

# **LAW No.237 OF 29th JUNE 1998 OF THE REPUBLIC OF KAZAKHSTAN**

## **ON PAYMENTS AND MONEY TRANSFERS**

### **Chapter 1. General Provisions Article 1. Relations Regulated by This Law**

1. This Law shall regulate the relations which emerge when performing payments and transfers of funds in the Republic of Kazakhstan, except for the relations associated with the performance of transfers of funds by the organizations of postal communications.

2. The relations associated with payments and transfers of funds as performed between the banks of the Republic of Kazakhstan, organizations which perform separate types of banking transactions and foreign banks (financial institutions) shall be regulated by agreements between them and by tradition of business as is applicable in the banking practice. When acts associated with said payments and transfers of funds take place in the Republic of Kazakhstan, then such relations shall be regulated by said agreements and business tradition as applicable in banking practice, unless it contradicts the legislation of the Republic of Kazakhstan.

### **Article 2. The Bases for the Emergence of the Relations Regulated by This Law**

The relations regulated by this Law shall emerge when performing the following:

payments and/or transfers of funds in accordance with the conditions of payment under civil transactions,

transfers of funds pursuant to instructions of clients of banks or organizations which perform individual types of banking transactions (henceforth the bank) when such instructions are not associated with the performance of conditions of payment under civil transactions;

obligatory payments and/or transfers of funds which are performed in accordance with the legislation of the Republic of Kazakhstan.

### **Article 3. Fundamental Definitions**

The following fundamental definitions have been used in this Law:

beneficiary's bank - a bank which in accordance with the provisions of an agreement with the sender and/or instructions of the sender is entitled to accept money received for the benefit of beneficiary and/or perform other acts provided for by instructions or agreements with the sender;

recipient bank - bank to which instructions concerning transfers of funds or payment of funds are addressed;

intermediary bank - any bank which is a participant of transfers of funds which is not the bank of the sender of funds nor the bank of the beneficiary;

beneficiary - a person indicated in order or collection as the recipient of hinds when performing transfers of funds as well as in cases of non-cash payments performed without transfer of hinds;

exactor - a person who by virtue of an agreement or law files a claim to exact hinds, which claim is subject to performance by the recipient bank without acceptance of the sender of hinds;

initiator of transfer of hinds (henceforth initiator) - a person who first filed instructions for performance of a transfer of hinds;

collection instructions - a method for the performance of payments used for withdrawal of hinds from bank accounts of senders without sender's consent;

clearing - the process of collection, reconciliation, sorting and offset of counter claims of participants of clearing and subsequent determining of their net positions (balance) as performed by a clearing organization, as well as performance by a bank of said acts with regard to counter claims between its clients;

operational day - a period of time during which a bank performs acceptance of instructions concerning transfers of hinds and ordinances concerning suspension or revocation of such instructions from clients and passing to them of information messages associated with the performance of transfers of funds for their benefit;

sender - a person who sends instructions associated with payment and/or transfer of hinds which may be also the sender of funds, initiator or beneficiary;

sender of hinds - a person at the expense of whom a payment and/or transfer of hinds is carried out;

transfer of hinds - consistent performance by recipient banks of instructions of senders concerning of hinds associated with the performance of payment or for other purposes;

payment - performance of a monetary obligation with the use of cash or without using cash by way of transfer of hinds or issue of a payment document containing monetary obligations or order on payment of hinds;

payment card - a facility for access to hinds through electronic terminals or any other devices, which contain information which allows the holder of such a card to perform payments, receive cash, perform exchange of currencies and other transactions as determined by the issue of a given payment card and on his terms;

payment instruction - payment or a method for the performance of payment and/or transfer of hinds which provides for the filing by the sender of instructions to the recipient bank on transfer of a certain amount of hinds defined in those instructions for the benefit of the beneficiary;

payment collection-instruction - a method for performance of payment whereby the order of the sender on payment of hinds in amount indicated in such a order on the basis and with attachment of documents which confirm said order; is filed to the bank of the sender of hinds;

payment document - a document on the basis of which or with the assistance of which payments and transfers of hinds are carried out;

