

8 February 2019

To all our clients and friends

INFORMATION LETTER

Changes in the Advertising Legislation of the Republic of Kazakhstan

On 8 January 2019, certain amendments were introduced into different codes and laws of Kazakhstan, which govern the procedure for carrying out advertising in the Kazakhstan territory. Such amendments affect various aspects of advertising activities, including delineation of competence of authorized agencies in the sphere of advertising, applied terminology, procedure for placing outdoor (visual) advertising and relevant tax rates, administrative liability for violating the advertising legislation, etc.

The major part of changes will be put into effect starting 11 April 2019, while certain changes (e.g. ban on prices in a foreign currency) entered into legal force in January 2019.

Please find below a summary analysis of amendments, which we deem most important for your activities.

1. Ban on Prices in a Foreign Currency

To further implement the state policy to use only national currency in transactions effected on the Kazakhstan's domestic market the law-maker introduced amendments into the laws governing the issues pertaining to trading activities, consumer protection, advertising and mass media, pursuant to which the price of goods (work, services) must be specified in tenge only.

At the same time, in order to obligate people to fulfill the above requirement a new set of elements of an administrative violation was added to the Administrative Code¹, which now provides for liability for "*indicating the price of goods not in tenge in the event of its sale in the territory of the Republic of Kazakhstan under a standard form contract*" in the form of a fine. For the business entities, such fine is 6-30 MCI² depending on the category of a business entity. In the event of a repeated violation (if committing such violation within a year of the moment of bringing to liability for a similar violation), the maximum fine increases up to 200 MCI.

2. Control over Compliance with the Advertising Legislation

New provisions were added to the Advertising Law³ to govern the procedure for exercising preventive control by authorized agencies in relation to relevant subjects (advertising distributors and advertisers) and objects (activities of advertising distributors and advertisers) as to compliance with the advertising legislation.

Preventive control is carried out:

¹ Administrative Code No. 235-V of the Republic of Kazakhstan dated 5 July 2014 (hereinafter, the Administrative Code).

² In 2019, the monthly calculation index (hereinafter, the MCI) is KZT 2,525.

³ Law No. 508-II of the Republic of Kazakhstan "On Advertising" dated 19 December 2003 (hereinafter, the Advertising Law).



- by regulatory governmental agencies in the sphere of advertising (understood as such are governmental agencies performing management in a certain industry sector where the advertising activities are carried out) and local executive agencies (akimats);
- initially without visiting the subject (object) of control; in the event the subject of control fails to implement the recommendations on elimination of violations – with visits to the subject (object) of control.

Preventive control without visits to the subject (object) of control is carried out no more than twice a month by way of analyzing the information obtained from different information sources. If any violations are detected in the course of preventive control without visits to the subject (object) of control (and no later than 5 business days of the moment of detecting), the authorized agency sends recommendations to eliminate the violations to the subject of preventive control by a courier, by post or in the electronic form. In turn, the subject of preventive control must either eliminate the detected violations (within 10 business days of the date of receiving the recommendations) or submit an objection to the authorized agency (within 5 business days of the date of receiving the recommendations).

3. Outdoor (Visual) Advertising

Firstly, it is worth pointing out the changes in the terminology applied by the law-maker. Thus, from now on, understood as outdoor (visual) advertising is the advertising placed on outdoor (visual) advertising objects and available for visual perception in the open space outside premises within or outside localities, within or outside public roadway easement areas.

In turn, outdoor (visual) advertising objects mean structures, various kind of three-dimensional frame structures or plate structures, including screens and electronic displays, illuminated structures and other means used to distribute and / or place advertising.

New concepts and definitions were added to the Advertising Law, including the concept of "street furniture (equipment)", which means, pursuant to legislation, decorative objects which can be practically used (vases for flowers, pavilions, arbors, benches, ash bins, public transport stops, information panels, equipment and structures for the games of children and rest of adults) installed within localities in the open public space and outside premises.⁴

Another important change relates to substitution of the permitting procedure for placement of outdoor (visual) advertising by notification procedure, which is briefly as follows. From now on, in order to place outdoor (visual) advertising the distributors must send relevant notices attaching a definite set of documents to the local executive agency at least 5 business day prior to the contemplated date of placing outdoor (visual) advertising. If the authorized agency does not provide the applicant with its comments concerning the placement of such outdoor (visual) advertising within 4 business days of the date of receiving a notice, the applicant may start placing the advertising within the timeframes specified in the notice. If the authorized agency provides its comments, the outdoor (visual) advertising may be placed only after eliminating the detected violations.

