



On approval of the Rules for application of limited enforcement measures to payment system operators and payment service providers that are not banks and organizations carrying out certain types of bank operations

Unofficial translation

Resolution of the Board of the National Bank of the Republic of Kazakhstan dated August 27, 2018 № 181. Registered in the Ministry of Justice of the Republic of Kazakhstan on October 4, 2018 № 17474.

Unofficial translation

Footnote. The heading - as amended by the resolution of the Board of the National Bank of the Republic of Kazakhstan dated 30.11.2020 No. 139 (shall enter into force from 16.12.2020).

In accordance with the Laws of the Republic of Kazakhstan dated March 30, 1995 "On the National Bank of the Republic of Kazakhstan" and "On Payments and Payment Systems", dated July 26, 2016 the Board of the National Bank of the Republic of Kazakhstan **hereby RESOLVES:**

1. To approve the attached Rules for the application of limited enforcement measures to payment system operators, payment system operating centers, payment service providers that are not banks, branches of non-resident banks of the Republic of Kazakhstan and organizations carrying out certain types of banking operations.

Footnote. Paragraph 1 - as amended by the resolution of the Board of the National Bank of the Republic of Kazakhstan dated 30.11.2020 No. 139 (shall enter into force from 16.12.2020).

2. The Department of Payment Systems (Ashykbekov Ye.T.), in accordance with the procedure established by the legislation of the Republic of Kazakhstan, shall ensure:

1) Jointly with the Legal Department (Sarsenova N.V.), the State registration of this Resolution with the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days from the date of state registration of this Resolution, , send it in Kazakh and Russian to Republican State Enterprise on the Right of Economic Management "Republican Center of Legal Information" for official publication and inclusion in the Reference Control Bank of Regulatory Legal Acts of the Republic of Kazakhstan;

3) place this Resolution on the Internet resource of the National Bank of the Republic of Kazakhstan after its official publication;

4) within ten working days after the State registration of this Resolution, submit to the Legal Department the information on the implementation of measures provided by subparagraphs 2), 3) of this paragraph and paragraph 3 of this Resolution.

3. The Directorate for the Protection of the Rights of Consumer of Financial Services and External Communications (A.L. Terentyev) shall within ten calendar days after the State registration of this Resolution, direct its copy for official publication in periodicals.

4. Supervising Deputy Chairman of the National Bank of the Republic of Kazakhstan Zh. B. Kurmanov shall be authorized to oversee the implementation of this Resolution.

5. This Resolution shall be enforced upon expiry of ten calendar days after the day of its first official publication.

*Chairman
of the National Bank*

D. Akishev

Approved
by Resolution No. 181
of the Board
of the National Bank
of the Republic of Kazakhstan
dated August 27, 2018

Rules

for the application of limited enforcement measures to payment system operators, payment system operating centers, payment service providers that are not banks, branches of non-resident banks of the Republic of Kazakhstan and organizations carrying out certain types of banking operations

Footnote. The heading - as amended by the resolution of the Board of the National Bank of the Republic of Kazakhstan dated 30.11.2020 No. 139 (shall enter into force from 16.12.2020).

Chapter 1. General provisions

1. These Rules for the application of limited enforcement measures to payment system operators, payment system operating centers, payment service providers that are not banks, branches of non-resident banks of the Republic of Kazakhstan and organizations carrying out certain types of banking operations, (hereinafter referred to as the Rules) have been developed in accordance with the laws of the Republic of Kazakhstan dated March 30, 1995 "On the National Bank of the Republic of Kazakhstan" and July 26, 2016 "On payments and payment systems" and determine the procedure for the application by the National Bank of the Republic of Kazakhstan (hereinafter referred to as the National Bank) of limited enforcement measures in relation to payment system operators, payment system operating centers, payment service providers that are not banks, branches of non-resident banks of the Republic of Kazakhstan and organizations engaged in certain types of banking operations (hereinafter referred to as non-bank entities of the payment services market).

