

UZBEKISTAN TO INTRODUCE NEW CURRENCY CONTROL RULES

1 NOVEMBER 2019

The President has signed the *Law On Currency Regulation No. ZRU-573 of October 22, 2019* (the “**New Law**”), which is effective since its date of publication - 23 October 2019. As the result, the *Law On Currency Regulation No. ZRU 556 - II of December 11, 2003* (the “**Old Law**”) shall cease to have effect. An unofficial translation of the New Law is available in English at the following link: <https://kostalegal.com/publications/law-of-the-republic-of-uzbekistan-on-currency-regulation>. The discussion below provides for the New Law review by focusing on, in our view, the most significant alterations made to the Old Law.

REGULATORS

The state body responsible for the state currency regulation remains the same - the Central Bank of the Republic of Uzbekistan (“**CBU**”). However, the CBU is no longer responsible for the issuance of permits to open bank accounts abroad as it was envisaged by the Old Law. It is now laid down that the CBU will only receive notifications of corresponding activities.

Separately, the New Law defines the CBU, the Audit Chamber, the Ministry of Finance, the State Tax Committee and the State Customs Committee as authorized bodies in the area of foreign currency control. In particular, these state bodies are authorized to conduct currency control inspections and require relevant information in this respect.

RESIDENTS AND NON-RESIDENTS

The group of persons and legal entities that fall within the definition of *resident* has been extended. As per the New Law, those who fall within one of the following categories are regarded as a *resident* for currency control purposes: (i) citizens of the Republic of Uzbekistan, including while residing abroad, (ii) individuals holding a residence permit in the Republic of Uzbekistan, including stateless persons, (iii) legal entities registered within the territory of Uzbekistan in accordance with Uzbek law or their representative offices/branches, (iv) international organizations with the headquarter registered in Uzbekistan.

As the New Law stipulates, *non-residents* are those who fall outside the definition of the *resident*.

CURRENCY OPERATIONS

Like in the Old Law, the New Law defines two types of foreign operations: current cross-border transactions and capital movement transactions. Such a separation is required to clearly define what kind of activities are intended to be regulated by the state. In this way, *current cross-border transactions* can be conducted with no limitations, while *capital movement transactions* shall comply with certain rules and procedure, i.e. registration with the CBU through notification.

Although, the New Law has kept the initial division principle, the list of foreign operations that fall within the relevant category have been slightly altered. It is to point out that the New Law clearly states that

dividend payments, payments made in connection with foreign trade, attraction of foreign direct investments and their repatriation can be done without limitations.

CURRENT CROSS-BORDER TRANSACTIONS

Current cross-border transactions may be freely carried out by both residents and non-residents. The changes introduced by the New Law with respect to *cross-border transactions* may be summarized as follows:

- Non-trade transfers, falling under *cross-border transactions*, now shall also include: (i) transfers between individuals in the amount of up to UZS 100 mln. (approx.. USD 10,000), (ii) payment for goods (services, works) for personal needs;
- The Old Law stipulated that loan repayments remain unregulated if paid in “*moderate amounts*” with no clarification provided. The New Law provides for more specific threshold by stipulating how such maximum amount shall be calculated. Thus, the amount of each regularly scheduled payment as specified in the loan agreement shall not exceed the sum that equals to such an amount doubled. As soon as the calculated threshold is exceeded, the operation on loan repayment shall be classified as *capital movement transaction*.

CAPITAL MOVEMENT TRANSACTIONS

All foreign operations that do not fall within the classification of *cross-border transactions* are considered *capital movement transactions* and, consequently, subject to state currency control. Currently, there is *Regulation on the Procedure for Capital Movement Transactions* that applies to *capital movement transactions*. After the New Law has been introduced, it is expected that the Regulation will be either amended or supplemented to fall with the requirements of the New Law. This shall clarify how exactly particular foreign operation must be regulated if classified as capital movement transaction.

The changes introduced by the New Law with regard to regulated foreign operations may be summarized as follows:

- “working capital injections by residents-legal entities of their branches abroad” and “the acquisition and sale of the exclusive right to intellectual property” have been added to the list of regulated foreign operations;
- the New Law specifies that export of assets in the case of international contracts shall be regarded as *capital movement transaction*, provided non-resident delays in performing his contractual obligations for over 180 days.

