KAZAKHSTAN

LAW ON STATE REGULATION AND SUPERVISION OF FINANCIAL MARKETS AND FINANCIAL ORGANISATIONS

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LAW No. 474 OF 4TH JULY 2003 OF THE REPUBLIC OF KAZAKHSTAN

CONCERNING THE STATE REGULATION AND SUPERVISION OF FINANCIAL MARKETS AND FINANCIAL ORGANISATIONS

AMENDMENTS AND ADDITIONS INTRODUCED BY:


8) Law No. 164 of 5th July 2006 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Mutual Insurance. (Article 1). Effective date n/a; and


This Law shall regulate public relations associated with the exercise of the state regulation and supervision of financial markets and financial organisations, and it is aimed at enhancing the stability of the financial system of the Republic of Kazakhstan as well as formation of conditions for the prevention of violations of rights and legitimate interests of financial service consumers.

CHAPTER 1. GENERAL PROVISIONS

Article 1. The Fundamental Definitions Used by This Law

Amended by 2) Law No. 577 of 7th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Investment Funds; and

The following fundamental definitions are used in this Law:
1) consumer of financial services — a physical person or legal entity using services of a financial organisation as well as one investing its funds into financial instruments;
2) professional activities in financial markets — business activities associated with rendering of financial services;
3) authorised body — state authority exercising the regulation and supervision of financial markets and financial organisations;
4) financial organisation — a legal entity exercising entrepreneurial activities associated with rendering financial services;
5) financial markets — a range of relations associated with rendering and utilisation of financial services, as well as issuing and circulation of financial instruments;
6) financial services — activity of participants of the insurance market, securities market, accumulation pension funds as well as activities of mutual insurance societies not to be licensed, [modified by 8] banking activity as carried out on the basis of licences received in accordance with the legislation of the Republic of Kazakhstan, [introduced by 2]

Article 2. The Legislation of the Republic of Kazakhstan Concerning the State Regulation and Supervision of Financial Markets and Financial Organisations

1. The Republic of Kazakhstan legislation concerning the state regulation and supervision of financial markets and financial organisations shall be based on the Republic of Kazakhstan Constitution, it shall consist of this Law and other regulatory legal acts of the Republic of Kazakhstan.
2. Where an international agreement ratified by the Republic of Kazakhstan establishes other rules than those that specified in this Law, the rules of an international agreement shall apply.

Article 3. Purposes, Principles and Objectives of the State Regulation and Supervision of Financial Markets and Financial Organisations

1. The following shall recognised the purposes of the state regulation and supervision of financial markets and financial organisations:
   1) ensuring financial stability of financial markets and financial organisations and supporting the confidence in the financial system as a whole;
   2) ensuring appropriate level of protecting interests of financial services users;
   3) formation of equal conditions for the activities of financial organisations, aimed at supporting fair competition in financial markets.
2. The following shall be recognised as principles of the state regulation and supervision of financial markets and financial organisations:
   1) efficient utilisation of regulatory resources and instruments;
   2) transparency of activities of financial organisations and financial supervision;
   3) encouraging management of financial organisations based on risk assessment;
   4) integrity of measures for ensuring protection of financial service user interests by way of supporting the development of new financial instruments and services as well as introduction of advanced technologies in financial markets;
   5) responsibility of authorities of financial organisations.
3. The following shall be recognised as objectives of the state regulation and supervision of financial markets and financial organisations:
1) establishing standards for the functioning of financial organisations, creation of incentives for improving corporate management of financial organisations;
2) monitoring of financial markets and financial organisations for the purposes of supporting the stability of the financial system;
3) concentrating supervisory resources on financial markets' sectors that are most exposed to risks, for the purposes of supporting financial stability;
4) encouraging the introduction of advanced technologies, ensuring the fulness and accessibility of user information on activities of financial organisations and financial services rendered by them.

Article 4. Prohibition of Unauthorised Activities in Financial Markets

1. It shall not be allowed to carry out professional activities in financial markets by persons who have not appropriate licences, issued in accordance with the Republic of Kazakhstan legislation.
2. Transactions associated with rendering of financial services committed without appropriate licences from the authorised body shall be recognised as invalid.

