

Kazakhstan

Baker & McKenzie

Government Resolution No. 19 dated January 8, 2004 On Approval of the List of Environmentally Hazardous Types of Business and Rules for Mandatory State Licensing of Hazardous Businesses

Government Resolution No. 19 came into force in the Republic of Kazakhstan on January 8, 2004. This Resolution establishes the duty of oil producers, shipping companies, and other businesses (both Kazakhstani legal entities and branches of foreign companies) to obtain from the Ministry of Environmental Protection (MEP) a further license to engage in environmentally hazardous businesses (the "License"), in addition to current licenses, which are still required under Kazakhstani law. The Resolution approves a list of environmentally hazardous businesses for which the License is required, include the following: shipping, dredging, petroleum operations, construction on

the North Caspian coastal territory, gas flaring, storage, burial, recycling and cross-border transportation of hazardous industrial wastes, disposal, storage, and use of mineral wastes from technological processes, emission of pollutants exceeding permissible amounts, import and export of ozone depleters, manufacturing with the use of ozone depleters, or use of equipment which contains them and certain other businesses. The Ministry of Environmental Protection issues the License within one month of the receipt of an application in the prescribed form with a copy of the state registration certificate, license fee receipt (in the amount of 11 times the minimum calculation index) and documents evidencing that the applicant meets the obligatory qualifying demands. □

New Law of the Republic of Kazakhstan On Advertising

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¹ In connection with the adoption of this Law the corresponding amendments were introduced to the Law of the Republic of Kazakhstan On Mass Media.

² Together with the Law on Advertising the issues of placing advertisements about medical products are regulated by Article 32 of the Law on Medical Products adopted on January 13, 2004. In our view, the above Laws complement each other, however, the Law on Advertising also regulates the issues of advertisement of goods of medical purpose, medical equipment, and medical and doctors activity. In accordance with the Law on Advertising the legislation of the Republic of Kazakhstan on prophylaxis and limitation of smoking regulates the issues of advertisement of tobacco products.

The new Law on Advertising was adopted on December 19, 2003.

The Law became effective on the date of its official publication – December 26, 2003 (except the prohibition about advertising of alcoholic products that became effective on January 1, 2004¹.

This is the first legislative act in the Republic

of Kazakhstan about advertising that contains the main terms and definitions in this field and regulates the general issues of its content, the state regulation, and the terms for placement and refutation.

The goal of the new Law is to ensure conditions required for the production, distribution, placement, and the use of advertisements, protection from unfair competition in the advertising field, and prevention and suppression of improper advertisements².

The Law consists of three chapters that include:

1. General provisions;
2. General and special requirements to advertisements; and
3. State regulation in the advertising area.

1. General provisions

The general provisions (Chapter 1 of the Law) determine the goals of the Law, the area of its application, and identifies the main definitions of advertising, improper advertisement, an advertiser, an advertisement producer, an advertisement distributor, an advertisement consumer, and the creeping line.

2. General and special requirements to advertisements

Chapter 2 of the Law provides for the general and special requirements to advertisements, such as the form, means of placements, and the content. The Law describes in detail the types of improper advertisements, the distribution of which is prohibited: unfair, inauthentic, unethical, wittingly false, and hidden (Article 7). The Law regulates the conditions for placing advertisements in TV and radio programs, periodicals, movie-, video- and information servicing, outdoor (visual) advertisements, and advertisements on transport vehicles (Articles 8-12).

The Law provides for limitations of advertisements volume in TV and radio programs that do not specialize on announcements and materials of advertising nature. Now it shall not exceed twenty percent of the total volume of broadcasting per day, except the creeping line. There were established limitations with respect to the sound, the size of advertisements, and broadcasting time (Article 8).

There were established peculiarities of advertisements about certain types of products, in accordance with which it is prohibited to advertise:

- 1) alcoholic products;
- 2) artificial substitutes of mother milk; and
- 3) goods (works and services) that are subject to obligatory licensing and that were not licensed in the Republic of Kazakhstan.

Peculiarities of advertising of financial, insurance, and investment services and securities are contained in Article 14 of the Law.

3. State regulation in the advertising area

The main goals of the state regulation in the advertising area (Chapter 3) are:

- 1) protection of the national interests;
- 2) prevention and suppression of improper advertisements, and advertisements encroaching on the public values and generally accepted norms of morals and morality; and
- 3) protection from unfair competition.

