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## SOME ISSUES OF STATE REGULATION, CONTROL AND SUPERVISION OF THE FINANCIAL MARKET AND FINANCIAL ORGANIZATIONS

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**Abstract.** *In many parts of the world, governments play a critical role in the economy, ensuring the reliable operation of financial service providers and the efficient service of state or local credit markets.*

*In addition, in this sense, Kazakhstan is no exception. In the republic, approaches and methods of regulating the financial market are based within the framework of the main directions of state policy in the field of development of the financial system of Kazakhstan, taking into account international standards (the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Pension Supervisors, the International Organization of Securities Commissions, the European Union, Council for Islamic Financial Services).*

*Public relations related to the implementation of state regulation, control and supervision of the financial market and financial organizations are subject to one of the key legislative acts – the Law of the Republic of Kazakhstan dated July 4, 2003 N 474 “On State Regulation, Control and Supervision of the Financial Market and Financial Organizations” (hereinafter referred to as the Law), which is aimed at increasing the stability of the financial system of the Republic of Kazakhstan and creating conditions for preventing violations of the rights and legitimate interests of consumers of financial services.*

*This article substantively conducts a detailed analysis (monitoring) of the mentioned above Law, some provisions of which currently do not have a uniform legal nature.*

*The structure of the article is represented by an introduction, an analysis of the compliance with the Constitution of Kazakhstan and the strategic goals of the state in the field under research; review of international experience; identification of certain shortcomings of the current Law, as well as the conclusion and specific proposals for improving national legislation in the field of regulation, control and supervision of the financial market and financial organizations.*

**Key words:** *Republic of Kazakhstan, financial market, financial organizations, regulation, control, supervision, special regulatory regime, authorized body.*

## ҚАРЖЫ НАРЫҒЫ МЕН ҚАРЖЫ ҰЙЫМДАРЫН МЕМЛЕКЕТТІК РЕТТЕУ, БАҚЫЛАУ ЖӘНЕ ҚАДАҒАЛАУДЫҢ КЕЙБІР МӘСЕЛЕЛЕРІ

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**Аннотация.** Әлемнің көптеген елдерінде мемлекеттік органдар қаржылық қызмет көрсетушілердің тұрақты жұмысы мен мемлекеттік немесе жергілікті несие нарықтарына тиімді қызмет көрсетуді қамтамасыз ете отырып, экономикада шешуші рөл атқарады.

Мұндай жағдай Қазақстанға да тән. Республикада қаржы нарығын реттеудің тәсілдері мен әдістері халықаралық стандарттарды (Банкті қадағалау жөніндегі Базель комитетінің, Сақтандыру қадағалауларының халықаралық қауымдастығының, Зейнетақы қадағалауларының халықаралық ұйымының, Багалы қағаздар жөніндегі комиссиялардың халықаралық ұйымының, Еуропа Одағының, Исламдық қаржы қызметтері жөніндегі кеңестің стандарттарын) ескере отырып, Қазақстан қаржы жүйесін дамыту саласындағы мемлекеттік саясаттың негізгі бағыттары шеңберіне негізделеді.

Қаржы нарығы мен қаржы ұйымдарын мемлекеттік реттеу, бақылау және қадағалауды жүзеге асыруға байланысты қоғамдық қатынастарды осы саладағы негізгі заңнамалық актілердің бірі – 2003 жылғы 4 шілдедегі Қазақстан Республикасының «Қаржы нарығын және қаржы ұйымдарын мемлекеттік реттеу, бақылау және қадағалау туралы» №474 Заңы (бұдан әрі – заң) реттейді. Бұл заң Қазақстан Республикасы қаржы жүйесінің тұрақтылығын арттыру және қаржы қызметтерін тұтынушылардың құқықтары мен заңды мүдделерінің бұзылуына жол бермеу жөнінде жағдайлар жасауға бағытталған.

Осы мақалада аталған Заңға жан-жақты талдау (мониторингі) жүргізілді, өйткені оның жекелеген ережелері қазіргі уақытта біркелкі құқықтық сипатқа ие емес.

Мақаланың құрылымында кіріспе, Қазақстан Конституциясына және зерттелетін саладағы мемлекеттің стратегиялық мақсаттарына сәйкестігін талдау, халықаралық тәжірибеге шолу жасау, қолданыстағы заңның жекелеген олқылықтарын анықтау, сондай-ақ қаржы нарығы мен қаржы ұйымдарын реттеу, бақылау және қадағалау саласындағы ұлттық заңнаманы жетілдіру жөніндегі қорытындылар мен нақты ұсыныстар бар.

**Түйін сөздер:** Қазақстан Республикасы, қаржы нарығы, қаржы ұйымдары, реттеу, бақылау, қадағалау, реттеудің ерекше режимі, уәкілетті орган.

