

30 November 2015

To all our clients and friends

INFORMATION MEMORANDUM New Information Access Law

The Law "On Information Access" (hereinafter, the Law) and the Law "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on Information Access Issues" (hereinafter, the Law on Amendments) were adopted on 16 November 2015 and will be put into effect starting 30 November 2015, except for certain provisions of the Law.

In this Information Memorandum we have presented a brief review of provisions of the said legislative acts.

1. Sphere of Application of the Law

The Law is generally intended to ensure transparency of the governmental agencies and organizations and arranges requirements to information posted on the websites of the governmental agencies and other information holders.

The Law does not cover the circulation of limited access information, claims from individuals and legal entities, procedure for considering which is established by the Republic of Kazakhstan's legislation on administrative violations, criminal procedure and civil procedure legislation, procedure for considering requests established by the RK Law "On the National Archive Fund and Archives" and procedure for provision of information to mass media stipulated by the Law of the Republic of Kazakhstan "On Mass Media."

2. Concept and Types of Information

Concept of information. For the purposes of the Law, understood as information is the data on persons, objects, facts, events, phenomena and processes obtained or created by the information holder and recorded at any medium and possessing details allowing to identify it.

Limited access information. Recognized as limited access information is the information referred to state secrets, personal, family, medical, banking, commercial and other law-protected secret, as well as service information with the mark "Not for public use" (sub-paragraph 8 of Article 1 of the Law).

Information access to which is not subject to restriction. The Law establishes a broad list of information, which cannot be recognized as limited access information (Article 6), which includes information on emergency situations, environmental conditions, formation and spending of funds from the national and local budgets.

3. Service Information

The RK Law "On Administrative Procedures" has been supplemented with the definition of the concept of service information, which means information created, processed and transferred in the course of performance of state functions by an owner or possessor, or the user of which is



the state. In our view, such broad definition of service information significantly narrows the scope of information available in accordance with the Law.

4. Information Holder's Obligations

The Law introduces the concept of the "information holders" and imposes a number of obligations on them.

Along with the governmental agencies and organizations, recognized as the information holders are:

- legal entities, which are the market entities occupying dominant or monopolistic position – with respect to information related to prices to the produced (sold) goods (work and services);
- legal entities – with respect to possessed environmental information, information on emergency situations, natural and man-triggered disasters, forecasts and consequences thereof, fire safety conditions, sanitary-and-epidemiologic and radiation environment, safety of foodstuff and other factors adversely affecting health and the process of ensuring safety of citizens, localities and production facilities.

The said legal entities are obligated to ensure access to respective information in accordance with provisions of the Law, including by way of creating websites and posting information on them.

The Law provides for a certain provision in respect of the scope of information, which is to be posted on a website by a market entity occupying dominant or monopolistic position, which is significantly less than the scope to be posted by the governmental agencies and other information holders. However, the Law does not contain any special provisions in respect of legal entities specified in sub-paragraph 2 above, which is, in our view, the law-maker's failure, since in case of literal interpretation of provisions of the Law the said legal entities are obligated to ensure posting on their websites of the whole scope of information stipulated for the governmental agencies and organizations (Article 16 of the Law).

5. Information Resources

The Law provides for the courts' obligation to post on the websites the judicial acts and case consideration schedules subject to limitations established by legislation.

The Law provides for an obligation to update on a daily basis the news line on the information holder's website, and to update other sections, at least, within three business days of the date of receiving or creating information, performance of which will allow the users to rely on respective data as on up-to-date information.

The Law provides for posting on the website of open normative legal acts the draft concepts of the draft laws and normative legal acts together with explanatory notes and comparative tables thereto (in case of introducing amendment(s) into legislative acts) for their public discussions prior to sending for approval to the interested governmental agencies. The reports on results of public discussions are to be posted on the website of open normative legal acts as well.

The provision of the Law on posting information on evaluation of the governmental agencies' activities, reports on achieving target indices of strategic plans and territories development programs and holding of public discussions of the governmental agencies' activities on the website dedicated to evaluation of efficiency of the governmental agencies' activities will be put into effect starting 1 January 2017.

6. Discussion of the Draft Laws and Publication of the Normative Legal Acts

The Law on Amendments introduces novelties into the Law "On Normative Legal Acts," according to which the draft concepts of the draft laws and normative legal acts together with explanatory notes and comparative tables thereto are to be posted on the website of open normative legal acts for public discussions.

The normative legal acts will be officially published at the reference control bank of the normative legal acts in the electronic form.

7. Procedure for Filing and Considering Requests for Provision of Information

The requests for provision of information may be filed by individuals and legal entities in a verbal or written form. The requests in the electronic form sent by way of blogging platforms of executive officers of the governmental agencies are deemed equal to the written requests.

The Law establishes a limited list of information, which may be provided at a verbal request.

Information access is to be denied, if a request raises an issue of legal evaluation of acts adopted by the information holder, analysis of activities of the information holder, subordinate agencies and organizations or performance of any other analytical work until its completion, as well as in other cases specified in the Law.

Should you have any questions, we would be happy to answer them.

Best regards,
AEQUITAS Law Firm