

*To all our clients and friends*

## INFORMATION LETTER Concerning Amendments to the Land Code of Kazakhstan

4 May 2018 marked the adoption of the Law No. 151-VI "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Land Relations Regulation" ("**Law**"), which was put into effect on 21 May 2018. Please see below the overview of key amendments introduced by the Law into the Land Code of the Republic of Kazakhstan ("**Kazakhstan**").

### 1. Definition of the Concept of "Land Commission," Regulation of the Issues of Forming the Land Commission and Its Activities

According to the amendments, the Law introduced definition of the concept of "*land commission*," which means a collective authority under a local executive authority considering the issues of granting rights to land plots (including determining the winner of a tender to grant the land use rights for the purposes of farming or agricultural production), including the issue of changing designation of land plots and transferring lands composing the water fund to lands of other categories (Article 12.12-1) of the Land Code).

The land commission is composed of the representatives of respective local executive and representative authorities, social councils, National Chamber of Entrepreneurs of Kazakhstan and other governmental authorities of Kazakhstan. Meetings of the land commission must be fixed using audio and video records.

The land commission must issue opinions within five (5) business days of the moment the land commission receives a proposal concerning possibility to use the requested land plot according to the stated designation.

The effective term of a positive opinion issued by the land commission is one (1) year of the date of issue, except for the land plots granted for the purposes of farming or agricultural production ("**Agricultural Land Plots**"). The fact of missing the one-year period serves as a ground for the local executive authority to refuse to grant rights to a land plot.

We found no provisions in the Law relating to the term of the land commission's positive opinion for granting Agricultural Land Plots. According to the representative of the Land Relations Administration, the above exception most likely occurred by mistake.

### 2. Regulation of the Procedure for Granting Agricultural Land Plots

According to the Law, Article 43-1 was added to the Land Code, which regulates in details the procedure for granting Agricultural Land Plots based on a tender. The local executive authority organizes and holds a tender; agrees upon the list of land plots for the tender; publishes a notice concerning the tender in print periodicals, on a website and special information stands of governmental authorities.



Tender bids are accepted upon expiration of 30 calendar days of the first publication of the notice or, in the event of re-bidding, upon expiration of 15 calendar days. The tender bid may be submitted either in a hardcopy or via the e-Government website.

The tender results are summarized the day after expiration of the period for submission of tender bids and must be recorded by a protocol resolution of the land commission, which must be sent to the local executive authority to make decision whether to grant rights to lease an Agricultural Land Plot. The draft lease agreement must be prepared within three (3) business days based on the decision made to grant the right to lease the Agricultural Land Plot.

According to the results of the concluded agricultural land plot lease agreement, the competent authority monitors the use of agricultural lands, including the winner's performance of the assumed obligations associated with the use of lands:

- on an annual basis within the first 5 years of lease;
- within subsequent periods: each 3 years in respect of irrigated agricultural lands, and each 5 years in respect of non-irrigated agricultural lands.

Positive results of the monitoring of using agricultural lands serve as a basis for a decision to extend the effective term of the agricultural land plot lease agreement.

According to the amendments introduced by the Law, an agricultural land plot is subject to forced taking in the event of failure to use it pursuant to designation within two (2) consecutive years of the moment such failure to use was detected for the first time.

### **3. Prohibitions and Restrictions on Transfer into Ownership and Lease of Land Plots Located within the Kazakhstan Borderland**

The land plots located within the Kazakhstan borderland may not be granted into private ownership or for temporary land use. However, agricultural land plots located within the Kazakhstan borderland may be used by people to pasture their own farm animals and for haymaking without the right to erect any buildings (structures, constructions) (Article 23.1-1 of the Land Code).

The land plots located within the Kazakhstan borderland cannot be held under the right of ownership by foreigners, stateless persons, Kazakhstan nationals married to foreigners or stateless persons, foreign legal entities or Kazakhstan legal entities with foreign participation. In the event of marriage between Kazakhstan nationals and foreigners or stateless persons, the right of ownership to land plots located within the Kazakhstan border area and borderland is to be re-registered or alienated according to the procedure established by the Land Code (Article 23.4 of the Land Code).

The agricultural land plots located within the Kazakhstan border area may be granted under the right of lease to Kazakhstan legal entities without foreign participation and Kazakhstan nationals, except for the Kazakhstan nationals married to foreigners or stateless persons.

### **4. Regulation of the Procedure for Placing Information on Granted Land Plots in Mass Media**

Before 2014, information on owners of immovable property items and technical characteristics of immovable property items was available to third parties and could be obtained electronically via the e-Government website or in the event of applying with a hardcopy request to an authorized agency. However, the access was closed for third parties starting 2014, and such information could only be obtained upon a request from the property owner or competent authority (law-enforcement, judicial, etc.).

According to the amendments introduced by the Law, local executive authorities must place information with the lists of persons who obtained land plots, specifying the ground for provision of a land plot, designation, area, location, type of right and lease term on special stands in places available for public, as well as by publishing such information on their websites and websites of the authorized agency of oblast, city of national significance, capital, region, city of oblast significance, on a monthly basis, and at least once in a quarter in print periodicals distributed within a respective administrative-territorial unit.

Thus, information on new holders of rights to land plots and technical characteristics of land plots became publicly available, because any person may freely review such information without sending any special request.

#### **5. Amendments Affecting the Pledge of Land Use Right**

Another exception was added to the general prohibition against transactions with the right of temporary short-term fee-paid land use and temporary free of charge land use. According to the amendments introduced by the Law into Article 77 of the Land Code, such right may be pledged to the Housing Construction Guarantee Fund for obtainment of a guarantee under the Kazakhstan legislation on participation in shared housing construction.

Should you have any additional questions in connection with this Information Letter, we would be happy to provide more detailed information.

Best regards,  
AEQUITAS Law Firm