a corporate governance framework and considers the growing importance of environmental, social and governance (ESG) investment in today's and tomorrow's capital markets. It presents proposed corporate governance principles for consideration by the AIFC, with a view to enabling the AIFC to promote itself as one of the world's most attractive financial centres for both investors and companies.

[1] FRC, 'History of the UK Corporate Governance Code', (February 2020), available at: https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code/history-of-the-uk-corporate-governance-code
[2] UK government, 'Cross-Government Prosperity Fund', (December 2015), available at: https://www.gov.uk/government/publications/cross-government-prosperity-fund-programme

The report also sets out the Working Group's rationale for the proposed high-level AIFC corporate governance principles. It is intended that the AIFC and the companies which adopt the corporate governance principles will apply them with flexibility, depending on the circumstances of the company concerned. At the forefront of the Working Group's deliberations has been the importance of enabling the AIFC to cater to both established and successful companies as well as those which are at an earlier stage in their development and continue to be entrepreneurially led. By doing so, the Working Group believes that its proposals provide a platform for not only the long-term success of the AIFC but also the sustainable prosperity of Kazakhstan and its citizens.

These days good corporate governance is no longer an optional extra, rather, it is an essential part of any world class financial centre's offering. Therefore, we hope that the proposed governance principles will receive favourable consideration to enable the momentum of the AIFC towards its objectives to be maintained by harnessing best practices in corporate governance and tailoring them to the diverse range of investment opportunities afforded by the Kazakh and other Central Eurasian economies.

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CORPORATE GOVERNANCE – A CORNERSTONE OF CAPITAL MARKETS

Put simply, corporate governance is the system of rules, practices and processes by which the company is directed and controlled.[3] Good corporate governance is critical to the sustainable success of any business enterprise. Conversely, poor corporate governance is often the gateway to corporate failure as well as the financial ruin of shareholders and those stakeholders who depended on the company for their economic well-being, including employees and suppliers.

Corporate governance, as we know it today, has developed steadily over the last 30 years. Over this period, boards of directors in the UK and many other Western economies have devoted an increasing amount of their time to focusing on how they govern the resources at their disposal in order to fulfil their company's purpose. Good corporate governance provides a decision making framework that should not only deliver attractive long-term returns to shareholders but also take account of the needs of other stakeholders such as suppliers, employees and regulators in doing so.

As time has gone by and experience has been gained, many boards have made improvements to their corporate governance. In doing so, they have developed a good understanding of corporate governance principles and as to what constitutes good practice. Also, the expectations of shareholders, investors and society as to the roles of companies and how they behave have steadily increased and played their part in shaping the development of good governance.

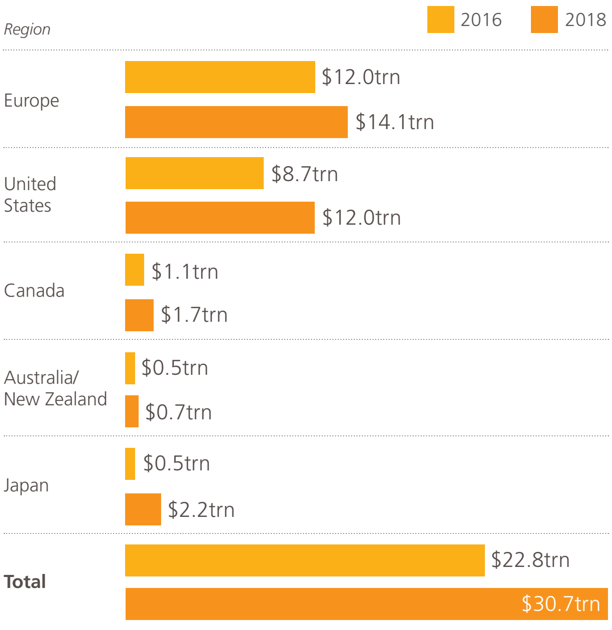
Importantly, good corporate governance ensures that businesses have effective decision making processes and controls in place. Also, it provides appropriate and effective channels of communication between the board, the executive leadership team, and shareholders and investors.

