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An Analytical Overview

LEGAL REGULATION OF NPOs' FUNDRAISING ACTIVITIES USING NON-CASH PAYMENT SYSTEMS IN THE REPUBLIC OF KAZAKHSTAN¹

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¹ This overview is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of ICNL and do not necessarily reflect the views of USAID or the United States Government.

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Legal Regulation of NCOs' Fundraising Activities Using Non-Cash Payment Systems in the Republic of Kazakhstan / Written and compiled by Roza Salibekova.

This overview is designed to inform private individuals and not-for-profit organizations about the key provisions of the Kazakh legislation that NCOs have to comply with in raising funds from legal and physical persons via non-cash payment facilities. Based on a comprehensive analysis of applicable Kazakh legislation, the study contains information of educational and practical value. Intended for a broad readership.

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Goals and Objectives

This study of the legal regulation of not-for-profit organizations' (NPOs) fundraising activity using non-cash payment facilities in the Republic of Kazakhstan (hereinafter, **the Study**) is based on a comprehensive analysis of the law of the Republic of Kazakhstan (hereinafter, **RK**) and has the following aims and objectives:

1. To review and analyze applicable RK regulation on NPOs' fundraising and their legal relationships (transactions) with residents and nonresidents that involve the use of non-cash payment systems; and
2. To present their findings and recommendations on the currently used and the most effective ways of fundraising for NPOs using non-cash payment systems.

To attain the said aims and objectives, this Study intends to present:

1. The results of a legal analysis of the mechanisms of civil, financial and banking, and tax regulation of NPOs' fundraising; and
2. Its arguments for the legal and economic feasibility of using the said methods of fundraising as long as they meet the standards and requirements of the aforementioned areas of effective law and are based on the best business practice in the RK.

Facts and Background

Intended for NPOs, this study aims to explain:

1. how various fundraising mechanisms work with the help of the Internet and electronic means; and
2. what legal consequences these various mechanisms have for NPOs (what is legal and what is not; how to use them in compliance with local legislation; tax consequences, etc.).

For the purposes of this study, crowdfunding is understood as attracting funds from the general public (an undefined circle of legal and physical persons) through donations or voluntary gratuitous contributions (hereinafter collectively, donations), using electronic means, to finance both specifically defined and general statutory activities of NCOs. "Crowdfunding" is not a legal term.

To achieve these goals, we have to consider the following fundraising mechanisms used by NCOs:

1. via the NCO's website – where donors pay directly to the NPO by credit or debit card;
2. through an intermediary – an online crowdfunding platform;

3. through a bank – where the latter accumulates funds in its account and transmits them to the NPO;
4. via a mobile service provider; or
5. via terminals
 - a. owned by organizations with a bank license, or
 - b. without one.

To this end, it is necessary to consider the following issues:

- the legality of fundraising by NPOs themselves and any of the above intermediaries passing collected funds on to the NPO;
- the legal relationship between the NPO and the intermediaries;
- the legal status of the funds received by an intermediary, including for taxation purposes;
- the legal status of the funds received by the NPO from intermediaries, their allocation to tax-exempt income; and
- the legal status of the intermediaries, the need of a license to carry out banking operations, the possibility of attracting funds from the general public on behalf of an NPO, legal responsibility regarding reporting on the use of funds raised, etc.

1. The Legal Regime of Local and Foreign Funding of NPOs

1.1. THE LEGAL STATUS OF FUNDRAISING IN THE RK

GENERAL

As the first step, let us define our terminology and consider the definitions of “fundraising” and “crowdfunding” in open sources.

Fundraising is defined as collecting voluntary donations in cash or in kind and, as a rule, for purposes not connected with making profit. Originally, it existed in the form of volunteers collecting donations on the street. At present, the method of collecting funds through the Internet (crowdfunding) is widespread.²

“Crowdfunding” as a public/grassroots form of fundraising is a collective cooperation of individuals (donors, contributors) pooling their money or other resources on a voluntary basis, normally through the Internet, to support efforts of other individuals (owners or founders of a startup or project) or organizations (recipients).³

These two words are identical and denote fundraising on a voluntary basis. Whereas fundraising usually involves funding by legal persons (institutions, companies) both on- and off-line (using donation boxes, for example), crowdfunding as a form of fundraising is usually done by individuals and online (using specialized Internet-based payment systems).

Crowdfunding is a growing trend in the RK, as it allows legal and physical persons to collect voluntary donations globally in a centralized manner using mobile technology. Some aspects of the involvement in these platforms of physical and legal persons as well as their legal competence within the framework of transactions made under relevant projects require the adoption of specialized regulation of the parties’ behavior and the review of the existing legal relationships in full compliance with effective legislation. At present, there are specialized services in the RK that are called “crowdfunding platforms”⁴ (hereinafter, “**Services**”). They are founded by both commercial and noncommercial organizations (hereinafter, “**Service Organizers**”) acting as intermediaries to provide their services to individuals and commercial and noncommercial legal persons.

In the RK, these services fund social and charitable projects, too, but their main users are commercial projects, socially-oriented included. NPOs are entitled to take part in crowdfunding services as project author on conditions stipulated by their contract with the service organizer. RK law has no special legal regulation for crowdfunding.

² <https://goo.gl/kghS8f>

³ <https://goo.gl/cE2gTu>

⁴ baribirge.kz, start-time.kz

These types of activities and their participants are subject to legal regulation of civil-law relations of RK legal persons on a general basis.

1.2. THE LEGAL STATUS OF NPOS IN FUNDRAISING ACTIVITIES

GENERAL

1.2.1. THE GENERAL LEGAL FRAMEWORK OF COMMERCIAL ORGANIZATIONS' ACTIVITY AS SERVICE ORGANIZERS

According to RK law, commercial organizations (normally, those incorporated as economic associations) may act as a service organizer in the capacity of an intermediary for public fundraising.

Commercial service organizers:

1. are not parties to any financing transactions between the participants and the authors of the projects (commercial or noncommercial), nor are they responsible or accountable for obligations of the latter, but provide technical, organizational and information opportunities;
2. take part in transactions between parties to the service – users and authors of projects – on behalf of and as instructed by the project authors, performing the intermediary (agency) function as technical organizer of the collection of funds; and
3. act as payment agents or subagents working together with payment organizations, banks and organizations that carry out individual types of banking operations, and render payment services, acting as payment service provider (not subject to state registration with the National Bank of the RK).

As a result, commercial legal persons acting as service organizers are entitled to perform an intermediary (agency) function within the framework of transactions between project authors and service users by raising funds in the project authors' interest and making a profit from these activities by way of compensation (See Section 2. Legal Regulation of Non-Cash Payment systems).

1.2.2. GENERAL LEGAL FRAMEWORK OF NPO ACTIVITY AS SERVICE ORGANIZER

RK law allows not-for-profit legal persons to act as a service organizer in the capacity of an intermediary for public fundraising.

1. Depending on the vector of an NPO's activity, i.e. the realization of:
 - a. in-house social objectives (the attainment of members' common goals where the NPO is not a political party or a stock company) – these may be specialized services created by:
 - i. public associations for the benefit of their members (for example, the online resource of an association of disabled

- persons created to assist with voluntary funding of social protection projects for the disabled)⁵ (see Addendum 2);
- ii. religious associations⁶ (for example, for the purpose of providing charitable aid or conducting socially useful activity to fulfill the humanitarian needs of members of the same confession⁷());⁸
 - iii. private institutions;
- b. external social objectives (social assistance to society) – in the form of public services created to give financial support to social projects and initiatives of commercial and noncommercial organizations (not connected with the service organizer through any membership or property participation) that are limited to the forms and goals of the service organizer’s statutory activity:
- i. foundations (including but not limited to public or corporate ones);⁹ and
 - ii. establishments, legal persons associations in the form of an association (or union), and associations of individual entrepreneurs and/or legal persons in the form of an association (or union);
2. are not parties to any financing transactions between the participants and the authors of the projects (commercial or noncommercial), nor are they responsible or accountable for obligations of the latter, but provide technical, organizational and information opportunities;
 3. take part in transactions between parties to the service – users and authors of projects – on behalf of and as instructed by the project authors, performing the intermediary (agency) function as technical organizer of the collection of funds (see Section 3.1.1. *Parties to Payments Systems*);

⁵ Art. 20-21 of the Law on Public Associations; see <http://www.acbk.kz/site/membership> (redirecting user to membership payment upon registration); <http://accountant.kz/index.php?newsid=66> (membership payment via terminal)

⁶ See <http://zeket.org.kz/ru/page/view?id=1>

⁷ Art. 10 of the Law on Religious Activity and Religious Associations of Oct. 11, 2011, *Charity*; Art. 20. *Property of Religious Associations*.

⁸ It should be noted that the adoption of the law On Charity in Kazakhstan gave rise to uncertainty as to which organizations may engage in charitable activities. Under the law On Charity, an NPO in the form of a public organization or foundation may obtain the status of a charitable organization on the condition that its governing body is a board of trustees rather than a general meeting of members or founders, as established by the NPO law. However, it can be concluded that an NPO will be deemed a charitable organization if its main activity is charity. It seems that other NPOs may also be able to provide charitable assistance, but only in addition to their basic statutory objectives under the general procedure established by law. Still, we recommend that providers of charitable assistance document it as a donation, a gift of property, an offering, etc.

⁹ For example, currently existing services founded by NPOs include «start-time.kz», by the TS Charity Corporate Foundation; istartup.kz, by the Public Foundation for Startups, Investors and Experts of Kazakhstan.