Article 5. Prudential Standards and Other Rules and Standards Obligatory for Compliance

Economic restrictions which are established by the authorised body for financial organisations for the purposes of ensuring their financial stability and protecting the interests of financial service users shall be recognised as prudential standards.

In the cases specified by the legislative acts of the Republic of Kazakhstan, the authorised body shall have the right to establish prudential standards and other rules and limits which are obligatory for compliance on a consolidated basis.

CHAPTER 2. STATUS, OBJECTIVES, FUNCTIONS AND POWERS OF THE AUTHORISED BODY

Article 7. The Status of the Authorised Body


1. The regulation and supervision of financial markets and financial organisations shall be carried out by the integrated authorised body appointed by the President of the Republic of Kazakhstan.
2. The authorised body shall be directly subordinated and accountable to the Republic of Kazakhstan President and it shall act on the basis of Regulations concerning it as approved by the President of the Republic of Kazakhstan.
2-1. Work remuneration system of the authorised body shall be approved by the President of the Republic of Kazakhstan pursuant to the proposal of the board of the authorised body coordinated with the National Bank of the Republic of Kazakhstan. [introduced by 3]
3. Financing of the authorised body shall be carried out at the expense of budgetary funds (costs estimates) of the National Bank of the Republic of Kazakhstan. The authorised body shall have the right to have other financial receipts relating to compensation of costs in accordance with the procedure defined in the regulations concerning the authorised body, which upon the results of a financial year shall be transferred to the budget of the National Bank of the Republic of Kazakhstan. [introduced by 3]
3-1. Work remuneration conditions for the employees of the authorised body shall be determined by its board. [introduced by 3]

**Article 8. Objectives of the Authorised Body**

1. The following shall be recognised as objectives of the authorised body:
   1) implementation of measures associated with the prevention of violation of rights and legitimate interests of financial service users;
   2) creation of equal conditions for the functioning of the relevant types of financial organisations on the principles of fair competition;
   3) enhancing levels of standards and methods for regulation and supervision of activities of financial organisations, use of measures associated with ensuring the timely and full performance by them of obligations they undertake.
2. The authorised body shall provide for the implementation of other objectives specified by this Law and other legislative acts of the Republic of Kazakhstan.

**Article 9. The Functions and Authority of the Authorised Body for Regulation and Supervision of Activities of Financial Organisations**


1. For the purposes of regulation and supervision of activities of financial organisations the authorised body shall:
   1) in the cases specified by the legislative acts of the Republic of Kazakhstan, issue and revoke permits for the opening (formation) of financial organisations, their voluntary reorganisation and liquidation, issue approvals for the opening of subdivisions of financial organisations, define the procedure for issuing said permits and approvals;
   2) in the cases specified by the legislative acts of the Republic of Kazakhstan, issue approvals or denies approvals for election (appointment) of persons to executive positions of financial organisations, and also define the procedure for issuing said approvals or denials of approvals;
   3) establish the procedure for issuing, suspending and revoking licences for the performance of professional activities in a financial market, in the cases specified by legislative acts of the Republic of Kazakhstan, issue, suspend and revoke said licences;
   4) issue regulatory legal acts obligatory for the compliance by financial organisations, users of financial services, other physical persons and legal entities in the territory of the Republic of Kazakhstan;
   5) approve prudential standards and other standards and restrictions obligatory for compliance by financial organisations, including those on a consolidated basis;
   6) establish the list, forms, timing and procedure for the submission of reports (except for financial statements and statistical reports) by financial organisations and their affiliated persons. [introduced by 1]
7) exercise supervision of compliance by financial organisations with the legislation of the Republic of Kazakhstan concerning accounting and financial reporting as well as accounting standards, except for the cases specified in legislative acts of the Republic of Kazakhstan; [added by 1]

7-1) delegate its representative for the participation in the general meeting of shareholders of financial organisations; [introduced by 4]

8) audit activities of financial organisations and their affiliated persons in the cases and within limits specified by the legislative acts of the Republic of Kazakhstan, in particular by hiring organisations of auditors;

9) define the procedure for the application, and apply restricted control measures and sanctions to financial organisations, as provided for by the legislative acts of the Republic of Kazakhstan;

10) in coordination with the Government of the Republic of Kazakhstan, take decisions on enforced purchase of shares of financial organisations in the cases specified by legislative acts of the Republic of Kazakhstan;

11) exercise the supervision of activities of liquidation commissions of financial organisations in the cases specified by the legislative acts of the Republic of Kazakhstan;

12) publish in mass media information on financial organisations (except for information constituting service secrets, commercial secrets, banking or any other secrets protected by the law), including information concerning measures imposed on them.