direct debit of bank account - a method for the performance of payments whereby withdrawal of hinds is carried out from the sender of hinds and the transfer for the benefit of the beneficiary on the basis of a prior permit of the sender of hinds on said withdrawal, which is effective for a definite period of time and/or within the limits of a certain amount of hinds;

instructions - order of the sender to the recipient bank on transfer or payment of hinds as filed for the virtue of an agreement of law. Instructions shall be compiled in the form of an order or in the form of a collection;

participant of a payment and/or of a transfer of hinds - physical persons and legal entities, affiliates and representations of legal entities who have rights and/or obligations with regard to payments and/or transfers of hinds;

cheque - payment document which contains a written order of the cheque issuer to the recipient bank, based on an agreement between them on payment of amounts of hinds indicated in such an order to the cheque holder;

cheque issuer - a person who writes out cheques;

cheque holder - a person for whose benefit a cheque was written out including cheque issuer if cheque was issued by him for himself

#### **Article 4. The Legislation of the Republic of Kazakhstan Concerning Payments and Transfers of Funds**

The legislation of the Republic of Kazakhstan concerning payments and transfers of Rinds shall be based on the Constitution of the Republic of Kazakhstan and it shall consist of this Law and other regulatory legal acts of the Republic of Kazakhstan.

#### **Article 5. Funds**

1. Funds shall be a method of payment and accumulation, they shall serve as a measure of value,
2. Funds exist in the form of bills (cash money) or in the form of monetary obligations of banks expressed in the form of entries in bank accounts of their clients.
- 3, Bills shall be issued in the form of banknote and coins which have nominal value (nominal).

#### **Article 6. Bank Accounts**

1. Bank account is a method of recording contractual relations between a bank and a client with regard to acceptance of deposits and performance by the bank of transactions associated with the following:
  - 1) ensuring availability and use by the bank- of hinds which belong to the client;

- 4) issue of bills of exchange and their transfers in accordance with endorsement;
- 5) use of plastic cards;
- 6) direct debit of bank account;
- 7) filing of payment collections-orders;
- 8) filing of collection instructions;
- 9) other methods as established by legislative acts of the Republic of Kazakhstan.

2. The rules and special considerations in applying methods of performance of payments and/or transfer of funds and the fundamental requirements with regard to contents of instructions shall be established by legislative acts and regulatory legal acts of the National Bank of the Republic of Kazakhstan.

#### **Article 8. Payment Order**

Application of bills of exchange as a payment method shall be regulated by the legislation of the Republic of Kazakhstan concerning the circulation of bills of exchange.

### **Article 11 Payment Card**

1, Payment card shall be used by its owner for the purposes of performing payments as well as for receiving cash money, currency exchange and other transactions in accordance with the

1. Withdrawal of funds from a bank account of a client without a client's consent shall be carried out with use of collection-orders on the basis provided for by the legislative acts of the Republic of Kazakhstan and in accordance with the procedure defined by the National Bank of the Republic of Kazakhstan, subject to compliance with the sequence provided for by the legislative acts of the Republic of Kazakhstan.

2. The initiator shall file with the bank of the sender of funds a collection ordinance with the attachment of originals of executive and other documents or their copies which confirm the bases for that exacting on the basis of rules provided for by the legislative acts of the Republic of Kazakhstan, except for the cases when such documents are submitted in accordance with the procedure provided for by article 20 of this Law. Requirements concerning the need of attaching original documents or their copies shall be established by the National Bank of the Republic of Kazakhstan.

3. In a collection ordinance the designation of payment shall be indicated and reference shall be made to the legislative acts which provides with the right to withdraw funds without consent of the sender of funds.

4. The rights and obligations of participants of payments shall arise as of the moment of the submission by the initiator of a collection-ordinance to the bank of the sender of funds. A bank of the sender of funds after receiving such instructions must accept it or to deny its acceptance and motivate it in writing. In the case of acceptance of a collection-ordinance by the bank of the sender of funds the sender of collection ordinance shall acquire the right to claim with regard to its performance

5. Amounts of collection-ordinances filed on the basis of claims fully or partially recognized by the sender of funds must be consistent with the amount of acknowledged claims.

