

06 August 2014

To our clients and friends

INFORMATION MEMORANDUM

Revised Administrative Code of the Republic of Kazakhstan and Related Legislative Amendments

Kazakhstan has adopted the revised Administrative Code (hereinafter, the "Code") to enter into force on 1 January 2015¹. The revised Code reforms the Kazakh legislation on administrative violations (hereinafter, the "administrative legislation").

In connection with the revised Code's adoption, the Law of 5 July 2014² (hereinafter, the "Law") accordingly amends certain RK legislative acts (including Civil Procedure Code, Marriage and Family Code, Law on Enforcement Proceedings and Status of Court Enforcement Officer, and other). The Law is to be enacted starting 1 January 2015, except for its certain provisions.

This Information Memorandum offers a brief analysis of some key innovations in the administrative legislation.

1. General Overview of Amendments

In general, the amendments detail and concretize the key provisions of administrative legislation, concurrently introducing new institutes and making more specific the language of norms relating to the administrative liability imposition regime. For instance, some constituent elements of administrative violations currently formulated in fairly general terms are henceforth subdivided into several more concrete elements.

It should be mentioned that a number of acts formerly belonging to the category of administrative violations have been transferred to the RK Criminal Code³ to be now classified as criminal offences. Concurrently, the amendments introduce new elements of administrative violations and eliminate a number of grounds allowing for exemption from administrative liability (active repentance, insignificance of violation, change in situation, or illness), which testifies to the state's intention to more toughly regulate the public relations in this area.

Unfortunately, the revised Code does not correct a gross error – the Special Part provides for sanctions not envisaged by the General Part. As an example, Article 328 of the Code provides for a fine in the amount of one thousand percent of the environmental emission charge rate, which is not provided for in Article 44 of the Code that contains an exhaustive list of administrative fines.

¹ Except for subparagraph 8) of the fifth part of Article 281 of the Code, which is to be enacted starting 1 January 2016.

² RK Law No. 236-V "On Introduction of Amendments into Certain RK Legislative Acts on the Issues of Legislation on Administrative Violations" dated 5 July 2014.

³ The revised RK Criminal Code of 3 July 2014.



2. Key Novelties

2.1. General Part

The new version of the Code suggests that the provisions regarding administrative liability imposition are to be established exclusively by the Code, in which connection the Law eliminates all norms containing special provisions regarding imposition of administrative liability from other RK legislative acts. In particular, the RK Civil Procedure Code no longer sets forth that civil legal proceedings apply to disputes arising out of administrative legal relations.

The scope of instances falling within the law retroactivity provisions has been expanded and the Code's retroactivity rule has been concretized.

The Code now excludes the provision regarding concurrent imposition of administrative liability on individuals and legal entities for one and the same violation.

The revised Code reduces the number of types of administrative sanctions and measures of administrative-and-legal influence, cancelling, for example, the for-a-fee taking of an item that served as the instrument of offence and the enforcement measures of medical nature.

Suspension or prohibition of activities (certain types thereof) is now to be used as an injunctive measure as well in proceedings over administrative violation cases.

The amended Code provides for more instances of exemption from administrative liability due to parties' conciliation. For instance, this applies to violations of requirements pertaining to banking customer services.

2.2. Special Part

2.2.1. *Elements of Administrative Violations*

Some constituent elements of administrative violations have been transferred to the RK Criminal Code. In particular, illegal limitation of the right of access to information resources will now be qualified as a criminal act.

Some elements of violations formerly described in general terms are now subdivided into several more concrete elements. In particular, the new Code subdivides such element as violation of the RK labor legislation into such elements as admission to work without employment agreement, failure to grant leaves, and other.

The Code introduces new elements of administrative violations, such as a breach of microcredit extension secrecy or, in some instances, lease out by owners of tank farms or reservoirs concurrently to two or more persons. Some constituent elements have been grouped together from different articles into one.

2.2.2. *Administrative Sanctions*

Certain sanctions have been changed, for example, the norm regarding violation of rules relating to pharmaceutical activities now excludes the additional sanction in the form of activities suspension.

The Code cancels the existing "spread" of administrative fines, now securing the absolutely definite amount of administrative fines for a violation, which is intended to introduce a differentiating mechanism of fines payment and imposition.

The fine amount may be decreased (by up to 30%) in cases and in accordance with the procedure as established by the Code.

The differentiated payment of fines (50%–50%) is applied in case of shortened administrative proceedings. If 50% of the fine is paid within the term established by the Code, the administrative violation case is recognized as reviewed on the merits.

2.2.3. Administratively Liable Persons

The persons subject to administrative liability are now divided into categories, as follows: individuals; small, medium and large business entities; and officers. Individual entrepreneurs and legal entities that are small business entities are collectively referred to as small business entities.

2.2.4. Administrative Proceedings

The Code introduces a shortened procedure for bringing to administrative liability, which applies only to individuals. Shortened proceedings are not applied where violation cases are reviewed by tax authorities and in other instances envisaged by the Code.

The revised Code importantly introduces the institute of reconsideration of effective resolutions in administrative violation cases based on the newly discovered circumstances.

The procedure for appealing the actions or omissions of an authority (official) conducting proceedings in an administrative violation case is henceforth established by the Code, not by the RK Civil Procedure Code.

2.2.5. Procedural Resolutions

Such type of procedural resolution as return of administrative violation protocol is excluded. This should probably mean that cases are to be reviewed based on the available protocols, without the possibility to "revise and improve" them, i. e., the possible flaws of the protocol may be interpreted in favor of the offender.

For the first time, the Code establishes the possibility for a court or authority (official) to recognize as incorrect the legal evaluation of an act committed and to change the qualification of violation, but only if changing it to an article providing for a less strict administrative sanction.

The Code introduces the institute of interaction between the Kazakhstan authorities and competent institutions and officials of foreign states in administrative violation cases.

3. Other Novelties

The Code and the Law contain a lot of other amendments to the RK legislative acts, which are either of editorial nature, or may be of interest only to a limited number of persons.

However, if necessary and upon your further enquiry, we can prepare a review of such amendments or more detailed comments and advice regarding administrative legislation innovations.

Best regards,

AEQUITAS Law Firm