

To our clients and friends

INFORMATION MEMORANDUM Concerning Amendments to the Civil Procedure Legislation of the Republic of Kazakhstan

Starting 1 January 2016, Kazakhstan is putting into effect its new Civil Procedure Code (hereinafter, the CPC) to substantially modify the civil judicial proceedings. On the same date comes into effect (except for some provisions) the RK Law of 31 October 2015 (hereinafter, the Law), which was adopted, inter alia, in order to implement the new CPC provisions. In particular, the Law amends Kazakhstan's Tax Code, Land Code, Environmental Code and Customs Code, and the laws governing the intellectual property area.

This Information Memorandum offers a brief overview of key amendments introduced by the new CPC and the Law into the civil procedure legislation.

1. Transition to a Three-Tier System of Justice

The most important innovation of the CPC is lessening the number of judicial instances. Cassation judicial boards under the oblast courts (and courts deemed equivalent thereto) are abolished, and the functions of the cassation instance, which will now be the highest judicial instance, will be performed by the Supreme Court. Thus, the new CPC provides for only three – first, appellate and cassation – judicial instances.

Cases will be reviewed in the appellate instance by a collegiate court consisting of at least three judges (except for specific appeals and appellate petitions in cases heard in summary (simplified) proceedings, which will be tried by a sole judge).

Effective judicial acts may be reviewed by the Supreme Court in cassation proceedings of a collegiate court consisting of at least three judges only subject to having complied with the appellate appeal procedure. A number of cases will not be subject to cassation review, including as follows:

- cases heard in summary (simplified) proceedings;
- cases ended by amicable agreement or agreement to settle through mediation or participation;
- cases relating to property interests of individuals, in case the claim amount is less than 2,000 MCI, or of legal entities, in case the claim amount is less than 30,000 MCI;
- cases ended in connection with abandonment of claim; and
- settlement of insolvency cases and cases over disputes arising in the framework of rehabilitation or bankruptcy proceedings.

Judicial acts in such cases may be reviewed only upon submission by the Chairman of the Supreme Court or the General Prosecutor in exceptional instances, for example, where a judicial act infringes upon the rights of an indefinite number of persons, or breaches other public interests or the uniformity of interpretation and application of the rules of law by the courts.



Cassation instance's resolutions may be reviewed on the same grounds by an expanded collegiate composition of the Supreme Court comprising at least seven judges.

2. Investment Court

An important innovation is a specialized court set up to hear investment disputes. Investment disputes under the first instance court rules will be heard by the Astana City specialized court's composition, and if a party to the dispute is a major investor – by the Supreme Court of the Republic of Kazakhstan.

A major investor is an individual or a legal entity investing in Kazakhstan 2,000,000 MCI or more.

3. Mandatory Pre-Trial Dispute Settlement

The list of disputes requiring mandatory pre-trial settlement has been expanded.

Pre-trial settlement is mandatory for disputes involving business entities, disputes related to intellectual property or consumer rights protection, disputes over appeals against notifications to settle customs arrears or against the actions (omissions) of officials exercising state control over land use and protection or state environmental control, and some other categories of disputes.

The CPC introduces a rule motivating the parties to comply with the pre-trial procedure: regardless of the case hearing results, the court may charge legal costs to the party breaching the deadlines for responding to claim or leaving the claim without response.

4. Strengthening the Discipline of Participants to the Proceedings

The parties will be required to present all evidence at the stage of the case preparation for trial, the deadline for which under the new CPC is 15 business days of the claim acceptance for judicial proceedings. The judge may extend this deadline by another month for particularly complex cases. The counterclaim is to be filed within the same period. Evidences may be presented later only if a party substantiates the impossibility to present them within the established deadlines, and the counterclaim may be accepted by the court only in cases where the respondent has not been notified of the deadline for the case preparation for trial and therefore was unable to participate at this stage of the process.

The new CPC also provides for the right of the court to charge all legal costs in a case to the person failing to timely present evidence without a good reason, if this resulted in the trial protraction.