The Rules shall be valid in the territory of the Republic of Kazakhstan and apply to residents of the Republic of Kazakhstan.

Footnote. Paragraph 1 as amended by the resolution of the Board of the National Bank of the Republic of Kazakhstan dated 28.11.2019 № 221 (вводится в действие с 01.01.2020); от 30.11.2020 No. 139 (shall enter into force from 16.12.2020).

2. The National Bank shall apply limited enforcement measures regarding to the non-bank entity of the payment services market, taking into account one or more of the following factors:

1) risk level.

Risk shall be understood as the probability of occurrence of negative consequences in the form of violation of the rights and freedoms of citizens, harming the interests of society and the state as a result of non-execution and (or) incomplete execution by the non-bank entity of the payment services market of the requirements established by the legislation of the Republic of Kazakhstan on countering the legalization (laundering) of income received from crime, and the financing of terrorism, as well as payments and payment systems, in carrying out activities, as well as the deterioration of the ability of the non-bank entity of payment services market to fulfill their obligations to ensure the functioning of the payment system or to provide payment services;

2) the ability to adjust the situation as a result of applying the chosen limited enforcement actions;

3) the nature of the violations and the possible consequences for the non-bank entity of payment services market and its clients;

4) the frequency and duration of violations;

5) measures to eliminate the violations and (or) causes, as well as the conditions that promoted them, taken (planned) by the non-bank entity of the payment services market;

6) limited enforcement measures, sanctions applied to a non-bank entity of payment services market for violation of the requirements of the legislation of the Republic of Kazakhstan on the issues falling within the competence of the National Bank;

7) awareness of senior employees of the non-banking payment services market entity about the violations;

8) analysis of the applied risk management system and information security measures;

9) general ability of the non-bank payment services market entity to ensure the functioning of the payment system or to provide payment services.

3. When assessing the level of risk when applying a limited measure of influence in relation to an operator, an operating center of payment systems that is not a bank, a branch of a non-resident bank of the Republic of Kazakhstan or an organization carrying out certain types of banking operations (hereinafter referred to as the operator), the type of payment system shall be additionally taken into account: systemically important payment system, significant payment system or other payment system.

In the assessment of the level of risk when applying a limited measure of influence in relation to a payment service provider that is not a bank, a branch of a non-resident bank of

the Republic of Kazakhstan or an organization carrying out certain types of banking operations (hereinafter referred to as the supplier), the types of payment services provided by it and its classification as significant suppliers shall be additionally taken into account.

Footnote. Paragraph 3 - as amended by the resolution of the Board of the National Bank of the Republic of Kazakhstan dated 30.11.2020 No. 139 (shall enter into force from 16.12.2020).

4. Analysis of the operator's ability to fulfill its obligations to ensure the functioning of payment systems shall be determined on the basis of information on payments and (or) money transfers submitted to the National Bank by the operator or operational center of the significant payment system, information on payment services submitted to the National Bank by suppliers, assessment materials (self-assessments) of the functioning of the payment system, the results of the significant payment system carried out by the operator to analyze the efficiency of the payment system for the satisfaction of participants with the quality of provided services, the results of documentary inspection and incoming requests from individuals and legal entities, state agencies, if available, analyze the requirements for availability of risk management systems and internal control.

Analysis of the supplier's ability to fulfill its obligations to provide payment services shall be determined on the basis of information on payment services submitted to the National Bank by suppliers, the results of a significant supplier's assessment of the quality of provided services, the results of inspections and incoming requests from individuals and legal entities, state agencies, if available, analyze the requirements for availability of risk management systems and internal control, as well as the ability of the supplier's management to interact with its shareholders (founders, participants) in order to obtain financial support in the event of a deterioration in its ability to provide payment services.

5. The National Bank shall apply the following limited enforcement actions regarding to non-bank entities of the payment services market:

- 1) giving of a binding written order;
- 2) issuing a written warning;
- 3) writing a written agreement.

6. The National Bank shall keep records of the applied limited enforcement actions and place information on the applied limited enforcement actions on its official Internet resource.