Although some global investors have taken a serious interest in corporate governance for many years, it is only within the last decade that the adoption of investor stewardship responsibilities has taken off. These responsibilities embrace holding the boards of investee companies to account, voting at shareholder meetings and reporting to their clients and beneficiaries. Investor stewardship serves to complement corporate governance and strengthen the accountability of boards.

Within the last two or three years there has been a dramatic increase in environmental, social and governance (ESG) investing, which refers to investment strategies that take into account both a company's ESG credentials and those of the market where the company's shares are listed. According to the Global Sustainable Investment Alliance, ESG investment strategies accounted for more than $30trn in 2018 and some estimates say it could reach $50trn over the next two decades.[4]

Figure 1: Global sustainable investing by region

Source: CNBC



[3] ICSA – The Corporate Governance Institute, 'What is corporate governance?', (March 2020), available at: https://www.icsa.org.uk/about-us/policy/what-is-corporate-governance

[4] CNBC, 'Your complete guide to investing with a conscience, a $30 trillion market just getting started', (December 2019), available at: https://www.cnbc.com/2019/12/14/your-complete-guide-to-socially-responsible-investing.html

Not only do investors see good governance as a positive factor when assessing companies for investment, they are increasingly assessing the credit and governance risk of companies which are perceived to have poor governance. Such companies can struggle to raise capital in public markets and their reputation can be tarnished. This was recently illustrated by the plight of WeWork, which had to cancel its plans for a US listing in September 2019 due, to a large extent, to scepticism about its business model and corporate governance.[5]

Leading global investors have been outspoken regarding the importance of governance in their investment decision making processes and capital allocation. For example, Larry Fink, Chairman and CEO, BlackRock said:

“a company cannot achieve long-term profits without embracing purpose and considering the needs of a broad range of stakeholders. Given the growing investment risks surrounding sustainability, we will be increasingly disposed to vote against management and board directors when companies are not making sufficient progress on sustainability-related disclosures and the business practices and plans underlying them.”

To assist the development of good corporate governance practices and to provide a basis for regulation, most leading financial centres have adopted corporate governance principles to assist them in raising standards in their markets and to provide a basis for effective accountability to shareholders and stakeholders.

Corporate governance is a cornerstone of today’s capital markets. Without good corporate governance practices, markets would crumble, whereas markets with strong, robust, principles-based governance practices have the potential to flourish, attracting quality companies for listing and quality investors alike. Because of this, we recommend that the AIFC adopts corporate governance principles in line with international best practices, in order to demonstrate high standards of corporate governance as an enduring hallmark. The Working Group proposes a set of 13 high-level principles that could help achieve this (see page 12).

[5] The Telegraph, ‘WeWork faces cash crunch after pulling float plans’, (September 2019), available at: https://www.telegraph.co.uk/technology/2019/09/30/wework-files-formal-request-withdraw-ipo-plans/

THE DEVELOPMENT OF CORPORATE GOVERNANCE IN THE UK

On 1 December 1992, the Cadbury Committee Report on the 'Financial Aspects of Corporate Governance' was published.[6] This marked the beginning of the UK's principles-based approach to corporate governance, which endures to this day. The Committee had been set up 18 months earlier, following a series of high-profile corporate scandals, to address concerns about the low level of confidence in both financial reporting and the ability of auditors to provide the safeguards which the users of companies reports sought and expected. The Cadbury Committee Report and its Code of high-level principles paved the way for a series of reviews addressing a range of contemporary corporate governance issues such as executive compensation and internal controls. In due course, the resulting codes were amalgamated by the Financial Reporting Council (FRC) when it published the Combined Code in 2003.

Following the global financial crisis, which came to a head in 2008/09, the FRC undertook a critical review of the Combined Code and the UK's overall approach to corporate governance. This resulted in the 2010 UK Corporate Governance Code, as well as the inaugural UK Stewardship Code, which addressed the stewardship responsibilities of institutional investors.[7,8]

The UK Corporate Governance Code defined the purpose of corporate governance as being to facilitate effective, entrepreneurial and prudent management that can deliver long-term corporate success.[9] The FRC emphasised that the Code's function should be to help boards discharge their duties in the best interests of the companies but it also signalled the importance of the general principles embedded in the Code, which are there to guide board behaviours.

