

To all our clients and friends

INFORMATION MEMORANDUM

Entrepreneurial Code of the Republic of Kazakhstan

Introduction

On 29 October 2015 the Entrepreneurial Code (hereinafter “the Code”) was adopted in Kazakhstan which main part comes into effect on 1 January 2016¹. Articles concerning functioning of the state corporation “Government for Citizens” and Social Health Insurance Fund come into force on 1 March 2016 and 1 January 2017, respectively; on 1 January 2017 the temporary provisions related to regulated markets will be terminated².

With the Code coming into force, a number of Laws³ will become void, which provisions are incorporated in the text of the Code (are codified) either completely, or with some amendments and additions. Adoption of the Code entailed introduction of amendments in several existing regulations⁴.

General review of the Code

The main consequence of adoption of the Code is changed status or validity of previous provisions in the field of state regulation of entrepreneurship; provisions which were contained in the regulations with lower level of validity are brought to the level of validity of the code.

In general the new Code is directed at improvement and development of legislation in the sphere of interaction of business entities and the state, business support, elimination of gaps and contradictions in legal regulation of the business relations.

Commodity, money and other property relations based on equality of participants, and also personal non-property relations related to property are still governed by the civil legislation of the Republic of Kazakhstan.

¹ The order of enactment of the Code is stipulated in the Code.

² Regulated markets – sphere of services (goods, works) rendered by the natural monopolies in respect of which state regulation of the prices was introduced.

³ "On farming" dated March 31, 1998; "On investments" dated January 8, 2003; "On private entrepreneurship" dated January 31, 2006; "On competition" dated December 25, 2008; "On state control and supervision in the Republic of Kazakhstan" dated January 6, 2011; "On the state support of industrial and innovative activity" dated January 9, 2012

⁴ Civil Code; Land Code; Code on health of the population and health system; Code on Administrative Offences; Laws "On Natural Monopolies and Regulated Markets"; "On administrative procedures (chapter is added on issues of appealing actions (inaction) of officials and acts (decisions) of government bodies); "On Development Bank of Kazakhstan"; "On technical regulation" and some other



You can read in more detail about the work on the Code, opinions and proposals of representatives of legal community in connection with adoption of the Code and its expediency in the article of professor Suleymenov M. K., the member of Academy of Sciences of RK, LLD, who paid great attention to this issue (http://www.zakon.kz/4765080-predprinimatelskijj-kodeks-respubliki.html?_utl_t=fb).

We would like to offer a short review of the changes, which in our opinion are the most significant ones.

Main novelties of the Code

Principles of interaction

The Code offers the updated list of the principles of interaction between the business and the state, in particular the principles of social responsibility of business; limited participation of the state in business activities; self-regulation in the sphere of entrepreneurship; mutual responsibility of business and state.

General issues

The new category of business entities – micro-entrepreneurship was added, the concept "self-regulating organizations of entrepreneurs" was introduced. Creation of advisory bodies is planned - the expert councils for business-related issues consisting of representatives of the National Chamber of Entrepreneurs of RK, the accredited associations of entrepreneurs, non-profit organizations. Novelty in the sphere of protection of the rights of business entities is introduction of participative procedures and the position of Commissioner for protection of the rights of entrepreneurs of Kazakhstan.

Support of investments

The Code also introduced certain novelties regarding the state support of investment activity. The regime of stability of provisions of investment contracts is not applicable to the subsequent amendments and additions in legislation, which were made (including, but not limited to) in order to ensure public order. Environmental safety, as a condition of non-applicability of stability regime, is not mentioned any more (however environmental safety is a component of the national security which excludes application of the stability regime). Functions of the authorized body on investments now include issuance of the application for obtaining the investor visa to foreign investors. Opportunity is provided to the investment projects (and investment priority projects) of exemption from the value added tax on import. The requirement of obligatory stamp of the legal entity on the investment application is eliminated. The stamp is now necessary only if the legal entity has one.

State control and supervision

Novelties in the field of state control and supervision are the following provisions. It is established that the state control and supervision is exercised only in the spheres provided by the Code. However provisions of the Code on the state control will be also applied to the relations, which are governed by other laws, if it is directly provided by such laws. New spheres of control are added: competition protection; support and protection of business entities; state statistics; organic production.

Violation of terms of performing inspections is included in the reasons for recognition of the inspection as invalid and cancellation of the inspection act.

The new reason is added for inspection with visit of the subject (object) of control and supervision – in order to stop and prevent violation of RK legislation (when these violations can potentially threaten life and health of the population, environment and national security). It is stipulated that the relevant decision of the President of the Republic of Kazakhstan will be the basis for suspension of inspections of private business entities for a certain period of time.

Antimonopoly regulation

Changes in the field of antimonopoly regulation are related to several issues including: cartels; the signs defining a group of persons, and coordinated actions; defining the dominant position of the market entity. Procedure is introduced of preliminary review of case materials for investigation by conciliation commission; opportunity is provided of preliminary review of the agreement of the market entities by antimonopoly authority.

With enactment of the Code the state register of the market entities holding the dominating and monopoly position will be gradually cancelled.

If you have any additional questions related to this Information Memorandum, we would be happy to provide the necessary advice.

Best regards,

AEQUITAS Law Firm