

06 February 2014

To all our clients and friends

INFORMATION MEMORANDUM regarding amendments to certain legislative acts of the Republic of Kazakhstan on enforcement proceedings improvement issues

The Law of the Republic of Kazakhstan "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on Enforcement Proceedings Improvement Issues" (hereinafter, the **Law**)¹ was adopted on 15 January 2014. The Law amends a number of current legislative acts² of the Republic of Kazakhstan (hereinafter, the **RK**), including the RK Law on Enforcement Proceedings³.

The key objectives of the Law adoption are to improve legislation regulating the sphere of enforcement proceedings, provide the court enforcement officers with effective levers to influence debtors, exclude norms, which make corruption possible, and to reach more efficient execution of judicial acts coming into legal force.

This Information Memorandum presents brief overview of the newly adopted and most significant legal regulations.

1. Amendment of the Procedure for Execution of Enforcement Documents

The Law establishes that enforcement documents are subject to enforcement only upon expiration of five business days of their entry into legal force, except for resolutions on administrative violations.

Now, when the enforcement document comes to a court enforcement officer, he/she initiates enforcement proceedings and concurrently undertakes measures on enforcement of a judicial act without offering a debtor to voluntarily execute it. The court enforcement officer establishes a five day period for voluntary execution from the date of initiation of enforcement proceedings only in case the debtor personally submits to the court enforcement officer a motivated written application for voluntary execution of the enforcement document (except for the enforcement documents, which are subject to immediate enforcement).

¹RK Law No. 164-V "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on Enforcement Proceedings Improvement Issues" dated 15 January 2014 (entered force on 29 January 2014).

²The Law amends the following RK normative acts: RK Law "On Banks and Banking Activities in the Republic of Kazakhstan" dated 31 August 1995; RK Law "On Bailiffs" dated 7 July 1997; RK Law "On Payments and Transfer of Money" dated 29 June 1998; RK Law "On State Legal Statistics and Special Records" dated 22 December 2003; RK Law "On Gambling Business" dated 12 January 2007; RK Law "On Public Procurement" dated 21 July 2007; RK Law "On Commodity Exchanges" dated 4 May 2009; RK Law "On Enforcement Proceedings and Status of Court Enforcement Officers" dated 2 April 2010; RK Law "On Mediation" dated 28 January 2011; and RK Law "On State-Owned Property" dated 1 March 2011.

³RK Law No. 261-IV "On Enforcement Proceedings and Status of Court Enforcement Officers" dated 2 April 2010.



Thus, the court enforcement officer's obligation to warn a debtor regarding enforcement of the enforcement documents and to send an offer regarding voluntary execution has been cancelled.

According to the amendments, a private court enforcement officer (hereinafter, the **PCEO**) cannot initiate enforcement proceedings on collection of amounts not only from the state, but also from legal entities where fifty percent of voting shares (participation interests in the charter capital) and more belong to the state and affiliated legal entities.

The Law excludes the norms providing for the right of the court enforcement officer to postpone enforcement actions or suspend the enforcement proceedings.

At the same time, the Law expands the list of cases where the court enforcement officer is obligated to suspend enforcement proceedings, in particular:

- temporary absence of debtor within a period exceeding one month (if debtor stays at medical treatment facility, he/she is on a business trip, outside the locality, including if the debtor does forced military service with the RK Military Forces), provided that the enforcement proceedings cannot be performed without his/her participation;
- claimant's failure to deposit to the current account the amount necessary to perform the enforcement actions;
- court puts the debtor on the wanted list.

Starting 1 January 2015, the attached property will be sold by a court enforcement officer through the trade organizations on a commission basis and via auction held in the electronic form (e-Auction). The form of sale of property will be determined by a court enforcement officer subject to the property type. Property with the value up to three hundred monthly calculation indices⁴ (hereinafter, the **MCI**) will be sold on a commission basis, except for immovable property. In case of invalidation of the repeated auction, claimant's refusal to accept the property and absence of other property with the debtor, the court enforcement officer will have to undertake measures on revaluation of property and its further sale.

2. Debtors' Liability for Non-Execution of Judicial Acts

The Law establishes the debtor's obligation to inform the court enforcement officer about change of the place of work, place of residence, origination of new sources of income and property within three business days of the moment of origination of the said circumstances, and until termination of enforcement proceedings, to come to the court enforcement officer on a monthly basis (and in case of summons).

In case the court enforcement officer fails to collect alimony from salary or other income of the debtor, the court enforcement officer is granted a right to initiate recovery proceedings against the debtor's property (except for the property against which no recovery proceedings may be initiated in accordance with legislation).

The Law establishes additional liability of the debtor and consequences for failure to execute enforcement documents.

In case the debtor untimely fulfills the property requirements of the enforcement document, from the moment of termination of enforcement proceedings the court enforcement officer files to court an application for collection from debtor of default interest in claimant's favor in the amount

⁴According to the RK Law "On Budget," the amount of monthly calculation index in 2014 is 1,852 KZT, which equals to approximately 10 USD in dollar terms at the current exchange rate of the RK National Bank.

of 0.1% of the collected amount or value of the property, which is subject to transfer, per each day of delay from the moment of initiation of enforcement proceedings.

3. Broadening of Powers of Enforcement Authorities

The Law grants the rights to the head of enforcement authorities to bring to liability for:

- failure to execute resolution or any other lawful demand of a court enforcement officer or court bailiff;
- provision of patently false information to a court enforcement officer, including on the debtor's income and material status;
- debtor's failure to inform a court enforcement officer about change of the place of work and place of residence;
- loss of enforcement document (only court enforcement officers are brought to administrative liability).

4. Establishment of New Amount of Remuneration to PCEO

According to the novelties, payment for PCEO's activities on enforcement proceedings involving collection of outstanding amounts will be made out of the funds collected from the debtor. The payment is established in the amount from 3% to 25% of the collected amount or property value and is MCI based.

With respect to non-property documents payment for PCEO's activities is established in the amount of 10 MCI from individuals and 20 MCI from legal entities.

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