In case of failure to meet the requirements of the Law the authorized bodies are entitled to demand from the advertiser, the advertisement producer and the advertisement distributor to present documentary proves for the advertisement information in the procedure established by the legislation of the Republic of Kazakhstan. The obligation of a person, who allowed the violation, to perform refutation in the procedure set forth by the legislation of the Republic of Kazakhstan (Article 19), has been determined. Moreover, there were named the cases when the advertiser, the advertisement producer and the advertisement distributor (Article 20) bear responsibility for infraction of the legislation.

It shall be noted that the Code of the Republic of Kazakhstan on Administrative Offences (Code on Administrative Offences) still does not contain provisions on responsibility for particular violations of the new Law but it shall be expected. In particular, the sanction for the breach of the prohibition to advertise certain types of products is not provided for yet. (On December 5, 2003, the Code on Administrative Offences was amended with Article 349-1 that provides for the responsibility for violations related to the placement of advertisements about tobacco and tobacco products.)

So, there are grounds to believe that the adoption of the new Law will promote regulation of the relations that arise in the process of production, distribution, placement, and the use of advertisements in the territory of the Republic of Kazakhstan. □

Regarding the Amendments to the Current Legislation of the Republic of Kazakhstan for the Period from January 1 through January 31, 2004

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According to Aequitas Law Firm electronic legal library, about 20 normative legal acts were issued in the Republic of Kazakhstan (the "RK") in January 2004.

This Information Memorandum covers the most important from the practical perspective or interesting, in our view, normative acts.

Laws of the RK:

1. RK Law No. 512-2, On Amending Some Legislative Acts of the Republic of Kazakhstan Concerning Regulation of Land Relations, dated December 29, 2003

[*Aequitas' Note:* The Law amends Articles 448 and 450 of the Code of the Republic of Kazakhstan, On Taxes and Other Mandatory Payments to the Budget, dated June 12, 2001 and appends Edict No. 2255 of the President of the Republic of Kazakhstan, Having the Force of Law, On Business Partnerships, dated May 2, 1995, the Law of the Republic of Kazakhstan, On Producers' Co-operative, dated October 5, 1995 and Articles 6 and 8 of the Law of the Republic of Kazakhstan, On Farming, dated March 31, 1998];

2. RK Law No. 508-2, On Advertising, dated December 19, 2003; Edicts of the RK President:

1. Edict No. 1270 of the President of the Republic of Kazakhstan, On Further Improving the Governmental System of the Republic of Kazakhstan, dated December 31, 2003.

[*Aequitas' Note:* The said Edict has reorganized the RK National Bank by segregation of the Agency for Regulation and Control over the Financial Market and Financial Organizations.]

Decrees of the RK Government:

1. Decree No. 1140 of the Government of the Republic of Kazakhstan, On Approval of Rules for Organization and Holding of Tenders (Auctions) for Sale of Land Plots or Tenant Right to Land Plots, dated November 13, 2003;
2. Decree No. 27 of the Government of the Republic of Kazakhstan, On Establishing the Quota for Attraction of Foreign Labor Force for Carrying Out Labor Activities on the Territory of the Republic of Kazakhstan for the Year 2004, dated January 12, 2004.

Acts of the RK Ministries and Departments:

1. Order No. 9 of the RK Ministry of Justice as of January 8, 2004, On Amending Order No. 141 of the Minister of Justice of the Republic of Kazakhstan, On Approval of the Regulations on Territorial Bodies of Justice of the Ministry of Justice of the Republic of Kazakhstan, dated September 23, 2002;

[*Aequitas' Note:* According to the said Order, the Office of Justice was renamed to the Department of Justice.]

2. Order No. 497 of the RK Agency for Customs Control, On Approval of Regulations on the Central Commission of the Agency for Customs Control of the Republic of Kazakhstan Concerning Attestation of Specialists in Customs Clearance and the Instruction on Qualification Examination for Receiving the Qualification of Customs Clearance Specialist, dated November 4, 2003;
3. Order No. 445 of the Tax Committee, On Approval of Rules for Calculation and Withholding of Individual Income Tax and Calculation of Social Tax, dated November 7, 2003. □