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# MAIN CHANGES IN THE FINANCIAL LEGISLATION OF KAZAKHSTAN IN THE 1ST QUARTER OF 2024

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## MAIN CHANGES IN THE FINANCIAL LEGISLATION OF KAZAKHSTAN IN THE 1ST QUARTER OF 2024

*GRATA International Banking & Finance Team is pleased to provide you with a brief overview of the main changes to the legislation of the Republic of Kazakhstan in January-March 2024 that may affect your business.*

Please contact us if you have any questions, we will be happy to answer them.

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## AMENDMENTS TO THE BANKING LAW

- The following amendments were made to the Law of the Republic of Kazakhstan dated 31 August 1995 No. 2444 “On Banks and Banking Activities in the Republic of Kazakhstan” (the “Banking Law”).
- From July 2023, it is not considered to be a disclosure of bank secrecy for banks to provide information, information and documents constituting bank secrecy for persons included in the register, upon a written request from the authorized body for the return of assets, signed by the first manager or the person performing his duties, with an attachment extracts from the register approved in accordance with the Law of the Republic of Kazakhstan “On the return of illegally acquired assets to the state.”
- From 1 January 2024, it is not allowed to establish temporary restrictions on the disposal of property, restrictions on transactions and other operations with property, seizure of money in bank accounts intended for crediting housing payments, one-time pension payments from the unified pension savings fund in in order to improve living conditions and (or) pay for treatment, target assets, payments of target savings from the unified accumulative pension fund in order to improve living conditions and (or) pay for education; on money held in bank accounts in housing construction savings banks in the form of housing construction savings accumulated through the use of housing payments, in the form of payments of targeted savings from the unified accumulative pension fund in order to improve housing conditions and (or) pay for education; on the assets of the social health insurance fund and target contribution funds allocated for the guaranteed volume of free medical care located in bank accounts.
- These changes are related to the expansion of opportunities for UAPF contributors to transfer part of their pension assets to private management without applying minimum adequacy thresholds.
- In February 2024, an amendment was made to the effect that banks and organizations carrying out certain types of banking operations have the right to collect copies of identification documents of non-residents for the purposes provided for by the Banking Law.
- Article 34 of the Banking Law Paragraph 5-1 was introduced, which states that a person has the right to voluntarily refuse to receive bank loans or withdraw it through the “electronic government” web portal.
- Also, Paragraph 5-2 of Article 34 of the Banking Law was introduced, prohibiting the Bank,

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an organization carrying out certain types of banking operations, from providing bank loans to a person if there is information in his credit report about his voluntary refusal to receive a bank loan.

## DRAFT LAW ON AMENDMENTS AND ADDITIONS TO CERTAIN LEGISLATIVE ACTS OF THE REPUBLIC OF KAZAKHSTAN ON THE DEVELOPMENT OF THE FINANCIAL MARKET AND PROTECTION OF THE RIGHTS OF CONSUMERS OF FINANCIAL SERVICES

- In August 2023, a consultative document on the regulatory policy of the draft Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Development of the Financial Market and Protection of the Rights of Consumers of Financial Services” (the “Draft Law”) was introduced.
- The Draft Law is aimed at resolving four main issues that arise from various instructions of the Head of State: limiting the growth of the debt burden of individuals, developing syndicated financing in the market of the Republic of Kazakhstan, creating a digital platform for the sale of stressed assets, as well as increasing the accessibility of entry of new players into the banking services market in attracting qualified and professional personnel to manage the financial sector.
- The first direction of the Draft Law is to limit the growth of the debt burden of individuals and the population of the Republic of Kazakhstan. The President, in a Decree dated 10 March 2023, instructed the ARRDF and the National Bank to limit the growth of the debt burden of citizens whose debt on loans and microcredits exceeds 90 calendar days. The Draft Law provides that for such citizens a ban on issuing consumer loans will be introduced.
- Further, the Draft Law is aimed at the development of syndicated financing in the market of the Republic of Kazakhstan.
- To do this, it is proposed to expand the list of participants in the syndicate of creditors, in particular these will be second-tier banks, the Development Bank of Kazakhstan, non-resident banks of the Republic of Kazakhstan, international financial organizations (Paragraph 10-1) of Article 1 of the Law of the Republic of Kazakhstan dated 20 February 2006 “On project financing and securitization”).