4. act as payment agents or subagents working together with payment organizations, banks and organizations that carry out individual types of banking operations, and render payment services, acting as payment service provider, and are not subject to state registration with the National Bank of the RK (see Section 3. *Raising Funds as a Payment Service Provider (Payment Agent). Organizing a Service or a Corporate Web Site*).

As a result, noncommercial legal persons acting as service organizers perform an intermediary (agency) function within the framework of transactions between project authors and service users by raising funds in the project authors' interest and do not make a profit from these activities by way of compensation.

As provided for by appropriate statutes, a legal person's legal personality and capacity in these or those civil-law relations constitute its legal status.

An NPO's fundraising activity is regulated by appropriate civil, banking and financial, and tax statutes of the RK.

Statutes establishing the legal status of NPOs and regulating their civil-law relations include: the Civil Code of the Republic of Kazakhstan of December 27, 1994 (General Provisions), the Civil Code of the Republic of the Republic of Kazakhstan of July 1, 1999 (Special Provisions) (hereinafter, collectively, "CC") and Law #142 of the RK On Noncommercial Organizations of January 16, 2001 (hereinafter, the NPO Law).

A number of statutes containing other related provisions pertaining to the subject of this study are referred to below as required by context.

1. The CC acknowledges a legal person as an NPO if the latter:
 - a. does not seek to produce income as the main (statutory) goal of its activity; and
 - b. does not distribute earned net income (cash after tax and other obligatory payments or cash in a tax-exempt organization) to its members.¹⁰
2. The NPO Law indicates a number of potential goals of an NPO's activity:
 - a. "social, cultural, scientific, educational, charitable and managerial goals;
 - b. "protection of the rights and lawful interests of individuals and organizations; dispute and conflict resolution; the fulfillment of citizens' religious and other needs; and
 - c. "health and environmental protection, the development of physical culture and sports, and legal assistance," with the proviso that NPOs

¹⁰ Art. 34 CC. *Types and Forms of Legal Persons*.

may be established with other goals in mind as long as they are directed at ensuring the public good and the benefit of their own members (participants).”¹¹

3. RK Law #36 On State Social Order, Grants and Bonuses to Nongovernmental Organizations in the Republic of Kazakhstan of April 12, 2005 (hereinafter, **SSO**) had to use the phrase “nongovernmental organizations” to cover all NPOs (with the exception of political parties, trade unions and religious associations) “created by individuals and/or non-state legal persons on a voluntary basis.”¹² Although noncommercial and nongovernmental organizations are often used as synonyms in practice, it should be borne in mind that the phrase “NPO” was introduced into legal usage in order to limit the ability of three types of NPOs – political parties, trade unions and religious associations – to obtain state funding, so it does not in any way impact on the NPOs’ ability to raise funds from the broad public.
4. RK Law #3-I On Public Associations of May 31, 1996 also classes local branches and representative offices of foreign and international noncommercial nongovernmental associations with NPOs in the organizational and legal form of public associations (such as trade unions, for example).¹³
5. The distinctive features of the legal regulation of individual organizational and legal forms of NPOs are written into relevant statutes.

As far as the form of ownership is concerned, NPOs are divided into:

- Nongovernmental – founded by individuals and nongovernmental legal persons: institutions, public associations, joint-stock companies, consumer cooperatives, foundations, religious associations, bar associations, auditors chambers, public foundations, and private institutions;¹⁴ and
- Governmental – founded by the state: government institutions and state foundations.¹⁵

The founding documents of an NPO should define the subject and goals of its activity as a legal person.¹⁶ As NPOs have the right to produce income from their business activity as long as it meets their statutory goals,¹⁷ it is very important that the statutory goals fit the subject and goals of its activities as they are defined in the NPO’s by-laws. The legal criteria that directly refer the activities of an NPO to commercial or noncommercial law are not specified in the legislation, so the key requirement is that

¹¹ Art. 4 NPO Law. *Goals of the Activity of Noncommercial Organizations.*

¹² Art. 1 SSO. *Main Definitions.*

¹³ Arts. 3, 9, 13, 14, 19, 24.

¹⁴ Art. 6 NPO Law. *Types of Not-for-Profit Organizations.*

¹⁵ Art. 8 NPO Law. *Institutions*; Art.13. *Types of Foundations.*

¹⁶ Art. 41 CC. *Founding Documents of a Legal Person.*

¹⁷ Art. 33 NPO Law. *The Right of a Not-for-Profit Organization to Engage in Business Activities.*

business activity be consistent with the organization's not-for-profit statutory activities. In other words, NPOs have special legal capacity (special legal status and tax treatment) and are entitled to conduct only such activities as are written in their founding documents as not-for-profit, without producing direct income for their own benefit. In so doing, they are able to profit from business activities related to the main statutory activities, as well as by receiving voluntary donations and other proceeds not prohibited by law, thereby indirectly ensuring that they can function and carry out those core activities. The NPOs' diversity of objective and function determines the ultimate recipient of economic benefits as well as the NPOs organizational and legal form. If the benefits are received by third parties (legal and physical persons) that are not party to the NPO, it may be established, for example, in the form of an institution or foundation. If the benefits are intended primarily to fill the needs of the NPO's participants themselves, it may be established in the form of an association or union. The organizational and legal forms of NPOs differ according to the objectives of their activities, the composition of the participants, the membership, the procedure of the formation and disposition of property, and the system of management and control, so different legal regulation procedures apply accordingly.

Consequently, the main (statutory) activity of an NPO is that which serves and directly implements the not-for-profit aims it was founded for.

Bearing in mind that there are no special rules on NPO transactions involving payment systems, the latter are subject to effective legislative provisions on the civil-law regime (which applies to all legal persons), with due attention to the specific aspects of the legal status of transactions and sources of financing, as will be shown below.

Consequently, NPOs are entitled to carry out those fundraising activities using payment systems that are within the scope of their legal capacity and statutory goals.

1.3. THE LEGAL REGIME OF AN NPO'S FUNDING SOURCES

GENERAL

NPOs are entitled to have the following sources of funding in monetary and other forms:¹⁸

1. contributions by founders (participants, members);
2. voluntary contributions and donations of property;
3. revenue (income) from the sale of goods, works and services;
4. dividend (income, remuneration (interest), receivable on stock, bonds and other securities and deposits); and

¹⁸ Art. 35 NPO Law. *Sources from Which a Not-for-Profit Organization Acquires Its Property.*

5. other revenue not prohibited by law.

The word “property” covers an aggregate of things, rights of claim, and obligations (debts).

“Property and property rights include: things, money (including foreign currency), securities, works, services, objectified results of creative intellectual activity, brand names, trademarks and other means of product customization, property rights (rights of claim) and other property.”¹⁹ In other words, a NPO’s property includes objects of rights in rem – things, exclusive rights, as well as objects of relative rights – rights in personam (claims).

Voluntary contributions and donations of property are funds received in cash or in kind that can be financially assessed for purposes of carrying out the NPO’s core activities. Such property (things, money, claims) comes into the NPO’s possession on a non-repayable basis, that is, by way of gift. Under the gift agreement, one party (the giver) donates or undertakes to transfer to the other party (the gift recipient) some property or property right (claim) to itself or to a third person, or releases or undertakes to release it from a property obligation to itself or a third person.²⁰

Unless prescribed by law, the terms and conditions of such an agreement are defined by the parties.²¹ The parties at their discretion may stipulate a condition regarding the aim of giving funds (intended use).

That funds have come into an NPO’s possession is confirmed by payment documents such as bank payments orders, cash receipts, property receipts and the like.

Non-cash payments also involve an aspect of property law such as the right of disposal (as opposed to the right of use) of physical and legal persons’ non-cash financial instruments that are kept on settlement, deposit and other accounts with banks and other banking establishments. The right of disposal is the subject of a bank account agreement.²²

Therefore, noncash financial instruments are objects of rights of claim to a bank or the issuer of electronic money (bank obligations) to claim payment to the right holder.

The above provision is reflected in Clause 4) Article 1 of RK Law On Charity of November 16, 2015 (hereinafter, **Charity Law**): “Voluntary donations – money as well as other property ...” transferred for the purpose of filling the NPO’s day-to-day needs.

Voluntary donations may come as:

¹⁹ Art. 115 CC. *Types of Objects of Civil Rights*.

²⁰ Art. 506 CC. *Deed of Gift*; Cl. 2 Art. 44 Law on Payments. *The Use and Payment of Electronic Money*.

²¹ Art. 382 CC. *Defining the Terms of an Agreement*

²² Art. 750 CC. *Transactions Performed by the Bank Under a Bank Account Agreement*; Art. 27 RK Law On Payments and Payment Systems of July 26, 2016. *Bank Accounts* (hereinafter, **PS Law**)

- i. charitable aid – non-repayable transfer of property (things, funds) to help the recipient improve his/her financial and/or material situation:
 - a. social support to a physical person.²³ The latter fact is significant for our purposes if the NPO raises funds as charitable aid, but its recipients are physical persons who are not NPO participants but rather recipients of aid intended to assist them with solving their social problems;
 - b. sponsored aid, that is property provided on a non-repayable basis for the purpose of spreading information about the sponsor.²⁴ It may be provided to physical persons in the form of financial (but not social) support for participation in sports competitions, contests, exhibitions and festivals and the improvement of their creative, academic, scientific research, inventor or sports performance.²⁵ The latter aspect may be important for our purposes if the NPO attracts sponsored aid for physical persons who have no connection with the NPO itself (for example, NPOs created as foundations or institutions may realize projects the beneficiaries of which are third persons);
 - c. support of an NPO's statutory activity;
 - d. support of organizations engaging in activity in the social sphere (health, education, research, librarianship), whose income from that activity, including interest on deposits and property received on a non-repayable basis, account for at least 90% of their total annual income,²⁶ as well as organizations with at least 51% disabled persons among their total workforce and at least 51% of the wage fund within the given tax period paid to employees with disabilities (in specialized organizations employing hearing, speech or sight-impaired disabled persons, these quota should be at least 35%);²⁷
2. property received on a non-repayable basis/non-repayable deductions and donations: the key element of these phrases is their “non-repayable” basis.