Since then, the UK Corporate Governance Code has been reviewed and updated approximately every two years.[10]

The UK Corporate Governance Code applies to all premium listed companies. The FRC also recognises the important economic contribution of large private companies – and the importance of them having effective corporate governance. Therefore, Sir James Wates, who chairs one of the UK's largest private companies, was asked by the UK government to develop principles to improve corporate governance standards at private companies and, in December 2018 'The Wates Corporate Governance Principles for Large Private Companies' were published by the FRC.[11] They apply to companies that either have more than 2,000 employees and/or a turnover of more than £200m and a balance sheet of more than £2bn.

The key features of the approach to governance and stewardship in the UK have been the use of high-level principles, the recognition of the importance of transparency and accountability, and using a consultative approach.

[6] ECGI, 'Cadbury Report (The Financial Aspects of Corporate Governance)', (December 1992), available at: https://ecgi.global/code/cadbury-report-financial-aspects-corporate-governance
[7] ECGI, 'The UK Corporate Governance Code', (May 2010), available at: https://ecgi.global/code/uk-corporate-governance-code
[8] FRC, 'The UK Stewardship Code', (July 2010), available at: https://www.frc.org.uk/getattachment/e223e152-5515-4cdc-a951-da33e093eb28/UK-Stewardship-Code-July-2010.pdf
[9] ECGI, 'The UK Corporate Governance Code', (May 2010), available at: https://ecgi.global/code/uk-corporate-governance-code
[10] FRC, 'The UK Corporate Governance Code', (July 2018), available at: https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf
[11] FRC, 'The Wates Corporate Governance Principles For Large Private Companies', (December 2018), available at: https://www.frc.org.uk/getattachment/31dfb844-6d4b-4093-9bfe-19cee2c29cda/Wates-Corporate-Governance-Principles-for-LPC-Dec-2018.pdf

Some of the emerging issues in UK corporate governance currently include:

– Discharging the legal responsibilities of directors under Section 172 of the 2006 UK Companies Act in particular, and their responsibilities to stakeholders such as employees, suppliers and customers.[12]

– The governance of diversity in its myriad of forms, including gender diversity, ethnic diversity and demographic diversity.

– Improving audit quality. This was recently addressed by Sir Donald Brydon, whose report was published in December 2019.[13] In it, he made a number of far-reaching recommendations to the UK government.

– Cyber risk: how to manage it and how to respond appropriately when a company has been hacked.

– Climate change risk management accountability and disclosure.

Also, at the request of the UK government, Sir John Kingman conducted an independent review of the FRC. In his report, published in 2018, he recommended that the FRC be replaced by Audit, Reporting and Governance Agency (ARGA), which, unlike the FRC, will be a regulatory authority with a statutory footing and, thereby, have significantly greater powers of enforcement.[14] This, and many of Sir John's other recommendations, were accepted by the UK government. Therefore, the FRC is currently transitioning into ARGA and, as a consequence, is significantly increasing its regulatory resource.[15] When the transition is completed, ARGA should serve to strengthen confidence in business.

On the global stage, the UK is generally recognised as a leader in corporate governance. Although there have been significant corporate failures in the UK from time to time, the approach to corporate governance taken in the UK continues to enjoy the respect of many jurisdictions, a significant number of whom have adapted the approach taken in the UK to their own markets and financial centres.