## НЕКОТОРЫЕ ВОПРОСЫ ГОСУДАРСТВЕННОГО РЕГУЛИРОВАНИЯ, КОНТРОЛЯ И НАДЗОРА ФИНАНСОВОГО РЫНКА И ФИНАНСОВЫХ ОРГАНИЗАЦИЙ

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**Аннотация.** Во многих странах мира государственные органы играют решающую роль в экономике, обеспечивая надежную работу поставщиков финансовых услуг и эффективное обслуживание государственных либо местных кредитных рынков.

И в этом смысле Казахстан не является исключением. В республике подходы и методы регулирования финансового рынка базируются в рамках основных направлений государственной политики в области развития финансовой системы Казахстана с учетом международных стандартов (Базельского комитета по банковскому надзору, Международ-



ной ассоциации страховых надзоров, Международной организации пенсионных надзоров, Международной организации комиссий по ценным бумагам, Европейского Союза, Совета по исламским финансовым услугам).

Общественные отношения, связанные с осуществлением государственного регулирования, контроля и надзора финансового рынка и финансовых организаций подпадают под действие одного из ключевых законодательных актов – одноименного Закона Республики Казахстан от 4 июля 2003 года N 474 «О государственном регулировании, контроле и надзоре финансового рынка и финансовых организаций» (далее – Закон), который направлен на повышение стабильности финансовой системы Республики Казахстан и создание условий по недопущению нарушений прав и законных интересов потребителей финансовых услуг.

В данной статье предметно проводится детальный анализ (мониторинг) упомянутого Закона, отдельные положения которого в настоящее время не имеют единообразную юридическую природу.

Структура статьи представлена введением, анализом соответствия Конституции Казахстана и стратегическим целям государства в исследуемой области; обзором международного опыта; выявлением отдельных недостатков действующего Закона, а также заключением и конкретными предложениями по совершенствованию национального законодательства в сфере регулирования, контроля и надзора финансового рынка и финансовых организаций.

**Ключевые слова:** Республика Казахстан, финансовый рынок, финансовые организации, регулирование, контроль, надзор, особый режим регулирования, уполномоченный орган.

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## Introduction

In the legislation of the Republic of Kazakhstan<sup>2</sup>, a *financial organization* is understood as a legal entity engaged in entrepreneurial activities for the provision of financial services. And the *financial market* is a set of relations related to the provision and consumption of financial services, as well as the issuance and circulation of financial instruments.

The authorized body of Kazakhstan (represented by the Agency for Regulation and Development of the Financial Market) assists in the development of the financial market, financial products, and also ensures equal conditions for the functioning of financial organizations on the principles of fair competition, and counters abuses in the financial market. In this regard, the legislator vests the authorized body with the relevant functions of not only regulation, but also control and supervision.

As rightly noted by A.I. Khudyakov, “*supervision*” in generally accepted sense means ensuring the legality of any activity, while “*control*” means ensuring compliance with both the legality and the expediency of certain activities [1]. In addition, a number of other authors (Klimchuk S.V., Surnina K.S., Nekhaichuk Yu.S., Pozharitskaya I.M. and others) believe that financial control should be

considered as one of the most important means of ensuring financial security. Therefore, state financial control is considered as a mechanism and means of “protection” against threats to economic security [2].

Considering the above, the object of a detailed analysis in this article is the Law of the Republic of Kazakhstan dated July 4, 2003 “On State Regulation, Control and Supervision of the Financial Market and Financial Organizations”.

On the basis of the current international and national legislation, legal and specialized literature, law enforcement practice in the area under research, the work will be sequentially presented by the following stages: 1. Analysis of compliance with the Constitution of Kazakhstan and the strategic goals of the state in the area under research; 2. Identification of certain shortcomings of the current Law of the Republic of Kazakhstan dated July 4, 2003 N 474 “On State Regulation, Control and Supervision of the Financial Market and Financial Organizations”; 3. Studying international experience; 4. Concrete proposals for improving national legislation.

## Materials and methods

During the preparation of this article, the

<sup>2</sup> Law of the Republic of Kazakhstan dated July 4, 2003 N 474 “On State Regulation, Control and Supervision of the Financial Market and Financial Organizations” / URL: [https://adilet.zan.kz/rus/docs/Z030000474\\_#z1](https://adilet.zan.kz/rus/docs/Z030000474_#z1) (access date: 30.08.2022)

authors have researched and analyzed both scientific monographs and legislative acts of the Republic of Kazakhstan and foreign countries on the issue of regulation, control and supervision of the financial market and financial organizations. Additionally, strategic and program documents of the Republic of Kazakhstan are considered: concepts, addresses, etc.

The research methodology is made up of general and particular methods of scientific knowledge (dialectical, formal-logical, systemic, comparative legal methods; as well as methods of analysis and synthesis, induction and deduction).