²³ In its Subclause 24-1), Clause 1, Article 12, the Code of Laws of the RK On Taxes and Other Obligatory Payments to the Budget of Dec. 10, 2008 (hereinafter, TC), defines social support to a physical person as non-repayable transfer by a tax agent in the space of a year of property within the limits of 55 minimal wages as established by the RK budget law and effective as of the beginning of the appropriate financial year, to a physical person eligible for social support under the RK law. The lists of categories of individuals provided for by that subclause is determined by the minister of the national economy in consultation with the minister for health and social development; see Order #143 of the Minister of the National Economy of the RK On Approving the List of Categories of Persons Eligible for Social Support Under the Law of the Republic of Kazakhstan of Feb. 26, 2015.

²⁴ Subclause 13) Clause 1 Article 12 TC.

²⁵ Subclause 13) Clause 1 Article 12 TC.

²⁶ Clause 2 Art. 135 TC.

²⁷ Clause 3 Art. 135 TC.

While RK law does not define them, we think that for all practical purposes this form of funding is about the transfer of property (including funds) or right on a non-repayable basis. Characteristically, the use of such property for intended purposes may take place but is not always a critical condition of such transfer.

3. a charitable grant: funds allocated for financial assistance the use of which for intended purposes must be documented by a report.²⁸

NPOs may be grantees where states, governments of states or organizations are grantors. Importantly, the latter should be international and governmental, or foreign or Kazakh nongovernmental public organizations and foundations engaged in charitable and/or international activity which is not inconsistent with the Constitution of the RK. Furthermore, they should be on the list of eligible organizations approved by the Kazakh Government on recommendation of appropriate authorities. The TC defines a grant as property extended on a non-repayable basis for the realization of certain goals (objectives).²⁹ In other words, in this case we are talking about foreign government grants and private grants from foreign or Kazakhstan legal persons.

Besides, the SSO Law refers to “grants to nongovernmental organizations” as funds “provided to nongovernmental organizations by an operator in the sphere of grant financing of nongovernmental organizations to support civil initiatives and engage the potentialities of civil society institutions in the solution of topical problems of social development.”³⁰

Grants are awarded on a competitive basis after an independent evaluation of NPO applications by an expert committee which is set up by the operator and includes Kazakhstani and/or foreign experts, NPO representatives. A contract is entered into with the NPO whose project is selected. Its obligatory conditions include deadlines for the realization of the project or program, reporting procedure and schedule, intended use of funds according to cost estimate, and the return of unspent funds to the operator.

This is the way the operator awards public (allocated by authorized public body from budget funds) and non-public (provided by individuals and legal persons from non-budgetary funds on a voluntary basis) grants.³¹

As a result, NPOs have the right to obtain property and funds (including non-cash funds) by any of the above means as long as it is a voluntary donation (gift) within the

²⁸ Art. 1 Charity Law.

²⁹ Subclause 11) Clause 1 Article 12 TC.

³⁰ SSO Law, Clause 7-1 Art. 1.

³¹ Rules of the Provision of Grants, Art. 6-1 Clause 1.

framework of charitable, sponsor activity with or without conditions as to its intended use, and fits the goals of their stated activity.

1.4. TAX TREATMENT OF NPO ACTIVITIES

GENERAL

Various aspects of NPO tax treatment have been dealt with in detail by the study *The Legal Framework of NPO Financial Sustainability in Central Asian Countries* (ICNL, 2017).³² Below, we briefly list the main privileges which NPOs obtain under applicable legislation regarding tax-exempt income relating to this study.

TC completely exempts NPOs from corporate income tax (hereinafter, CIT) on the following categories of revenue:

1. grants;
2. charitable aid;
3. property received on a non-repayable basis; and
4. deductions and donations on a non-repayable basis.³³

An NPO is obliged to keep accounting separately for the above tax-exempt revenue and its income taxable on a general basis. When receiving the latter, the amount of NPO expenses subject to deductions is determined by the taxpayer's choice between the proportional or the separate method. According to the proportional method, the amount of expenses subject to deductions in the total mass of the NPO's expenses is determined on the basis of the specific weight of taxable income in the NPO's aggregate income. According to the separate method, the NPO keeps a separate accounting for expenses relating to tax-exempt income and those relating to income subject to taxation on a general basis.³⁴

This benefit does not apply to NPOs recognized as autonomous educational organizations in accordance with Article 135-1 of the TC and organizations engaged in social activities, in accordance with Article 135 of the same code. Organizations engaged in the social sphere may, subject to certain conditions, reduce the amount of the CIT by 100% in compliance with Article 139 of the TC.

Although they are exempt from paying the CIT, NPOs receiving donations are obliged to subject this income to 10% individual income tax (IIT) in the event of the transfer of these donations to physical persons (individuals).

³² Pp. 21-32.

³³ Clause 2 Article 134 TC.

³⁴ Clauses 4-7 Article 134 TC.

Alongside that, NPOs has the right not to tax (with IIT) an individual's income which it pays to him or her from grant funds (with the exception of labor remuneration)³⁵ or property obtained as charitable aid,³⁶ as well as the payment in the amount of minimal wages out of the grant in connection with the performance of social works and professional training.³⁷

In addition to the IIT benefits, the above payments are exempted from social tax as well. Furthermore, payments made out of grants (for example, in the payment of wages to staff) are exempt from social tax if there is a contract between the NPO and the grantor.³⁸

REPORTING ON FOREIGN FUNDING

A particular feature of the legal regulation of NPO funding from foreign sources is the requirement to notify the appropriate public authority of its receipt and to report on the manner in which it was spent, in cases prescribed by law.³⁹ In this case, we understand "foreign funds" as money and/or other property received from foreign states, international and foreign organizations, foreign nationals, and stateless persons (hereinafter, "foreign funds"). Not all types of NPOs and physical persons are obliged to inform the tax authorities of the receipt of such funds. This requirement applies only to those NPOs (and legal persons in general) and individuals whose activities are aimed at:

- legal assistance, including provision of legal information, protection and representation of citizens and organizations, as well as counseling;
- study and polls of public opinion, sociological surveys (with the exception of public opinion polls and sociological surveys conducted for commercial purposes) and the dissemination and placement of their results; and
- collection, analysis and dissemination of information, except for commercial purposes.⁴⁰

NPOs and physical persons are obliged to inform the tax authorities not only of the receipt but also of the expenditure of foreign funds. Information about recipients and

³⁵ Subclause 11 Clause 1 Article 156 TC.

³⁶ Subclause 29 Clause 1 Article 156 TC.

³⁷ Subclause 10 Clause 1 Article 156 TC.

³⁸ Clause 2 Article 357 TC.

³⁹ Order of RK Minister of Finance #554 On Approving the Rules, Deadlines and Form of Submission of Information by Physical and Legal Persons and/or Structural Units of a Legal Person to Public Revenue Agencies Regarding Their Receipt and Expenditure of Funds and/or Other Property Received from Foreign States, International and Foreign Organizations and Stateless Persons of Oct. 19, 2016.

⁴⁰ Clause 1-1, Article 14 TC. This requirement does not apply to 1) state bodies; 2) second-level banks and insurance companies; 3) major taxpayers; 4) educational organizations; 5) quasi-public sector subjects; 6) diplomatic missions; 7) funds and/or other property receivable as payment for medical or preventive treatment, etc.

the persons providing such funds, as well as about the amount of funds received and other relevant information is included in the database.

2. Legal Regulation of Non-Cash Payment Systems (Payment Systems)

2.1. PAYMENT SYSTEMS

GENERAL

The main statutes regulating payment relations between payment market participants in the RK include: PS Law, the Law of the RK On Banks and Banking Activity of August 31, 1995, the Law of the RK On Countering the Legalization (Laundering) of Criminal Income and the Financing of Terrorism of August 28, 2009 (hereinafter, **CT Law**), the Law of the RK On Currency Regulation and Control of June 13, 2005, decisions of the Board of the National Bank of the RK (hereinafter, **NBRK Board Decisions**), and enactments of the Government of the RK.

Under PS Law, all payment systems, including foreign payment systems (hereinafter, **PS**), are classified as follows:

1. System-relevant PS. Its uninterrupted work is important to the stability of the RK financial market; interruptions may cause financial risks.
It effects payments, wire-transfers money on obligations of the securities and currency markets of the RK, as well as in the interest of the National Bank's monetary policy;
2. Relevant PS. The Interbank Clearing System through which local currency payments and transfers are effected in the RK (at least 25% of all such transactions annually with the exception of those effected through system-relevant PS); and
3. Other PS. Other than system-relevant or relevant PS through which local currency payments and transfers are effected in the RK (at least 25% of all such transactions annually).

