Currency Regulations

Goals and Tasks of Currency Regulation and Control

Currency regulation in Kazakhstan is regarded as an activity of authorized state bodies (currency regulation bodies) on the procedure for carrying out currency transactions, rights of possession, usage and disposal of currency values, aiming to ensure protection and stability of the national currency and payment balance of the country, formation and development of the internal currency market.

The main currency regulation body is the National Bank of the Republic of Kazakhstan. Also the currency regulation activities could be executed by the Government of Kazakhstan and other authorized state bodies, which contemplate their acts with National Bank (NB RK).

Among the basic tasks of currency regulation it is necessary to list:

- Development of normative legal acts determining principles and procedures for carrying out currency transactions in the territory of the RK, rights and duties of currency transactions subjects, responsibilities for violation of currency legislation;
- Control over observance of currency legislation (currency control); and
- Situation analysis of the currency market, volumes and structure of currency transactions carried out.

An important component of the system of currency regulation is the currency control. The goal of the currency control is to ensure observance of legislation by residents and non-residents of the Republic of Kazakhstan in carrying out currency transactions by them.

Basic directions of the currency control include:

- Determination of conformity of currency transactions to the current legislation and availability of licenses and certificates necessary for their realization;
- Control over validity of payments in foreign currency in a part of their conformity to contracts’ clauses; and
- Control over completeness and objectivity of accounting and reporting on currency transactions.

The currency control in Kazakhstan is carried out by bodies and agents of the currency control. The currency control bodies are state bodies entitled to perform functions of currency regulation according to the legislation (the National Bank of Kazakhstan, customs bodies, etc.). Agents of currency control are authorized banks and authorized organizations carrying out certain types of bank operations.

Normative Legal Base on Currency Regulation

Currency regulation in Kazakhstan is based on the following normative acts:

Law of the Republic of Kazakhstan On Currency Regulation No.54-I 3PK (The Law), dated December 24, 1996, is a basic act on issues of currency regulation determining principles and procedures for carrying out currency transactions in the territory of the Republic of Kazakhstan, rights and duties of currency transactions subjects, responsibilities for violation of currency legislation.

The basic normative legal act of the National Bank of Kazakhstan regulating the procedure for carrying out currency transactions and determining basic principles of currency control are the Rules for carrying out currency operations in the Republic of Kazakhstan, approved by resolution of the Government of RK No.115, dated April 20, 2001.

The decree of the President of the Republic of Kazakhstan On National Bank of the Republic of Kazakhstan having the force of a law, dated March 30, 1995, determines tasks, principles of activity, legal status and powers of the National Bank of Kazakhstan, including the sphere of currency regulation and control.
The procedure of licensing, reasons for suspension of action and recall of licenses for realization of activity connected to the use of foreign currency are established by Law of the RK On Licensing dated April 17, 1995, No. 2200 and by Regulations on procedure of licensing activities connected to the use of foreign currency, approved by resolution of the NB RK Board No.130, dated April 24, 1997.

The procedure for carrying out and organizing registration of operations connected to capital movement, providing for transfer (flow) of means from non-residents in favor of residents is determined by the Rules for registration of currency transactions connected to capital movement, approved by a resolution of the NB RK Board No.88, dated March 31, 2001.

Residency

The Law provides the interpretation of residency different than given in Tax Legislation. According to the Law residents are:

- Individuals who have the permanent place of living in the Republic of Kazakhstan including individuals who are temporarily outside the borders of Kazakhstan and individuals who are on public services abroad;
- Legal entities created according to the legislation of the RK, which are situated in Kazakhstan, including all their branches, representative offices in the RK and abroad.
- Non-residents are all those individuals and legal entities, which are not mentioned as residents.

Currency Operations

Currency operations mean operations on transfer of property and other rights on currency valuables and operations connected with import, export and forwarding in and out of the RK of the currency valuables. Currency operations include two types:

- Current operations include transfers on export-import payments, short term loans that are to be settled within the period of less than 120 days; transfer and receiving of incomes on dividends, loans etc.; grants, payroll, inheritance, pension transfers and etc.;
- Operations connected with movement of capital. These are: investments; transfers on intellectual property, realty sale or purchase; transfers on export-import payments and loans with period of more than 120 days; deposits in foreign banks; international transfers connected with pension assets accumulation, international insurance transfers.

Currency Restrictions

There are some restrictions on currency operations. President of the RK is authorized to make decisions on limitation or suspension of currency operations for purposes of implementation of international obligations or in extraordinary situations.

The National Bank of the RK may put restrictions on the payment currency of export operations of residents and may set the regime of obligatory sale of the export currency income. Also the National Bank for purposes of economic security provision may set limitations on type of settlements of separate export operations.

Licensing of Currency Operations

The National Bank of the RK executes licensing of the operations connected with usage of currency valuables.