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- Also, a paragraph has been added stating that a syndicated loan agreement can be concluded after the borrower has entered into loan agreements with several future members of the syndicate of lenders. In this case, the syndicated loan agreement changes the previously incurred obligations of these persons, if the composition of the participants in the previously arisen obligations and the composition of the participants in the syndicated loan agreement completely coincide, while the syndicated loan agreement may provide for the termination or modification of the pledge agreement and (or) other agreement related to the obligations borrower (Article 14-1 Paragraph 1-1 of the Law of the Republic of Kazakhstan dated 20 February 2006 “On project financing and securitization”).
  - Also, the possibility of converting a bilateral loan agreement into a syndicated loan and determining the conditions for transferring the rights of claims of creditors within the syndicate has been introduced.
  - The draft Law provides for an expansion of the list of investors who have the right to purchase stressed assets, an institute of service companies has been created to service and manage non-performing loans, and also sets a deadline (up to 3 years) for the ownership of foreclosed property. In addition, it is planned to create digital platforms through which trading in stressed assets of banks, organizations carrying out certain types of banking operations and microfinance organizations will be carried out.
  - One of the key requirements for the operation of digital platforms established in the new legislative changes is registration of a legal entity. Operators of an electronic trading platform for the sale of banking assets must be created in accordance with the legislation of the Republic of Kazakhstan and have the organizational and legal form of a joint stock company or limited liability partnership (according to the Draft Law, Article 15-19 of the Law of the Republic of Kazakhstan dated 4 July 2003 “On state regulation, control and supervision of the financial market and financial organizations”).
  - We note that banks themselves are not allowed to act as operators of an electronic trading platform.
  - It is noteworthy that trading on digital platforms will be open to all interested investors, including financial companies and private investors represented by legal entities and individuals, including foreign investors. It is worth noting that the sale of loans issued to individuals to private investors is prohibited by banking legislation.
  - According to these innovations, banks, microfinance organizations and other credit institutions will be required to sell recovered property, as well as rights of claim under bank

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loan and microcredit agreements through electronic platforms. This will ensure transparency of transactions and contribute to the formation of fair market prices for these assets.

- In order to make all these changes, it will be necessary to amend the laws on banks and banking activities, on microfinance activities, on collection activities and on state regulation, control and supervision of the financial market and financial organizations. To date, the law has not been put into effect.

## AMENDMENTS TO THE LAW ON MICROFINANCE ACTIVITY

- The following amendments were made to the to the Law of the Republic of Kazakhstan dated 26 November 2012 No. 56-V “On Microfinance Activity” (the “Law on Microfinance Activity”).
- In February 2024, a change was made to the effect that microfinance organizations have the right to collect copies of identification documents of non-residents for the purposes provided for by the Law on Microfinance Activity.
- Article 3 of the Law on Microfinance Activities includes Paragraph 3-1, which states that a person has the right to establish a voluntary refusal of microloans or withdraw it through the “electronic government” web portal.
- Also, Paragraph 3-2 of Article 3 of the Law on Microfinance Activities was introduced, prohibiting a microfinance organization from providing microloans to a person if his credit report contains information about his voluntary refusal to receive microloans.

## AMENDMENTS TO THE PERSONAL DATA LAW

- The Law of the Republic of Kazakhstan dated 21 May 2013 N 94-V “On Personal Data” (the “Personal Data Law”) introduced the concept of “violation of the security of personal data,” which means “violation of the protection of personal data, resulting in illegal distribution, modification and destruction, unauthorized distribution of transmitted, stored or otherwise processed personal data or unauthorized access to them”.
- In addition, a provision has been introduced prohibiting the collection and processing of copies of identification documents on paper, except in cases of lack of integration with informatization objects of state bodies and (or) state legal entities, the impossibility of identifying the subject using technological means, as well as in other cases cases provided

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for by the laws of the Republic of Kazakhstan.

- The exceptional cases of collecting and processing copies of identification documents on paper provided above do not apply to the use and presentation of identification documents generated through the digital document service.
- The list of cases in which the collection and processing of personal data is carried out without the consent of the subject or his legal representative included the implementation by a unified accumulative pension fund of activities related to the opening of pension accounts, provision of information on the amount of pension savings, as well as on conditional pension accounts.
- The Personal Data Law introduced Articles 27-2 and 27-3, provisions regulating in detail state control and the procedure for compliance with the legislation of the Republic of Kazakhstan on personal data and their protection by state bodies.
- State control over compliance with the legislation of the Republic of Kazakhstan on personal data and their protection in relation to state bodies (hereinafter referred to as the subjects of control) is carried out by the authorized body in the form of inspections. Inspections are divided into periodic and unscheduled. Periodic inspections are carried out no more than once a year in accordance with the periodic inspection plan approved by the first head of the authorized body.
- An unscheduled inspection is an inspection appointed by an authorized body in the following cases:
  - 1) the presence of confirmed requests to the subject of control, received from individuals and legal entities, about violation of the requirements of the legislation of the Republic of Kazakhstan on personal data and their protection;
  - 2) appeals from individuals and legal entities whose rights and legitimate interests have been violated;
  - 3) demands of the prosecutor on specific facts of causing or threat of causing harm to the rights and legitimate interests of individuals and legal entities, the state;
  - 4) appeals from government bodies on specific facts of harm to the rights and legitimate interests of individuals and legal entities, the state, as well as on specific facts of violations of the requirements of the legislation of the Republic of Kazakhstan, the failure to eliminate which entails harm to the rights and legitimate interests of individuals and legal entities;
  - 5) re-inspection related to the control subject's appeal about disagreement with the initial inspection;



