

REGULATION
on carrying out controls and application of sanctions to foreign exchange entities
Published in the Official Monitor of the Republic of Moldova
No 391-394 of 19.10.2023, Article 975

Registered
at the Ministry of Justice of the Republic of Moldova
No 1845 of 05 October 2023

APPROVED
by the Decision of the Executive Board
of the National Bank of Moldova
No 187 of 28 September 2023
In force as of 19 October 2023

Chapter I
GENERAL PROVISIONS

1. The Regulation on carrying out controls and application of sanctions to foreign exchange entities (hereinafter – Regulation) lays down the rules for carrying out controls on the activity of foreign exchange entities, for completing and examining the results of such controls, and for applying sanctions to foreign exchange offices and hotels by the National Bank of Moldova (hereinafter – NBM).

2. The purpose of carrying out controls on the activities of foreign exchange entities is to verify compliance with Law No 62/2008 on Foreign Exchange Regulation (hereinafter – Law No 62/2008), Law No 308/2017 on Prevention and Combating Money Laundering and Terrorist Financing (hereinafter – Law No 308/2017), as well as the provisions of the regulatory acts issued in their application.

3. The terms defined in Law No 62/2008 and in the Regulation on the licencing of foreign exchange entities, approved by the Decision of the Executive Board of the NBM No 304/2016 shall be used in this Regulation.

4. The controls over the activity of the foreign exchange entities and the applications of sanctions against them shall be carried out in accordance with the provisions of Law No 548/1995 on the NBM (hereinafter – Law No 548/1995), Law No 62/2008, Law No 308/2017, Law No 75/2020 on the Procedure for Ascertaining Violations in the Field of the Prevention of Money Laundering and Terrorist Financing and the Method of Application of Sanctions (hereinafter – Law No 75/2020), Law No 202/2017 on the Activity of Banks and of this Regulation.

5. To determine the compliance of the foreign exchange entity with the requirements related to the amount of funds established by Law No 62/2008, shall be applied the official exchange rate of the Moldovan leu against valid foreign currencies:

a) on the day of execution of the foreign exchange transaction - in the case referred to in Article 42¹ paragraph (2) letter (c) and paragraph (3) letter (f) of Law No 62/2008.

b) on the date for which the calculation is made - in the case referred to in Article 44, paragraph 4 of Law No 62/2008.

Chapter II
TYPES AND FREQUENCY OF CONTROLS

6. Controls over the foreign exchange entities may be:

1) depending on the place of control:

a) on-site inspections;

b) off-site inspections;

2) depending on the type of control:

a) scheduled inspections – a control performed on the basis of a quarterly control plan approved by the NBM;

b) unannounced inspections – a control the performance of which is not foreseen in the quarterly control plan of the NBM. The unannounced on-site inspection shall be performed in the cases provided for in Article 62 paragraph (3) of Law No 62/2008.

3) depending on the aim of control:

a) complex control – a control carried out with a view to the full verification of foreign exchange activities, i.e. compliance with foreign exchange regulations and/or regulations on the prevention and combating money laundering and terrorist financing;

b) thematic control - a control carried out to verify an area related to foreign exchange activities from the point of view of foreign exchange regulations and/or regulations on the prevention and combating money laundering and terrorist financing.

7. The quarterly control plan shall be drawn up considering: the frequency of the previous controls, the detected violations during the previous controls, the measures taken to stop or remedy the previously detected violations, the results of the off-site inspections, the risks associated with foreign exchange activities, the complaints (petitions) recorded by the NBM.

Chapter III

CONTROL OVER THE ACTIVITY OF THE FOREIGN EXCHANGE ENTITY

8. On-site inspection (scheduled and unannounced) of the activities of foreign exchange entities shall be carried out by an inspection team consisting of at least two officials of the NBM, hereinafter referred to as “inspectors”, who are authorised in accordance with the purpose of the control inspection.

9. In case of the on-site inspection, the NBM shall issue the Decision on the on-site control (hereinafter – Decision of the NBM), which shall comprise at least the information referred to in Article 62 paragraph (4) of Law No 62/2008.