### Findings and Discussion

*Regarding the compliance of the Law with the Constitution of the Republic of Kazakhstan and the strategic goals of the state*

The Constitution of the Republic of Kazakhstan<sup>3</sup> does not contain norms that directly determine the procedure for the implementation of state regulation, control and supervision of the financial market and financial organizations. However, the Republic of Kazakhstan has assumed the obligation to create conditions to prevent violations of the rights and legitimate interests of citizens, including consumers of financial services. Thus, Article 12 of the Constitution reads:

*“1. The Republic of Kazakhstan recognizes and guarantees human rights and freedoms in accordance with the Constitution”.*

Recognition of the rights and freedoms of a citizen means that a person may have his own rights and freedoms, as well as protect them in case of violation, guided by the Constitution.

Recognizing the human rights and freedoms accepted by the international community, the Republic of Kazakhstan simultaneously guarantees their implementation. The President of the Republic is the guarantor of human and civil rights and freedoms. In order to strengthen the protection of the constitutional rights and freedoms of citizens, the President of the Republic in accordance with p.p. 10-1) Art. 44 of the Basic Law is empowered in the interests of protecting the rights and freedoms of man and citizen, ensuring national security, sovereignty and integrity of the state to apply to the Constitutional Council for consideration of the law or other legal act that has entered into force for compliance with the Constitution of the Republic of Kazakhstan.

Assuming the guarantee of ensuring constitutional rights and freedoms, the state establishes legal mechanisms for their implementation (realization). These include: legislative acts (legislative framework) adopted in accordance with the Constitution of the Republic of Kazakhstan, and aimed at developing its provisions, as well as the system of state, judicial and law enforcement agencies, special institutions (Commission on Human Rights under the President of the Republic, Commissioner for Human Rights in the Republic of Kazakhstan).

The state protection of human rights does not exclude the independent actions of everyone to protect them by all means not prohibited by law, including the opportunity to apply to non-governmental human rights organizations and international institutions (the UN Human Rights Committee, the UN Committee against Torture, the UN Committee on Elimination of Racial Discrimination, United Nations Committee on the Elimination of Discrimination against Women).

Recognition and guarantee of human rights and freedoms are essential features of a rule of law state, emphasizing the importance of human rights and freedoms as the highest value.

The analyzed Law does not contain norms that go against the norms of the Constitution of the Republic of Kazakhstan.

Turning to strategic documents, there should be paid attention to the State of the nation addresses by the President.

Thus, in the State of the nation address “New Kazakhstan: The Path of Renewal and Modernization” dated March 16, 2022 K.K. Tokayev clearly emphasizes the need to urgently implement a comprehensive package of priority anti-crisis measures: “Kazakhstan has faced unprecedented financial and economic difficulties in our modern history, associated with a sharp aggravation of the geopolitical situation. Tough sanctions confrontation is already leading to serious costs not only for individual countries, but for the entire global economy. The situation is changing rapidly, literally every hour. Uncertainty and turbulence in world markets are growing, production and trade chains are collapsing. However, there is still no reason to panic. Our country has all the necessary reserves and tools to overcome a large-scale crisis.” [3].

Thus, in order to make extraordinary decisions, a number of instructions are issued to the Government, the National Bank and the Agen-

<sup>3</sup> Constitution of the Republic of Kazakhstan dated August 30, 1995 / URL: [https://adilet.zan.kz/rus/docs/K950001000\\_](https://adilet.zan.kz/rus/docs/K950001000_) (access date: 30.08.2022)

cy for the Development and Regulation of the Financial Market:

- to ensure the stability of the national currency as a key factor in the economic security of the country;
- in the financial sector it is required to reduce the increased speculative demand that has arisen, among other things, due to the activity of outside buyers;
- large institutional players should purchase foreign currency only as part of the fulfillment of their contractual obligations, ensuring its supply;
- the issue of increasing sales of export foreign exchange earnings by companies with state participation should be worked out;
- as part of the fulfillment of their contractual obligations, second-tier banks must control and monitor the acquisition of foreign currency by their clients;

-strict control over compliance with of this requirement by banks should be established [3].

In the next State of the nation address “Fair State. United nation. A prosperous society” dated September 1, 2022, the emphasis is placed on the need for a systematic increase in the legal and financial literacy of citizens. It is important to consistently build up efforts to uncover underlying mechanisms, search for the true organizers of corruption and shadow schemes for embezzlement of budget funds and national wealth [4].

Decree of the President of the Republic of Kazakhstan dated October 15, 2021 No. 674 approved the Concept of Legal Policy of the Republic of Kazakhstan until 2030<sup>4</sup>, which, in turn, corresponds to paragraph 1 of Article 40 of the Constitution of the Republic of Kazakhstan. The concept is the basis for the development of relevant programs in the field of legal policy of the state, long-term and annual plans for legislative work of the Government of the Republic of Kazakhstan, draft regulatory legal acts of the Republic.

