

15 July 2014

*To our clients and friends*

## **INFORMATION LETTER**

### **regarding the new Law of the Republic of Kazakhstan "On Trade Unions"**

On 27 June 2014, Kazakhstan adopted the Law No. 211-V "On Trade Unions" (hereinafter, the Law), which is to come into legal force on 12 July 2014 and, starting this date, to replace the same-name Law No. 2107-XII of 9 April 1993.

In order to bring Kazakh legislation in line with the Law, a number of regulatory legal acts, including the Labor Code,<sup>1</sup> intended to clarify the powers of trade unions and their associations at the local, regional and national levels (hereinafter, the trade unions) are to be amended concurrently.

The Law keeps the previously existing approaches to the setting up of trade unions as public associations: based on the principles of voluntary participation for the purposes of representation and protection of labor and socio-economic rights and interests of their members, and membership, on a first priority basis, of Kazakhstan citizens. The Law provisions also apply to Kazakhstan citizens who are on business trips outside the country and to foreign citizens and stateless persons residing and working in Kazakhstan.

In our view, the most notable among the introduced legislative amendments are as follows.

- The Law contains definitions of some terms, which have been previously used by the legislator without defining their meaning (for example, trade union member, trade union primary organization and trade union body). This allows avoiding ambiguous interpretation of these terms.
- The Law identifies local and industry trade unions, as well as their territorial and nationwide associations, and clarifies the trade union's powers to represent employees' interests at each of the said levels.
- The Labor Code has been added with a new chapter to govern the labor specifics of employees who are members of trade union bodies (for instance, members of elective trade union bodies who are not released from their principal work cannot be subjected to disciplinary sanctions, unless there is a motivated opinion of the trade union body whose members they are; members of trade union bodies are released from their principal work in order to perform public duties in the interests of their members for the period of trade union training or to participate as delegates in congresses (conferences) convened by trade unions, as well as in the work of their plenums and presidiums).
- The concept of employees' representatives has been changed to currently mean the trade union bodies, and, if the latter are missing, the elective representatives elected and authorized by employees in the general meeting (conference) of employees by participants' majority vote, provided that at least two thirds of employees (conference delegates) are present. If the organization has several employees' representatives to

---

<sup>1</sup> Law No. 212-V of the Republic of Kazakhstan "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Trade Union Activities and Labor Relations Regulation" dated 27 June 2014.



---

participate in the process of entering into the collective agreement, they form a single representative body in which each employees' representative is entitled to hold negotiations based on the proportional representation principle, depending on the number of employees represented.

- The Labor Code provisions have been supplemented with a norm envisaging an additional form of control over employer company activities by the state labor inspection – that of a visit. The visit does not require prior notification of the employer and registration with the authorized agency for legal statistics and special records, as required in case of conducting state scheduled and unscheduled inspections. The period of visit to the entity under control cannot exceed one day. After the visit, the state labor inspector is to draw up the visit results report in two counterparts, without instituting administrative violation case, but explaining to the controlled entity, on a mandatory basis, the procedure for eliminating the violations identified in the course of the visit. Within five business days of the date of request to eliminate the identified violations, employers must inform the state labor inspector about the results of the said request consideration and measures taken.

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

Best regards,

AEQUITAS Law Firm