10. The on-site inspection may also be carried out by means of a control purchase in accordance with the provisions of Article 62¹ of Law No 62/2008.

11. The Decision of the NBM shall be issued in two copies. One copy of the Decision shall be kept by the NBM, and the other copy shall be handed over to the foreign exchange entity (in the person of the representative, the cashier of the foreign exchange entity or another person authorised to act on behalf of the foreign exchange entity, including in the performance of foreign exchange transactions) at the moment of initiating the inspection. When handing over the Decision of the NBM, the inspectors shall also present their employee ID card.

12. While carrying out the on-site inspection, the inspectors have the right to:

a) enter the premises of foreign exchange entities and have access to safes, information from electronic cash registers, foreign exchange machines and other technical means used in the course of conducting foreign exchange transactions with individuals;

b) request the presentation of documents and information necessary for the control and make copies thereof if the case may be;

c) request the generation of totalizing tax documents (X-report) and/or the reports on the operations carried out, containing the relevant data, for the day of the control up to the moment of the control;

d) use technical means (audio, video, photo) for the attestation of the established facts, to request, if necessary, explanations from the cashier of the foreign exchange entity or from the person authorised to act on behalf of the foreign exchange entity and/or to invite one or more assistant witnesses.

13. Employees of the foreign exchange entity shall not have the right to carry out personal control over inspectors, technical means, including telephones, electronic information carriers in their possession, to pick up these means or to prevent inspectors from using these means when carrying out control.

14. If the assistant witness is called, he/she must be a neutral person with full legal capacity, who has no interest in the outcome of the control and who is not related to the NBM inspectors, employees and associates/shareholders of the foreign exchange entity.

15. By signing the act on inspection results, the assistant witness certifies the accuracy of the information relating to the conduct of the inspection and undertakes not to disclose any information constituting a commercial, banking, or other legally protected secret of which he/she has become aware in connection with the inspection. An assistant witness has the right to be informed about the reasons for his/her being selected as an assistant witness, to be informed about the Decision on conducting the control, to comment on the content of the act on inspection results in relation to the facts (actions) observed.

16. During the on-site inspection, the foreign exchange office/branch shall be obliged to present to the inspection team all the funds located in its premises, including in safes, in order to verify the existence of funds in the amount determined pursuant to Article 44, paragraph (1) or paragraph (2) of Law No 62/2008, as the case may be.

17. If the amount of funds available at the foreign exchange office or its branches is lower than the amount specified in Article 44 paragraph (1) and/or (2) of Law No 62/2008, the inspection team shall have the right to request the foreign exchange office to provide information on the amount of funds available at the time of the inspection in accounts opened at licensed banks and/or in exchange machines. If such information cannot be provided at the time of the inspection, it shall be provided after the inspection within the period specified in the Act on inspection Results, together with the relevant documents.

18. The provisions of Article 75¹ of Law No 548/1995 shall be considered when exercising control over the activities of foreign exchange entities, provided that they do not conflict with the provisions of Law No 62/2008 and Law No 308/2017.

Chapter IV

Drawing up the act on inspection results of the on-site inspection

19. Based on the results of the on-site inspection, the inspection team shall draw up an act on inspections results, in two copies, in accordance with the form set out in Annex 1, which shall be completed in the case of an inspection carried out at the foreign exchange entity. One copy of the act on inspection results shall be kept by the NBM, to which the documents collected by the inspection team (as originals or copies, as the case may be) confirming the facts found during the control shall be attached, and the second copy (if any, with the attachments of the documents collected by the inspectors) shall be sent to the foreign exchange entity subject to the control, in accordance with the provisions of Article 11² paragraph (1) letter a) - f) of Law No 548/1995.

20. If none of the notification methods referred to in paragraph 19 is likely to be unsuccessful, including the addressee is not available/cannot be contacted or refuses to accept the notification, the provisions of Article 11² paragraph (10) of Law No 548/1995 shall be applied.

21. In case of resistance to the performance of the inspection (denial of access to the premises of the foreign exchange entity, to safes, to information from electronic cash registers, currency exchange machines and other technical means, creation of any other obstacles on the part of the employees of the foreign exchange entity or other persons to the performance of the inspection) and/or evasion from submitting the information and documents required during the control, this fact shall be recorded in the act on inspection results.