6. The liability for the substantiation of withdrawal of funds without consent of the sender of funds shall rest with the exactor.

#### **Article 15. Documents Which are Used When Collection-Ordinances are Filed**

The following shall be the documents on the basis of which collection-ordinances shall be filed for withdrawal of funds without consent of the sender of funds:

executive writs or decrees of courts on exacting funds as issued on the basis of decisions, sentences, definitions and orders of courts;

ordinances of the bodies of the tax service on forcible withdrawal of taxes and other obligatory payments to the budget which have not been paid in time, as established by the legislation of the Republic of Kazakhstan, fines and penalties assessed for nonpayment or for untimely payment of taxes and other obligatory payments to the budget;

ordinances of the custom's bodies on forcible exacting of custom's duties and other obligatory payments the collection of which is entrusted to the custom's bodies, and which have not been paid within deadlines established by legislation of the Republic of Kazakhstan, fines and penalties assessed for non-payment or untimely payment of such payments;

resolution on exacting fines as past by administrative bodies or official persons authorized to process cases of administrative violations;

documents which contain executory notes of notaries;

claims partly or fully acknowledged by senders of funds in writing as well as claims of payment not paid in time but accepted by the sender of funds;

agreement between the exactor and sender of funds which contains the right of the exactor with regard to withdrawal of funds without consent of the sender of funds;

other documents as established by the legislative acts of the Republic of Kazakhstan.

#### **Article 16. Acceptance of Instructions**

1. Acceptance of instructions in the form of an order means the consent of the recipient bank to perform instructions of the sender (client).

Acceptance of instructions in the form of a claim means the consent of the sender of funds and/or recipient bank to perform claims of the initiator.

2. Acceptance of instruction may be expressed by way of making an entry or fixing a note on a payment document which directly indicate the performance of that acceptance or payment by the recipient bank of an amount of funds as defined in instructions, to the sender or pursuant to his instructions to a third party.

Acceptance of instructions may also be expressed in the form of signature and seal (if any).

3. When acceptance of instructions is carried out by way of making a note or fixing a note on a payment document or signature and seal (if any) then said notes or entries must contain the date and time of their commission.

4. Instructions may be accepted without appropriate note when in accordance with the provisions of an agreement or legislation of the Republic of Kazakhstan, the acceptance must be expressed by acts or any other methods.

5' Acceptance of instructions or denial of its acceptance must be performed not later than three working days after the day of receiving instructions except for the cases provided for by article 38 of this Law.

#### **Article 17. Rights and Obligations Which Emerge in the Case of Acceptance of Instructions**

1. Prior to the acceptance of an order by the Recipient bank its sender shall be obliged to provide for amount of money which is required for performance of orders after its acceptance by the recipient bank. When performing transfers of funds upon results of clearing, the sender shall be obliged to provide for the amount of funds which is required for performance of his order only in the case if he has negative balance.

2. In the case of acceptance of instructions the following rights and obligations shall emerge:

1) when order is accepted by the recipient bank the recipient bank shall acquire the obligation before the sender with regard to performance of accepted order;

2) when order is accepted by the bank of the beneficiary the bank of the beneficiary shall acquire the obligation associated with the receipt for the benefit of the beneficiary of amount of funds indicated in instructions;

3) in the case of acceptance of a claim by the sender of funds the beneficiary shall acquire the right to claim with regard to accepted claims and the sender of funds shall acquire the obligation with regard to its execution for the benefit of the beneficiary;

4) in the case of acceptance of a claim by the recipient bank the sender shall acquire the right to claim under accepted claim and the recipient bank shall acquire obligations with regard to its performance.

3. A beneficiary bank shall have the right to perform offset for the benefit of a third party or for his own benefit of amounts of funds indicated in the instructions accepted by the bank against the amount of obligations of the beneficiary before the third party or that bank, the period of performance of which arrived by the moment of receipt of such instructions by the bank of the beneficiary subject to compliance with the sequence of withdrawal of funds from the bank as established by the legislative acts of the Republic of Kazakhstan.

