



Special Legal Alert

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Recent changes in Kazakhstan
currency legislation

Dear friends

In this special legal alert, we discuss the latest and most significant amendments envisaged by the Currency Regulation and Currency Control Law (the "Law"), which deal with currency residence status and introduce a number of new provisions, as follows:

Currency Residence Status:

- For the purposes of currency control, the following entities are recognised as **residents**:
 - a) branches of foreign financial organisations
 - b) branches (representative offices) of foreign non-financial organisations with permanent establishments in Kazakhstan, as prescribed by the Tax Code
- By the same token, the following entities are recognised as **non-residents**:
 - a) legal entities and organisations that have not created a legal entity, which are incorporated overseas and located outside of Kazakhstan; as well as branches (representative offices) in Kazakhstan whose operations do not lead to the creation of a permanent establishment in accordance with the Tax Code
 - b) branches (representative offices) of foreign non-financial organisations whose non-resident status is established by treaties (in accordance with a Kazakhstan Government act) concluded on behalf of Kazakhstan with foreign organisations, and which entered into force before the Law

New Currency Regulation Provisions:

- The Law, among others, permits transactions between:
 - a) branches (representative offices) of foreign organisations
 - b) residents authorised to conduct currency transactions with residents by laws of Kazakhstan or prior to the Law being enacted, by presidential acts
 - c) professional securities market entities performing currency transactions on behalf of clients, individuals or legal entities to transfer money and financial instruments from accounts (to accounts) to record and store money and financial instruments belonging to customers, to execute and terminate brokerage service contracts

- d) the recipient of minerals on behalf of the State, which, in accordance with the Tax Code, it receives in consideration of a subsoil user's execution of a tax liability in kind, and connected with the transportation, storage and sale of such minerals
 - e) individuals for goods, work and services in the Khorgos International Centre for Cross-Border Cooperation Special Economic Zone
- Foreign exchange operations carried out in the Astana International Financial Centre are outside the legal remit of the Law and related to financial and professional services in the Astana International Financial Centre are covered by acts of the Astana International Financial Centre in consultation with the National Bank.
 - The National Bank or authorised banks will monitor currency transactions by assigning registration numbers (a record of registration instead of registration and notification) to:
 - a) foreign exchange contracts for the movement of capital (with the exception of authorised banks and branches (representative offices) of foreign organisations)
 - b) accounts of resident legal entities (other than authorised banks and branches (representative offices) of foreign organisations) in foreign banks
 - c) export/import currency agreements settled through the accounts specified in paragraph b) above
 - The National Bank receives notification of currency transactions conducted, including on behalf of clients, from authorised banks in the form of reports.
 - Authorised banks provide notification of currency transactions conducted if their value equals or exceeds the threshold value as reported by both resident and non-resident customers, when making payments and/or cash transfers.
 - The notification threshold for currency payments and/or transfers, currency transaction codes and the procedure for submitting the information specified in this paragraph are determined by the rules for performing foreign exchange operations in Kazakhstan.
 - A resident legal entity (with the exception of a bank and branch or representative office of a foreign organisation) will also be obliged to notify the National Bank if an account in a foreign bank that

has been assigned a registration number changes or closes.

- Importantly, resident individuals are not required to notify the National Bank of their accounts in foreign banks; instead authorised banks will notify it when transferring cash from individuals' accounts to foreign bank accounts.
- The Law also requires branches (representative offices) of foreign non-financial organisations with operations in Kazakhstan of more than one year to provide the National Bank with information on transactions with residents and non-residents in the form of reports, including at the National Bank's request.
- To prevent the withdrawal of funds from the country, authorised banks should request a resident's authorisation to transfer money for certain currency transactions (for example, interest-free financial loans of over 720 days by a resident to a non-resident) with the restrictions established by the Law. The above permission is drafted in free form. A single authorisation is permitted for all currency payments and/or cash transfers under a single

foreign exchange contract whereby foreign exchange operations may lead to the withdrawal of cash from Kazakhstan. The law has also established a list of currency transactions that may be used to withdraw cash from Kazakhstan.

- **The New On Currency Regulation and Currency Control Law will come into force on 1 July 2019, with the exception of certain provisions, which will be enacted from 16 December 2020.**
- In addition to the Law, the President has also approved amendments to a number of legislative acts dealing with currency regulation and currency control; the risk-based supervision of financial organisations; consumer protection in the financial services market, and improvements to National Bank performance. A significant change has been the National Bank's introduction of a motivated assessment concept and supervisory response measures in relation to banks and organisations performing certain types of banking operations, bank holdings, their managers, organisations comprising banking conglomerate, major bank participants, persons meeting the characteristics of major bank or bank holding participants.

- This document provides an in-depth analysis of the most significant amendments and changes planned to be introduced into legislative acts regulating business across a wide range of sectors. Our main objective is to inform our active and potential clients of the new developments in various areas of law.
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 - Licensing and Regulatory
 - Real Estate
- ▶ Legal Due Diligence
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