Payments and transfers between PS members are made in tenge (Art. 282 CC. *Monetary Obligation*; Sec. 2 **NBRK Board Decision** #202 On Approving the Rules of Issue, Use and Payment of E-Money of August 31, 2016. *The Procedure of Issuing E-Money* (hereinafter, **E-Money Rules**).

Payment services are rendered on the basis of a contract entered into by the customer and the payment service provider. The payment service provider only provides a payment service on the basis and in accordance with the customer's direction.

The instruction in form of an order or claim may be presented in electronic form or on paper. A payment order is a payment document to the effect that the sender of the

money instructs his/her bank or non-bank organization to transfer the amount of money indicated in the payment document in favor of the stated beneficiary.

Upon receiving the customer's instruction through a third-party vendor's remote access system, the payment service provider that serves the customer's bank account shall send the payment service provider and/or customer his confirmation of payment and/or transfer of money without delay.

The execution of the instruction is the performance by the bank or the organization carrying out certain types of banking operations of the terms and conditions of the instruction:

1. transmission of the instructions to another bank or non-bank organization in the event that the original bank or organization carrying out certain types of banking operations does not service the beneficiary; or
2. completion of the money transfer if the sender's bank is the beneficiary's bank.

The execution of the instruction is performed by the sender's bank no later than one day following the receipt of the instruction. The sender's bank transfers money between bank accounts opened in the same bank or non-bank organization within one business day. International payments and money transfers are executed within three business days from the receipt of the instruction.

2.1.1. PAYMENT SYSTEM MEMBERS

Payment service providers include: the National Bank of the Republic of Kazakhstan (hereinafter, **NRBK**), second-level banks, organizations carrying out certain types of banking operations (hereinafter, **Non-bank organizations**), payment organizations, and their agents and subagents.

1. NRBK. NRBK operates the system-relevant PS Interbank Funds Transfer System and the relevant PS Interbank Clearing System. Its operations hub is the Kazakhstan NRBK Interbank Settlements Center.

NRBK regulates the payment service market, monitors, analyzes and evaluates the functioning of PS and exercises relevant oversight, maintains the registries of PS, payment organizations and major payment service providers, and oversees the fulfillment by all system-relevant PS members of requirements in respect of the organizational measures and software and hardware involved.

As of April 20, 2017, the Payment Systems Register included but was not limited to the following payment systems: VISA, FASTER (AO Kazkommertsbank), MasterCard,

Western Union, AO Narodnyi Bank PS, UnionPay International Co. Ltd., Intelepress, and American Express.⁴¹

As of February 10, 2017, the Register of Relevant Payment Service Providers included: AO Tsentralnyi depozitarniy tsennykh bumag, AO Narodnyi Bank Kazakhstana, AO Kaspi Bank, AO Citibank Kazakhstan, and NAO State Corporation Pravitelstvo dlya Grazhdan.⁴²

2. BANKS AND NON-BANK ORGANIZATIONS. The list of non-bank organizations includes but is not limited to: AO Kazpochta, AO Kazakhstanskaya fondovaya birzha, RGP Kazakhstan NRBK Interbank Settlements Center and other non-bank organizations.

Non-bank organizations are entitled to execute one or more operations under license from the Agency of the Republic of Kazakhstan for the Regulation and Oversight of the Financial Market and Finance Organizations, in particular:

- a. either cash and transfer operations or
- b. loan and trust operations as far as mortgage claims management is concerned.

In other words, they may not combine these two types of banking operations.⁴³

Banks and non-bank organizations may not act as payment organizations, payment agents or payment subagents but may provide payment services to customers, including under agency contracts with payment agents and subagents, on which they maintain registries and provide information to NBRK. Under such contracts, banks and non-bank organizations are jointly accountable to the client for obligations of their payment agents and subagents. Banks and non-bank organizations perform (or do not perform) payment services based on grounds stipulated by the laws on banks and banking, payments, payment systems, and countering the legalization (laundering) of criminal income and the financing of terrorism.

3. PAYMENT ORGANIZATIONS. Payment organizations can only be commercial entities. For example, e-money or instant system operators, processing companies, or mobile and other electronic payment processing operators may act as a payment organization. Payment organizations are payment agents and subagents of banks and non-bank organizations under agency contracts for payment services. Payment organizations are subject to NBRK registration pursuant to NBRK Board Decision On Approving the Operating Rules of Payment Organizations of August 31, 2016⁴⁴ (hereinafter, **Payment Organization Rules**). Any payment service activities performed

⁴¹ <https://goo.gl/77SRD2>

⁴² <https://goo.gl/BWC2Hg>

⁴³ Sec. 1 NRBK Decision of December 06, 2003 On Approving the Rules of Founding, Licensing, Regulating and Terminating Organizations Carrying Out Certain Types of banking Operations

⁴⁴ Sec. 4 *Rendering Payment Services to Payment Organizations*.

by a payment organization without proper registration with NBRK are illicit and subject to legal liability.

A payment organization has the right to provide non-cash payments and transfers, receive cash for payment purposes without opening a bank account for the sender, and engage a payment agent or subagent on a contractual basis for the provision of such services, maintaining proper registers and accounts and sharing liability to the client with such agents.

The payment organization is not entitled to engage in any other business activities except:

1. the development, adaptation and modification of technical support for software;
2. the purchase, sale and renting of electronic terminals and other data processing and transmission equipment;
3. computer and information technology-related activities, including information technology services, data-processing and transmission services, and the establishment and use of databases and information resources;
4. the establishment and maintenance of system and network security;
5. the development and realization of means of cryptographic security; and
6. public-key and digital-signature certification and registration certificate validation services.

The registry of payments organizations (as of August 11, 2017) includes LLC WOOPAY, LLC KIBERPLAT KAZAKHSTAN, LLC CloudPayments Kazakhstan, LLC QIWI Kazakhstan, LLC PayPoint, LLC Allpay, LLC Astana-Plat, LLC Lichnaya Kassa, LLC NativePay, LLC PayForm, LLC Finansovyye tekhnologii, LLC Smart Pay, LLC Dar Ecosystem, LLC Tsentr Internet platezhei, LLC CNP Processing Kazakhstan, LLC W1 Kazakhstan, LLC Smart Billing, LLC Digital Management, LLC ALEMPAY, LLC Interveil Kazakhstan, LLC Energiya RK Rudnyi, LLC Mplat, LLC MAER Soft, LLC AltynPay, AO Kazteleport, LLC Easy Wallet, LLC UNIKASSA, LLC PES, and LLC Instant Payments.⁴⁵

4. E-MONEY ISSUERS are second-level banks in the RK.⁴⁶The issuer of e-money issues it to an individual or agent by exchanging it to an amount of money of the same nominal value, and repays e-money by exchanging the e-money it has issued (by transfer to the client's bank account or by issuing cash). E-money is an unconditional and irrevocable monetary obligation of the e-money issuer, which is stored electronically and accepted as a means of payment in the e-money system by other

⁴⁵ <https://goo.gl/4fUpzi>

⁴⁶ <https://goo.gl/PYMPLN>

members of the system. Should e-money users violate legislation on financial monitoring and countering the legalization (laundering) of money, or exceeding the maximum amounts established for payment transactions (see 3.2. *Payments Using E-money*), the e-money issuer or system operator shall provide relevant information to the Financial Monitoring Committee of the Ministry of Finance of the RK.

E-money system agents include banks, non-bank organizations, the National Mail Operator, and payment agents engaged in the acquisition of e-money from its issuer and owners (individuals) for subsequent sale (to individuals) on the basis of a contract with the e-money issuer or system operator. A contract between the issuer and the agent shall contain the procedures and conditions for the payment of cash received by the agent from individuals to its bank accounts. When they sell e-money to physical persons, cash received by non-bank agents shall be credited to their bank accounts in accordance with the procedure and the deadlines stipulated by the contract between the issuer and the agent. The second-level banks and the JSC Kazpochta sell e-money in foreign currency, issued by non-residents of the RK, under contracts with such non-resident issuers. Agents have the right to sell e-money via electronic terminals in exchange for cash and non-cash payments in banks and cash receipt points, and non-cash payments via remote access systems.

5. PAYMENT AGENTS AND SUBAGENTS. A payment agent is a legal entity that has entered into an agency contract with a bank or a non-bank organization. Payment agents include: payment organizations and various legal persons (commercial and non-commercial), with the exception of banks and non-bank organizations. A payment agent is not required to be registered with the NRBK.

A payment subagent is a legal person or individual entrepreneur who has entered into an agency contract with an agent to render payment services. Payment subagents include: legal persons (commercial and non-commercial) and individual entrepreneurs, with the exception of banks and non-bank organizations. The payment subagent is not required to be registered with the NRBK.

“According to the Dictionary of Civil Law (ed. by V.V. Zalessky, J.D.),⁴⁷ “an agency contract is a civil law contract under which one party (the agent) undertakes to perform, on behalf of the other party (the principal), legal and other acts for a fee, either in its own name but at the expense of the principal or in the name and at the expense of the principal.”

At the same time, the rules of civil law of the Republic of Kazakhstan do not provide for the notion of an agency contract (agreement).

⁴⁷ *Slovar' grazhdanskogo prava*. V.N. Dodonov, Ye.V. Kaminskaya and O.G. Rumyantsev. Ed. by V.V. Zalessky. Moscow, INFRA-M, 1998.

However, the agency contract is of a civil nature and, accordingly, the rules of civil law of the Republic of Kazakhstan are applicable to it.