#### **Article 18. Bases for Denial of Acceptance of Instructions by the Recipient**

## **Bank**

1. A denial of acceptance of instructions by the recipient bank shall be carried out as follows:

- 1) when the amount of funds which is required for performance of transfer of funds is not secured;
- 2) when payment document contains signs of forgery;
- 3) when the sender does not comply with the requirements established by the legislation and/or provisions of the agreement with regard to the procedure for compilation and submission of instructions concerning transfer of funds;
- 4) in the case of non-compliance with other requirements established by legislation and/or provisions of an agreement.

2. In the case of filing collection ordinances without attaching to them of one of the documents provided for in article 15 of this Law, the recipient bank shall be obliged to deny acceptance of such collection ordinances.

## **Article 19. Performance of Instructions**

1. Performance of instructions by the recipient bank shall be carried out on the basis of acceptance by it of such instructions.

Performance by the recipient bank of its obligations before the sender with regard to the transfer or payment of funds in accordance with received instructions shall be recognized as performance of instructions.

Performance of instructions shall be recognized as follows:

- 1) transfer by the recipient bank to the following bank recipient of instructions on transfer of funds for the benefit of the beneficiary provided recipient bank is not the bank of the beneficiary;
- 2) completion of a transfer of funds when the recipient bank is the bank of the beneficiary;
- 3) issue of cash money to the sender who submitted instructions on payment of cash money when the recipient bank is the bank of the sender of funds;

2. Performance of instructions shall be carried out by the recipient bank in compliance with the provisions of such instructions and not later than the operational day of the recipient bank following the day of acceptance of received instructions unless the provisions of such instructions specify any other period of its performance.

When conditions of performance of instructions on transfer of funds are impossible to perform by the bank of the recipient, the compliance with them may entail delay of transfer of funds or additional costs, then the recipient bank within the operational day must notify of that the sender. Performance of instructions shall be carried out subject to the date and time of their receipt.

## **Article 20. Special Considerations in the Performance of Court Decisions on Exacting Funds**

1. Decisions of the court of the Republic of Kazakhstan on exacting funds shall be submitted to the relevant subdivisions of the National Bank of the Republic of Kazakhstan where court proceedings take place.

2. The National Bank of the Republic of Kazakhstan upon receiving a court decision on exacting funds within three working days shall send its copies for performance to all banks.



3. Banks shall be obliged not later than the operational day following the day of receipt of said funds to send to the court which passed the relevant decision information on availability of banking accounts of persons from whom the exacting of funds is carried out or on their absence. Information on availability of bank accounts must include all appropriate details of bank accounts and amounts of balances in them.

4. A court upon receiving from banks said information shall determine the bank (banks) on which the duty will be imposed with regard to performance of a decision to exact funds and it shall send to such a bank (banks) instructions with the attachment of appropriate executive document.

5. When a court at the moment of passing a decision to exact funds has information on availability of funds in a bank account of a person from whom exacting of funds is to be carried out then the court decision shall be filed for execution directly into the relevant bank passed the subdivisions of the National Bank of the Republic of Kazakhstan.

## **Chapter 2. Payments**

### **Article 21. Payments**

1. Payments shall be carried out on the basis and in accordance with the provisions of civil law transactions, provisions of the legislation of the Republic of Kazakhstan and court decisions.

2. Payments in accordance with the provisions of the civil law transactions shall provide for

## **Article 24. Completion of Payments**

1. When a payment is carried out with the use of cash money then completion of payment shall take place at the moment when funds are received by the person for whose benefit the payment is made or by the person authorized and/or person indicated for whose benefit payment is made.

2. When a payment without use of cash money is carried out by way of transfer of funds then the completion of payments shall take place at the moment of the completion of transfer of funds.

2. In the cases provided for by legislative acts or in accordance with agreements, instructions in the form of claims shall be filed by third parties who are not clients of the recipient bank.

2. The procedure, time and conditions for refund of money under unauthorized payments shall be established in agreement between the sender

2. When instructions or ordinances on revocation or suspension of their performance is received after the termination of the operational day then such instructions or ordinances shall be deemed to be received by the recipient bank at the beginning of the following operational day.