22. The act on inspection results shall be signed on each page by inspectors and by the representative of the foreign exchange entity (the cashier of the foreign exchange entity or another authorised person to act on behalf of the foreign exchange entity, including when conducting foreign exchange operations). If the person concerned refuses to sign the act on inspection results, the inspectors shall record the refusal in the act. If the witness is called as an assistant, the act on inspection results shall also be signed by the witness on each page, and on the last page he/she shall indicate his/her name, surname, first name and contact information (domicile/residence, telephone number, etc.).

23. If the spaces provided for completion on the inspection act form are not sufficient to record all the information relating to the results of the inspection, such information shall be recorded on additional sheets attached to the act on inspection results, which shall form an integral part of the act. Each additional sheet shall be signed by the members of the inspection team, the authorised person of the foreign exchange entity and, if may case be, the assistant witness.

24. The information on the cases of violation (found during the control) of the provisions of Law No 62/2008 on the use of electronic cash register by the foreign exchange office/its branches, the hotel exchange bureau shall be submitted by the NBM to the State Tax Service in order to apply the measures in accordance with the legislation in force.

Chapter V

FEATURES OF CONDUCTING THE OFF-SITE INSPECTION

25. The off-site inspection shall be carried out by the employees of the NBM, without issuing a written decision, on the basis of the reports and other data submitted in accordance with the law and the NBM regulations, or at the express written request of the NBM.

26. If, during the off-site inspection of the foreign exchange entity, violations are found, the information on the violations found shall be drawn up and brought to the attention of the foreign exchange entity. The information on the violations found shall be notified to the foreign exchange entity in accordance with the provisions of Article 11² paragraph (1) letter (a) - (f) of Law No 548/1995.

27. The provisions of paragraph 20 shall also be applied for off-site inspection.

Chapter VI

ENFORCEMENT OF SANCTIONS FOR VIOLATIONS RELATED TO FOREIGN EXCHANGE

Section 1. General Provisions

28. A violation of the provisions of Law No 62/2008, of this Regulation and of the normative acts of the NBM in the course of foreign exchange transactions conducted by a licensed bank through foreign exchange bureaux or currency exchange machine shall be done in accordance with the provisions of Article 75¹ of Law No 548/1995, taking into account the peculiarities provided for by this Regulation, and sanctions shall be applied in accordance with Chapter 5 of Title V of Law No 202/2017 on the Activity of Banks and in accordance with the provisions of Article 75 and 75² of Law No 548/1995.

29. In the event of a violation of the provisions of Law No 62/2008, this Regulation and normative acts of the NBM in relation to the foreign exchange activity conducted by the foreign exchange offices and hotels, in the event of a violation of the licensing conditions and/or in the event of a failure to comply with the imposed sanctions, the NBM shall impose sanctions on the foreign exchange offices and hotels in accordance with the provisions of Articles 63-66 of Law No 62/2008 and Articles 75-75² of Law No 548/1995, taking into account the peculiarities provided for in this Regulation.

30. The information on sanctions applied to foreign exchange entities is published on the NBM website.

31. Pursuant to Article 63 paragraph (3) of Law No 62/2008, Article 75 paragraph (1), letter c) of Law No 548/1995, the NBM may impose the following sanctions on an foreign exchange office or hotel holding a NBM licence (hereinafter referred to as the licensee)

- 1) written warning;
- 2) a fine of MDL 10.000 to 40.000;
- 3) partial or total suspension of the cash exchange activity with individuals;
- 4) withdrawal of the licence/authorised copy of the licence.

32. The individualisation of sanctions shall take into account at least the following circumstances (insofar as they can be determined):

- 1) the seriousness and impact of the violation on the licensee's activity;

- 2) the duration and frequency of the violation;
- 3) the repetitive nature of the violation (violation committed within 2 years of the date of the finding of the same violation);
- 4) where applicable, the amount of money involved in the subject matter of the violation;
- 5) the actions of the licensee following the violation, including:
 - a) the degree of cooperation demonstrated under the inspection of the NBM, i.e., whether the licensee responded promptly and effectively to all requests made by the NBM and/or whether the licensee provided incomplete information and/or the information provided misled the NBM;
 - b) the nature, extent and effectiveness of any corrective action taken by the licensee to address the violation and the timeliness of such action.

