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Law Alert

Amendments to the law of the Republic of Kazakhstan on anti- corruption issues

December 2020

The President of the Republic of Kazakhstan (the "RK") has signed the law on amendments to certain legislative acts of the Republic of Kazakhstan on anti-corruption issues dated 6 October 2020 (the "Law").

The Law was published on 7 October 2020 and entered into force on 18 October 2020. In this alert we would like to highlight the main provisions of the Law that amend and supplement the anti-corruption laws.

- Prohibition of gifts

Article 216 of the Law on State Property dated 1 March 2011 (the “State Property Law”) has been amended. Now public servants and other individuals who are subject to anti-corruption restrictions cannot accept gifts, and any received gifts are deemed to have been given to the state and become state property.

It should be noted that the pre-existing threshold for gifts to civil servants that could be accepted, which was the equivalent of approximately 60 USD, established by Art. 509 of the Civil Code of the RK, was excluded in July 2020.

- Individuals who are subject to anti-corruption restrictions

The Law has expanded the range of individuals who are subject to anti-corruption restrictions under the Law of the RK on Anti-Corruption dated 18 November 2015 (the “Anti-Corruption Law”).

The list of individuals was defined as individuals authorized to perform public functions provided for in Article 1.4, and it has been amended to include the following individuals:

- 1) Individuals authorized to make decisions to organize and conduct procurement, including public procurement, and
- 2) Individuals responsible for selecting and implementing projects financed from the state budget and the National Fund of the RK, and who hold a position not lower than the head of an independent structural division in these organizations.

Article 12 of the Anti-Corruption Law has been supplemented with paragraph 5, which explicitly prohibits family members¹, and dependent individuals permanently residing with the individuals who are subject to anticorruption restrictions from receiving remuneration, gifts or services that are provided for the actions (lack of action), if such actions (lack of action) are taken as part of official powers of the individuals who are subject to anti-corruption restrictions.

- Obligations of individuals subject to anti-corruption restrictions in respect of receiving gifts/services

The Law on Public Service of the RK (“Public Service Law”) has been amended with respect to

the term within which gifts received by a public servant should be transferred to the state.

Gifts received without the knowledge of a public servant must be transferred free of charge to the authorized body for management of state property within 7 (seven) calendar days of the date when the public servant became aware of the received gift (previously, this period was specified as a “seven-day period”), and services rendered to the public servant should be paid for by the public servant by transferring payment to the state budget within 7 (seven) calendar days of the date of rendering the service or of the date when the public servant became aware of the provision of the service.

It should be noted that these restrictions apply to gifts received by a public servant, as well as services rendered to him/her in connection with the performance of their public or equivalent duties.

Family members of a public servant are not entitled to accept gifts or services, invitations to tourist or health and wellness facilities or other trips, at the expense of individuals and legal entities (both residents and non-residents of the RK) with whom the public servant is connected by work.

- Liability for violation of the anti-corruption legislation

It should be noted that the Law does not amend the provisions on liability for violation of anti-corruption legislation. Below we set out the current regulations for violation of anti-corruption laws.

The provision of remuneration by individuals and legal entities, as well as the receipt of remuneration by an individual authorized to perform public functions or an individual deemed equal to such, entails criminal liability. However, if the actions do not constitute a criminal offense, such as receipt of property, rights to property or other benefits as a gift for the first time, provided there is no prior agreement to commit legal actions (or to fail to commit legal actions) and if the value of the gift did not exceed 2 (two) times the MCI, these actions entail administrative responsibility.

The Criminal Code of the RK provides that receipt of a bribe by an individual authorized to perform public functions, or an individual deemed equal to such, or an individual holding a public position with high

¹ I.e. spouses, parents and children.

responsibility, or a public official, as well as an official of a foreign state or international organization, personally or through an intermediary, is punishable by a fine in the amount of twenty to fifty times the amount of the bribe, or by imprisonment for up to five years, with confiscation of property and lifelong deprivation of the right to hold certain positions or engage in certain activities.

Additionally, protection or conspiracy by an individual authorized to perform public functions, or an individual deemed equal to such, or an individual holding a public position with high responsibility, or a public official, as well as an official of a foreign state or international organization (either personally or through an intermediary) is a crime.

Aggravating factors for the recipient of a bribe include the size of the bribe (significant, large, especially large), extortion, conspiracy, and repeated acts. At the same time, an individual who gave a bribe is exempt from criminal liability if he/she had been subject to extortion by an individual authorized to perform public functions, or an individual deemed equal to such, or an individual holding a responsible public position, or a public official, as well as an official of a foreign state or international organization. Also, an individual who gave a bribe is exempt from criminal liability if such an individual voluntarily informs a law enforcement body or the special state authority about the bribe.

Anti-corruption restrictions

Anti-corruption restrictions are aimed at preventing corruption offenses.

Anti-corruption restrictions, among other things, include a prohibition on accepting remuneration, gifts or services for actions (lack of action) in favor of the individuals who provided them, if such an action (lack of action) is taken as part of official powers of the individuals specified in the Anti-Corruption Law.

Importantly:

- 1) it is prohibited to accept not only gifts, but also remuneration or services, and
- 2) the provision of remuneration, gifts or services carried out in connection with not only the actions, but also the lack of action of the authorized individual is a violation of the law.

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- Conducting training on current anti-corruption legislation of the Republic of Kazakhstan.
- Legal due diligence of counterparties from open sources.
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- We actively participate in preparing amendments to legislative acts on anti-corruption issues.



Contact Information:



Dinara Tanasheva
Partner, Head of Tax & Law Practice in
Kazakhstan and Central Asia

Tel.: +7 (727) 258 5960
dinara.s.tanasheva@kz.ey.com



Zafar Vakhidov
Director, Tax and Law

Tel.: +7 (727) 258 5960
zafarvakhidov@uz.ey.com



Tolkyunay Shynazarova
Associate, Tax and Law

Tel.: +7 727 258 5960
tolkyunay.shynazarova@kz.ey.com

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