2. The authorised body shall have the right to carry out audits of financial organisations and their affiliated persons, in particular by hiring organisations of auditors, for the following purposes:

1) identifying financial condition of financial organisations and their affiliated persons;

2) establishing the compliance with the Republic of Kazakhstan legislation of the management structure and procedures for the adoption of decisions by financial organisations and their affiliated persons;

3) identifying affiliated persons of financial organisations;

4) exposing and preventing violation of financial services user rights;

5) exposing and preventing unauthorised activities associated with rendering of financial services or issuing of financial instruments.

3. Aside from the powers specified in paragraphs 1 and 2 of this Article, the authorised body shall exercise other powers associated with regulation and supervision of financial organisations, subject to special considerations specified by Articles 10-13 of this Law.

4. The authorised body shall not have the right to interfere with activities of financial organisations, except for the cases provided for by legislative acts of the Republic of Kazakhstan.

Article 10. Special Considerations in Regulation and Supervision of Banking Activities

Amended by 4) Law No. 107 of 23rd December 2005 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Licensing and Consolidated Supervision; and


For the purposes of exercising regulation and supervision of banking activity, the authorised body shall:

1) define the procedure for issuing and denying issuing of permits for acquisition by physical persons and legal entities of the status of major participants in banks and banking holding, for the formation and acquisition by banks of subsidiary organisations, issue or deny issuing of said permits;
2) establish minimum amounts of equity capital of banks;
3) establish requirements for the formation of reserve capital of banks;
4) approve prudential standards and other rules and restrictions which are obligatory for the compliance by banking groups;
5) establish the procedure for the obligatory collective guaranteeing (insuring) of savings (deposits);
6) establish the procedure for categorisation of assets and contingent liabilities and formation of provisions for them. The procedure for recognition of assets and contingent liabilities as doubtful and bad, shall be determined in coordination with the state authority providing tax supervision of compliance with tax obligations to the state;
7) maintain the register of banks
8) define the procedure for the application and take decisions on application to affiliated persons of banks of enforcement measures as specified by legislative acts of the Republic of Kazakhstan;
9) in the cases established by the banking legislation of the Republic of Kazakhstan, take decisions on sealing of banks and appoint the temporary administration (a temporary bank manager);
10) in the cases established by the banking legislation of the Republic of Kazakhstan, take decisions on revocation of licences for the performance of all or certain transactions specified by the banking legislation of the Republic of Kazakhstan, and appoint temporary administration (a temporary administrator);
11) exercise other functions in accordance with the legislative acts of the Republic of Kazakhstan.

The authorised body shall have the right to have its representatives in banks for the purposes of exercising supervisory functions. [introduced by 4]

Article 11. Special Considerations in Regulation and Supervision of Insurance Activities


For the purposes of exercising the regulation and supervision of insurance activities, the authorised body shall:

1) define the procedure for issuing and revoking permits for acquisition of control of an insurance (reinsurance) organisation, issue and revoke said permits;
2) establish requirements to the formation of insurance reserves by insurance (reinsurance) organisations;
3) establish requirements to techniques for the computation of insurance reserves of insurance (reinsurance) organisations;
4) define the procedure for the placement and investment of assets by insurance (reinsurance) organisations;
5) establish requirements with regard to the form and contents of insurance policies;
6) define the procedure and conditions for increasing amounts of regular insurance payments during the period of annuity agreements validity on the basis of actuary resolutions and requirements concerning their contents;
7) define the procedure and terms of issuing by insurance organisations carrying out activities associated with accumulation insurance, of loans to their insurants;
8) define the procedure for accounting by an insurance (reinsurance) organisation for insurance and reinsurance agreements (insurance policies), in particular those fulfilled by the insurance (reinsurance) organisation with violation of the periods established (by the agreements or the Republic of Kazakhstan legislation);
9) maintain a register of insurance (reinsurance) organisations, insurance brokers, actuaries;
10) in the cases established by the legislation of the Republic of Kazakhstan, take decisions on revocation of licences for the right to carry out insurance activities and appoint temporary administration (a temporary administrator);
11) define the procedure for the obligatory collective guaranteeing of insurance payments under obligatory insurance agreements;
12) exercise other functions in accordance with the legislative acts of the Republic of Kazakhstan.

