



On approval of Requirements to internal control rules for combating the legalization (laundering) of proceeds from crime and financing of terrorism for credit partnerships

Invalidated Unofficial translation

Order № 161 of the Minister of Finance of the Republic of Kazakhstan dated April 5, 2016. Registered with the Ministry of Justice of the Republic of Kazakhstan on May 5, 2016 № 13688. Expired by Order of the Minister of Finance of the Republic of Kazakhstan dated September 24, 2020 No. 915.

Unofficial translation

Footnote. Expired by Order of the Minister of Finance of the Republic of Kazakhstan dated September 24, 2020 No. 915 (effective from November 15, 2020).

Pursuant to paragraph 3-2 of Article 11 of the Law of the Republic of Kazakhstan dated August 28, 2009 “On combating the legalization (laundering) of proceeds of crime and financing of terrorism **I hereby ORDER:**

1. To approve the attached Requirements to internal control rules for combating the legalization (laundering) of proceeds from crime and financing of terrorism for credit partnerships.

2. The Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan (B.Sh. Tadzhiyakov) in accordance with the procedure established by legislation shall:

1) ensure state registration of this order with the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days after the state registration of the order send on official publication in periodicals and an information and legal system "Adilet";

3) within five working days from the date of receipt of this order from the Ministry of Justice of the Republic of Kazakhstan send to the Republican state enterprise on the right of economic management "Republican Center of Legal Information" of the Ministry of Justice of the Republic of Kazakhstan for placement in the Reference Control Bank of regulatory legal acts of the Republic of Kazakhstan;

4) place this order on the Internet resource of the Ministry of Finance of the Republic of Kazakhstan.

3. This order shall be enforced upon expiry of ten calendar days after the date of its first official publication.

*Minister of Finance
of the Republic of Kazakhstan*

B. Sultanov

Approved

Requirements for internal control rules for combating the legalization (laundering) of proceeds from crime and financing of terrorism for credit partnerships

Chapter 1. General provisions

Footnote. Title in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

1. These Requirements to internal control rules for combating legalization (laundering) proceeds from crime and financing of terrorism for credit partnerships (hereinafter referred to as the Requirements) have been developed in accordance with the Law of the Republic of Kazakhstan dated August 28, 2009 "On combating legalization (laundering) of proceeds from crime and financing of terrorism" (hereinafter referred to as the Law) and the International Standards of the Financial Action Task Force (FATF).

2. These Financial Monitoring Requirements shall include credit partnerships (hereinafter referred to as the Entities).

3. If the Requirements did not provide other, then the concepts applied in Requirements are used in the values specified in the Law, the Law of the Republic of Kazakhstan dated March 28, 2003 "On credit partnerships".

4. The following basic concepts shall be used for the purposes of the Requirements:
1) Excluded by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

2) the client – an individual or legal entity receiving the services of the Entities;

3) the form of data and information on the transaction subject to financial monitoring - the form defined by the Rules for submission of data and information on transactions subject to financial monitoring by financial monitoring subjects, approved by the resolution of the Government of the Republic of Kazakhstan dated November 23, 2012 № 1484 (hereinafter referred to as the FM-1 form);

4) risks of legalization (laundering) of proceeds from crime and financing of terrorism - possibility of intentional or unintentional involvement of Entities in processes of legalization (laundering) of proceeds from crime and financing of terrorism or other criminal activity;

5) management of risks of legalization (laundering) of proceeds from crime and financing of terrorism - a set of measures taken by Entities to monitor, identify risks of

legalization (laundering) of proceeds from crime and financing of terrorism, as well as their minimization (in relation to services, clients);

6) Excluded by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Footnote. Paragraph 4 as amended by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

5. Internal control shall be carried out to:

1) ensuring compliance of the Entities with the requirements of the legislation of the Republic of Kazakhstan on combating legalization (laundering) of proceeds from crime and financing of terrorism (hereinafter referred to as CLP/FT);

2) maintaining the effectiveness of the system of internal control at a level sufficient to manage the risks of legalization (laundering) of proceeds from crime and financing of terrorism

(hereinafter referred to as LP/FT);

3) minimizing the risks of LP/FT.

6. Excluded by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

7. Excluded by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

8. The ICR (internal control rules) - a document that shall regulate the organizational basis of work aimed at CLP/FT and shall establish the procedure of actions of Entities for CLP/FT purposes.

9. The ICR shall include programs in accordance with paragraph 3 of Article 11 of the Law.

Footnote. Paragraph 9 in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

10. Excluded by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

11. In case of introduction of amendments and/or additions to CLP/FT legislation, the Entities shall make the corresponding amendments and/or additions to the ICR within 30 calendar days.