[12] Legislation.gov, 'Companies Act 2006', (November 2006), available at: http://www.legislation.gov.uk/ukpga/2006/46/section/172
[13] UK government, 'Assess, assure and inform', (December 2019), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852960/brydon-review-final-report.pdf
[14] UK government, 'Independent review of the Financial Reporting Council (FRC) launches report', (December 2018), available at: https://www.gov.uk/government/news/independent-review-of-the-financial-reporting-council-frc-launches-report
[15] FRC, 'The FRC sets out its transition pathway', (May 2019), available at: https://www.frc.org.uk/news/may-2019/the-frc-sets-out-its-transition-pathway

THE RATIONALE FOR THE PROPOSED AIFC CORPORATE GOVERNANCE PRINCIPLES

The AIFC's goal is to support Kazakhstan's policy of modernisation and growth, make the business environment more friendly, attract capital to accelerate development and provide companies with the most advanced, secure and effective investment instruments. Its mission is to contribute to the sustainable development of Kazakhstan and Central Eurasia by fostering innovative financial services and products.[16]

To these ends, we believe that it would be beneficial for the AIFC and its constituents to adopt high-level principles of corporate governance which are fully aligned with and supportive of the AIFC's goal and its mission.[17]

One of the objectives of the AIFC is to attract investment into the Kazakhstan economy by creating an attractive environment. For major global institutional investors, good governance and stewardship are no longer optional extras. Rather, they evaluate corporate governance as a critical component in their risk assessments of companies and of the markets in which they do invest in or might invest in. As part of their stewardship responsibilities, they are demonstrating an increased willingness to engage with companies and policymakers with a view to playing their part in progressively raising standards of corporate governance.

By adopting globally respected principles of corporate governance, which are underpinned by an effective enforcement or recognition mechanism, the AIFC will enable those companies who comply with the spirit of the principles to enjoy over time a lower cost of capital than might otherwise be the case. This can be done by virtue of their enhanced corporate governance risk profile and the consequential increase in capital supply. This economic incentive, of itself, will attract companies to engage with the AIFC and its constituents, list on the AIX and contribute to the Kazakhstan's prosperity.

Through embracing, and being seen to embrace, the proposed principles of corporate governance, the AIFC's reputation and global standing will be enhanced. It will be able to refer on an on going basis to its principles in a manner that will serve to demonstrate its integrity and the high standards it seeks to uphold. Furthermore, should the AIFC wish to update or revise any of its governance rules, it will be helpful for the Centre to have its key governance provisions to be clearly set out. If the principles are followed up with a strategic communications plan once they are launched, this will further enable the AIFC to raise its profile, strengthen its brand globally and enjoy the benefits which accrue therefrom.

In developing the proposed principles, the Working Group gave careful consideration for a number of factors.

Should the AIFC take a rules-based or a principles-based approach?

A principles-based approach to corporate governance implies that boards should adhere to the spirit of the principles rather than the letter of the rules (as required by a rules-based approach). This has a number of advantages. Firstly, it helps to engender an open spirit of effective communication between the shareholders and the company. Secondly, it reduces the cost of conducting business and is more likely to stimulate innovation and the overall competitiveness of companies. Thirdly, principles can be applied to the diverse set of situations and provide flexibility for how a company's board organises itself and discharges its duties. Furthermore, it is probable that companies and their advisers will find ways around a rules-based approach, thereby undermining its credibility. Accordingly, it is felt that a principles-based approach is far more suitable and attractive for the AIFC than a rule-based approach.

Should companies be required to adopt a 'comply or explain' approach or an 'apply or explain' one?

'Comply or explain', the approach adopted in the UK Corporate Governance Code, can encourage boards of directors to 'box tick' rather than comply with the spirit of the principles underlying the code. Furthermore, the explanations provided by companies in the UK when they do not comply with the provisions supporting the principles have often tended to be boilerplate in nature and failed to provide a sufficiently meaningful account to shareholders and stakeholders.

[16] AIFC, 'Objectives', (March 2020), available at: https://www.aifc.kz/tseli/
[17] AIFC, 'The AIFC and associated institutions – what is the objective of the AIFC?', (March 2020), available at: https://www.aifc.kz/faq

In contrast, the 'apply or explain' approach, which was adopted in respect of the Wates principles and the UK Stewardship Code, provides a basis for the provision of much more meaningful explanations as to how a board has applied the principles. Also, it helps to provide companies with relatively more flexibility, which enhances the prospect of corporate governance principles being tailored thoughtfully to the specific circumstances of the company concerned. Therefore, we support 'apply or explain' being used as a primary approach in relation to the AIFC corporate governance principles, noting that there may be certain circumstances when 'comply or explain' might be more appropriate.