7. The application to the non-bank entity of the payment services market of one limited enforcement action shall not preclude the application to it of other limited enforcement actions.

8. The non-bank entity of the payment services market shall notify the National Bank of the execution of the limited enforcement action within the terms specified in the written order , written warning, and written agreement.

The notification shall be sent to the National Bank within five working days after the date of elimination of violations and (or) causes, determined by the application of a limited enforcement actions, and the conditions that promoted them.

If the term established in the limited enforcement action for eliminating violations and (or) the causes and conditions contributing to their occurrence, exceeds one month, the non-bank entity of the payment services market shall monthly notify the National Bank of the phased implementation of the conditions and measures aimed at eliminating the violations with attachments supporting documents, before the fifth day of the month following the reporting.

9. The beginning of the term for fulfillment of the conditions and measures provided in the relevant document of the National Bank on the application of a limited enforcement action shall be considered the date of its actual receipt by a non-bank entity of payment services market.

Chapter 2. Giving a binding written order

10. A written order shall be an indication to the non-bank entity of the payment services market to take compulsory corrective measures aimed at eliminating the violations found and (or) the reasons, as well as the conditions that promoted them within the time period specified in the written order, and the established period of the plan of measures for the elimination of the revealed violations and (or) causes, as well as the conditions that promoted them, (hereinafter referred to as the plan of measures).

11. The appeal of the written order of the National Bank in court shall not suspend its execution.

12. Corrective measures shall be indicated in a written prescription and constitute the following measures compulsory for implementation:

1) on fulfillment of obligations to customers and (or) service providers, third parties with whom the non-bank entity of the payment services market has entered into contractual obligations aimed at the provision of payment services;

2) to eliminate the revealed violations of the requirements established by the legislation of the Republic of Kazakhstan on countering the legalization (laundering) of incomes from crime and the financing of terrorism, as well as on payments and payment systems, the causes and (or) conditions facilitating their execution;

3) on fulfillment of the requirements imposed on the non-bank entity of the payment services market, established by the legislation of the Republic of Kazakhstan on countering the legalization (laundering) of incomes from crime and financing of terrorism, as well as on payments and payment systems.

13. The non-bank entity of the payment services market shall submit, within the period established by a written order, to the National Bank a plan of measures with a description of violations, causes and (or) conditions facilitating their execution, a list of planned activities, deadlines for their implementation, as well as responsible officials.

14. Within ten working days from the date of submission of the action plan, the National Bank shall consider it and, in case of disagreement, shall send its opinion on it, indicating to the non-bank entity of the payment services market about the need to adjust the planned measures or the deadlines for their execution and submit the updated plan of measures in term established by the National Bank.

15. If the National Bank fails to direct the opinion within the period specified in paragraph 14 of the Rules, the plan of measures shall be considered adopted.

16. The National Bank shall require the submission of a plan of measures in cases, when violations of the requirements established by the legislation of the Republic of Kazakhstan on countering the legalization (laundering) of proceeds from crime and the financing of terrorism , as well as on payments and payment systems are revealed in the activities of the non-bank entity of the payment services market, the elimination of which and (or) the reasons, as well as the conditions facilitating their execution, is objectively possible by taking measures by the non-bank entity of the payment services market.

17. The National Bank shall monitor the execution of the adopted plan of measures by the non-bank entity of the payment services market.

18. A written order shall be brought to the notice of the head of the non-bank entity of the payment services market.

19. The head of a non-bank entity of the payment services market shall, within five calendar days from the date of receipt of the written order, notify all members of the executive agency of the non-bank entity of the payment service market on the issuance of the written order.

20. In the absence of the possibility of eliminating violations and (or) the reasons, as well as the conditions that contributed to their commitment, , within the terms established in the written order and (or) the plan of measures, for reasons beyond the control of the non-bank entity of the payment services market, the non-bank entity of the payment services market shall send a letter to the National Bank with a description of the reasons and proposed deadlines for the elimination of violations and (or) the causes, as well as the conditions that facilitated their commitment, and (or) changes in the plan of measures, indicating the proposed deadlines and the completion of the planned measures for twenty working days before the deadlines set in the written order and (or) in the plan of measures.