**Article 32. Exchange of Messages Between the Sender and the Recipient Bank When Funds are Transferred**

1. When transfers of funds are performed the sender and recipient bank shall perform exchange of messages which contain the following:

- 1) information on acceptance or denial of acceptance of instructions;
- 2) information on performance of instructions;
- 3) information on mistaken instructions;
- 4) information on revocation or suspension of performance of instructions;
- 5) other information concerning transfer of funds.

2 Forms and methods for exchange of the above-mentioned instructions shall be established by agreement between the sender and the recipient bank which receives transfer of funds, unless it is otherwise provided for by the National bank of the Republic of Kazakhstan.

bank of appropriate instructions. Other senders shall have the right to send such ordinances only if

be obliged to pay damages as provided for by civil legislation of the Republic of Kazakhstan, to the person whose funds he unlawfully used.

4. The recipient bank shall not be liable when in performance of payment it failed to comply with the procedure for protection acts but funds were received by the beneficiary

- 1) as indicated in the instructions or claim of transfer of funds;
- 2) within time acceptable for beneficiary;
- 3) in amount indicated in the order for transfer of funds;
- 4) in this respect no loss (loses) were incurred neither by the sender nor by the beneficiary.

#### **Article 38. Instructions Which are Subject to Performance Within Indefinite Period of Time**

1. In the case of absence or shortage of amounts of funds of the sender of funds or the recipient bank, which is required for performance of instructions the recipient bank shall be obliged to accept and keep for one month instructions received until funds are received into the bank account of the sender of funds or the recipient bank which is sufficient for their performance only in the cases provided for by:

- 1) agreement between the sender of funds and recipient bank;
- 2) legislative acts and/or regulatory legal acts of the National bank of the Republic of Kazakhstan.

2. Performance by the recipient bank of instructions provided for in paragraph 4 of this article shall be carried out in a calendar sequence in accordance with the procedure of their receipt by the recipient bank subject to compliance with the sequence for performance of instructions as provided for by the legislative acts of the Republic of Kazakhstan, the calendar sequence envisages the date and time of receipt of instructions by the recipient bank.

3. When performing instructions provided for in paragraph 1 of this article the date and time of acceptance shall be recognized as the date and time when such instructions were performed by the recipient bank.

4. When upon expire of the period established in paragraph 1 of this article a submitted instruction of the sender is not performed because of shortage of funds of the sender of funds or of the recipient bank, then the recipient bank shall be obliged to return such instructions to its sender without performance.

#### **Article 39. Prohibition of Payment or Transfer of Funds**

Performance of payment, issuing of instructions on transfer of funds, performance of instructions, issue of funds by a bank to beneficiary or receipt by the beneficiary of funds may be prohibited by the state bodies or official persons authorized appropriately by relevant legislative acts of the Republic of Kazakhstan and only on the basis provided for by the legislative acts of the Republic of Kazakhstan.

#### **Article 40. International Treaties**

Should an international treaty ratified by the Republic of Kazakhstan provide for any other rules than those which are stipulated in this Law the rules of the international treaty shall apply.

#### **Article 41. Measures for the Implementation of This Law**

From the date of introduction into effect of this Law the paragraph 6 of Decree of 30th January 1993 of the Supreme Soviet of the Republic of Kazakhstan ((Concerning the Report of the Chairman of the Board of the Republic of Kazakhstan on the Issue of Strengthening the Payment and Credit Discipline in the Republic», Temporary Regulations «Concerning Economic Sanctions for Violation of the Procedure for Conducting Non-Cash Settlements in the Republic of Kazakhstan» and «Concerning Sanctions Applied to Commercial Banks for Violation of Economic Rules of the National Bank of the Republic of Kazakhstan» as approved by said Decree (the Bulletin of the Supreme Soviet of the Republic of Kazakhstan, 1993, No.4, i. 68; the Bulletin of the Parliament of the Republic of Kazakhstan, 1996, No.8-9, i. 239) shall be recognized as invalid.

**President of the Republic of Kazakhstan**

**N. NAZARBAEV**