Off-the-shelf principles, or principles tailored to the specific needs of the AIFC and its constituents?

Many regulators and exchanges have adopted governance codes based on the comply or explain model. The principles in many of the codes are often similar to (but not necessarily exactly the same) as those used in the UK corporate governance code. Nonetheless, we believe it is in the best interest of the AIFC and its constituents to have a tailored set of principles. In this regard, it can both adopt and adapt some of the high-level principles which have been used in other jurisdictions and, at the same time, develop principles specifically designed to meet the needs of the AIFC and its constituents.

Should the principles focus solely on shareholders, or on key stakeholders too?

Until recently, governance has focused on maximising long-term sustainable shareholder value. However, in many western economies there has been a shift from a shareholder centric model of governance to a stakeholder one. This change has largely reflected changes in societal values, which have tended to become more inclusive and thereby more attuned to the needs of stakeholders, not just shareholders. Last year, the American Business Roundtable, a highly influential US business group, issued a statement redefining the purpose of a corporation, away from shareholder primacy to serving the needs of all stakeholders which was signed by 181 CEOs of leading US companies.[18,19] We believe that it is both appropriate and in the best interests of the AIFC and its constituents for its high-level principles to respect the primacy of shareholders but also explicitly recognise the responsibilities of a board to a company's stakeholders, irrespective of the legal responsibilities.

Should the principles be designed primarily for two-tiered boards such as those in Germany and China, or one-tier boards, which are the norm in the UK and the US?

Increasingly, investors and regulators are calling into question the effectiveness of two-tier boards, whose directors often tend to have an insufficiently good understanding of what is going on within the organisation, which undermines the effectiveness of corporate governance. In contrast, the greater interaction that takes place between executive and non-executive directors of unitary boards tends to result in a better strategy, better corporate performance, and better communicative relationships with a company's shareholders and stakeholders. Therefore, we recommend that the AIFC's principles should be designed primarily for unitary boards. If necessary, the principles can be adapted for two-tiered boards, on a case-by-case basis so that they remain both are relevant, meaningful and effective.

Review and regulation

Over and above the structural issues considered above, it is very important that the AIFC corporate governance principles be maintained and reviewed at regular intervals to ensure they remain relevant, effective and proportionate: also, that they are monitored and regulated – and seen to be monitored, with a view to maintaining high standards of good corporate governance over the long term.

[18] Business Roundtable, 'About Us', (March 2020), available at: https://www.businessroundtable.org/about-us

[19] Business Roundtable, 'An Economy That Serves All Americans', (August 2019), available at: https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

THE WORKING GROUP'S PROPOSED AIFC CORPORATE GOVERNANCE PRINCIPLES

01	Companies should be led by a board that promotes the long-term success of the company, generating value for its shareholders, acting responsibly towards key stakeholders, and in the case of companies operating in Kazakhstan contributing to the sustainable economic development.
02	Companies should have an effective board which is collectively accountable for ensuring that the company is managed prudently and effectively.
03	The board should establish the company's mission, purpose, values and strategy, and satisfy itself that these and its culture are aligned.
04	The board should set, and its members should comply with, high standards of ethical behaviour, and hold management accountable for delivering these standards throughout the organisation.
05	The board should ensure that there is a clear division of responsibilities between the non-executive directors and executive management, and that no one individual has unfettered powers of decision making.
06	Boards should be large enough to accommodate all necessary skills and competences, but still be small enough to promote cohesion, flexibility and effective participation.
07	The board, and its committees, should have an appropriate balance of skills, experience, independence and knowledge of the company's business and adequate resources, including access to expertise as required and timely and comprehensive information relating to the affairs of the company.
08	The board should ensure that the company's financial and other reports present an accurate and understandable assessment of the company's financial position and prospects by ensuring that there are effective internal risk control and reporting requirements.
09	The board should be responsible for setting the risk appetite of the company. Risk appetite refers to the amount of risk that a board is willing to take on in order to achieve its strategic objectives.
10	The board should ensure that the company has a risk management, internal control and compliance framework which is effective, well defined and well integrated.
11	The board should ensure that there is a formal and rigorous annual performance evaluation of the board, its committees and individual directors. Annual evaluation of the board should include composition, diversity and effectiveness. Individual director evaluation should determine whether directors are contributing effectively to the work of the board and its committees.
12	The board should have a formal and transparent procedure for developing policies on director and executive remuneration. No director should be involved in deciding his or her own remuneration.
13	The board should ensure that the remuneration policies and practices are designed to support strategy and are aligned with the long-term interests of the company.