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6) re-inspection related to the control subject's appeal about disagreement with the initial inspection;

7) the need to monitor the execution of the report on the results of the inspection.

- The rights and obligations of the inspected subjects and inspectors, the period of the inspection, the requirements for the act on the appointment of the inspection and the act on the results of the inspection and other features of such inspections are described in detail in these articles.

## AMENDMENTS TO THE SECURITIES MARKET LAW

- The Law of the Republic of Kazakhstan dated 2 July 2003 No. 461 "On the Securities Market" (the "Securities Market Law") was amended in February 2024 to the effect that professional participants in the securities market have the right to collect copies of identification documents of non-residents, for the purposes provided by the Law about the securities market.

## AMENDMENTS TO THE LAW ON THE NATIONAL BANK OF THE REPUBLIC OF KAZAKHSTAN

- In the Law of the Republic of Kazakhstan dated 30 March 1995 No. 2155 "On the National Bank of the Republic of Kazakhstan" (the "Law on the National Bank") an amendment was introduced to Paragraph 7 of Article 56 stating that the National Bank, together with the authorized body that provides management in the field of security tax receipts and other obligatory payments to the budget, determines the procedure for implementing export-import currency control in order to ensure that residents of the Republic of Kazakhstan comply with the repatriation requirement.

## AMENDMENTS TO THE LAW ON PAYMENTS AND PAYMENT SYSTEMS

- The Law of the Republic of Kazakhstan dated 26 July 2016 No. 11-V I "On Payments and Payment Systems" (the "Payments Law") was amended in February 2024 to the effect that the payment service provider has the right to collect copies of identification documents of non-residents, for the purposes provided for by this Law.

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## AMENDMENTS TO THE LEGISLATION ON CURRENCY REGULATION AND CURRENCY CONTROL

- From 1 January 2024, amendments were introduced to the Law of the Republic of Kazakhstan dated 2 July 2018 No. 167-V I “On Currency Regulation and Currency Control” (the “Law on Currency Regulation”), according to which export-import currency control is now carried out jointly by the National Bank of Kazakhstan, currency control agents and the state revenue authority (tax authority), introduced Article 20-1, which defines the features and procedure for conducting currency control for the repatriation of national and (or) foreign currency for export or import by the state revenue authority.
- The National Bank of the Republic of Kazakhstan and the Minister of Finance of the Republic of Kazakhstan jointly adopted new rules for the implementation of export and import controls in the Republic of Kazakhstan. Among other things, these rules regulate the procedure for exercising control over export-import transactions jointly by the National Bank of the Republic of Kazakhstan, currency control authorities and the state revenue authority, contain a clarified definition of the date of export or import, provide for separate accounting of foreign exchange contracts with an accounting number in the territorial divisions of state revenue authorities in certain cases and so on.
- In addition, the National Bank of the Republic of Kazakhstan adopted changes to the Rules for Carrying Out Foreign Exchange Transactions in the Republic of Kazakhstan. In accordance with these changes, new grounds for recognizing operations as operations the conduct of which may be aimed at withdrawing money from the Republic of Kazakhstan were introduced, namely:
  - transfer of money by a resident to a non-resident professional participant in the securities market carrying out currency transactions on behalf of clients in an amount exceeding 50,000 (fifty thousand) US dollars in equivalent;
  - transfer by a resident of money to his own account abroad in an amount exceeding 50,000 (fifty thousand) US dollars in equivalent;
  - free transfer of money carried out by a resident in favor of a non-resident in an amount exceeding 50,000 (fifty thousand) US dollars in equivalent.
- In addition, a provision was introduced according to which currency transactions, the conduct of which may be aimed at evading the requirements of the currency legislation of the Republic of Kazakhstan, include payments and (or) transfers of money from one person per calendar month under two or more currency agreements concluded with one and by the same non-resident, for a total amount exceeding the threshold value above which such currency agreements are subject to assignment of an account number.