Article 12. Special Considerations in Regulation and Supervision of Activities of Securities Markets Entities

Amended by 2) Law No. 577 of 7th July 2004 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Investment Funds; and

For the purposes of exercising regulation and supervision of securities markets entities the authorised body shall:
1) recognise financial market assets as securities;
2) carry out the state registration of issues of non-governmental securities, consider and approve reports on results of issuing and placement of shares, placement and redemption of obligations and annulment of securities issues and assign national identification numbers to state securities;
3) define the terms and procedure for issuing, placing, circulating and redeeming securities, including derivative securities, procedure for the assignment of national identification numbers to state securities;
4) establish the terms and procedure for the state registration of securities issues, including derivative securities, considering reports on results of their placement and redemption as well as their annulment;
5) organise training and retraining of specialists for professional participants of securities markets;
6) define the terms and procedure for issuing, suspending validity and revocation of permits for the performance of activities associated with training of specialists for work in securities markets, issue, suspend validity and revoke said permits;
7) define the terms and the procedure for conducting certification, and conduct the certification of physical persons who intend to work in securities markets, issue to persons who underwent the certification, qualification certificates, carry out re-certification of holders of qualification certificates, suspend and resume validity of qualification certificates, revoke qualification certificates;
8) define the terms and procedure for suspension and resumption of placement and circulation of securities and derivative securities;
9) maintain the State Register of Securities, the Register of licences and permits for the performance of activities in securities markets and the Register of issued qualification certificates for the right to exercise activities in securities markets;
10) exercise the terms and procedure for the exercise of professional activities in securities markets, in particular requirements concerning the terms and procedure for the commission of securities transactions;
11) establish the procedure for the performance of investment activities by organisations that carry out activities associated with investment management of pension assets and institutional investors;

12) establish the procedure for the exercise of activities of trade organisers in securities and self-regulatory organisations;

13) exercise the supervision of manipulation of prices of securities including derivative securities, conclusion in securities markets of transactions involving insider information or information which constitutes service secrets, commercial, banking or other secrets protected by law;

14) carry out the regulation and supervision of functioning of investment funds in accordance with the legislation of the Republic of Kazakhstan; [introduced by 2]

14-1) define the procedure for obtaining permits for voluntary reorganisation or liquidation of specialised financial companies; [introduced by 6]

15) exercise other functions in accordance with the legislative acts of the Republic of Kazakhstan.

Article 13. Special Considerations in Regulation and Supervision of Activities of Accumulation Pension Funds

For the purposes of exercising the regulation and supervision of activities of accumulation pension funds the authorised state body shall:

1) establish requirements to foundation parties, shareholders, executives of accumulation pension funds;

2) establish the minimum size of the authorised capital of accumulation pension funds, procedure for its formation and composition;

3) establish the procedure for the maintenance of accounting for pension savings in individual pension accounts of recipients and exercise the supervision of the accuracy of their maintenance, and also establish the procedure for transfers of pension savings;

4) establish the procedure for issuing permits for acquisition of more than twenty-five percent of shares in an accumulation pension fund;

5) coordinate pension rules of accumulation pension funds;

6) establish the procedure for transfers of pension assets and liabilities under pension agreements of an accumulation pension fund which is reorganised or liquidated to other funds;

7) in the cases established by the legislation of the Republic of Kazakhstan concerning pension support, take decisions on revocation of licences of accumulation pension funds for activities associated with collection of pension contributions and performance of pension payments, and appoint temporary administration (a temporary administrator);

8) take a decision on sealing of accumulation pension funds;

9) exercise other functions in accordance with the legislative acts of the Republic of Kazakhstan.