WORKING GROUP RECOMMENDATIONS ON REGULATING AND MAINTAINING THE PROPOSED AIFC CORPORATE GOVERNANCE PRINCIPLES

Market participants and prospective market participants, as well as other stakeholders, will attach due importance to the proposed principles being regulated – and being seen to be regulated – in an effective and pragmatic way that seeks to uphold high standards of good governance. Accordingly, it is recommended that the AIFC and its constituents agree an appropriate mechanism for regulating and enforcing the proposed corporate governance principles. It should be as transparent as possible, to help engender trust and confidence in the principles and their enforcement. Furthermore, the mechanism should provide for those who have responsibility for regulation to report publicly on an annual basis about their activities and future direction, as well as any other information that may be deemed relevant at the time. For the avoidance of doubt, any ongoing enforcement investigations and reviews should be noted in the annual report and brought to the market's attention in a timely manner but they should not be subject to any detailed transparency until such time as the regulatory outcome has been determined. To do otherwise might be prejudicial.

It would be desirable for the enforcement mechanism to provide that investigations and reviews are commenced and completed as quickly as possible. In the UK, the FRC previously came under some criticism for the length of time taken to complete certain investigations.[20] The FRC recognised that it needed to improve the speed of its investigations and has set itself a key performance indicator to conclude investigations within two years.[21] Therefore, we believe it is important that the performance of the enforcement mechanism be kept under close review. Furthermore, that those responsible for enforcement should regularly be held accountable by the AIFC.

The enforcement mechanism should also incorporate guidance regarding its scope – for example, whether it will have powers of enforcement over corporate advisors – and the nature and amount of enforcement tools, which need not necessarily be financial. We believe enforcement should be both proportional and applied consistently between different cases.

We recognise that this approach to enforcement will take time to implement and will not be easy to establish given the need to change board culture and work with stakeholders to encourage a good understanding of benefits of good corporate governance. We therefore welcome the AIFC proposal to create the AIFC 'Corporate Governance Institute' (ACGI) as an important step in the AIFC's journey towards embedding good corporate governance in the centre. ACGI will have a broad mandate to promote and maintain the principles, as well as offer training to the AIFC community and other quasi-government entities and private businesses in Kazakhstan.

In addition to enforcement, it is desirable that the proposed AIFC corporate governance principles be kept under regular review to help ensure that they remain relevant and effective. The UK corporate governance code is generally reviewed every two years by the FRC, using a consultative approach that enjoys the support of market participants. As well as helping to ensure that the proposed Code remains up-to-date, it also serves to keep the market participants abreast of emerging good corporate governance practice and remind them of the role and relevance of the proposed principles.

A key component to making the proposed AIFC corporate governance principles successful is the training of company directors – both executive and non-executive – and corporate advisors. This would help to ensure that they have a good understanding of the proposed corporate governance principles and how they should be applied. Also, when it comes to corporate governance, good practice is constantly evolving. Consequently, it is important that company directors keep themselves abreast of emerging good governance practice in order to fulfil their responsibilities effectively. We urge the AIFC to address directors' training at an early stage, not least to help ensure that appropriate training platforms for directors are available at the outset, which would help to enable a successful launch of the principles.[22]

Our recommendations on regulation and enforcement will be considered by the AIFC when the market is sufficiently mature, as is the case in developed countries.