Also, Article 381 CC provides that the parties may enter into a contract containing elements of the various agreements provided for by law (a mixed contract). The parties' relations under a mixed contract shall be subject to the relevant parts of the law on agreements whose elements are contained in the mixed contract, unless otherwise provided for by the agreement of the parties or the substance of the mixed contract.

On the basis of Article 146 and Article 865 CC governing the actions of the parties under contracts of agency and commission, it can be inferred that as far as RK law is concerned, an agency contract falls under the provisions of the aforementioned agreements, and so the rules of civil law of the Republic of Kazakhstan governing relations relating to the conclusion of contracts of agency and commission are applicable...⁴⁸

A payment agent or subagent may render payment services in the following cases, among others:

- on behalf of a bank or a non-bank organization;
- conducting proper verification and identification of the client, in accordance with CT Law, and informing the PS participant about the sender and beneficiary of the payment or transfer in compliance with the CT Law, except:
 - ii. cash receipt services to effect payment without opening a bank account for the sender;
 - iii. services for the sale (distribution) of e-money and debit cards;
- if it gives the client a document confirming the fact of the payment service;
- where the payment agent's remuneration is stipulated by a contract with the bank, the non-bank organization or the payment organization, or the payment subagent's remuneration by a contract with the payment agent, as well as by a contract between the payment agent and the bank, non-bank organization, or payment organization.⁴⁹

Consequently, where a payment agent or subagent renders a service for a fee in the name and at the expense of the other party, an agency contract applies the provisions of a contract of assignment,⁵⁰ and where he so acts in his own name but at the other

⁴⁸ Letter #TS-UM-08-3-22/8813 *On Exempting an Agency Fee from Social Tax* from the Taxation Committee of the Ministry of Finance of the Republic of Kazakhstan of Nov. 5, 2003

⁴⁹ Art. 14 PS Law. *Requirements in Rendering Payment Services via Payment Agents and/or Subagents.*

⁵⁰ Art. 846 CC.

party's expense, the provisions of the contract of commission⁵¹ or a mixed contract⁵² will be applicable.

According to the PS Law, payment agents are entitled to provide cash-receipt services for depositing the money in bank accounts, including those of third parties; cash-receipt services for effecting payment without opening a bank account for the sender; services for the sale (distribution) of e-money and debit cards, subject to the existence of an agency contract for any of the types of payment services authorized for banks, non-bank organizations and payment organizations. The payment agent shall provide the bank, non-bank organization or payment organization with information about the payment subagent it has engaged, which will be entered in the authorized payment agents register as stipulated by the contract between them.

In entering into contracts with payment service providers making non-cash payments, debit card payments and transfers, e-money payments and transfers by banks, non-bank organizations, payment organizations and other legal entities whose activities do not require a registration with the NRBK, payment agents are required to comply with the service provider's operating rules.

In acting as payment agents of banks and non-bank organizations in the provision of services:

1. for the sale (distribution) of e-money and debit cards and
2. receipt and processing of payments, payment organizations shall provide payment documents confirming the fact of the service provision in compliance with the Rules of Payment Organizations⁵³ and Rules #202 of the Issue, Use and Repayment of E-Money of August 31, 2016⁵⁴.

6. CLIENT is the physical or legal person (or a local branch or representative office of the legal person) a payment service is provided to.

The legislation of the RK provides for the possibility of providing (arranging the rendering of) payment services to NPOs for the purpose of their non-commercial funding by participating in PS as payment agents or subagents of payment service providers. In other words, an NPO is entitled to provide payment services if the proceeds of its activity (including business activity) are directed towards attaining their statutory goals without making commercial profit in the form of a fee for those payment services (see Section 1.2 *The Legal Status of NPOs in Fundraising Activities*). Where an NPO arranges the rendering of payment services (e.g. through a charitable Internet resource) but receives no fee, the rules of a mixed (agency) contract apply.

⁵¹ Art. 865 CC.

⁵² Art. 381 CC.

⁵³ Sec. 4 *Payment Organizations Providing Payment Services*.

⁵⁴ Sec. 2 *Rules of E-Money. Procedure of Issuing E-Money*; Sec. 3. *Procedure of Using E-Money*.

In general, the practice of NPOs' using Internet resources for non-cash PS to attract funding has been successful. In part, a number of NPO crowdfunding services⁵⁵ and corporate websites⁵⁶ were operating in the RK as of September 2017. NPOs providing payment services are represented in RK cyberspace.

Summing up, a NPO may provide payment services as payment agents or subagents to raise funds for the attainment of its statutory goals.

3. Fundraising as a Payment Service Provider (Payment Agent)

GENERAL

Organizing a Service or a Corporate Website

NPOs have the right to organize services (see Section 1.2.2. *General Legal Framework of NPO Activities as Service Organizer*) and corporate websites for fundraising using PS under agency contracts for payment services with payment service providers. The general legal grounds for this activity by NPOs are set forth in Section 1.2. *The Legal Status of NPOs in Fundraising Activities*. The main relationships between the parties in transactions between the NPO and the payment service provider are shown in Table 1. *Service Organization*.

To organize a service or website, an NPO should:

- i. enter into a hosting contract with a hosting service provider – a telecommunication operator or service provider. The hosting agreement may provide for the creation of a domain name and the extension by the provider of software, hardware and other support;
- ii. enter into an agency contract with a provider of payment services (using debit cards, e-money), stipulating a non-remuneration clause – no commission for the NPO for its payment services to clients (legal and physical persons) – and conditions on the intended use of payments and transfers;
- iii. enter into a contract on undertaking to comply with PS rules⁵⁷ determined by the PS operator. Conditions of compliance with PS rules may be provided for by an agency contract for providing payment services (subcl. (ii));
- iv. ensure that the Internet resource allow for a user agreement such as a contract for the provision of services or personal security rules;

⁵⁵ For example, пример, the Corporate TS Charity Foundation - <https://start-time.kz/>

⁵⁶ For example, the Public Organization Shugyla (Шұғыла) - <https://www.shugyla.kz/>

⁵⁷ Art. 5 PS Law. *Main Requirements Placed on Payment Systems*; Sec. 3 *Rules of Issue of E-Money*.

- v. ensure that necessary information about payment services is provided to PS members and authorized bodies in cases stipulated by applicable financial monitoring and tax legislation; and
- vi. ensure service security.

Table 1. Service Organization

Payment agent and/or Subagent	Grounds for Transaction	Payment Service Provider
NPO	Agency contract for payment services	Banks Non-bank organizations Payment organizations Agents

Banks, non-bank organizations, payment organizations, e-money issuers and e-money system operators exercise financial monitoring of money operations to counter the legalization of criminal income.

In entering into contracts with payment service providers, an NPO may act as an agent or subagent.⁵⁸

3.1. PAYMENTS USING DEBIT CARDS

In the RK, banks issue both credit cards (used to obtain a loan – the bank’s borrowed funds – and which do not provide for clients keeping their own funds on the account) and debit cards (used for the cardholder’s direct withdrawal of their own money from their account). In most cases, individuals are issued debit cards, as the collateral on them is limited to the amount of money on the client’s current account. Debit cards with a prepaid amount are referred to as prepaid debit cards.

Payments using debit cards in the territory of the RK are made in tenge, the national currency of the RK.

Payments and transfers between banks – members of the Inter-Bank Debit Card System – are based on the results of processing and clearing and the determination of the banks’ net positions by the RGP Kazakhstan NRBK Interbank Settlements Center in accordance with NRBK Board Decision #216 The Rules of Making Interbank Payments and/or Money Transfers on Transactions Using Debit Cards in the Republic

⁵⁸ For example, the KIT payment organization gives instructions to its payment agents and subagents based on one of two respective joint activity organization plans: <https://goo.gl/fHQqrL>

of Kazakhstan of August 31, 2016, and NRBK Board Decision #217 of the same date, On Approving the Rules of the Inter-Bank Debit Card System. A physical person is the holder of a debit card from the date of its receipt.

The relations between banks is governed by the rules of the card system, operating rules, and contracts with the operations center. Operating rules are approved by the operations center, including routing, authorization and clearing procedure requirements, technical standards, and interoperability with card-issuing and acquiring banks, as well as formats used for data transmission, information security and protection, and the calculation of interbank commissions (including money transfer transactions) expressed as a percentage of the amount of the transfer. The rate of the interbank commission is established by the operations center in agreement with the NRBK⁵⁹. Money transfers can be received from debit cards based on interbank clearing data following the completion of a setoff of banks' mutual claims and obligations.

Second-level banks issue debit cards under debit card issuance contracts in accordance with NRBK Board Decision #205 of August 31, 2016, On Approving Debit Card Issuance Rules and the Requirements for Services Relating to Their Use in the Republic of Kazakhstan (hereinafter, **Card Use Rules**). Payments from the card are made to the beneficiary's bank account.

In the RK, most transactions between debit card issuing and acquiring banks which receive payments and transfers from debit card holders on their accounts are effected via VISA and MasterCard payment systems registered with the NRBK. RK banks and relevant payment system members maintain the routing standards of interbank communications registered in NRBK PS, which enables online non-cash settlements between the accounts of PS members. The processing of debit card payments issued by an RK resident bank in the service network of other resident banks is done by a processing organization.⁶⁰

The top limit amount issued to the beneficiary of a debit card transfer is **200,000** tenge (the maximum set for prepaid debit cards).