33. The Decision on the application of a sanctions for breaches of foreign exchange regulations and the Decision on the resumption of the licensee's activity shall be taken by the Governor, the First Deputy Governor, the Deputy Governors or by the person authorised to do so on the basis of the NBM's internal regulations or on the basis of the Governor's order, taking into account the provisions of Article 24 paragraph (2) of Law No 548/1995, with the exception of the sanctions providing for the suspension of the activity or the withdrawal of the licence, which are the competence of the Executive Board.

34. In the case of violation detected during an on-site inspection, the Decision on the application of the sanction shall be taken based on the act on inspection results, and in the case of violation detected during an off-site inspection - on the basis of the information on the violation detected by the NBM, in both cases taking into account the relevant arguments submitted by the licensee in accordance with the provisions of Article 62 paragraph (6) of Law No 62/2008.

35. Decisions on the application of sanctions shall be notified to the licensee in accordance with the provisions of Article 11² paragraph (1) letter (a) - (f) of Law No 548/1995. If it is not possible to notify them by any of the means provided for in this paragraph, including if the addressee is unavailable or unreachable or refuses to accept them, the provisions of Article 11² paragraph (10) of Law No 548/1995 shall apply.

36. The licensee against whom sanctions have been imposed shall be obliged, within the time limit laid down in the Decision imposing the sanction, to remedy the detected violation, to notify the NBM of their remedy and, where appropriate, to take other measures provided for in the Decision imposing the sanction and in this Regulation.

37. For the purpose of verifying compliance with the Decision on the application of sanctions, the NBM may carry out on-site inspection in accordance with the provisions of Article 62 paragraph (3) letter (a) of Law No 62/2008 and this Regulation.

Section 2. Warning to the licensee

38. The written warning shall be sent to the licensee in the case and within the period provided for in Article 64 of Law No 62/2008.

39. In applying the warning, account shall be taken of the provisions of Article 75 paragraph (4) and (5) of Law 548/1995 and of the peculiarities set out in *Section I* of this Chapter.

Section 3. Application and incontestable collection of fines against the licensee

40. The Decision of the NBM on the application of a fine on the licensee for foreign exchange violations shall be issued in the case provided for in Article 75² paragraph (8) of Law No 548/1995, taking into account the peculiarities provided for in Article 75² paragraph (10)-(14) of Law No 548/1995 and Article 64¹ of Law No 62/2008, as well as the provisions of this Regulation.

41. The NBM shall apply to the licensee the sanction in the form of a fine within the limits provided for in Article 75 paragraph (1) letter c) of Law No 548/1995 and taking into account the circumstances set out in paragraph 32.

42. The proof of voluntary payment of the fine by the licensee shall be provided by sending to the NBM a copy of the document issued by the resident payment service provider confirming payment of the fine.

43. In the case of incontestable collection of the fine from the licensee's account opened with a bank, the NBM shall forward the Decision on the application of the fine, accompanied by the order of collection, to all the licensee's accounts opened with banks in turn. Proof of payment of the fine shall be provided by the bank's return to the NBM of the Decision on the application of the fine, accompanied by the second copy of the order for incontestable collection of the fine, which shall contain the mention of enforcement.

44. The NBM applies the provisions of Article 75² paragraph (11) letter (c) of Law No 548/1995 if the Decision to impose a fine has been withdrawn/returned to the NBM due to lack or insufficiency of funds in the bank accounts of the licensees.

*Section 4. Suspension and resumption
the licensee's foreign exchange activities*

45. The Decision on the suspension of foreign exchange activities shall be taken and notified to the licensee in accordance with the provisions of Article 65 of Law No 62/2008, taking into account the provisions of this Regulation.

46. In the event that any of the grounds provided for in Article 65 of Law No 62/2008 are found to exist in relation to the activity of the foreign exchange offices carried out through a branch and/or through an currency exchange machine on which the inspection was carried out, the activity of foreign exchange in cash with individuals shall be suspended.