Changes were also introduced into the list of objects and information, which do not relate to outdoor (visual) advertising. Thus, the list now contains information about cultural values and historical and cultural heritage sites, including about historical and cultural monuments. At the same time, exterior design of showcases and windows was removed from the said list and, accordingly, in order to minimize advertising expenses the entrepreneurs will have to place advertising inside the premises only.

⁴ Placement of advertising information on street furniture (equipment) is the outdoor (visual) advertising and must be carried out in complying with respective legislation requirements.

For the purpose of placing outdoor (visual) advertising, the Advertising Law and the Land Code⁵ provide for the necessity to obtain the right of temporary fee-paid land use (lease), which is granted to citizens and non-state legal entities for a term from 5 to 49 years. Land plots from the common-use lands, except for sidewalks and cycle lanes, may be granted to citizens and legal entities for the temporary land use for installation of lightweight structures (vending kiosks (pavilions), kiosks, outdoor (visual) advertising objects, etc.) without prejudice to public domain.

It is allowed to place outdoor (visual) advertising on street furniture (equipment) installed by local executive agencies or investors from own funds under relevant contracts with local executive agencies entered into on the basis of the results of an open tender. Both individuals and legal entities may act as investors.

Outdoor (visual) advertising is placed on a fee-paid basis. The charged amounts are calculated based on the charge rates and the actual time of placing the outdoor (visual) advertising:

- 1) specified in a notice; or
- 2) established by the local executive agency in the event of placing outdoor (visual) advertising without sending a notice.

The Tax Code⁶ provides for the new types of the rates of charges for placing outdoor (visual) advertising, which differ depending on the type of object of outdoor (visual) advertising, its dimensions and place of location.

The charged amount payable to the budget is now paid on a monthly basis within a current month (not within the next month as it was before), but no later than 25 day of a month.

From now on, advertising may be placed on transport vehicles without sending a notice of placing outdoor (visual) advertising and without charging for placing the outdoor (visual) advertising.

4. Administrative Liability for Violating the Advertising Legislation

In addition to the above liability for indicating the prices of goods not in the national currency, the Administrative Code now also contains a new article with the list of types of violations of the advertising legislation, which entail administrative liability, specifically, as follows:

- 1) unfair and unreliable advertising (with some exceptions provided for by legislation);
- 2) unethical and hidden advertising;
- 3) advertising on television and radio channels on the national days of mourning;
- 4) advertising in the form of various events, including prize drawings and lotteries intended to stimulate the demand and interest to alcoholic beverages, tobacco and tobacco products;
- 5) disruption by advertising, including by way of a new ticker, of official announcement broadcastings, speeches of the presidential candidates of the Republic of Kazakhstan and deputies of representative agencies, educational and religious television programmes, including demonstrations of children's television programmes, except for the advertising intended for children and teenagers;
- 6) disruption of a movie by advertising in providing cinema and video services, except for the breaks between series;

⁵ Land Code No. 442-II of the Republic of Kazakhstan dated 20 June 2003.

⁶ Code No. 120-VI of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the Budget (Tax Code)" dated 25 December 2017.

- 7) placement of outdoor (visual) advertising on historical monuments and within the protective zones, on religious buildings (structures) and within the territories allocated thereto, including on fences, as well as within the specially protected natural territories;
- 8) advertising of a building under construction or a commissioned residential building, which fails to meet the classification of residential buildings as per the approved design documentation; and
- 9) advertising of religious associations and faith-based (religious) educational institutions, which were not registered under the legislation of the Republic of Kazakhstan.

The amount of an administrative fine varies from 100 to 400 MCI, and from 150 to 600 MCI in the event of a repeated violation, depending on the category of a business entity.

5. Other Changes

The law-maker described in more details certain provisions in relation to prohibitions and restrictions with respect to advertising, including as follows:

- visual or audio use of images of underage children is now allowed not only for the purpose of advertising of goods (work, services) for underage children, but in social advertising as well; and
- organizations in the sphere of conformity confirmation not accredited in Kazakhstan are not prohibited to carry out all advertising literally, but only the advertising of services (intermediary services) on mandatory confirmation of the products conformity.

The allowable scope of television trade on the television channels not specializing in advertising messages and materials was increased from 15% of the total advertising broadcasting time per a day to 30%.

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