Physical persons' payments using debits cards are documented. The payment document is generated on paper and/or electronically and passed from one PS member to another. It should contain the following information:

1. number of the payment document and the date (dd/mm/yy) of its issue;
2. the names (codes) of the entrepreneur and the acquirer;
3. debit card details;

⁵⁹ Art. 12 of the RK Law On State Property of March 1, 2011.

⁶⁰ Cl. 45 The Rules of the Use of Payment Cards.

4. amount paid;
5. currency of payment; and
6. payment purpose code.⁶¹

After the payment is made, the card holder is issued a receipt or a copy of the payment document (slip) that was generated in the process of payment. The receipt may be issued to the card holder electronically and sent to his/her email address or telephone by SMS and/or multimedia message, as provided for by the card issue contract.

The receipt shall contain the following details:

1. number of the payment document and the date (dd/mm/yy) of its issue;
2. the names (codes) of the entrepreneur and the acquirer;
3. amount paid;
4. currency of payment;
5. authorization or other code identifying the payment in the debit card system;
6. time of the payment; and
7. debit card details. Partial indication of card details is allowed in compliance with the requirements of the relevant debit card systems and contracts.

The above details may be used by the NPO for tax reporting purposes. The payment service provider shall ensure that appropriate payment documents are generated in accordance with the Card Use Rules.

It should be noted that some RK banks issue physical persons with debit cards which can be used for funding charitable projects. In part, Kazkommertsbank issues the Guardian Angel payment card which withholds 0.15% of the amount of every transaction (purchase of goods and services, Internet payments and money transfers) to fund charity projects supervised by Kazkommertsbank, Visa Inc., and the community charity foundation Kus Zholy.⁶²

3.2. PAYMENTS USING E-MONEY

In accordance with its request and contract with the service or corporate website organizer, an e-money supplier registers its e-money with the PS, furnishes necessary software and other facilities for the functioning of the e-money on the Internet resource (for example, PS processing center), and provides various IT services such as data processing and transmission and the creation and use of databases and other information resources.

⁶¹ Cl. 33 of the Card Use Rules.

⁶² See Kazkommertsbank's Guardian Angel debit cards at <https://goo.gl/Q1srd2>

Necessary information about the PS and methods of payment (instructions) are placed on the Internet resource of the service or the relevant corporate website.

The receipt generated in the process of issuing e-money shall contain the following details:

1. the issuer's name and bank details, including business identification number;
2. time and date of the transaction;
3. number of the receipt;
4. amount of money accepted or payment arrived from the e-money owner;
5. amount of e-money issued;
6. identification code of the e-money owner's e-purse if he or she is a physical person;
amount of commission (in case of funds withdrawal).

Additional details required by the issuer may be indicated.

Payment via a payment service or corporate website using e-money: its owner (a physical person) transfers e-money to another person using an e-purse, provided that security procedures required by in-house rules of the PS supplier's system or under a contract between the e-money system members are complied with.

A physical person's confirmation of his/her purchase of e-money is any document confirming that he or she has received an amount of money in exchange for valid e-money or any other confirmation (data message) which unequivocally indicates that the e-money was sold to that physical person.

After the e-money payment is made, its owner (a physical person) is issued a receipt – in electronic or paper form – confirming the fact of payment.⁶³

In other words, in paying via an electronic payments system, the confirmation of the payment or transfer is the crediting of the funds to the recipient's account or e-purse and his/her receipt of an appropriate electronic confirmation to his/her personal office, a stated e-mail address or mobile phone number using SMS.

The receipt shall indicate these obligatory details:

1. amount paid;
2. time and date of payment;
3. number of the receipt;
4. name or code and personal identification number, business identification number of the sole entrepreneur or legal person;

⁶³ Cl. 3 Rules of E-Money Use. *Procedure of E-Money Use*.

5. transaction or other code identifying the payment in the e-money system; and
6. identification code of the e-purse of the physical person – e-money owner.

The maximum amount of one transaction by a physical person using e-money shall be:

- i. **500 MCI⁶⁴ (1,134,500 tenge)** – for transactions made by identified owners of e-money (physical persons);
- ii. **100 MCI (226,900 tenge)** – for transactions by unidentified owners of e-money (physical persons) (with the exception of repaid e-money, i.e., an amount of equal nominal value transferred to the e-money owner’s bank account, as well as issued to them in cash) using e-currency.

At present, there are software solutions for PS members that combine methods of joint payments and transfers using debit cards and e-currency, called payment aggregators. Providers of this service may take a fee (commission). Since payment aggregators make it possible to use the services of major providers already on the registers of the RK PS and which are operating on the debit card (VISA and MasterCard) and e-currency (WebMoney, QiwiWallet, YandeMoney) markets, there is no particular need to use them in an online resource.

4. Fundraising as a Consumer (Client) of Payment Services

GENERAL

ENTERING INTO CONTRACTS FOR SERVICES WITH PAYMENT SERVICE PROVIDERS

NPOs have the right to enter into contracts for providing (receiving) payment services for the benefit of NPOs, acting as both clients of payment organizations and payment agents or subagents.

Table 2 shows the main types of relations of the parties in transactions between an NPO and a payment service provider.

Table 2. Fundraising as a Client

Consumer (client)	Grounds for Transaction	Payment Service Provider
NPO	Agency contract for providing (receiving) payment services	Banks Non-bank organizations Payment organizations Payment agents

⁶⁴Under Art. 7 RK Law on the Republic’s Budget for 2017-2019, 1 MCI (monthly calculation index) amounts to 2,269 tenge.

		Payment subagents Mobile telephony operators
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4.1. NON-CASH PAYMENTS

Non-cash payments are made by banks and non-bank organizations. Under Law #154 On the CT Law and the Rules of Currency Operations in the Republic of Kazakhstan of April 28, 2012, the following procedure exists for payments and money transfers in foreign currency.

- I. For incoming/outgoing payments (money transfers) through an authorized RK bank, a physical person (resident or nonresident) shall present the following documents identifying the physical person – sender or recipient of the money – and payment purpose:
 - a. identity card;
 - b. foreign currency contract except in stipulated cases; and
 - c. for resident physical persons, their registration certificates and notification reports, where applicable foreign currency regulation regimes extend to a physical person’s transactions.

Foreign nationals and stateless persons may also present a document confirming their right of permanent residence in the RK. Such physical persons should present this document so that their status as RK residents could be determined.

Contracts between the physical person with physical and legal persons as well as payment orders, invoices, tax and license fee payment receipts, etc. may be presented instead of a foreign currency contract. In the event of a public contract, offers made to an undefined person (subscriptions to printed and electronic publications, access to information systems confirmations and other public offers of goods and services) may be presented instead of a foreign currency contract.

The obligatory condition for the acceptance of a document as a foreign currency contract is the presence therein of payment details which identify the beneficiary and the amount and purpose of the payment.

2. Physical persons are entitled to make the following foreign currency payments (money transfers) without opening an account with an authorized bank:

- a. non-repayable money transfers within the Republic of Kazakhstan for the benefit of physical persons as well as legal persons whose statutory activity is directed at charity;
- b. non-repayable money transfers from and to RK, including those of tax, license fee, fine and alimony payments, grants and the like;
- c. other money transfers from the Republic of Kazakhstan, unrelated to the performance by the physical person of any business activity and which do not legally require an account number, registration or notice assigned or appended to the relevant contract.

Under the CT Law⁶⁵, the amount and procedure of money transfers without opening a bank account are established by NRBK decisions. For the time being, no such limit is set.

Physical persons other than those aforementioned shall make money transfers via accounts in authorized banks.

3. Irrespective of the amount of the transfer being made, a foreign currency contract must be presented in the event of foreign currency payments for which registration, notification or contract account number assignment are required (transfers by residents).
4. Nonresident physical persons are entitled to make the following payments and money transfers in foreign currency without presenting a foreign currency contract:
 - a. transfers from a bank account using a debit card issued by an authorized bank;
 - b. transfers from a bank account in amount not exceeding the equivalent⁶⁶ of US\$10,000; and
 - c. money transfers without opening a bank account if such transfers fall within the class of non-repayable and other transfers unrelated to any business activities.

When effecting payments or transfers without opening a bank account/presenting a foreign currency contract, a nonresident physical person should stipulate in his/her money transfer (issue) order (request) that (1)

⁶⁵ Cl. 4 Art. 16

⁶⁶ The US dollar equivalent of the transfer amount is determined on the basis of the dollar to tenge market exchange rate and the cross rates as provided for by Order #36 of the Minister of Finance of Jan. 28, 2009 and NBRK Decision #4 of Jan. 26, 2009 On Establishing the Procedure of Setting and Using the Market Currency Exchange Rate. The rate is effective on the day of payment/money transfer by authorized bank

he/she permits the bank to submit information about the transaction to law enforcement bodies and the NRBK at their request and (2) confirms that the transaction has no relation to any commercial activities.

If the amount of a bank account money transfer exceeds the equivalent of US\$10,000 and the transfer is made without using a debit card, the nonresident physical person:

- either presents an appropriate foreign exchange contract; or
- stipulates in the money transfer (issue) order (request) that he/she permits the bank to submit information about the transaction to law enforcement bodies and the NRBK at their request.

The foreign currency contract and other related documents are presented at the request from the authorized bank or the National Bank.

The physical person sending or receiving the money shall be liable for any incorrect information in the money transfer (issue) order (request).