Concerning the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Issues of Entrepreneurship

1. Audits of activities of financial organisations, legal entities carrying out activity in securities markets, issuers of securities, liquidation commissions of banks, insurance (reinsurance) organisations, accumulation pension funds (henceforth — organisations) shall be
carried out by the authorised bodies independently or by inviting other state bodies and organisations.

2. Audits of activities of organisations shall be subdivided into the following types:

1) integrated audits — not more frequent than once a year in accordance with the plans of audits of the authorised body;

2) sample audits — with regard to separate issues of organisations activities in connection with petitions of physical persons and legal entities and also in the case of discovery by the authorised body, within the framework of exercising supervisory and monitoring functions, of violations of requirements of the laws of the Republic of Kazakhstan;

3) raid audits — audits simultaneously encompassing activities of several organisations concerning issues of their compliance with certain requirements of the Republic of Kazakhstan legislation.

3. The authorised body in writing shall notify an organisation of forthcoming audit. In a notice on forthcoming audits, the authorised body shall specify the list of documents which must be presented by the organisation under audit to the group of auditors by the beginning of the audit.

Two copies of the notice shall be passed to the organisation, of which one with a note of receipt by the organisation shall be returned by the organisation to the authorised body.

Performance of an audit shall also be possible without a prior notice.

4. An organisation, not later than the day following a day of beginning an audit, shall submit a letter to the head of the group of auditors, containing the following details:

1) manager in charge of supporting the conducting of the audit and a person to substitute for him;

2) specialists of the organisation who are in charge of preparing appropriate documents (information), their timely transfer to the group of auditors and collecting interim statements from the group of auditors.

5. The authorised body, where appropriate, may extend the period for conducting the audit, of which a written notice shall be forwarded to the organisation.

Two copies of a notice shall be presented to the organisation, of which one with the note of receipt by the organisation of the notice, shall be returned to the authorised body.

6. An organisation shall be obliged to render assistance to the group of auditors with regard to issues specified in the assignment of the authorised body concerning the audit and also to provide for the possibility of interviewing any official persons and employees and access to any sources needed for verifying information.

7. Organisation shall provide the group of auditors with a separate office for work and a permit for entry of their administrative buildings, provide for the presentation by its employees of explanations (both oral and written) on questions of members of the group of auditors, access to information concerning activities of the organisation in particular to computer systems and data bases, provide the group of auditors with the possibility of photocopying relevant documents and also render assistance to the group of auditors in timely completion of audits.

8. The group of auditors may compile interim statements to be presented to the organisation for its consideration.

Interim statements shall be signed by individuals who compiled them and the head of the group of auditors.

9. Where there are complaints concerning an interim statement, the organisation upon expiry of four working days from the date of receipt of an interim statement shall disclose its written objections.

Conclusions presented in interim statements shall be recognised as preliminary and they may be revised in the final report on audit results, subject to objections and additional information received from the organisation, including third parties.
10. The group of auditors shall receive from the organisation all appropriate documents, in particular, their copies to be attached to interim statements and final reports on results of an audit.

The head of the group of auditors shall forward written requests to the head of the organisation, which will be subject to implementation within specified periods.

11. Members of a group of auditors when conducting audits shall provide for the safety of documents received from the organisation and for the confidentiality of information contained in them.

12. Within thirty calendar days after completing and audit, two copies of the final report on audit results signed by the person in charge of the audit and by his immediate superior, shall be forwarded to the chief executive of the organisation.

13. The chief executive (deputy) or a manager in charge of supporting conducting of an audit in the organisation shall receive the first copy of the final report on the results of the audit, initialise every page of the second copy of the report, inscribe te date of the receipt on the last page and mention position, surname, name, patronymic and not later than the day following the receipt of the final report on results of the audit, forward it to the authorised body. Results of an audit presented in the final report on the results of an audit shall be communicated by the organisation to the executive and other authorities of the organisation.