According to the above-mentioned Concept of legal policy, the emerging trends in the development of both the world and the domestic economy determine the following areas for the development of financial legislation as priorities:

- creation of a favorable legal framework for

the introduction of an effective regulatory regime and the financial supervision sector, maintaining stability both at the level of the financial system as a whole and at the level of individual financial institutions, which will help ensure the stability of the financial system;

- creation of a regulatory environment that takes into account the interests of both financial institutions and users of financial services in order to develop the non-banking sector and microfinance by strengthening regulation in those areas of the non-banking sector that carry significant risks for protecting the rights of consumers of services, which will contribute to the systematic development of the non-banking sector and microfinance, as well as the synergy of banking and non-banking financial services;
- the development of financial technologies in the financial market and the introduction of innovations, which will ensure the development of competition between the players, will improve the quality of financial services and services provided, and the formation of an economically developed society.

For consumers of financial services, satisfaction with the safety, quality, cost and range of financial services provided remotely is important. Financial institutions, in turn, are faced with the goal of effectively managing the level of cybersecurity risks at adequate costs for its provision. The common goal for both society and the state, as well as for financial organizations, is the formation of a financial market that can most effectively and safely carry out its function as a financial intermediary.

For these purposes, as well as in the implementation of the Cyber Security Concept (“Cyber Shield of Kazakhstan”), approved by the Decree of the Government of the Republic of Kazakhstan dated June 30, 2017 No. 407<sup>5</sup>, the Board of the Agency of the Republic of Kazakhstan for Regulation and Development of the Financial Market and the Board of the National Bank of the Republic of Kazakhstan approved the Joint Resolution on July 20, 2020 No. 69 “On Approval of the Cybersecurity Strategy for the Financial Sector of the Republic of Kazakhstan for 2020-2022”<sup>6</sup>.

The analyzed Law also meets the main provisions of the Decree of the Government of the Republic of Kazakhstan dated August 27, 2014

<sup>4</sup> Decree of the President of the Republic of Kazakhstan dated October 15, 2021 No. 674 “On approval of the Concept of the legal policy of the Republic of Kazakhstan until 2030” / URL: <https://adilet.zan.kz/rus/docs/U2100000674> (access date: 30.08.2022)

<sup>5</sup> Decree of the Government of the Republic of Kazakhstan dated June 30, 2017 No. 407 “On Approval of the Cyber Security Concept (“Cyber Shield of Kazakhstan”)” / URL: <https://adilet.zan.kz/rus/docs/P1700000407> (access date: 30.08.2022)

<sup>6</sup> Agency of the Republic of Kazakhstan for regulation and development of the financial market / URL: <https://finreg.kz/?docid=3550&switch=russian> (access date: 30.08.2022)



No. 954 “On Approval of the Concept for the Development of the Financial Sector of the Republic of Kazakhstan until 2030”<sup>7</sup>, which is aimed at creating a competitive financial sector and increasing its efficiency in the redistribution of resources in the economy based on the best international standards, including those of the Organization for Economic Cooperation and Development. By 2025, it is planned to complete the process of harmonization of the laws of the countries participating in the Common Economic Space, which determine the development of the financial markets of the countries. The main result of the harmonization will be the creation of a supranational body for the regulation of the financial market. In this regard, the role and place of national regulatory authorities is expected to change.

In accordance with the Decree of the Government of the Republic of Kazakhstan dated May 30, 2020 No. 338 “On approval of the Concept for improving financial literacy for 2020-2024”<sup>8</sup>, it is possible to single out the main areas of work to improve financial literacy carried out by the authorized body for regulation, control and supervision of the financial market and financial organizations:

- conducting sociological research and organizing a monitoring system for the most pressing issues in the field of financial literacy. As part of the analysis of requests from consumers of financial services, as well as monitoring the media space, information and explanatory materials are being developed and distributed through all available communication channels: the Agency’s Internet resources, republican and regional mass media, and social media.

- as part of the functioning of the public reception, where the consumer of financial services can apply for the protection of his own rights and receive qualified advice, direct explanatory and advisory work is carried out. During the period of activity of the public reception, consultations are given to more than 5,000 people.

- information content and updating of specialized Internet resources on financial literacy is being carried out, as well as the development of educational materials and support for

a special application for mobile devices. More than 17,000 inquiries from financial consumers are considered and answered through the *FingramotaOnline* mobile application.

The President of the Republic of Kazakhstan approved the Decree dated February 15, 2018 No. 636 “On approval of the National Development Plan of the Republic of Kazakhstan until 2025 and recognition of some decrees of the President of the Republic of Kazakhstan as repealed”<sup>9</sup>, which states that in order to increase the availability of financial services for the population, counteract illegal financial and fraudulent transactions and further reduction of the shadow economy, the system of regulation and supervision of the sector, non-banking microfinance organizations will be improved. A mechanism for prompt response to cyber threats in the financial market will also be launched, which involves automated interaction on information security issues between financial market entities and the authorized body for regulation, control and supervision of the financial market and financial organizations represented by the industry information security center.