5. Resident physical persons have the right to make the following payments, money transfers in foreign currency without presenting a foreign currency contract:
 - a. money transfers from a bank account using a debit card;
 - b. bank account money transfers in amount not exceeding US\$10,000 if the transaction is not related to commercial activities. To eliminate the risk of erroneous classification of the foreign currency transaction by the authorized bank's employee, the physical person shall declare in his/her money transfer (issue) order (request) that the transaction is not related to any of the foreign currency transactions for which registration, notifications, and the assignment of an account number to the contract are required;
 - c. money transfers without opening a bank account if these are non-repayable and other transfers unrelated to any commercial activities.

When effecting payments or transfers without opening a bank account/presenting a foreign currency contract, a resident physical person should stipulate in his/her money transfer (issue) order (request) that (1) he/she permits the bank to submit information about the transaction to law enforcement bodies and the NRBK at their request and (2) confirms that the transaction is not related to any of the foreign currency transactions for which registration, notifications, and the assignment of an account number to the contract are required and (3) the transaction is not related to any commercial activities.

If the amount of a bank account money transfer exceeds the equivalent of US\$10,000 and the transfer is made without using a debit card issued by an authorized bank, the resident physical person:

- either presents an appropriate foreign exchange contract; or
- stipulates in the money transfer (issue) order (request) that he/she permits the bank to submit information about the transaction to law enforcement bodies and the NRBK at their request and confirms that the transaction is not related to any of the foreign currency transactions for which registration, notifications, and the assignment of an account number to the contract are required.

The foreign currency contract and other documents referred to in Cl. 7 of the Rules are presented at the request from the authorized bank or the National Bank.

The physical person sending or receiving the money shall be liable for any incorrect information in the money transfer (issue) order (request).

6. The authorized bank informs the NRBK on a monthly basis about the following transactions by physical persons:
 - a. money transfers without opening a bank account where the amount of transfer exceeded the equivalent of **US\$10,000**;
 - b. bank account money transfers without using a debit card and presenting a foreign currency contract if the amount of transfer exceeded **US\$50,000**; and
 - c. bank account money transfers or cash withdrawals from a bank account using a debit card outside the Republic of Kazakhstan, if the amount transferred or withdrawn exceeded the equivalent of **US\$10,000**.

The information submitted to the National Bank does not include physical persons' transfers within the Republic of Kazakhstan.

7. The presentation of a contract for opening a bank account with a foreign bank is not required for physical persons' money transfers to or from their own account with a foreign bank. The authorized bank making such transfers shall notify the NRBK of their total amount.

Settlements between legal persons on a transaction worth more than 1,000 MCI (**2,269,000** tenge) on the date of the payment shall only be made on a non-cash basis.⁶⁷

⁶⁷ Art. 25 of the Law On Payments. *Payments and/or Money Transfers*; Art. 266 of RK Code of Administrative Misdemeanors of July 5, 2014. Violation of the Limitations Set for Payments by RK Legislative Acts.

The maximum amount of a bank transaction by a client (physical or legal person or beneficial owner) from an offshore zone⁶⁸ for the benefit of another person need not be subject to financial monitoring if the amount does not exceed 5,000,000 tenge.⁶⁹

The maximum amount of a bank transaction by a client (physical or legal person or beneficial owner) for the benefit of another person on a non-repayable basis need not be subject to financial monitoring if the amount does not exceed 7,000,000 tenge (*ibid.*).

The maximum amount of a non-cash payment or money transfer without using a bank account shall not exceed 2,000,000 tenge.⁷⁰

NPOs have the right to indicate their banking details, including the BIN (business identification number of a legal person) and the details of their e-purse, if any, in the mass media such as Internet resources (a crowdfunding service or corporate website), television, and periodical publications by way of advertising.

4.2. PAYMENTS UNDER CONTRACTS WITH COMMUNICATION OPERATORS

Communication operators, including mobile telephony, in the RK currently make it possible for clients to pay for services of other service and content providers through entering into payment service contracts with such service providers and relevant banks and nonbank organizations.

Funds are transferred to the bank account of payment/transfer recipient via the communication operator's bank account to which funds from communication service users arrive. For that purpose, the balance units of communication service users are used as a settlement account. For example, a payment may be effected by sending an SMS to a short number.⁷¹

To be able to receive payments or money transfers by SMS, an NPO should enter into a contract for the issue and maintenance of a short number. After the SMS message, the subscriber will receive information about the charity project being funded (a link to its online resource, for example) and/or thanks for its support.

⁶⁸ RK Ministry of Finance Order #52 On Approving the List of Offshore Zones for Purposes of the Law of RK On Countering the Legalization (Laundering) of Criminal Income and the Financing of Terrorism

⁶⁹ Art. 4 CT Law Transactions Involving Funds and/or Other Property Subject to Financial Monitoring.

⁷⁰ Art. 5 CT Law. *Due Diligence by Subjects of the Financial Monitoring of Clients.*

⁷¹ For example, the Public Foundation Voluntary Mercy Society is collecting donations for its Give a Life to Children using SMS. Every time a subscriber sends an SMS to the short number 9099, the Public Foundation Home receives a donation of 280 tenge; <http://www.detdom.kz/index.php?lang=rus&uin=1278577372>.

The communication operator accounts for taxable income from subscribers' payments in accordance with the terms and conditions of its contract with the payment service provider.

For tax purposes, the NPO and the communication provider may produce a report on the mutual settlement of their accounts payable and accounts receivable.

The procedure and frequency of mutual settlements and other terms and conditions are provided for by the contract between the NPO and the communication operator.

4.3. PAYMENTS UNDER CONTRACTS WITH PAYMENT SERVICE PROVIDERS (E-TERMINALS)

Agents may realize e-money via e-terminals that enable acceptance of cash and non-cash payments.

To be able to make payments and transfers using e-money to a bank account or e-purse, an NPO should enter into a contract with a provider of payment services involving e-terminals. For that purpose, the latter normally arranges for the NPO's advertising banner to feature in the payment interface of the e-pay terminal network.⁷²

In making payments/money transfers by paying cash to a PS (bank) via an e-terminal, the sender is issued a receipt which has the primary document status and confirms the fact of contributing the money to a PS via the e-terminal. After the money is accepted and the receipt issued, the PS (bank) acquires the obligation to the sender to make the payment and/or transfer for the benefit of the payee.

After the payment using e-money is made, its owner – a physical person – is issued a receipt confirming the fact of payment, either on paper or in electronic form.⁷³

The latter receipt has the following details:

1. amount paid;
2. time and date of payment;
3. serial number of the receipt;
4. name or code and personal identification number, business identification number of the sole entrepreneur or legal person;
5. transaction or other code identifying the payment in the e-money system; and
6. identification code of the e-purse of the physical person – e-money owner.

⁷² For example, the payment organization Qiwi offers its partnership to charitable organizations, see <https://goo.gl/wfJsMN>

⁷³ Sec. 3 E-Money Rules. *The Procedure of Using E-Money*.

The maximum amount to be credited to a physical person's bank account by paying cash to an e-terminal shall not exceed **500,000 tenge**.⁷⁴

The maximum amount of one transaction by a physical person using e-money shall be:

- i. **500 MCI (1,134,500 tenge)** – for transactions made by identified owners of e-money (physical persons);
- ii. **100 MCI (226,900 tenge)** – for transactions by unidentified owners of e-money (physical persons) (with the exception of repaid e-money, i.e., an amount of equal nominal value transferred to the e-money owner's bank account, as well as issued to them in cash) using e-currency.

4.4. PAYMENTS UNDER CONTRACTS WITH PAYMENT SERVICE PROVIDERS (BANKS)

Like any other legal person, NPOs may enter into contracts with banks for the opening and maintaining a bank account. There is no special legislative regulation of fundraising by banks for NPOs (see Sec. 4.1 *Non-Cash Payments* and Sec. 2. *Legal Regulation of Non-Cash Payment systems (Payment Systems)*)

As a rule, the opening and maintaining a bank account is subject to a contract for for-fee payment services. In practice, however, there are cases where NPOs are exempt from paying a commission to the bank for the opening and maintaining of their account. This is normally subject to a decision made by the bank's rate committee once a year.⁷⁵

Furthermore, banks in the RK may raise voluntary donations to NPOs by placing relevant information on the bank's page in an online or Internet banking system. In this case, the bank's clients may transfer their own funds to the account of the NPO whose project is featured on the bank's page. These funds are accumulated on the bank's account and then are periodically (according to agreement between the bank and the NPO) transferred to the recipient's account based on a relevant deed of acceptance. In practice, such funds are exempted from tax.

In addition, banks can collect donations for NPOs via e-terminals, from which not only their own clients but also other persons can transfer funds to the account of this or that NPO.

5. Conclusion and Recommendations

There is a legal framework in the RK for NPO fundraising with the help of Internet and other e-technology. All the fundraising methods described above are used in the RK effectively. Notably, the effectiveness of this or that method largely depends on how

⁷⁴ Art. 5 CT Law. *Due Diligence by Subjects of the Financial Monitoring of Clients*.

⁷⁵ From R. Salibekova's interview with a Kazkommertsbank officer, Sept. 18, 2017.

socially active and advanced the NPO itself is, in part, the media outreach strategy it uses to promote its projects and programs, and the level of the public's awareness and social engagement.

It is difficult to name the most popular method of Internet fundraising for social projects at the moment. It is certain, however, that voluntary donations, in part to charitable foundations, are widespread, especially when raised via banks. One reason for that is the degree of trust that precisely these members of PS enjoy. Also, there are a number of charitable foundations which the public is more willing to donate to, which often depends on this or that foundation's image and efficiency of operation.