The Law of the RK On Licensing defines that the following operations connected with usage of currency valuables are subject to licensing:

- Retail sale and services delivered in foreign currency;
- Opening of bank accounts by residents (including accounts in tenge) in foreign banks and other financial institutions.
- Investments of residents abroad (except broker-dealer activity of banks);
- Currency transfers of residents in favor of nonresidents as payment for realty;
- Currency transfers of residents in favor of nonresidents as settlement for import deals with advance payment period more than 120 days;
· Exceeding of the period of export income receiving by residents over 120 days since the date of export;
· Provision of loans by residents to nonresidents for a period of more than 120 days; and
· Debiting the bank account of a third party on foreign currency received by a resident from a nonresident as loan.

The National Bank of the RK is authorized to issue, to suspend the validity of or to recall a license.

Registration of Currency Operations

Certain currency operations should be registered. Operations connected with movement of capital are subject to registration, particularly, the operations on import in Kazakhstan of property (or currency) exceeding the equivalent of 100,000 US dollars. These operations include:

· Loans from nonresidents with duration of more than 120 days, including the financial leasing;
· Credit of the export-import operations by nonresidents;
· Direct and portfolio investments of nonresidents in the RK;
· Transfers of nonresidents as payment for exclusive intellectual rights full transmission by residents;
· Transfers of nonresidents as payment for the real estate ownership rights.

Transfers & Payments

According to the Rules, currency operations in Kazakhstan are carried out by residents and nonresidents through accounts opened with authorized or foreign banks.

All transactions between residents are executed in tenge. Payments and transfers on operations between residents and nonresidents are carried out in any currency defined according to agreements of the parties.

International payments and transfers made for execution of current operations between residents and nonresidents are carried out by the authorized banks without limitations.

If the execution of obligations on current operations was postponed by more than 120 days, then these operations change to capital-movement ones and should be licensed. Transfers and payments are executed by the authorized banks after presentment of duly completed documents (contracts, invoices, consignments, licenses, registration certificates, etc.) by these entities or individuals. Also banks may require additional information or documents on transfer executed for purposes of observance of currency legislation of the RK. No operations connected with entrepreneurial activity could be executed on accounts of individuals. Individual entrepreneurs – residents and nonresidents are maintained as legal entities by authorized banks.

Import and Export of Foreign Currency

Import and export of currency valuables is not limited and stipulated by the above-mentioned Rules, which settles the following:

The national currency and the coins made of precious metals emitted by the NB RK are subject to import-export without limitations.

Individuals-residents may carry, outside of the RK without legality confirming documents, the foreign currency in cash not exceeding the equivalent of 10,000 US dollars (if destination is the Customs Union country, these documents are not required). The documents confirming the legality of foreign currency are presented to customs bodies.

Carrying outside of the RK of the foreign currency in cash and the payment documents denominated in foreign currency by individuals-nonresidents is executed according to the customs declaration filled out during import. If the amount exported exceeds the amount mentioned in the customs declaration, then nonresidents must provide the customs bodies with documents confirming the legality of foreign currency.
Citizens of the Customs Union countries may carry outside the RK without legality confirmation documents foreign currency in cash equivalent to 1,500 US dollars.

**Customs procedures on currency valuables import and export is regulated by the customs legislation, which stipulates the following:**

Declaration of foreign or national currency brought to the customs territory of the RK by individuals — residents or nonresidents is not obligatory but recommended.

Foreign and national currency brought out of the customs territory of the RK by nonresidents is to be declared in written form and is subject to customs registration.

**Withdrawal and Purchase of Foreign Currency**

Legal entities – residents may withdraw foreign currency in cash only for payroll payments for nonresident staff and for expenses connected with foreign business trips of their staff. Unused part of foreign currency should be returned to bank accounts.

- **Legal entities – residents may purchase foreign currency for the following purposes:**
  - Execution of payments and transfers in favor of nonresidents;
  - Execution of obligations on loans in foreign currency received from authorized banks;
  - Business-trip and executive expenses outside the RK;
  - Replenishment of corporate card accounts; and
  - And other operations settled by legislation of the RK.

The purchased foreign currency, which was not used by a legal entity fully or partially in 30 calendar days, should be immediately sold in the inner currency market. Nonresidents may withdraw foreign currency cash only for payroll and business-trip purposes. Unused foreign currency is returned to a bank account. Nonresident legal entities are prohibited to purchase national currency for purpose of further exchange to foreign currency in the inner currency market.

**Responsibility for Violation of Currency Legislation**

The legal entities are responsible for violation of currency legislation of the RK in cases if:

- The operations non-contemplating the Law executed – the fine of 20% of the contract amount is applicable;
- The currency operations results are not recorded properly in accounting documents – the fine in amount of missed sum is applicable; and
- The accounting was executed without following the procedure and prescribed forms of accounting – the fine of 5% of the improperly recorded amount is applicable;

Officials and individuals guilty of violating the currency legislation bear responsibility according to the administrative legislation of the RK, which stipulates that such violations are fined up to 200-times Monthly Index Factor (MIF) for individuals and up to 25-times MIF for officials. In some cases officials are criminally prosecuted for violations like non-returning of currency valuables from abroad.