Thus, it can be stated that the analyzed Law corresponds to the strategic goals of the state, in general, and indicative provisions of related sectoral legislation, in particular.

Regarding the certain shortcomings of the current Law of the Republic of Kazakhstan dated July 4, 2003 N 474 “On state regulation, control and supervision of the financial market and financial organizations”

1. In subparagraph 3) of paragraph 3 of Article 15-2 of the Law, it is established that an unscheduled inspection is carried out within the competence of the body of control and supervision with a visit to the inspected entity in the presence of a threat to the national and **economic security** of the Republic of Kazakhstan, the stability of its financial system.

At the same time, the Law of the Republic of Kazakhstan dated January 6, 2012 No. 527-IV “On the National Security of the Republic of Kazakhstan”<sup>10</sup> lists the main types of national security in the Republic of Kazakhstan, namely:

1) public security – the position of protec-

<sup>7</sup> Decree of the Government of the Republic of Kazakhstan dated August 27, 2014 No. 954 “On approval of the Concept for the development of the financial sector of the Republic of Kazakhstan until 2030” / URL: <https://adilet.zan.kz/rus/docs/P1400000954> (access date: 30.08.2022)

<sup>8</sup> Decree of the Government of the Republic of Kazakhstan dated May 30, 2020 No. 338 “On approval of the Concept for improving financial literacy for 2020-2024” / URL: <https://adilet.zan.kz/rus/docs/P2000000338> (access date: 30.08.2022)

<sup>9</sup> Decree of the President of the Republic of Kazakhstan dated February 15, 2018 No. 636 “On approval of the National Development Plan of the Republic of Kazakhstan until 2025 and recognition of some decrees of the President of the Republic of Kazakhstan as repealed” / URL: <https://adilet.zan.kz/rus/docs/U1800000636#z13> (access date: 30.08.2022)

<sup>10</sup> Law of the Republic of Kazakhstan dated January 6, 2012 No. 527-IV “On the National Security of the Republic of Kazakhstan”



tion of life, health and well-being of citizens, spiritual and moral values of Kazakhstani society and the social security system from real and potential threats, which ensures the integrity of society and its stability;

2) military security – the position of protection of the vital interests of a person and a citizen, society and the state from external and internal threats associated with the use of military force or the intention to use it;

3) political security – the position of protection of the foundations of the constitutional order, the activities of the system of state bodies and the order of state administration from real and potential threats, which ensures the observance of the rights and freedoms of citizens, social groups and the balance of their interests, stability, integrity and favorable international position of the state;

4) economic security – the provision of protection of the national economy of the Republic of Kazakhstan from real and potential threats, which ensures its sustainable development and economic independence;

5) information security – the position of protection of the information space of the Republic of Kazakhstan, as well as the rights and interests of a person and a citizen, society and the state in the information sphere from real and potential threats, which ensures sustainable development and information independence of the country;

6) environmental safety – the position of protection of the vital interests and rights of a person and a citizen, society and the state from threats arising from anthropogenic and natural impacts on the environment.

In this situation, the wording “economic security” is part of national security. It should also be noted that in accordance with the Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V “On legal acts”<sup>11</sup>, if there are contradictions in the norms of one regulatory legal act or regulatory legal acts of the same level, the norm of the act that is later put into effect, or a norm that corresponds to an act later is enacted.

2. Article 13-3 of the analyzed Law revealed a potential conflict between normative legal acts.

In accordance with the Law of the Republic of Kazakhstan dated March 30, 1995 No. 2155 “On the National Bank of the Republic of Kazakhstan”, the *procedure for introducing and canceling a special regulatory regime, carrying out activities under a special regulatory regime*

*is approved by a regulatory legal act of the National Bank of Kazakhstan.*

Article 13-3 of the analyzed Law establishes that the *procedure for introducing and canceling a special regulatory regime, carrying out activities within the framework of a special regulatory regime is approved by the regulatory legal act of the authorized body.*

At the same time, according to the analyzed Law, the authorized body for regulation, control and supervision of the financial market and financial organizations is the Agency of the Republic of Kazakhstan for the regulation and development of the financial market. The above mentioned rules do not correspond with each other.

It should be noted that according to the Law of the Republic of Kazakhstan “On the National Bank of the Republic of Kazakhstan”, a special regulatory regime is introduced by the decision of the Board of the National Bank of Kazakhstan, which specifies the types of payment services and (or) *activities related to payment services*, special conditions for their provision (implementation) in within the framework of the special regulatory regime, the procedure and conditions for applying the requirements of the legislation of the Republic of Kazakhstan to the participants of the special regulatory regime.

At the same time, the analyzed Law determines that a special regulatory regime is introduced by a decision of the Board of the authorized body, which indicates the types of activities (services, products) in the financial sector, *activities related to the concentration of financial resources and (or) payment services*, special conditions for their implementation within the framework of a special regulatory regime, the procedure and conditions for applying to the participants of a special regulatory regime the requirements of the legislation of the Republic of Kazakhstan.