Although crowdfunding platforms are still in their infancy, it may well be that they are going to become as popular as they are in the West or in our neighbor Russia (for funding precisely social benefit projects). This kind of activity may become useful for charity communal work projects not unlike the traditional Kazakh *asar* (barn raising).

Finally, all aforementioned crowdfunding methods have so far been used by physical persons only. Legal persons normally enter into a contract with the NPO and transfer funds to its account direct from theirs without using payments cards or agents to that end. However, the legal basis for crowdfunding by legal persons is in place, and the only question usually is if the contract between the NPO and the platform has been drawn up the right way, because the platform's offer should contain a description of conditions for the participation of legal persons. It should also be noted that the conception of corporate social responsibility is becoming increasingly popular, and as a result there are growing opportunities for the funding of NPOs precisely by commercial legal entities.

6. Additional Questions and Answers

I. Which forms of fundraising are the safest and the most effective?

All the aforementioned forms of fundraising are safe and effective. Effective, because NPOs are already using them here and now. Our study contains both legal arguments for their use and links to relevant laws and resources. Safe, because service providers (banks, payment organizations) rather than NPOs ensure the security of online payment transactions and bear joint responsibility. NPOs only sees to the security of its own website (for which end it receives an https rather than http protocol, protection against viruses and cross script attacks, etc.) with the help of specialist companies, Web designers and Web masters under individual contracts.

2. *How should we formulate our contracts so that the tax bodies recognize the funds we receive as tax exempt?*

- a. In its contracts, an NPO should stipulate:
 - i. that it does not take any commission on payments – *as discussed above*,
 - ii. the designed use of the funds (i.e. charities, a grant) – *as discussed above*,
 - iii. links to the statutes the contract refers to,
 - iv. the taxes it pays (10% withholding tax when payments to physical persons are made), and
 - v. the fees of its payment agents (for example, payment organizations)
- b. To obtain tax benefits, an NPO should:
 - i. enclose the following payment and accounting documents as requested by the tax authorities: documentation on its electronic transactions (if its site stores such transaction data, the NPO itself can do it, or it may request electronic documents from the payment organization whose payment gateways it uses, since the latter is supposed to retain such data in its payment system).

Payment documents include:

 - auto-generated electronic payment orders when the payment is initiated by a physical person in the payment system on the website, through a terminal or at the bank – when it is a non-cash (bank) transfer.
 - bank payment orders – the document confirming the crediting of funds to the NPO’s account.
 - auto-generated electronic payment receipts stating that the transaction is completed (if its site stores such transaction data, the NPO itself can do it, or it may request electronic documents from the payment organization whose payment modules it uses, since the latter is supposed to retain such data in its payment system).
 - a mutual setoff report. The confirmation of a mutual setoff with providers of payment services is not a primary accounting document. It may or may not be issued. It is a convenience for accountants. The primary document is the accounts payable and receivable inventory report.
https://online.zakon.kz/Document/?doc_id=31657403#pos=14;-96) and

https://online.zakon.kz/Document/?doc_id=31653485#pos=24;-102).

The inventory report is not a mandatory requirement on the part of tax authorities. It is necessary for the convenience of bookkeeping because it clearly reflects the movement of money. Accounts payable show how much the NPO has to pay to any third parties (such as providers of payment services, if relevant service contracts with them are on a for-fee basis) and the tax authorities (on incoming payments). Accounts receivable show how much the NPO's contracting party have to pay the NPO (for example, communication operators out of the money they have received from individuals).

In fact, there may not be any arrears at all. The report simply reflects the movement of money – it may well be that no one owes anything to anyone. It is not necessary to submit it to tax authorities, but can be done if requested, as the tax staff prefer data presented in a convenient manner.

- ii. present, at the request of the tax authorities, its public offer contracts of supply with physical and legal persons (in the case of a service or corporate site), agency contracts with payment service providers, and membership provisions;
- iii. fill out its tax declaration according to TC requirements. This is the main document which an NPO has to submit to the tax authorities, and it must be in strict compliance with the TC; and
- iv. (d) append Form OI8 to show foreign funding and its expenditure (mandatory).

3. *“Step-by-step algorithms” for each type of fundraising*

- a. Payment cards and e-money. Crowdfunding service, corporate site:
 - i. the NPO must have a current account to receive payments by payment card.
 - ii. the NPOs has to open an electronic wallet (linked to its account).
 - iii. the NPO has to request the bank to connect its current account to Internet banking services with the possibility of Internet transactions (receipt of payments and money transfers, payment via the Internet using payment cards and e-money).
 - iv. the NPOs enters into an agency contract with the payment service provider for services using payment cards and e-payments, under which:
 - the NPOs will be a payment agent or subagent and will receive the appropriate software, hardware, and other

facilities from the provider for installation on an Internet resource (crowdfunding service, corporate site)

- the payment service provider will maintain the payment system installed on the NPO's Internet resource (crowdfunding service, corporate site)
- the NPO will not be charged for the agency fee on payments and transfers
- the NPO will not be charged for the agency fee on payments and transfers except for 10% withholding tax (NPO)
- the main text contains provisions on compliance with the rules of the payment system of the service provider; and
- the purpose of payment, the order and method of payment to the service provider are also specified, as are other essential terms and conditions which the parties deem necessary.

On the corporate site or crowdfunding service that accepts payments using payment cards and e-money, the NCO should specify:

- user Agreement (crowdfunding service)
- service Contract (crowdfunding service)
- personal Information Provision (crowdfunding service)
- payment system rules, payment instructions (corporate site and crowdfunding service)
- offer from the project authors (crowdfunding service)
- entry and membership rules (if required) (corporate site).

b. Non-cash (bank) transfers via the corporate site:

- i. the NPOs should enter into a contract to open and maintain the current account with the bank, which will receive money via non-cash bank transfers, i.e. the standard current account of an NPO (as described in Paragraph (a) I. above).
- ii. it has to request the bank to connect its current account to Internet banking services with the possibility of Internet transactions (receipt of payments and money transfers, payment via the Internet).
- iii. the NPO's corporate site should specify:
 - the details of the NPO's current account and its BIN (same in mass media such as periodical publications, television and the like);
 - entry and membership rules (if required); and

- the NPO's offer to receive payment for charitable purposes, specifying the intended use of the funds and how to pay by bank transfer.
- c. Payments via electronic terminals. The NPO should:
- i. have a current account that will receive payments from electronic terminals; and
 - ii. enter into a contract (as a consumer rather than an agent) with a provider of payment services via e-terminals, under which:
 - the NPO will be a consumer of payment services receiving payments via e-terminals and will get a banner in the e-terminal network from the provider
 - the NPO accepts the rules of the payment system of the e-terminal payment service provider
 - the NPO will not charge a fee and will not act as a payment agent regarding any payments and transfers it receives, except for 10% withholding tax (NPO)
 - the main text above indicates if the contract is on a repayable or nonrepayable basis, as well as the provider's fee for its services to the NCO or the absence thereof
 - the purpose of payment and the procedure and method of payment to the service provider are also specified
 - as are other essential terms and conditions of the contract that the parties deem necessary
- d. Payments via banks – applicable exclusively to foundations in cooperation with banks (there are only two such in the RK at the moment – the Kus Zholy and the Khalyk Bank foundations) or where banks accumulate funds accruing to the NPO' account from Internet banking users, i.e. directly from the bank's clients The NPO should:
- i. have a current account with such banks that will receive funds which the banks' foundations will accumulate, and
 - ii. enter into a contract (as a consumer rather than an agent) for payment services with such foundations, under which:
 - the NPOs will be a consumer of payment services, receiving payments at its account with the bank
 - it will delegate asset management to the foundation, including fundraising, account management and tax reporting on its behalf
 - the NPO will not charge a fee on payments and transfers it receives

- the main text above indicates whether the contract is on a repayable or nonrepayable basis, as well as the provider's fee for its services to the NCO or the absence thereof
 - it also specifies the purpose of the payment and the procedure and method of settlements with the bank. Normally these are contracts on a non-repayable basis. The mutual settlement procedure may be determined by mutual setoff reports
 - the terms and conditions of funding for the NPO's projects, which of them the bank intends to finance on behalf of the NPO, and in what manner, and
 - Other essential terms and conditions of the contract that the parties deem necessary
- e. Payments via communication operators (mobile telephony providers). The NPO should
- i. have a current account that will receive the funds being collected by communication operators, and
 - ii. enter into a contract (as a consumer rather than an agent) for payment services with such communication operator, under which:
 - the NPOs will be a consumer of payment services, receiving payments at its bank account
 - the NPO will not charge a fee on payments and transfers it receives except for 10% withholding tax (NPO)
 - the main text above indicates if the contract is on a repayable or nonrepayable basis, as well as the provider's fee for its services to the NCO or the absence thereof
 - it also specifies the purpose of the payment and the procedure and method of settlements with the bank. Normally these are contracts on a non-repayable basis. The mutual settlement procedure may be determined by mutual setoff reports
 - the terms and conditions of funding for the NPO's projects, and
 - other essential terms and conditions of the contract that the parties deem necessary

In addition, the National Bank and Telecom are currently reviewing the possibility of internal (within the RK) non-cash settlements without any banks or intermediaries. While this scheme can be regarded as promising for the future, there are no concrete plans to that effect for the time being.