Chapter 2. Internal control program for CLP/FT purposes, including requirements for employees of financial monitoring entities responsible for implementation and compliance with Internal Control Rules

Footnote. Title in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

12. The CLP/FT internal control program shall comprise:

1) procedure of internal control organization, including description of functions of responsible person or structural subdivision, including procedure of interaction with other structural subdivisions of the Entity during internal control for CLP/FT purposes;

2) the procedure of refusal of clients to establish business relations and termination of business relations, refusal to carry out transactions with money and (or) other property, and taking measures to freeze transactions with money and (or) other property;

3) the procedure of recognition by the Entities of a complex, unusually large and other unusual transaction to be studied as a suspicious transaction;

4) the procedure of recognition of the client's transaction, having characteristics corresponding to typologies, schemes and methods of legalization (laundering) of criminal proceeds and financing of terrorism, as suspicious;

5) the procedure of submitting information and information on transactions subject to financial monitoring, on facts of refusal of the client to establish business relations, termination of business relations with the client, refusal to carry out transaction with money and (or) other property, measures to freeze transactions with money and (or) other property in authorized body, including instructions and regulations of work in the automated information systems and the software used for transfer of data, information and documents in authorized body;

6) the procedure for recording and storing documents and information obtained from the results of the client's proper inspection, including the client's file and correspondence with him, documents and information on transactions subject to financial monitoring, including suspicious transactions, as well as the results of the examination of all complex, unusually large and other unusual transactions.

Documentary recording of the operations subject to financial monitoring and directed to the authorized body shall be carried out in numbered, bound and sealed and the signature of the Entity in the register of data on the operations subject to financial monitoring.

The transaction register for financial monitoring shall record:

number and date of transmission of information to the authorized body;

a ground for sending a message;

number and date of notification of acceptance/non-acceptance by the FM-1 form of the authorized body;

7) the procedure of informing the employees of the entity of the leader about the known facts of violation of the law on CLP/FT, ICR committed by the employees of the Entity.

Footnote. Paragraph 12 in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

12-1. The ICR shall provide for the appointment of a responsible person or a structural subdivision to monitor compliance with the ICR.

A person who shall not have a higher education, who has not removed or repaid a criminal record for the commission of crimes in the sphere of economic activity, or intentional crimes of moderate severity, serious or particularly serious crimes, shall not be appointed to the position of responsible person.

Footnote. Requirements as added by the Paragraph 12-1 in accordance with the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

13. Functions of the Entities under the internal control program:

- 1) introduction of amendments and/or additions to ICR;
- 2) organization and control of submission of data and information on transactions subject to financial monitoring to the authorized body in accordance with the Law;
- 3) making decisions on recognition of client transactions as suspicious;
- 4) making decisions to assign client transactions to complex, unusually large and other unusual transactions, to transactions having characteristics corresponding to typologies, schemes and method of legalization (laundering) of criminal proceeds and financing of terrorism;
- 5) making decisions on suspension or refusal to carry out operations of clients and the need to send them to the authorized body;
- 6) making decisions on establishment, continuation or termination of business relations with clients;
- 7) documentation of the decisions taken in relation to the operation of the client (his representative) and the beneficial owner;
- 8) forming a client file on the basis of data obtained as a result of implementation of the ICR;
- 9) taking measures to improve the system of risk management and internal control;
- 10) provision of measures for storage of documents and information obtained on the basis of the results of proper inspection of the client, including the client's file and correspondence with him, documents and information on transactions subject to

financial monitoring, including suspicious transactions, as well as the results of examination of all complex, unusually large and other unusual transactions, at least five years from the date of termination of business relations with the client;

11) others in accordance with CLP/FT legislation.

Footnote. Paragraph 14 as amended by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

14. Entities in accordance with their assigned functions shall:

1) ensure confidentiality of information received in the exercise of their functions;

2) provide information to the relevant state bodies to monitor the implementation of CLP/FT legislation;

3) provide in authorized body by its inquiry necessary information, data and documents according to Paragraph 3-1 of Article 10 of the Law.

15. Entities and his workers shall not inform clients and other persons on granting in authorized body of information, data and documents on such clients and on the operations made by them.

Chapter 3. LP/FT Risk Management Program

Footnote. Title in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

16. The risk management program LP/FT shall provide for Entities to conduct risk assessment of transactions with money and/or other property related to LP/FT with assignment of risk levels.

Risk levels shall be formed on the basis of available information about the client (its representative) and the beneficial owner.

The results of the risk assessment shall be documented and provided at the request of the relevant state bodies and non-profit organizations, of which the Entities shall be members.

The client risk level (customer group) shall be reviewed by the Entity as the customer information (customer group) and the results of the activity monitoring (business relationship) shall be updated.