As can be seen above, in the decision to introduce a special regulatory regime, some activities are duplicated, however, they are approved by different departments. Perhaps, a reasonable explanation for this is that the procedure for introducing and abolishing a special regulatory regime, carrying out activities under a special regulatory regime by legal entities **that are not financial organizations**, is the exclusive prerogative of the National Bank of the Republic of Kazakhstan.

/ URL: <https://adilet.zan.kz/rus/docs/Z1200000527> (access date: 30.08.2022)

<sup>11</sup> Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V “On legal acts” / URL: <https://adilet.zan.kz/rus/docs/Z1600000480> (access date: 30.08.2022)

3. A similar defect is reflected in subparagraph 14) of paragraph 1 of Article 9, where for the purposes of state regulation, control and supervision over the activities of financial organizations, as well as other persons in accordance with this Law and other laws of the Republic of Kazakhstan, *the authorized body introduces a special regulatory regime* in relation to financial organizations and (or) other legal entities and regulates their activities within the limits of its competence.

It is recommended to eliminate the defect of the norm of the Law.

4. The same situation is observed in paragraph 4 of Article 13-3 of the Law, which reads: *“A special regulatory regime is introduced by the decision of the Board of the authorized body, which indicates the types of activities (services, products) in the financial sector, activities related to the concentration of financial resources and (or) with payment services, special conditions for their implementation within the framework of a special regulatory regime, the procedure and conditions for applying the requirements of the legislation of the Republic of Kazakhstan to participants in a special regulatory regime”*.

In summary, it should be noted that, as mentioned above, in accordance with Decree of the President of the Republic of Kazakhstan dated November 11, 2019 No. 203 “On further improvement of the public administration system of the Republic of Kazakhstan”, the National Bank of the Republic of Kazakhstan is reorganized by separating from it the Agency of the Republic of Kazakhstan for the regulation and development of the financial market – a state body of the Republic of Kazakhstan, directly subordinate and accountable to the President of the Republic of Kazakhstan.

In this regard, it is recommended to bring the Law into line with the Law of the Republic of Kazakhstan “On the National Bank of the Republic of Kazakhstan”.

5. Article 13-4 of the Law establishes that the Model Agreement on the implementation of activities under a special regulatory regime *is approved by the authorized body*.

Currently, there is a resolution of the Board of the National Bank of the Republic of Kazakhstan dated September 27, 2018 No. 226 “On approval of a standard agreement on the implementation of activities under a special regulatory regime”<sup>12</sup>.

As it is known, the National Bank of the Republic of Kazakhstan is reorganized by separating from it the Agency of the Republic of Kazakhstan for the regulation and development of the financial market, which carries out state regulation, control and supervision of the financial market and financial organizations.

According to the Law, the authorized body is a state body that carries out state regulation, control and supervision of the financial market and financial organizations.

6. Taking into account the specifics of the regulation of public relations in the field of state regulation, control and supervision of the financial market and financial organizations, the Law contains an acceptable number of reference and blanket rules.

Meanwhile, in some articles of the Law the following reference norms are used:

*article 6-5: “2) adopts regulatory legal acts regulating the activities of the financial market and financial organizations, as well as other persons, in accordance with this Law, other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan”;*

*“17) approves regulatory legal acts regulating the activities of financial organizations to ensure information security, in accordance with this Law and other laws of the Republic of Kazakhstan”;*

*“19) fulfills other functions and powers provided for by this Law, other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.”*

*article 8: “2. The authorized body ensures the implementation of other tasks provided for by this Law and other legislative acts of the Republic of Kazakhstan.”*

*article 9: “1. For the purposes of state regulation, control and supervision over the activities of financial organizations, as well as other persons in accordance with this Law and other laws of the Republic of Kazakhstan, the authorized body: ...”*.

*“8) checks the activities of financial organizations and other persons specified in paragraph 1 of Article 15-1 of this Law, in cases and within the limits provided for by this Law and other laws of the Republic of Kazakhstan, including with the involvement of the National Bank of the Republic of Kazakhstan and an audit organization;”*.

*“21) exercises other functions and powers provided for by this Law, other laws of the*

<sup>12</sup> Decree of the Board of the National Bank of the Republic of Kazakhstan dated September 27, 2018 No. 226. “On Approval of a Model Treaty on the Implementation of Activities under a Special Regulatory Regime” / URL: <https://adilet.zan.kz/rus/docs/V1800017629> (access date: 30.08.2022)

*Republic of Kazakhstan* and acts of the President of the Republic of Kazakhstan.”

