



Remain Focused on Changes

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In this issue, we discuss some of the latest interesting and important amendments

Overview of the most interesting and important amendments in Kazakhstan law

Dear friends,

On 11 March 2017, Law № 49-VI dated 27 February 2017 *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Improvements to Civil and Banking Law and to doing Business* ("27 February 2017 Law") introduced a number of amendments to various legislative acts.

In this document, we provide you with a brief overview of the most important amendments.

Amendments to the Civil Code:

- According to the amendments, invalid transactions are now treated as either *void* or *contestable*.
 - A *void transaction* is one that is invalid for reasons clearly stipulated by law, irrespective of whether it has been recognised as such by a court. For example, a transaction concluded for a criminal purpose, where illegality has been established by a court ruling; a transaction concluded without the required permit or after a permit has expired; a transaction concluded by an individual who has not reached 14 years of age, apart from minor common transactions concluded as they are carried out; a transaction concluded by an individual recognised as legally incapable due to mental illness or dementia.
 - Likewise transactions concluded with no simple written form are all recognized as void. For example, those concluded during business activities, except those settled as they are concluded; worth in excess of 100 times the monthly calculation index, except those settled as they are concluded and in other cases stipulated by law or agreement of the parties.
 - Insurance agreements insuring the illegal property interests of the insurer, and agreements to borrow funds from individuals as a business activity are recognized as void.

A *contestable transaction* is one whose invalidity is established by a court. For example, a transaction whose subject does not comply with the law; a transaction concluded to intentionally contradict the principles of law and order; a transaction concluded by an individual subsequently recognised

as legally incapable are contestable and may be recognised as invalid by a court

The key difference is that a contestable transaction is determined invalid by a court and the consequences of its invalidity apply, while the nullity of a transaction is not established by a court, and only the consequences of the invalidity of a void transaction apply.

- Further, the amendments affected the "fraudulent and sham transactions," with regard to the division into void and contestable.

If previously, the Civil Code provided only a definition, it now includes a clarification, specifically that a court recognises a transaction as fraudulent and sham according to a lawsuit.

To The Law on Limited Liability Partnerships further amendments has been introduced:

- According to the amendments, "an assignment agreement of a partner disposing of assets (charter capital) share in a partnership or a part of it, of which the individual is a party, should be notarised."
 - Previously, only signatures were notarised. However, in practice the authorities required that the agreements itself must be notarised. Thus, legislation has been brought into line with practice.
- The obligatory audit of limited liability partnership financial statements has been introduced in the cases where partnerships simultaneously:
 - has partners (founders) holding less than 10 (ten) percent interests in charter capital **and**
 - is a large business (average annual headcount in excess of 250 (two hundred and fifty) persons and (or) average annual income in excess of 3 (three) million times the monthly calculation index for the relevant year)

To the Law on Joint Stock Companies, dated 13 May 2003 further amendments has been made:

- Entities holding in excess of 20 (twenty) percent of voting shares should publish details of their holding in the mass media within 30 (thirty) calendar days of their purchase.

To the law on the State Registration of Legal Entities and Registration of Branches and Representative Offices*, dated 17 April 1995 further amendments has been introduced:

- The option of registration of a legal entity belonging to a medium-sized business entity via the e-government web portal has been introduced. It is provided that within the registration procedure an application for opening a bank account and compulsory insurance of an employee against accidents is also submitted via the e-government web portal. However, how this provision will operate in practice is not yet clear, since the opening of a bank account and the application for compulsory insurance of an employee is filed only after the registration of a legal entity.

This amendment covers only those registered through the e-gov.kz website. At the same time, registration in this manner is not obligatory.

To the Law on Obligatory Employee Professional Accident Insurance*, dated 7 February 2005 further amendments has been introduced:

- Due to amendments to the Law on the State Registration of Legal Entities and Registration of Branches and Representative Offices, obligatory employee accident insurance agreements are concluded by filing an application on www.e-gov.kz. Eligible agreements are signed using the insurer and insured party's digital signature. Agreement issues caused by missing conditions will be resolved in favour of the insurer.

* These amendments enter into force from 1 January 2018.

How Deloitte can help you

The Deloitte Legal team in Kazakhstan will be pleased to answer to any questions with regard to the abovementioned amendments, as well as to provide professional consulting on any other issues.

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