If the deadline set in the first part of this paragraph is less than twenty working days from the date of the written order, the non-bank entity of the payment services market shall send a letter to the National Bank with a description of the reasons and proposed deadlines for the elimination of violations and (or) the causes, as well as the conditions that facilitated their commitment, , and (or) changes in the plan of measures, before the deadlines set in the written order and (or) in the plan of measures.

Based on the results of consideration of the letter of a non-bank entity of the payment services market, the National Bank shall decide, within five working days, whether it agree or

disagree with the terms specified in the letter of the non-bank entity of the payment services market, or shall determine other acceptable terms and send the changes to the written order and (or) report agreeing with the deadlines set in the plan of measures or establishing other acceptable deadlines in the plan of measures or shall inform of a disagreement to change the deadlines set in the written order and (or) plan of measures.

Chapter 3. Issuance of a written warning

21. A written warning shall be a notification of the National Bank about the possibility of applying sanctions to a non-bank entity of the payment services market, if the National Bank detects a similar violation of the legislation of the Republic of Kazakhstan within one year after the issuance of the warning.

22. A written warning shall be brought to the attention of the head of the non-bank entity of the payment services market.

23. The head of the non-bank entity of the payment services market shall, within five calendar days from the day of receipt of the written warning, notify all members of the executive agency of the non-bank entity of the payment services market about issuing a written warning.

Chapter 4. Drawing up a written agreement

24. The National Bank shall conclude a written agreement with the non-bank entity of the payment services market on the necessity for eliminating violations revealed and (or) the reasons and conditions that facilitated their commitment, , and approve the list of measures for eliminating these violations and (or) the reasons and conditions that facilitated their commitment, , indicating the terms for their elimination and (or) the list of restrictions, which the non-bank entity of the payment services market assumes until the violations and (or) causes are eliminated, as well as the conditions that facilitated their commitment.

A written agreement shall be concluded with the head of the non-bank entity of the payment services market or designated persons.

The written agreement shall be subject to compulsory signing by the non-bank entity of the payment services market.

25. A written agreement shall be concluded in cases where consequences are expected in the non-bank entity of the payment services market activities that may further deteriorate the ability of the non-bank entity of the payment services market to fulfill its obligations to provide payment services and ensure the functioning of the payment system.

26. The written agreement shall specify the list of measures for eliminating violations revealed and (or) the reasons, as well as the conditions that facilitated their commitment, and the deadlines for their implementation and (or) the list of obligations assumed by the non-bank entity of the payment services market. Having signed a written agreement, the non-bank entity of the payment services market shall assume obligations to fulfill its conditions.

27. In the absence of the possibility of eliminating violations and (or) the reasons, as well as the conditions that facilitated their execution, within the terms established in a written agreement, for reasons beyond the control of the non-bank entity of the payment services market, the non-bank entity of the payment services market shall send a letter to the National Bank describing the causes and proposed deadlines for the elimination of violations and (or) the reasons, as well as the conditions that facilitated their commitment, , twenty working days prior to the deadlines set in a written agreement.

If the deadline set in the part one of this paragraph is less than twenty working days from the date of the written agreement, the non-bank entity of the payment services market shall send a letter to the National Bank describing the reasons and proposed deadlines for the elimination of violations and (or) reasons and conditions that facilitated their commitment , before the deadlines set in a written agreement.

Based on the results of consideration of the letter of a non-bank entity of the payment services market, the National Bank shall decide, within five working days, whether it agrees or disagrees with the terms specified in the letter of the non-bank entity of the payment services market, or shall determine other acceptable terms and conclude an additional written agreement indicating new deadlines for the elimination of violations and (or) the reasons, as well as the conditions that facilitated their commitment or shall inform of a disagreement to change the terms, conditions set in a written agreement.