[20] UK government, 'Independent Review of the Financial Reporting Council', (December 2018), paragraph 2.55, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/ attachment_data/file/767387/frc-independent-review-final-report.pdf

[21] ibid., 2.57 & 2.58,

[22] For example, see the corporate governance and training modules offered by ICSA – The Chartered Governance Institute, available at: https://www.icsa.org.uk

AIFC NEXT STEPS IN PROMOTING AND MAINTAINING THE PROPOSED AIFC CORPORATE GOVERNANCE PRINCIPLES

A 2017 EBRD study on corporate governance in Kazakhstan found that there is too much emphasis on compliance.[23] Therefore, the AIFC corporate governance principles have been designed to ensure that there is proper balance between performance and conformance.

Although the principles and its guidance are applicable to the AIFC Authority and its 100%-owned subsidiaries on an 'opt-in' basis (in full or in part), it is recommended that the principles will receive broader adoption both within the AIFC and by other Kazakh companies over time.

It is proposed to create the ACGI, which will have a broad mandate to promote and maintain the principles, as well as offer training to the AIFC community and other quasi-government entities and private businesses in Kazakhstan. Therefore, it is recommended that the ACGI would offer the following services:

1. Promote high quality corporate governance in the AIFC. Given the diversity of the AIFC Authority's 100%-owned subsidiaries in terms of size and scope of activities, the ACGI should work with subsidiary boards to selectively opt-into those principles that are considered relevant to promote the long-term sustainable success of the subsidiary and ultimately the AIFC.
2. Certify and grade the application of the principles through a system of certificate(s) of good corporate governance. AIFC Authority subsidiaries which opted-into the principles should be able to apply to the ACGI annually for formal certification in recognition of the way they have applied the principles. This should further contribute to the adoption of sound corporate governance practices at the AIFC.
3. It is desirable that the proposed AIFC corporate governance principles be kept under regular review to help ensure that they remain relevant and effective. The UK corporate governance code is generally reviewed every two years by the FRC, using a consultative approach that enjoys the support of a broad group of stakeholders. As well as helping to ensure that the proposed Code remains up to date, it also serves to keep the market participants abreast of emerging good corporate governance practices and remind them of the role and relevance of the proposed Principles.
4. Finally, in the spirit of continuous improvement and the development of company directors, the ACGI will promote the adoption of rigorous and tailored externally facilitated board and director evaluations by all companies adopting the principles. Boards that commit to regular board and individual director evaluation tend to outperform boards that do not in terms of board diversity, greater accountability and effectiveness of decision making.

[23] EBRD, 'Country assessments: Kazakhstan', (September 2018), available at: https://www.ebrd.com/documents/oce/pdf-transition-report-201718-kazakhstan.pdf?

CONCLUSION

A robust and effective approach to corporate governance is a vital foundation of a successful international financial centre. It attracts global investors, provides a framework for boards of directors to govern their companies and promotes the centre's values and culture.

The UK-Kazakhstan Corporate Governance Working Group believes that the time is now right for the AIFC to adopt the high-level corporate governance principles proposed in this report. They will enable the AIFC to not only enhance its competitiveness but also raise its reputation within Kazakhstan, Eurasia and the rest of the world. As well as adopting the proposed principles, it is important that the AIFC also develops an effective regulatory and enforcement mechanism to help underpin the integrity of the principles and how they operate.

The UK is a recognised global leader in corporate governance. The Working Group has been able to draw on the UK's extensive experience and expertise during its discussions and in developing its recommendations and views, which we hope will receive favourable consideration. We believe they will enable the AIFC to fulfil its full potential in the ecosystem of global capital markets.

It is important to bear in mind that the proposed AIFC corporate governance principles are a means to an end, rather than an end in themselves. They are to assist in enabling the AIFC to attract investment into the Kazakhstan economy by creating an attractive environment for investment. Thereby providing an essential ingredient for the sustainable long-term prosperity of Kazakhstan and its citizens.

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Co-Chairs: AIFC / TheCityUK

- ACCA
- AIFC Authority
- AIFC Court
- Astana Financial Services Authority (AFSA)
- Astana International Exchange (AIX)
- CFA Institute
- CISI
- FRC
- Michelmores
- Norton Rose Fulbright
- PwC

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