

ADMINISTRATIVE PROCEDURE CODE OF THE REPUBLIC OF KAZAKHSTAN

IMPORTANT!

On 29 June 2020, Kazakhstan adopted the [Administrative Procedure Code](#) of the Republic of Kazakhstan (the "**APC**"), which will be put into effect starting from 1 July 2021. Adoption of the APC led to changes in a number of legislative acts of the Republic of Kazakhstan.

Please see below the APC provisions and changes introduced into the civil procedure legislation in connection with the APC adoption, which we deem most important for the business activities of companies.

■ **Concept of an "Administrative Claim"**

The APC introduced the concept of an "*administrative claim*," which means a claim filed to court for the protection and restoration of violated or challenged rights, freedoms or legitimate interests arising out of public relations.

In light of the above, starting from 1 July 2021, the [Civil Procedure Code](#) of the Republic of Kazakhstan (the "**CPC**") will no longer contain the rules on consideration of disputes arising out of public relations, specifically, on protection of voting rights; on challenging the resolutions and actions (omissions) of governmental agencies, local self-government authorities, public associations, organizations, officials and public servants; on appealing against the actions (omissions) of a court enforcement officer; on challenging the resolutions, opinions and ordinances of the authorized agency based on the results of inspection of the public procurement process. These categories of cases will be considered in accordance with the procedure for administrative legal proceedings. Subject to consideration under the procedure for administrative legal proceedings will also be appeals from investors against administrative acts, administrative actions (omissions) of administrative agencies and officials.

■ **Principles of Administrative Procedures and Administrative Legal Proceedings**

APC establishes certain principles of administrative procedures and administrative legal proceedings, among which we can distinguish as follows:

- ***Right priority principle*** establishes that all doubts, contradictions and ambiguities of the administrative procedure legislation must be interpreted in favor of the administrative procedure participant.

- **Presumption of reliability** implies that, when implementing an administrative procedure, the materials, objects, documents and information submitted by the administrative procedure participant must be deemed reliable until otherwise established by the administrative agency or official.
- **Principle of proportionality** implies ensuring of fair balance of interests of the administrative procedure participant and the public. An administrative act or administrative action (omission) must be applicable, required and proportionate.
- **Active role of court** is ensured by the APC rules on the court's obligation to assist with the elimination of formal errors, clarification of ambiguous expressions, filing of applications on the merits of an administrative case, supplementation of incomplete factual data important for a complete and unbiased assessment of circumstances of an administrative case. In the event the evidences submitted by the administrative process participants are insufficient, the court will collect them on its own initiative. A court may assist a party with the formulation and/or amendment of the stated claims with prior clarification of legal implications.

■ Types of Administrative Claims

APC divides administrative claims into:

- **challenging claims**, where a claimant claims for revocation of a burdening administrative act, which violates his/her rights and legitimate interests;
- **enforcement claims**, where a claimant may claim that a favorable administrative act, which had been previously rejected, be issued or a defendant be obliged not to issue a burdening administrative act;
- **claims for actions**, where a claimant may claim for taking of certain actions that are not aimed at the issuance of an administrative act or refraining from such actions;
- **claims for recognition**, where a claimant may claim for recognition of presence or absence of any legal relations if he/she may not file any of the above challenging claims, enforcement claims or claims for actions. As regards the claims for recognition, a claimant may also claim for recognition of a burdening administrative act as void or for its invalidation;
- **claims against actions (omissions) of a court enforcement officer.**

■ Time for Filing Administrative Claims

- Challenging and enforcement claims are filed to court within 1 month of the date of serving a resolution of the authority considering the appeal. In the event no pretrial procedure is stipulated by legislation or there is no authority considering the appeal, the claim is filed within one month of the date of serving an administrative act or from the moment of notification.
- Claims for actions are filed to court within 1 month of the date when the person became aware of the action, and when the term for taking the action established by legislation has expired.