47. The NBM shall impose on the licensee the sanction of suspension of foreign exchange activity, taking into account the limit provided for in Article 65 paragraph (2) of Law No 62/2008 and the circumstances referred to in paragraph 32.

48. Unless otherwise specified in the Decision to suspend the activity of foreign exchange in cash with individuals, the licensee shall, within 3 working days from the date of receipt of the Decision, take the measures specified in paragraphs 49 and 50, as appropriate.

49. In case of adoption of the Decision on suspension of the activity of foreign exchange with individuals, the foreign exchange office is obliged to:

a) suspend the activity of the head office and/or branches and/or currency exchange machine referred to in the Decision of the NBM;

b) notify the NBM in writing of the suspension of the activity of the head office and/or branches and/or currency exchange machines specified in the NBM Decision;

c) to post notices of the suspension of activities pursuant to the NBM Decision in conspicuous places of the head office and/or branches and/or currency exchange machine specified in the NBM Decision, indicating the period of suspension.

50. In the event of a Decision to suspend the hotel's foreign exchange activities with individuals, the hotel is obliged to:

a) suspend the foreign exchange activity of the hotel and/or currency exchange machines;

b) notify the NBM in writing form of the suspension of the foreign exchange activity of the hotel and/or currency exchange machines;

c) to post in a visible place of the hotel and/or on the body of its currency exchange machines, as specified in the NBM Decision, notices on the suspension of the activity on the basis of the NBM Decision, indicating the period of the suspension.

51. The Decision on the resumption of the activity by the licensee shall be taken within the period referred to in Article 65, paragraph (4) of Law No 62/2008 and shall be notified to the licensee in accordance with the provisions of Article 11², paragraph. (1) letters a) - f) of Law No 548/1995.

*Section 5. Withdrawal of the licence/authorised copy
of the license issued to foreign exchange office and hotel*

52. The Decision of the NBM on the withdrawal of the licence/authorised copy of the licence issued to the foreign exchange office or hotel shall be adopted and notified to them in accordance with the provisions of Article 66 of Law No 62/2008, considering the provisions of this Regulation.

53. In the event that the reasons referred to in Article 66 paragraph (1) letter (c), (d), (e) and (j) of Law No 62/2008 are found to exist in relation to the foreign exchange activity conducted by the branch, the authorised copy of the license issued to the foreign exchange office to carry out the foreign exchange activity by the branch on which the inspection was carried out shall be withdrawn.

54. In the case of withdrawal of the authorised copy of the license, the provisions of Article 66 paragraph (3) - (6) of Law No 62/2008 shall apply accordingly.

55. In the event of withdrawal of the licence/authorised copy of the licence, the exchange office shall be obliged to:

a) definitively cease foreign exchange activities in cash with individuals of the head office and/or branches and/or currency exchange machines referred to in the Decision of the NBM;

b) notify the NBM in writing of the definitive cessation of the foreign exchange activity of the head office and/or branches and/or through the currency exchange machines specified in the Decision of the NBM, enclosing the original licence and/or authorised copies of the licences of the branches specified in the Decision of the NBM.

56. In case of withdrawal of the licence, the hotel is obliged to:

a) permanently cease the foreign exchange activity in cash with individuals of hotel and currency exchange machines;

b) inform the NBM in writing form about the definitive cessation of the foreign exchange activity in cash with individuals of hotel and/or through its foreign exchange machines, attaching the original of the license.

Chapter VII

THE APPLICATION OF SANCTIONS AND REMEDIAL MEASURES FOR BREACHES RELATING TO THE PREVENTION AND COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

57. The application of sanctions to the foreign exchange entity, in case of violation of the provisions of Law No 308/2017 and the regulations of the NBM drawn up based on this Law, shall be carried out in accordance with the provisions of Law No 75/2020.

58. The Decision on the application of sanctions for violations in the field of prevention and combating money laundering and terrorist financing shall be taken by the Executive Board of the NBM, considering the provisions of Article 75² paragraph (3), (10) - (15) of Law No 548/1995.