Footnote. Paragraph 16 as amended by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

17. In the risk management program, a high risk level of LP/FT shall be assigned to

:

1) business relations and transactions with clients from states (territories): non-implementing and/or under-implementing FATF recommendations;

with increased corruption or other criminal activity;
subject to sanctions, embargoes and similar measures imposed by the United Nations (hereinafter referred to as the UN);
providing financing or support for terrorist (extremist) activities, and in which there shall be established terrorist (extremist) organizations.

Note. References to the lists of such states (territories) according to the data of the UN and international organizations shall be posted on the official Internet resource of the authorized body.

2) to the client in case:

the client is a foreign public official;

the client is an official of a public international organization;

the client is a person acting for the benefit of a foreign public official;

the client is a person who is a family member, a close relative of a foreign public official;

client (his representative) or beneficial owner, or client's counterparty under the transaction shall be registered or shall carry out activities in the state (territory) included in the List of Offshore Zones, approved by Order № 52 of the Acting Minister of Finance of the Republic of Kazakhstan dated February 10, 2010 "On approval of the list of offshore zones for the purposes of the Law of the Republic of Kazakhstan "On combating legalization (laundering) proceeds from crime and the financing of terrorism", registered in the Register of state registration of regulatory legal acts under No. 6058 (hereinafter referred to as the Order);

the client shall be included in the List of organizations and persons connected with the financing of terrorism and extremism, in accordance with Article 12 of the Law;

the client is stateless;

the client is a citizen of the Republic of Kazakhstan who does not have an address of registration or stay in the Republic of Kazakhstan;

the client is a nonresident;

the business relationship with the client shall be carried out under unusual circumstances (e.g. too large an unexplained geographical distance between the Entity and the client);

the client's activities are related to the intensive circulation of cash;

the Entity shall have difficulties in verifying the information submitted by the client

;

the client insists on haste of operation;

the client insists on non-standard or unusually complex calculation schemes, the use of which differs from the usual practice of the Entity;

the client uses new products and new business practices, including new transfer mechanisms, new or evolving technologies for both new and existing products;

actions aimed at avoiding financial monitoring procedures shall be carried out by the client;

the client transactions have been previously considered suspicious;

other client information associated with high LP/FT risk shall be available

3) operations:

related to anonymous bank accounts or using anonymous, fictional names, including cash payments;

having no obvious economic meaning or apparent legal purpose;

done with a non-natural frequency;

committed on an unusually large sum;

for which information shall be available on the high risk level of LP/FT.

Note. Clients assigned a high risk level of LP/FT shall be subject to enhanced measures to properly screen clients, in accordance with paragraph 7 of Article 5 of the Law.

Footnote. Paragraph 17 as amended by the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

18. In the risk management program, the low risk level LP/FT shall be assigned to:

1) business relations and transactions with individuals and legal entities from states (territories):

states (territories) not included in the List that shall not comply with and/or shall not sufficiently comply with FATF recommendations;

with low levels of corruption or other criminal activity;

2) the client in cases when the client is:

a financial institution - subject to financial monitoring, and over the past year has not been held administratively liable for non-compliance with CLP/FT legislation;

state body of the Republic of Kazakhstan;

an entity listed on the stock exchange;

3) to operations:

on transfer to trust management of property (shares, actions in authorized capital of the commercial organizations and other property and also the property transferred to property hiring) civil servants;

related to the certification of the contract on the procedure for the use of property.

Clients assigned a low risk level of LP/FT shall be subject to simplified measures for proper screening of clients, in accordance with paragraph 7 of Article 5 of the Law.

Chapter 4. Program of client identification of

Footnote. Title in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

19. The program of client identification shall consist of activities carried out by Entities to identify and update previously received information about clients (their representatives) and beneficial owners, including information about the source of financing of transactions performed by the client and shall include procedures for:

1) compliance with measures to properly check the client (his representative) and beneficial owners in accordance with the requirements of Article 5 of the Law;

2) validation of information about the client (his representative) and beneficial owner in accordance with subparagraph 6) of paragraph 3 of Article 5 of the Law;

3) presence or absence in relation to the client (his representative) and the beneficial owner of information on their involvement in the financing of terrorism and extremism provided for in the List of organizations and persons related to the financing of terrorism and extremism, in accordance with Article 12 of the Law;

4) to verify the client's affiliation and/or involvement with a foreign public official, his family members and close relatives in accordance with the requirements of Article 8 of the Law;

5) identification of clients having registration, place of residence or location accordingly:

In a state (in a territory) that shall fail to comply with and/or does not sufficiently comply with the recommendations of FATF, or that shall use accounts with a bank registered in that state (in that territory) pursuant to subparagraph 4) of paragraph 4 of Article 4 of the Law;

offshore zones approved by the Order;

6) establishing the intended purpose and nature of the business relationship.