For the first time legislatively secured is a provision that the burden of proof in cases disputing the decisions or actions of governmental agencies, local self-government authorities, officials and public servants rests with the agency/authority or the person whose acts or actions are appealed.

5. Changes in the Period for Appealing Judicial Acts

The period for filing an appellate petition against a court judgment will be 1 month (or 10 days, if filing a specific appeal against a court ruling) of the date the judgment or ruling is rendered in the final form (previously this period was 15 days of the date the judgment or ruling copy is served).

Appellate petitions in cases disputing a resolution, opinion or ordinance issued by the authorized agency following a public procurement audit may be filed within 10 days of the date the court judgment is rendered.

It will be possible to appeal judicial acts by cassation with the Supreme Court within 6 months of the date on which the appellate instance court's judicial acts enter into effect (under the current legislation, the period for filing a petition for a judicial act review by the Supreme Court is 1 year of the date the judicial act enters into legal force.)

6. Changes in the State Duty

The state duty on appellate petitions has been abolished.

The state duty on claims for invalidation of sale and purchase, pledge and gift-giving agreements and other transactions involving subsequent return of all property received under the transactions will be determined based on the market value of the property on the date of filing the claim in court. Previously, there were no clear regulations on this matter, due to which, in practice, the state duty on claims for transaction invalidation was payable in the amount established for non-property claims.

The state duty on claims for compensation of moral harm and damages caused by dissemination of information discrediting honor, dignity and business reputation will be determined as a percentage of the amount claimed for compensation (1% of the amount of moral harm or damages on individuals, and 3% on legal entities). Previously, the state duty on claims for moral harm compensation was payable in the amount established for non-property claims.

In case the parties reconcile at the stage of appeal, the paid state duty is to be refunded in full, and if the conciliation is reached at the stage of cassation, only half of the paid state duty is subject to refund.

7. Possibility to Expeditiously Apply Injunctive Measures

Currently, the court ruling concerning measures to be taken to secure the claim is directed to the court enforcement officer who, in turn, inquires with the banks and registration authorities about the respondent's accounts and assets. Private court enforcement officers must also obtain the court's sanction in order to impose attachment. Such procedure causes lack of the injunctive measures' necessary expeditiousness.

Pursuant to the new CPC, the ruling to secure the claim may be sent directly to the person obligated to fulfill it: to the bank, if the numbers of the debtor's accounts to be attached are known; to the registration authority in order to encumber the disputed property; to the respondent, if the ruling prohibits the respondent to commit certain actions; to the debtors of the respondent, if the ruling prohibits other persons to discharge their obligations to the respondent, etc.

8. Other Changes

Excluded are the norms regarding leaving a claim without an action (movement). In case of non-payment or incomplete payment of the state duty or if the statement of claim does not meet the established requirements, which cannot be rectified at the stage of the case preparation for trial, the court will return the statement of claim to the claimant without consideration.

It is now possible to recover legal costs incurred during case hearing in the appellate and cassation instances, if the relevant application has been discussed during the case hearing by those judicial instances, but the legal costs have not been recovered due to the need to verify the authenticity of the submitted documents, and this is specified in the resolution of the relevant judicial instance. The application for legal costs recovery may be filed in the first instance court within 1 month of the date the last judicial act completing the case hearing on the merits has entered into effect.

The maximum amount of attorney's fees in respect of non-property claims, which the court may recover from the losing party, is established. Such fees are recoverable within reasonable limits, but cannot exceed 300 MCI. As regards monetary claims, the maximum amount of attorney's fees recoverable from the losing party remains unchanged (10% of the satisfied part of the claim).

The list of attorney's powers, which may be exercised only if these powers are specified in the power of attorney, has been expanded. In particular, such powers now include the right to increase or decrease the claims, file applications for judicial acts review based on newly discovered or new circumstances, and waive appellate or cassation petitions.

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

Best regards,

ÆQUITAS Law Firm