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- When conducting operations, the conduct of which may be aimed at withdrawing money from the Republic of Kazakhstan, as well as operations, the conduct of which may be aimed at evading the requirements of the currency legislation of the Republic of Kazakhstan, the resident submits to the authorized bank permission to transfer information about this payment and (or) transfer of money to currency control authorities and law enforcement agencies, as well as, at the request of the authorized bank, other documents and information necessary for the authorized bank to monitor and study the operation in accordance with the requirements of the Law of the Republic of Kazakhstan “On Combating the Legalization (Laundering) of Proceeds from Crime, and financing of terrorism” (hereinafter referred to as the AML/CFT Law). When making a payment and (or) transfer of money for the above currency transactions, the authorized bank monitors and studies such operations in accordance with the program for monitoring and studying customer transactions provided for by the internal control rules developed and adopted in accordance with Article 11 of the AML Law.

## AMENDMENTS TO THE LEGISLATION ON INSURANCE ACTIVITIES

- The Law of the Republic of Kazakhstan dated 18 December 2000 No. 126 “On Insurance Activities” (the “Insurance Law”) was amended in February 2024 to the effect that insurance organizations have the right to collect copies of identification documents of non-residents for the purposes provided for by law.
- Changes were introduced to the legislation of the Republic of Kazakhstan (including the Law on the Regulation of Trade Activities, the adoption of the Order of the Minister of Trade and Integration of the Republic of Kazakhstan dated 29 March 2024 No. 158-HK “On approval of the conditions for the implementation of certain types of activities of the Export Credit Agency of Kazakhstan”), aimed at introducing measures to develop and promote the export of domestic processed goods, works and services to foreign markets, support for non-raw material exports, as well as establishing a legal basis for the functioning of an export credit agency with a special legal status.
- Export Credit Agency (ECA) is a legal entity determined by a decision of the Government of the Republic of Kazakhstan, which has the status of a national development institution in the field of development and promotion of non-resource exports and operates in accordance with the Law of the Republic of Kazakhstan “On Regulation of Trade Activities” and the legislation of the Republic of Kazakhstan.

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- Insurance and reinsurance. ECA carries out voluntary insurance of export loans, investments, transactions related to lending (loans) to domestic exporters and foreign buyers of domestic non-commodity goods, works, services, guarantees and guarantees provided in their favor against the corresponding losses of financial organizations, other financial losses and relevant civil legal liability without the appropriate license.
  - ECA provides voluntary insurance and reinsurance against the risks of domestic exporters and investors making investments outside the territory of the Republic of Kazakhstan, their foreign counterparties in relevant transactions, Kazakh and foreign credit organizations providing lending and financial support to these persons.
  - Insurance coverage for insurance products is no more than ninety percent, and for insurance of export letters of credit within the framework of trade finance, insurance of short-term receivables of the exporter and insurance of export credits reaches up to one hundred percent of the amount of loss.
  - ECA accepts insurance risks for reinsurance from resident insurance (reinsurance) organizations of the Republic of Kazakhstan, branches of non-resident insurance (reinsurance) organizations of the Republic of Kazakhstan, non-resident insurance (reinsurance) organizations of the Republic of Kazakhstan, as well as from export credit agencies of other countries. ECA provides reinsurance with supranational reinsurance companies, members of international associations and export credit and guarantee insurance organizations, as well as cross-border insurance and reinsurance.
  - Guaranteeing export transactions. ECA guarantees transactions to promote non-resource exports, provides guarantees related to the implementation of export contracts and export activities.
  - Pre-export and export trade finance. ECA provides domestic exporters with pre-export financing by placing a conditional bank deposit in second-tier banks, the Development Bank of Kazakhstan. ECA, in order to promote the export of non-commodity goods (works, services), places a conditional bank deposit in second-tier banks, the Development Bank of Kazakhstan for the purpose of export trade financing of foreign buyers.