“3. In addition to the functions and powers provided by paragraphs 1, 2, 2-1 and 2-2 of this article, the authorized body exercises other powers for state regulation, control and supervision of financial organizations, branches of non-resident banks of the Republic of Kazakhstan, branches of insurance (reinsurance) organizations - non-residents of the Republic of Kazakhstan, branches of insurance brokers - non-residents of the Republic of Kazakhstan, banking and insurance holding companies, banking conglomerates and insurance groups, taking into account the specifics provided for in Articles 10-13 of this Law, as well as *other laws of the Republic of Kazakhstan* and acts of the President of the Republic of Kazakhstan.”

*article 10*: “11) performs other functions in accordance with the legislation of the Republic of Kazakhstan.”

*article 11*: “12) performs other functions in accordance with the legislation of the Republic of Kazakhstan.”

*article 12*: “15) performs other functions in accordance with the legislation of the Republic of Kazakhstan.”

*article 12-2*: “6) performs other functions provided for by this Law, *other laws of the Republic of Kazakhstan* and acts of the President of the Republic of Kazakhstan.”

*article 13*: “5) performs other functions in accordance with the legislation of the Republic of Kazakhstan.”

*article 13-5*: “2. A reasoned judgment is understood as a reasonable professional opinion of the collegial body of the authorized body, which is the basis for the application of supervisory response measures established by the laws of the Republic of Kazakhstan, as well as for making decisions in other cases provided for by this Law and *other laws of the Republic of Kazakhstan*.”

*article 13-6*: “5) perform other functions and powers provided for by this Law, *other laws of the Republic of Kazakhstan* and acts of the President of the Republic of Kazakhstan.”

*article 15-1*: “1... and *other laws of the Republic of Kazakhstan*, as well as the rules for automating accounting, approved by the National Bank of the Republic of Kazakhstan, identifying violations of the rights and legitimate interests of consumers of financial services, violations that pose a threat to the

national and economic security of the Republic of Kazakhstan, the stability of its financial system, identifying shortcomings and (or) risks in the activities of financial institutions, banking conglomerates and (or) insurance groups.”

“2. According to the results of the control, the control and supervision body in accordance with this Law and *other laws of the Republic of Kazakhstan* ...”.

“3. The body of control and supervision exercises control and supervision in the form of inspection and other forms in accordance with this Law and *other laws of the Republic of Kazakhstan*.”

*article 15-11*: “The work of employees of the authorized body is regulated by the Labor Code of the Republic of Kazakhstan with the features established by this Law, as well as *other regulatory legal acts of the Republic of Kazakhstan* and acts of the authorized body.”

*article 15-12*: “9) other grounds provided for by the laws of the Republic of Kazakhstan.”

In addition to the vicious practice of using reference norms by legislators, when it is proposed to look into “*other legislative acts of the Republic of Kazakhstan*”, and without specifying which ones, there are also contradictions between laws. The content of the articles allows their interpretation in two ways as well.

Therefore, it should be noted that corruption factors in the analysis of this Law “On State Regulation, Control and Supervision of the Financial Market and Financial Organizations” are directly related to the presence of excessive blanket and reference norms of the law (*detailed above*).

*Regarding the regulation, control and supervision of the financial market and financial organizations in the legislation of foreign countries and international law*

As any market, financial markets need rules to function. European Union rules governing the market for financial instruments are set out in the *Markets in Financial Instruments Directive (MiFID)*. These rules have been applied since November 2007 and are the basis for the integration of the EU financial market<sup>13</sup>. *MiFID* establishes the legal and regulatory framework for the provision of investment services in financial instruments (such as brokerage, advisory, dealing, portfolio management, underwriting, etc.) by banks and investment

<sup>13</sup> *Markets in Financial Instruments Directive (MiFID)* dated April, 21, 2004 / URL: [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/111020-mifid-mifir-proposal-impact-assessment\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/111020-mifid-mifir-proposal-impact-assessment_en.pdf) (access date: 30.08.2022)



firms, as well as for operations on regulated markets by market operators. It also establishes the powers and responsibilities of national competent authorities in relation to these activities.

It is unusual to question the need for government financial regulation in modern economies. However, until recent decades there was very little regulation of financial markets by the state in the *United Kingdom*. English legal development had been characterised by a blend of legislation with 'the common law'. The common law is a body of law derived from decisions reached in courts by judges. It evolves from the accumulation of the precedents embodied in these decisions and in that sense is 'judge-made': it does not reflect input from either the executive or the legislature, and has often been seen as protecting individuals' freedom against the power of the state. The common law has often existed to widen the scope of, and enforce agreements between, parties rather than, as regulation does, dictate the content of agreements or direct the activities of parties.

In the financial sphere, the common law tradition was associated with 'self-regulation under the law'. A standard pattern was that the practitioners of a financial activity would form themselves into the members of a corporate body which endorsed their professional credentials while having authority over them. The corporate body would articulate and enforce rules of good conduct, on the understanding that breaches of those rules would be sanctioned. An extreme sanction would be expulsion from membership.[5]

Also, the *United Kingdom* has the so-called *Financial Services and Markets Act 2000*<sup>14</sup>, which is a law regulating financial services and markets; provides for the transfer of certain statutory functions relating to building societies, partnerships, labor and precautionary societies and certain other mutual aid societies; and etc.

