

EUROPEAN BANKING GUIDE FOR NONPROFITS

HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT



European Center for
Not-for-Profit Law



PILnet



KAZAKHSTAN

Law firms participating in this research are not liable towards third parties for the accuracy of the information contained in this guide. The research cannot be considered as legal advice. It was carried out in 2022 and responds to the regulatory framework on organizational banking in this time period. If you have further queries please reach out to our clearinghouse for legal help.



European Center for
Not-for-Profit Law

European Center for Not-for-Profit Law Stichting (ECNL)

ECNL's mission is to create legal and policy environments that enable individuals, movements and organizations to exercise and protect their civic freedoms and to put into action transformational ideas that address national and global challenges. We envision a space in which everyone can exercise their rights freely, work in solidarity and shape their societies.



PILnet

PILnet is a global non-governmental organization that creates opportunities for social change by unlocking law's full potential. With programs in Europe & Eurasia, Asia, and at the global level, PILnet aims to reclaim and reimagine the role of law so that it works for the benefit of all. PILnet builds networks and collaborations of public interest and private lawyers who understand how law works when it serves the interests of the privileged and then it uses that knowledge to strengthen civil society and the communities they serve. PILnet not only obtains high-quality, free legal assistance for civil society organizations when they urgently need it but also helps organizations to capitalize on the full range of specialized legal expertise that can be provided by corporate lawyers, including against ongoing, or even yet-to-be-determined, challenges.

© 2022 by the European Center for Not-for-Profit Law Stichting (ECNL), PILnet and Partnering Law Firms.

1. OPENING AN ORGANISATIONAL BANK ACCOUNT

a. What are the requirements to open an organisational bank account?

In order to open an account with a Kazakh bank, a party must have a business identification number in Kazakhstan (BIN).

Please be informed that the BINs assignment procedure changes from time to time. Currently, for assignment of a BIN for a foreign organization, the local bodies require first obtaining an individual identification number (IIN) for the CEO of such an organization.

As for the timeframe, once all relevant documents (in legalized or apostilled form) are submitted, a BIN could be obtained approximately within 10 business days (i.e., local Russian or Kazakh translation of documents – 3-4 days; the obtaining of IIN – 3 days, and then obtaining the actual BIN – 3 days).

The actual procedure on the opening of a bank account is the following:

1. Non-resident organization needs to provide to a relevant bank a set of the following documents:
 - a. Filled application in a standard form provided by the bank;¹
 - b. Document with specimen signatures and seal of the organization;²
 - c. Copies of the passports of persons included in the Document with specimen signatures and seal;³
 - d. Extract from the trade registry (or an analogous document);⁴
 - e. Power of attorney from the organization authorizing to open a bank account in Kazakhstan (if applicable);
 - f. Other documents that may be requested by the bank in practice:

1 Para.5 of the Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 207 dated 31 August 2016 “On Approval of the Rules for Opening, Maintenance and Closing of Customers’ Bank Accounts”, as amended (the Rules) available at: <http://zan.gov.kz/client/#!/doc/107695/rus>.

2 Para.26.4 of the Rules.

3 Para.26.4 of the Rules.

4 Para.26.4 of the Rules.

- i. Registration certificate of the organization;
 - ii. The Charter / Article of Association of the organization (or an analogous document);
 - iii. Document (resolution) confirming the appointment of the organization's CEO;
 - iv. Document confirming the authority of the persons included in the Document with specimen signatures and seal of the organization;
 - v. Taxpayer registration certificate of the organization (or an analogous document) (if any);
and
 - vi. Copy of the passport of the organization's CEO.
2. Know your client (KYC) clearing takes up to 4-7 banking days after submission of the full set of documents to the bank;
3. If KYC (including anti-money laundering (AML)) clearing is positive, the bank concludes the bank account agreement with the client organization⁵ and opens a bank account.

i. Do organisations have to be physically present in the country to open a bank account? I.e., can they operate in country X but have a bank account in country Y? Is the presence of a statutory representative required or can the presence be fulfilled through an authorization?