59. The sanction provided for in Article 34 paragraph (1) letter (b) of Law No 75/2020 may be imposed by the Governor, the First Deputy Governor or the Deputy Governors of the NBM or in the manner determined by the internal regulations of the NBM, taking into account the provisions of Article 24 paragraph (2) of Law No 548/1995.

60. The fine for the natural person shall be imposed in accordance with the provisions of Articles 34 and 40 of Law No 75/2020.

61. In the case of application of the sanctions provided for in Article 34, paragraph (1), letter c) of Law No 75/2020, the provisions of paragraphs 48-50, 55, and 56 of this Regulation shall apply.

Annex 1
to the Regulation on carrying out controls
and application of sanctions to foreign exchange entities



NATIONAL BANK OF MOLDOVA
1 Grigore Vieru Avenue, MD-2005,
Chisinau, Republic of Moldova

ACT ON INSPECTION RESULTS No _____

_____ 20 _____

_____ (place of drawing up)

Undersigned, _____
(NBM inspectors' position, name, and surname)

Pursuant to Chapter VIII of Law No 62/2008 on Foreign Currency Regulation and/or Chapter III of Law No 308/2017 on Combating Money Laundering and Terrorist Financing, carried out the _____
(scheduled /unannounced)

on-site inspection according to the Decision of the National Bank of Moldova

No _____ of _____,

at the foreign exchange entity _____
(name of the foreign exchange entity, number and date of issue of the licence/authorised copy of the licence)

with the head office _____
(head office of the foreign exchange entity)

with the address of the foreign exchange activity _____
(address of the foreign exchange activity of the exchange entity)

in the presence of _____
(position, name, and surname of the representative cashier of the exchange entity /other person authorised to act on behalf of the exchange entity)

Date (period) of the activity under inspection _____

(other information, as the case may be)

Time of the start of the inspection _____.

Results of the inspection

I. Findings on currency values at the time of the start of the inspection:

At the time of the inspection, all foreign exchange assets on the premises of the foreign exchange entity belong to

(name of the foreign exchange entity, signature of the representative/cashier of the foreign exchange entity/other person authorised to act on behalf of the foreign exchange entity)

1. Balance at the beginning of the day			2. Received for settlement during the day		
Name of currency values, currency	In nominal	Equivalent in MDL at official exchange rate	Name of currency values, currency	In nominal	No of doc.
USD			USD		

EUR			EUR		
RUB			RUB		
RON			RON		
UAH			UAH		
MDL		X	MDL		
3. Collections			4. Payments		
Name of currency values, currency	In nominal	Purchase price	Name of currency values, currency	In nominal	Sales price
USD			USD		
EUR			EUR		
RUB			RUB		
RON			RON		
UAH			UAH		
MDL			MDL		

5. Transmitted during the day			6. Balance at the time of control according to the records		
Name of currency values, currency	In nominal	No of doc.	Name of currency values, currency	In nominal	Equivalent in MDL at official exchange rate
USD			USD		
EUR			EUR		
RUB			RUB		
RON			RON		
UAH			UAH		
MDL			MDL		X

In case of disagreement with the results of the on-site inspection, you have the right to submit the reasons for your disagreement in writing to the National Bank of Moldova within 5 working days from the date of notification of the act on inspection results, attaching, if necessary, the relevant documents.

Time of inspection completion _____.

Assistant witness (if had been called): _____

(name, surname, middle name, domicile (residency), telephone number)

Additional pages to the act: _____ pages.

Annexes to the act : _____

(title, number and date, if the case may be; number of pages)

V. Signatures:

Inspectors of the National Bank of Moldova _____

Authorised person (employee) of the foreign exchange entity _____

Reference of refusal to sign the document (if applicable) _____

Assistant witness (if had been called)

name, surname

By signing the act on inspection results, I certify the accuracy of the information relating to the conduct of the inspection and I undertake to maintain the confidentiality of information constituting commercial, banking or other legally protected secrets of which I have become aware in connection with the inspection.

Signature

The act was drawn up on ____ 20__ Mr (Mrs) _____

(position, name, surname, of the representant/cashier of the exchange entity /other authorised person to act on behalf of the exchange entity)

who confirmed the above by signature _____.

(signature)