## **AMENDMENTS TO THE LAW ON DIGITAL ASSETS IN THE REPUBLIC OF KAZAKHSTAN**

- The Law of the Republic of Kazakhstan dated 6 February 2023 No. 193- VI “On Digital

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Assets in the Republic of Kazakhstan” (the “Law on Digital Assets”) introduced a procedure for suspending the license for digital mining activities. According to these changes, by decision of the authorized body the license may be suspended for a period of one to six months in the following cases:

- 1) “identifying false information when obtaining a license to carry out digital mining activities;
  - 2) failure of the digital miner to comply with the requirements established by the legislation of the Republic of Kazakhstan;
  - 3) failure to eliminate violations within the prescribed period based on the results of an unscheduled inspection by an authorized body;
  - 4) failure by the digital miner to provide information to the authorized body about changes in information within the time limits established by the legislation of the Republic of Kazakhstan on digital assets;
  - 5) voluntary application of a digital miner to an authorized body;
  - 6) in other cases provided for by the laws of the Republic of Kazakhstan.”
- The decision to suspend the license to carry out digital mining activities must indicate the reasons and duration of suspension of the license to carry out digital mining activities. It is important to note that the suspension of a license to carry out digital mining activities entails a ban on carrying out digital mining activities for the period of suspension.
  - Paragraph 6 of Article 9 was also introduced, which makes it possible to renew the license to carry out digital mining activities.

## CHANGES IN THE LAW ON INFORMATIZATION

- The Law of the Republic of Kazakhstan dated 24 November 2015 No. 418- V “On Informatization” introduced the following definitions:
  - information security threat - a set of conditions and factors that create preconditions for the occurrence of an information security incident;
  - information security researcher - a specialist in the field of information security and (or) information and communication technologies, registered in the program for interaction with information security researchers, who studies information objects connected to the program for interaction with information security researchers to identify vulnerabilities;
  - program of interaction with information security researchers (hereinafter referred to as the interaction program) – an informatization object intended for registration of information security researchers, registration of identified vulnerabilities, as well as to ensure interaction of information security researchers with information security objects;

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- vulnerability – a flaw in an informatization object, the use of which may lead to a violation of the integrity and (or) confidentiality, and (or) availability of the informatization object;
  - a single “electronic government” repository – a repository of source codes and executable codes of “electronic government” informatization objects compiled from them
  - Also, the Law on Informatization was supplemented with provisions on the possibility of creating your own interaction program or purchasing interaction program services from third parties in accordance with the Civil Code of the Republic of Kazakhstan.
  - Article 54 of the Law on Informatization is supplemented by Paragraph 2-1, according to which the owners or possessors of informatization objects of state bodies are obliged to take measures to ensure:
    - 1) “connecting informatization objects to the interaction program, with the exception of informatization objects that do not have access to the Internet;
    - 2) elimination of identified vulnerabilities registered in the interaction program for informatization objects of government agencies;
    - 3) connection to the service of the State Operational Information Security Center or Operational Information Security Center.”

## **AMENDMENTS TO THE LAW ON COMBATING THE LEGALIZATION (LAUNDERING) OF ILLEGALLY OBTAINED MONEY AND THE FINANCING OF TERRORISM**

- Amendments have been introduced to the Law on Combating the Legalization (Laundering) of Illegally Obtained Money and the Financing of Terrorism, according to which a register of beneficial owners of legal entities is created, which is maintained by the authorized body (the Agency of the Republic of Kazakhstan for Financial Monitoring). The register of beneficial owners of legal entities is a state database designed to record and store information about the beneficial owners of legal entities in order to combat the legalization (laundering) of proceeds from crime and the financing of terrorism.
- Information from this register should be used by financial monitoring entities in order to identify the beneficial owner of the client of financial monitoring entities. The subject of financial monitoring is, when identifying the beneficial owner, the information provided by the legal entity does not correspond to the information specified in the register of beneficial owners of legal entities, and there are sufficient grounds to believe that the activities of such a legal entity are related to the legalization (laundering) of income and

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the financing of terrorism, the subject financial monitoring is obliged to terminate or refuse to establish business relations with such a legal entity.

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*The information in this review is provided for your convenience and does not constitute legal advice. This overview is prepared to provide general information for our clients and other interested persons. This information should not be upon in any specific situation without appropriate legal advice.*

*We hope that the review given above will be useful to you. Please feel free to contact us at [finance\\_securities@gratanet.com](mailto:finance_securities@gratanet.com) if you have any questions or comments. We will be happy to receive your feedback.*

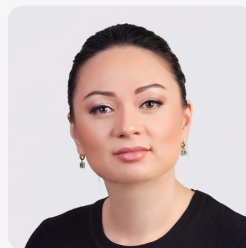
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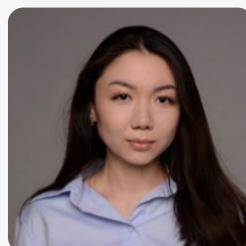
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