14. Where there are objections concerning results of an audit presented in the final report on the results of the audit, the organisation within ten calendar days from the date of receiving the final report on the results of an audit shall submit them to the authorised body in writing.

15. Results of an audit of an organisation presented in the final audit report may be considered at a meeting chaired by the head of the authorised body or his deputy, head of the unit of the authorised body or his deputies with inviting managers of the organisation.

16. Results of a meeting shall be formulated as minutes to be signed by the chairman of the meeting and within five calendar days from the date of signing shall be forwarded to the head of the organisation for perusal. In the event that there are objections, within three working days from the date of receipt of the minutes of the meeting, the organisation shall submit them to the authorised body in writing.

In the case of disagreement of the authorised body with the objections of the organisation against the minutes, the final decision shall be taken by the head of the authorised body or by his deputy.

17. Results of an audit may be solely used for the purposes of the exercise of by the authorised body of its functions.

18. The final report on the results of an audit may not be used by an organisation for the confirmation of its financial status, for advertising or other purposes, nor be passed to third parties without approval of the authorised body, except for the cases provided for by the laws of the Republic of Kazakhstan.

19. In the case of differences between documented data of financial or other reports presented by an organisation to the authorised body and the data presented in the final report on results of an audit, the organisation in accordance with the instructions of the authorised body shall bring its reports into conformity with the results of the final report, including concerning previous reporting dates.

20. Organisations within periods established by the authorised body, shall submit for the approval plans of measures with scheduled tasks and persons in charge of emilinating violations and omissions discovered in the course of audits.

After coordinating a plan of measures with the authorised body, the organisation shall present reports on elimination of violations and omissions or explanations on causes of failure to provide for obligations undertaken in accordance with the plan of measures.

21. In the event of refusal of an organisation to disclose documents, information within periods specified in the requests of the group of auditors, failure to implement provisions of paragraphs 7 and 10 of this Article making it impossible to carry out an audit within the
established period, an audit may be terminated pursuant to a decision of the person in charge of the audit after a proper written notice to the head of the authorised body or his deputy.

22. It shall be prohibited to employees of the authorised body to disclose or pass to third parties of information received in the course of auditing organisations.

23. Persons who carry out audits shall be held responsible for disclosure of information received in the course of activity of the organisation, which constitute a secret protected by the law in accordance with the laws of the Republic of Kazakhstan.

Article 14. The Authority to Receive Information

For the purposes of ensuring the high-quality and timely performance of the functions entrusted to the authorised body for regulation and supervision of financial markets and financial organisations, implementation of the requirements of this Law, the authorised body shall have the right to receive from physical persons and legal entities, as well as from state authorities information which is needed for the performance of their supervisory functions, in that case information received shall not be subject to disclosure.

Employees of the authorised body shall be liable for disclosure of information received in the course of their exercise of supervisory functions constituting service secrets, commercial, banking or other secrets protected by the law in accordance with the laws of the Republic of Kazakhstan.

Article 15. The Interaction of the Authorised Body with Other State Authorities of the Republic of Kazakhstan and Authorities of Other States, Exercising Regulation and Supervision of Financial Markets and Financial Organisations

1. The authorised body within the bounds conferred to it by the legislative acts of the Republic of Kazakhstan shall be independent in its activities. The state authorities shall have no right to interfere with the functioning of the authorised body with regard to the exercise of its powers assigned by legislation, except for the case specified by the legislative acts of the Republic of Kazakhstan.

2. The authorised body shall coordinate its activities with other state authorities within the bounds of authority specified by the Republic of Kazakhstan legislation.

3. The authorised body shall cooperate with the state authorities of other states which exercise the regulation and supervision of financial markets and financial organisations and it shall have the right to exchange information which is needed for their exercise of supervisory functions.

CHAPTER 3. CONCLUDING PROVISIONS


Persons guilty of violating the Republic of Kazakhstan legislation concerning state regulation and supervision of financial markets and financial organisations, shall be held responsible as established by the laws of the Republic of Kazakhstan.

Article 17. The Procedure for the Entry into Force of This Law

This Law shall enter into force from the 1st January 2004.

President of the Republic of Kazakhstan
N. Nazarbaev