- No, Kazakh law does not expressly require physical presence in Kazakhstan in order to open a bank account. A local representative, acting under a relevant power of attorney, may in principle submit all documents in the bank.
- That said, we may not fully exclude the risk that the Kazakh banks – given inter alia the secondary sanctions risk and so on – may request that a party opening a bank account is physically present in the bank.

ii. Are there specific requirements for CSOs to open accounts by law or asked in practice by the banks (e.g, years of operations, annual turnover, to have director or member of governing body to be national of the country)

No, Kazakh law does not impose any additional requirements specific for CSOs.

⁵ Para.5 and 10 of the Rules.

iii. Who is authorized/required to open a bank account? Can this be done online, or that person needs to be present in the country?

The Rules do not specify authorized persons to open a bank account.

The Rules have no restrictions for opening a bank account online. Moreover, the Rules stipulate that:

- a. the application can be signed electronically or using dynamic identification;⁶
- b. if agreed with the bank, the bank account agreement can be signed electronically or using dynamic identification;⁷ and
- c. the document with specimen signatures and seal of the organization (signing of which is required to be verified by the bank employees) can be signed in front of notary and apostille for non-residents.⁸

However, as mentioned above, we may not fully exclude the risk that the banks may still require physical presence in the bank.

iv. What is the process of setting up a bank account? E.g., how long it takes, is there a practice to have an interview in the bank?

Once all documents are provided in the proper form and content, the process of opening a bank account generally takes 5–10 banking days. However, a precise term would depend on a particular bank.

No interview is required.

2. BANKING ACTIVITIES

a. What customer due diligence requirements are in place and what is their impact on civil society organisations' banking activities?

We understand that banks' due diligence of its customers includes the following:⁹

6 Para.13 of the Rules.

7 Para. 14 of the Rules.

8 Para.53 of the Rules.

9 Article 5.2 Kazakhstan Law No. "On Counteracting the Legalisation (Laundering) of Proceeds, Obtained by Criminal Means and the Financing of Terrorism" dated 28 August 2009, as amended (the AML Law) available at: <http://zan.gov.kz/client/#!/doc/47702/rus>.

- a. collecting information necessary to identify (1) the foreign entity: name, number under which the foreign entity is registered in a foreign country (if any), address, place of the main activity, type of activity, and (2) full name and residence of founders of the foreign entity and its beneficial owners;
- b. the intended purpose and nature of the business relations;
- c. on an ongoing basis, verifying the business relations and examining the operations carried out by the customer through the bank, including, if necessary, obtaining and recording the information on the source of funding of the carried out operations; and
- d. checking the reliability of information required to identify the customer, its beneficial owner, and updating the information about the customer and its beneficial owner.

However, banks' internal documents may impose additional measures on due diligence of its customers.

There are no separate requirements applicable to CSOs.

b. Which internal principles or official (central bank) "suspicious transaction" monitoring criteria are in place affecting the civil society organisations? Is it publicly available?

Under AML Law, suspicious transaction is a transaction of a client (including an attempt to carry out such a transaction, a transaction in progress or an already completed transaction) in relation to which there are suspicions that money and/or other assets used for its completion are proceeds of criminal activity, or the transaction itself is intended to legalize (launder) proceeds of criminal activity or terrorist financing or other criminal activity.¹⁰

There is a publicly available list of Criteria of Suspicious Transaction¹¹ which includes, among others:

¹⁰ Article 1.1) of the AML Law.

¹¹ Order of the Chairman of the Agency on Financial Monitoring of the Republic of Kazakhstan No.13 dated 22 February 2022 "On Approval of the Rules of Submission of Financial Monitoring of Data Information on Transactions Subject to Financial Monitoring by Subjects and Criteria of Suspicious Transaction", as amended (the AML Rules) available at: <<http://zan.gov.kz/client/#!/doc/146953/rus/30.09.2020/69>>.