Note: for a client with a high risk of LP/FT, when establishing the intended purpose and nature of the business relationship, information on the type of activity and the source of financing of the transactions performed shall be additionally requested;

For a low risk LP/FT client, the intended purpose and nature of the business relationship shall be determined based on the nature of the client's transactions.

7) applying to the client, depending on the assigned risk level, measures to properly verification of the client in accordance with the risk management program;

8) update information obtained as a result of client identification as client identification changes

(his representative) and beneficial owner, but at least once a year.

Update information on the client (his representative) and beneficial owner with high risk level of LP/FT shall be updated at least once in half-year. The update

information on the client (his representative) and the beneficial owner with low risk of LP/FT shall be updated at least once every two years.

In case of refusal of the client to establish business relations and carry out transactions with money and (or) other property in case of impossibility to take the measures provided for in sub-paragraphs 1)2), 2-1), 4) and 6) of paragraph 3 of Article 5 of the Law, as well as measures to freeze transactions with money and (or) other property, the Entities shall send to the authorized body a message about such fact of refusal under the FM-1 Form.

If it is impossible to take the measures provided for in subparagraph 6) of paragraph 3 of Article 5 of the Law, as well as in case of suspicion in the course of the examination of transactions performed by the client that the business relationship is used by the client for the purposes of LP/FT, the Entities shall terminate the business relationship with the client.

If the business relationship is terminated on the above mentioned grounds, the Entities shall send a message to the authorized body on the FM-1 Form.

19-1. If the Entity, in accordance with the Law, on the basis of a contract, has instructed another person to apply to the clients of the Entity the measures provided for in subparagraphs 1), 2), 2-1) and 4) of paragraph 3 of Article 5 of the Law, the Entity shall develop rules of his interaction with such persons, which shall include:

- the procedure for conclusion by the Entity of contracts with persons entrusted with carrying out identification, as well as the list of officials of the Entity authorized to conclude such contracts;

- the procedure for identifying the client (his representative) and the beneficial owner in accordance with the agreements between the Entity and the persons entrusted with the identification;

- the procedure and terms of the Entity's transfer of information received during identification by persons entrusted with identification;

- the procedure of implementation by the Entity of control of observance by persons to whom carrying out identification, requirements for identification, including the procedure, terms and completeness of transfer to the Entity of the received data and also the measures taken by the Entity on elimination of the revealed violations shall be entrusted;

- the grounds, procedure and terms of the Entity's decision to unilaterally refuse to perform the contract with persons entrusted with identification, in case of their non-compliance with the identification requirements, including the procedure, terms and completeness of the transfer of the received information to the Entity, as well as the list of officials of the Entity authorized to make such a decision;

provisions on liability of persons to whom the Entity has instructed to carry out identification for non-compliance with identification requirements, including procedure, terms and completeness of transfer of the received information to the Entity;

Procedure of interaction of the Entity with persons entrusted with identification on issues of provision of methodological assistance in order to fulfill requirements for identification.

The Entity may include additional conditions in the interaction rules.

Footnote. Requirements as added by the Paragraph 19-1 in accordance with the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Chapter 5. The program of monitoring and studying client transactions, including the study of complex, unusually large and other unusual client transactions

Footnote. Title in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

20. The program of monitoring and studying client transactions, including the study of complex, unusually large and other unusual client transactions, shall be to identify transactions specified in Article 4 of the Law.

Footnote. Paragraph 20 in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

21. The Entity, if a client is assigned a high risk level, the LP/FT shall further examine all transactions carried out by the client at the Entity in order to determine the causes of the planned or completed transactions and identify the nature of the transactions that require further verification.

The Entity, if a customer is assigned a low risk level, the LP/FT will study the current customer transaction.

22. Information received as part of the implementation of the program of monitoring and studying of client transactions shall be documented and recorded in the client's file.

23. Data and information on client transactions identified as a result of monitoring specified in paragraphs 1, 2, 3 and 5 of Article 4 of the Law shall be submitted by the Entity in Kazakh or Russian to the authorized body in the FM-1 form.

Footnote. Paragraph 23 in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

24. The report on the transaction subject to mandatory examination shall be submitted by the Entity to the authorized body, not later than the working day following the day of recognition of such transaction as suspicious.

Chapter 6. Training and education program for employees of Entities on CLP/FT issues

Footnote. Title in the wording of the order of the Minister of Finance of the RK dated 10.11.2017 № 658 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

25. The training and education program on CLP/FT issues shall be developed in accordance with the requirements for training and education of employees approved by Order № 533 of the Minister of Finance of the Republic of Kazakhstan dated November 28, 2014 "On approval of requirements for financial monitoring entities for training and education of employees" registered in the Register of the state registration of regulatory legal acts under № 10001.