FOREIGN CURRENCY REGULATIONS OF RESIDENTS

As a common rule, all currency operations within the territory of Uzbekistan shall be carried out in national currency, except for limited cases. Thus, the Old Law provided that transactions between residents may involve the use of foreign currency in the cases listed in the relevant article. This list had, however, a carve-out clause stating that the use of foreign currency between residents may be permitted in other cases stipulated by Uzbek law. In practice, for strategic foreign investment projects, there were adopted a number of Presidential and Cabinet of Ministers’ decrees expressly permitting the use of foreign currency between residents engaged in the implementation of such projects. Though, the New Law did not amend this list in essence, it made the list exhaustive. Hence, residents now have no right to use foreign currency within the territory of Uzbekistan in the cases other than those explicitly stipulated in the New Law.

The changes introduced by the New Law have also softened certain requirements with regard to individuals, whereas legal entities are now subject to more strict procedures.

**RESIDENTS-
INDIVIDUALS**

Following the changes introduced by the New Law, individuals are now free to open foreign bank accounts. The Old Law permitted such operation to be done only in cases when a person was residing abroad and only for that period. Thus, no limitations are now imposed on activities of individuals when opening foreign bank accounts.

**RESIDENTS-
LEGAL ENTITIES**

As for now, legal entities willing to open bank accounts abroad shall have the permission of the President or the Government of Uzbekistan or unless there is an international treaty providing for such right to open bank account abroad. Additionally, legal entities are obliged to follow notification procedures, namely notify local tax authorities and CBU of all activities associated with foreign bank accounts (i.e. opening, closing, changing requisites) and submit quarterly balance statements.

FOREIGN CURRENCY REGULATIONS OF NON-RESIDENTS

As per the New Law, non-residents are allowed to open bank accounts in Uzbekistan both in foreign and national currency. However, legal entities – non-residents are required to operate (carry out activities) in Uzbekistan. The New Law does not elaborate on this requirement and it is not clear what kind of activities shall satisfy this criterion.

Furthermore, the Old Law stipulated that repatriation is done without any limitations imposed. The New Law has kept this provision.

GENERAL FOREIGN CURRENCY REGULATIONS

The general foreign currency regulations that have been changed mainly affect the issues of price fixing in foreign currency, import-export of cash, rights and obligations of residents and non-residents in the course of foreign currency controls.

PRICE FIXING IN FOREIGN CURRENCY

According to the New Law, it is now prohibited to tie foreign currencies and other conventional units to the prices. This is a long-standing entrepreneurs practice to incorporate currency clauses (pegging the agreed amount to the exchange rate of a foreign currency) into contracts in order to anticipate any risks associated with the currencies depreciation. As for now, such hedging instrument is considered illegal. CBU may later clarify what kind of hedging instruments shall be used by entrepreneurs as an alternative in order to stay compliant with the New Law.

IMPORT-EXPORT OF CASH

Another area affected is the import-export of cash in foreign currency. As a general rule, legal entities still are not allowed to export or import cash. Individuals are free to import cash, including in foreign currency with no limitations envisaged. However, it is required to follow certain permitting procedures if the amount exceeds UZS 100 mln (approx. USD 10,000) while exporting. Previously, such a threshold was USD 5,000.

RIGHTS AND OBLIGATIONS OF RESIDENTS AND NON-RESIDENTS IN THE COURSE OF FOREIGN CURRENCY CONTROLS

The New Law has also provided residents and non-residents with the set of rights and obligations applied in the course of foreign currency controls. The Old Law lacked such provision.

RIGHTS

- get acquainted with the documents providing the outcomes of the inspections carried out;
- appeal against actions of bodies responsible for currency controls;
- be compensated for actual damages caused by currency control authorities.

OBLIGATIONS

- provide currency control authorities with all required documentation;
- provide all required clarifications during inspections;
- follow reporting procedures;
- eliminate detected infringements of Uzbek law;
- ensure currency control authorities access to the premises, documentation and relevant databases.