- the customer is registered (domiciled) or systematically carries out transactions involving persons registered (domiciled) in a country that does not comply with the Financial Action Task Force (FATF) recommendation;¹²
- transactions with money and/or other property involving charity organizations (funds), (excluding transactions related to the payment of taxes, other obligatory payments to the budget, penalties and fines, pension and social contributions, membership fees, utility payments, insurance premiums under obligatory insurance contracts);¹³
- transfers of money on a significant amount as grants, financial assistance, loans or donations, including those involving non-residents between whom there is no business relationship, except for transfers to non-profit organizations;¹⁴ and
- transactions with money and/or other property related to charity and/or other donations, except for the participation of non-profit organizations.¹⁵

c. Do the banks in the country of operations have any restrictions/limitations to bank transactions and transfers to certain jurisdictions (such as high-risk ones).

Banks may, as part of their due diligence on customers and their beneficial owners, terminate business relations with financial institutions from the countries that do not comply with and/or properly comply with the recommendations of the FATF.¹⁶

i. If yes, is the list of jurisdictions publicly available?

Yes, the list of the countries that do not comply with and/or properly comply with the recommendations of the FATF is available [here](#).

ii. What would be the procedures the bank would follow in this case for their CSO clients?

There is no separate procedure specific for CSO clients. The general approach would be followed. Please refer to our responses above for a general approach on banking activities.

12 Para.1 of the Annex 2 of the AML Rules.

13 Para.2 of the Annex 2 of the AML Rules.

14 Para.14 of the Annex 2 of the AML Rules.

15 Para.17 of the Annex 2 of the AML Rules.

16 Article 10.2 of the AML Law.

3. OBLIGATIONS AND REPORTING REQUIREMENTS

a. Are banks required to provide CSO clients' financial information to CSO regulatory authorities or public officials? If yes, under what circumstances must banks do so, and what types of information must they provide?

The banks, being regulated entities, must comply with the various reporting obligations. By way of example, under the Resolution No.211,¹⁷ such reporting includes inter alia monthly report on issued loans and receivables accounted for as part of bank's assets and customer's assets,¹⁸ monthly report on customer accounts,¹⁹ and etc. These reports are provided to the National bank of Kazakhstan. However, please note that these are general reporting obligations of the bank and are not specific for CSO customers.

b. What obligations do banks have to protect the privacy of clients' information?

The banks have a general obligation not to disclose banking secrecy of their clients. Banking secrecy includes information on customers, their operations and relations with banks related to the acceptance of banking services, including without limitation: information on numbers of bank accounts, balances and transfers on these accounts, restrictions on these accounts (decisions and/or orders of state authorities to suspend debit transactions, arrests, pledges), transactions of customers.²⁰

For completeness, Kazakh law sets forth a number of instances when banking secrecy may be disclosed without consent of a relevant client (e.g., to state authorities within the context of a criminal investigation, etc.).

17 The Resolution No.211 of the Management Board of the NBK "On approval of the list, forms, terms and rules of reporting for licensees carrying out activities in the securities market and sole operator" dated 26 November 2019, as amended (the Resolution No.211).

18 Para.1.6) of the Resolution No.211.

19 Para.1.49) of the Resolution No.211.

20 Article 50.1 of the Kazakhstan Law "On Banks and Banking Activity in the Republic of Kazakhstan" No. 2444 dated 31 August 1995, as amended (the Banking Law).

c. Are there specific reporting obligations for banks to inform governments on civil society banking in certain circumstances?

We are not aware of any specific reporting obligations for banks on the CSOs.

d. Are you aware of any change in regulation/practice due to the Russian sanctions?

In general, the banking regulations in Kazakhstan have not been amended due to imposition of any sanctions on Russia. However, there may have been some practical adjustments in completion of various procedures. It is more appropriate therefore to address this question directly to Kazakh banks.



European Center for
Not-for-Profit Law

European Center for Not-for-Profit Law Stichting
5 Riviervismarkt, 2513 AM
The Hague, Netherlands
www.ecnl.org
twitter.com/enablingNGOlaw



PILnet
199 Water Street, 11th Floor
New York, NY 10038 U.S.A.
<https://www.pilnet.org>
twitter.com/PILnet