Regarding to the *United States of America*, before discussing how the government regulates financial markets, we must address a threshold question: Is regulation necessary in the first place? The regulation of financial intermediaries concentrates on two levels of risk: investment risk for individual firms (micro-level) and systemic risk (macro-level) for significant parts of the sector or the financial system

as a whole. At the firm level, it has been long recognized that banks and bank-like institutions borrow short-term and lend long-term; thus, they may encounter liquidity crises leading to bank runs and panics. Since the Great Depression, the antidote to this phenomenon has been to regulate individual institutions for safety and soundness by establishing capital reserve requirements, enforcing prudential lending practices, and instituting direct oversight by regulators, as well as providing insurance funds to repay investors in the case of bank failure and stabilize industry-wide risks.[6]. In the United States of America, there is the *American Financial Markets Integrity and Security Act 2021*<sup>15</sup>. Thus, the legislature strategically delegates regulatory authority to the executive to manage overall market risk.

Financial supervision in *China* is carried out in accordance with applicable laws and regulations. With the enactment of the Securities Law at the end of 1998, three main supervisory authorities, namely the People's Bank of China (PBOC), the China Insurance Regulatory Commission and the China Securities Regulatory Commission, supervise three types of financial institutions and their business activities on the basis of the People's Bank of China, Commercial Banking Law, Insurance Law and Securities Law, respectively. Financial institutions strictly adhere to the principle of separation of financial business. Banks in China cannot deal in trust, insurance or securities, or invest in trust or investment companies; while securities and insurance institutions may not engage in banking and trust business. As for the supervision of commercial banks in China, both the system and the structure of supervision are developed strictly in accordance with the requirements of the Basel Accord<sup>16</sup>.

Thus, state regulation, control and supervision of financial markets, financial organizations in various foreign countries and at the regional legal level differ in terms of providing them the appropriate competence. However, almost all of them in one way or another rely on the international standards of the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, etc.

<sup>14</sup> *Financial Services and Markets Act 2000* / URL: <https://www.legislation.gov.uk/ukpga/2000/8/introduction> (access date: 30.08.2022)

<sup>15</sup> *American Financial Markets Integrity and Security Act 2021* / URL: <https://www.congress.gov/bill/117th-congress/senate-bill/570/text?r=24&s=1> (access date: 30.08.2022)

<sup>16</sup> *Financial supervision in China: framework, methods and current issues* / URL: <https://www.bis.org/publ/plcy07k.pdf> (access date: 30.08.2022)



## Conclusion

Conducted analysis of the Law of the Republic of Kazakhstan dated July 4, 2003 N 474 “On State Regulation, Control and Supervision of the Financial Market and Financial Organizations” showed that its provisions meet the requirements of the Constitution of the Republic of Kazakhstan, and also correspond to the goals of state strategic documents (strategies, concepts, programs, addresses, etc.). Besides, in terms of studying international experience, advanced developed countries, as well as a regional association (European Union), in which the state is also involved in the regulation, control and supervision of the financial market and financial organizations, are considered.

Particular attention is paid to the analysis of shortcomings (inefficiency) of the norms of this Law, for the elimination of which the following recommendations are proposed:

1. In order to avoid contradictions between regulatory legal acts it is recommended that the analyzed Law should be corresponded with the Law of the Republic of Kazakhstan “On the National Security of the Republic of Kazakhstan”, by excluding the wording “and economic” in subparagraph 3) of paragraph 3 of Article 15-2 of the analyzed Law, which does not carry any legal burden and absorbed by the national security system. As an alternative, bring it into line with the Entrepreneurial Code of October 29, 2015 No. 375-V, setting out in a similar edition “the national security of the Republic of Kazakhstan, including economic

security”.

2. To work out this issue and determine the competence of a specific state body authorized to approve the procedure for introducing and abolishing a special regulatory regime.

3. Eliminate the defect of the norm of the Law in the way indicated above in paragraph 2.

4. Bring it into line with the Law of the Republic of Kazakhstan “On the National Bank of the Republic of Kazakhstan”.

5. Develop a draft standard agreement on the implementation of activities under a special regulatory regime approved by the Agency of the Republic of Kazakhstan for the regulation and development of the financial market.

6. Change the wording of the reference norm.

Thus, taking into account the solution of the most important task of protecting the vital interests of the individual, society and the state, in order to minimize gaps and artificial contradictions in the norms of laws (codes), and most importantly, the formation of legal relations related to the implementation of state regulation, control and supervision of the financial market and financial organizations, it is recommended to take into account the proposals developed during the analysis of the effectiveness of the Law of the Republic of Kazakhstan dated July 4, 2003 No. 474 “On State Regulation, Control and Supervision of the Financial Market and Financial Organizations”.

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