- Claims for recognition are filed to court within 5 years of the moment of origination of relevant legal relations. Claims for invalidation of a burdening administrative act, which has no legal force, may be filed within 3 months of the date when the person became aware of violation of his/her rights, freedoms and legitimate interests by this act.
- Claims against actions (omissions) of a court enforcement officer are filed to court within 10 business days of the date of taking an action (refusal to take actions) or of the date when a claimant or a debtor, who had not been notified of the time and place of taking actions by a court enforcement officer, became aware of such actions.

APC also provides for requirements to the content and form of an administrative claim.

■ **Timeline for Administrative Legal Proceedings**

APC provides for the concept of a "reasonable timeline for administrative legal proceedings," which is determined subject to legal and actual complexity of an administrative case, behavior of participations of administrative proceedings, procedural sufficiency and efficiency of court's actions.

However, an administrative case must be resolved within a term not to exceed 3 months of the date of filing a claim. As regards administrative cases of special complexity, this term may be extended by a motivated court ruling for a reasonable term, but not for more than 3 months.

■ **Appeal**

Judgments of the first instance court may be appealed by the administrative process participants by filing an appellate petition within 2 months of the date of issuing a judgment in its final form.

Rulings of the first instance court may be appealed by the administrative process participants by filing a specific appeal within 10 business days of the date of producing a ruling in its final form.

As regards the cases involving challenging of judgments, opinions and ordinances of the authorized agency based on the results of inspection of the public procurement process, and cases involving challenging of actions (omissions) of court enforcement officers, an appellate petition may be filed within 10 business days of the date of issuing a judgment.

Administrative case in the appellate instance court is considered and resolved within the reasonable timeframes, but not more than within 3 months of the date it comes to court.

Administrative case involving challenging of resolutions, opinions and ordinances of the authorized agency based on the results of inspection of the public procurement process and actions (omissions) of court enforcement officers must be considered within 10 business days of the date it comes to court.

Based on a motivated application of the administrative process participant, a court may provide it with an additional term of not more than 1 month in order to substantiate its legal position.

■ Cassation Appeal

Court judgments and rulings, which have not yet entered into legal force, may be appealed by the administrative process participants in accordance with the cassation procedure by filing a cassation appeal within 1 month of the date of serving a judicial act of the appellate instance in its final form.

Judicial acts, which have entered into legal force, may be reconsidered upon the protests of the General Prosecutor of the Republic of Kazakhstan brought both on his/her own initiative and upon applications from the administrative process participants within 3 months of the date the judicial act enters into legal force.

Furthermore, resolutions of the cassation instance on administrative cases may be reconsidered as advised by the Chairman of the Supreme Court of the Republic of Kazakhstan, upon a protest of the General Prosecutor of the Republic of Kazakhstan in instances, as follows:

- where the execution of an issued resolution may result in severe irreversible effects to life and health of people or to economy and security of the Republic of Kazakhstan;
- where the issued resolution violates the rights, freedoms and legitimate interests of an indefinite range of persons or any other public interests; and
- where an issued resolution is inconsistent with the practice of interpretation and application of the rules of law by courts.

Administrative case in the cassation instance court must be considered and resolved within the reasonable timeframes, but not more than within 6 months of the date it comes to court.

■ Control over the Judgment Execution

A defendant must execute a court judgment in an administrative case within 1 month of the date of its entry into legal force, about which the defendant must accordingly notify the court. In the event of a failure to voluntarily execute a court judgment within the term specified therein, the first instance court imposes a money sanction, the amount of which is 10-100 monthly calculation indices.

■ Final and transition provisions

Starting from 1 July 2021, the [Law](#) of the Republic of Kazakhstan on Administrative Procedures and the [Law](#) of the Republic of Kazakhstan on Procedure for Considering Applications from Individuals and Legal Entities will lose their force.

Cases accepted for judicial proceedings before putting the APC into effect are considered under the rules of procedural legislation in effect prior to putting the APC into effect.

The unaccomplished part of the administrative procedure initiated prior to putting the APC into effect, which has not been accomplished after putting the APC into effect, must be conducted in accordance with the APC if so applied for by the applicant in writing to a respective administrative agency or official.

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

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Legal Updates shall not be treated as a legal advice or a reason for making specific decisions on the Kazakh law issues. Should you need a legal advice, we would be happy to assist.