

18 July 2013

To all our clients and friends

INFORMATION MEMORANDUM regarding amendments to personal data legislation

The Law on Personal Data and Its Protection was adopted in Kazakhstan on 21 May 2013. The Law will be put into effect upon expiration of six months of its first official publication¹, i.e. starting 26 November 2013.

The Law enactment gave rise to corresponding amendments² to certain RK legislative acts, which will also be put into effect starting 26 November 2013.

The Law contains a number of reference norms and contemplates adoption of subordinate normative legal acts. In particular, according to the RK Prime Minister's Ordinance³, it is contemplated to adopt the Rules for Defining by the Owner and/or Operator the List of Personal Data Required or Sufficient for the Fulfillment of Tasks Performed by Them, and Rules for Implementation of Personal Data Protection Measures by the Owner and/or Operator and Third Party.

Relations Regulated by the Law

The Labor Code⁴ and informatization legislation⁵ previously contained certain regulations with respect to personal data. From now on, the key norms relating to collection, processing and protection of personal data are established by the Law, regardless of the sphere of its use. The RK informatization legislation still provides for peculiarities of collection and processing of personal data by electronic information resources containing personal data.

Furthermore, the Law does not cover the relations existing in the event of:

- (i) collection, processing and protection of personal data exclusively for personal and family needs;
- (ii) formation, storage and use of documents in accordance with legislation on National Archive Fund and Archives;
- (iii) collection, processing and protection of personal data referred to state secrets;
- (iv) collection, processing and protection of personal data in the course of intelligence, counterintelligence and operational-and-investigative activities, as well as in the course of implementation of measures on assurance of security of protected persons and facilities.

¹ RK Law No. 94-V "On Personal Data and Its Protection" dated 21 May 2013 (hereinafter, the Law), published in *Kazakhstanskaya Pravda* on 25 May 2013.

² Along with the Law, the RK Law No. 95-V "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Personal Data and Its Protection" was adopted on 21 May 2013 and published in *Kazakhstanskaya Pravda* on 25 May 2013.

³ Ordinance No. 95-p of the RK Prime Minister "On Measures for Implementation of the Law of the Republic of Kazakhstan on Personal Data and Its Protection of 21 May 2013" dated 21 June 2013.

⁴ RK Labor Code, dated 15 May 2007, as amended (hereinafter, the LC).

⁵ RK Law No. 217-III "On Informatization" dated 11 January 2007, as amended.



Key Concepts Used in the Law

In our view, the Law establishes a fairly broad definition of personal data concept, which means information referred to a certain personal data subject or a subject defined on the basis of such information, recorded on an electronic, paper and/or other tangible medium (sub-paragraph 2 of Article 1 of the Law). Understood by a personal data subject (hereinafter, the Subject) is an individual to whom personal data refers (sub-paragraph 16 Article 1 of the Law).

The Law also defines a group of entities related to collection and processing of personal data. Understood by the owner of the base containing personal data (hereinafter, the Owner) is the state body, individual and/or legal entity exercising the right to own, enjoy and dispose of the base containing personal data in accordance with the RK legislation (sub-paragraph 9 of Article 1 of the Law). Understood by the operator of the base containing personal data (hereinafter, the Operator) is the state body, individual and/or legal entity carrying out collection, processing and protection of personal information (sub-paragraph 10 of Article 1 of the Law). Meant by a base containing personal data (hereinafter, the Base) is the aggregate of the ranked personal data (sub-paragraph 8 of Article 1 of the Law).

The Law also operates other concepts (for example, collection and processing of personal data, cross-border transfer of personal data, etc.).

Key Provisions of the Law

Collection and processing of personal data is performed by the Owner and/or Operator upon consent of the Subject or its legitimate representative, except for the cases primarily relating to protection of public interests as provided for in Article 9 of the Law.

Cross-border transfer of personal data to the territory of foreign countries is performed only in cases where such countries ensure protection of personal data or in the presence of consent of the Subject or its legitimate representative to the cross-border transfer of its personal data, as well as in some other cases (Article 16 of the Law).

Consent (withdrawal of consent) to collection and processing of personal data is to be given by the Subject or its legitimate representative in writing or in the form of an electronic document or otherwise with the use of protective action elements not contradicting the RK legislation. The Subject or its legitimate representative may not withdraw the consent to collection and processing of personal information, if this contradicts the RK legislation or in case of presence of an outstanding obligation (Article 8 of the Law).

Obligations of the Owner and Operator

The Law (paragraph 2 of Article 25) establishes a number of obligations of the Operator and the Owner on adoption of, and compliance with, the measures (legal, organizational and engineering) necessary for the protection of personal data, including as follows:

- (i) provide information relating to the Subject within three business days of the date of receiving request from the Subject or its legitimate representative, unless the RK legislation provides for other deadlines;
- (ii) amend and/or supplement personal data within one business day on the basis of relevant documents confirming its reliability, or destruct personal data in case of failure to amend and/or supplement it.

Obligations of the Owner and Operator on protection of personal data originate from the moment of its collection and remain in effect until the moment of its destruction or depersonalization (paragraph 2 of Article 22 of the Law).

Furthermore, in accordance with amendments introduced into the LC in connection with adoption of the Law, an employer is obliged, among other things, to (Article 65 of the revised LC):

- (i) process personal data provided directly by an employee or by the authorized state bodies, with preliminary notification of the employee and obtainment of such employee's consent;
- (ii) ensure familiarization with the employer's act establishing procedure for collection, processing and protection of the employee's personal data;
- (iii) not to disclose the employee's personal data to a third party without such employee's written consent, except for the cases provided for by the LC and other RK laws;
- (iv) permit access to the employee's personal data only to the specifically authorized persons. In this case, such persons should have a right to receive only such personal data of an employee, which is necessary for the performance of specific functions, and should comply with the confidentiality regime.

In our view, the above provisions imply the need for an employer to adopt relevant act (provision, instruction, ordinance) establishing procedure for collection, processing and protection of the employee's personal data. In the event such employer's act already exists, the Law obliges employer to bring its provisions and other company's documents into compliance with requirements of the Law within three months of the date the Law is put into effect (i.e. until 25 February 2014) (paragraph 2 of Article 31 of the Law).

The Law establishes criminal and administrative liability for violation of legislation on personal data and its protection.

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

Best regards,

AEQUITAS Law Firm