

# Legal Alert

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## **Law of the Republic of Kazakhstan dated 7 April 2015 № 300-V On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding the Legal Regulation of Intellectual Property**

The Law above has introduced a number of amendments and additions to the following normative and legal acts governing intellectual property:

- 1) the General and Special parts of the Civil Code;
- 2) the Tax Code;
- 3) the Copyright and Allied Rights Law;
- 4) the Selection Achievements Law;
- 5) the Patent Law;
- 6) the Trade Mark, Service Mark and Origin of Goods Law.

The legislator amended the above acts with terms such as comprehensive business license agreement, after-use right, business subjects of industrial property, useful models, industrial samples and others.

The most important legislative additions include:

- the ability to extend the validity of patents in relation to medicine- and pesticide-related inventions, the application of which would require a license;
- the removal of the term “innovation patent” and the inclusion of the consolidation of the protection of rights to inventions, useful models and industrial samples by a patent;
- the removal of patent assignment contracts from those requiring registration with the patent authorities;
- a significant increase in the value of compensation awarded by a court to protect copyright and allied rights;
- the possibility to restore the validity of a patent to selection achievements;
- changes to the review application procedure for a patent for selection achievements, and the procedure for considering applications;
- changes to issue dates for patents on inventions, useful models, and the registration of industrial samples;
- the possibility of expediting the review applications for patents on inventions, if the inventions in question are entitled to favourable patent conditions;
- rights to trademarks are not confirmed by certificates, but by a record of registration in and extract from the state register of trademarks of the Republic of Kazakhstan;
- details on the procedure and deadlines for recognising a trademark as accepted.

The Law also detailed the activities of organisations managing material rights on a collective basis and added conditions for the registration of trademarks.

After the amendments, the Law makes it possible to review trademark applications ahead of schedule if the applicant makes an additional payment and written request.

**The Law entered into force on 21 April 2015.**

## Draft Law On Arbitration as at 31 March 2015

The Draft Law *On Arbitration* (the “Draft”) was prepared on the instructions of the president and covers the main terms used in civil cases regulated by arbitration, as well as the fundamental principles and key aspects of arbitration cases.

A dispute may be considered by arbitration if the parties have entered into a written arbitration agreement, including in relation to a dispute under consideration in a court, until the court reaches a verdict on the dispute. The plan is for arbitration to consider civil and legal disputes between individuals and (or) legal entities, except for:

- disputes involving the interests of minors and individuals recognised as legally incompetent or restricted as to their legal capacity;
- bankruptcy and rehabilitation disputes;
- disputes between natural monopolies and their consumers;
- disputes arising from personal non-property relations and disputes stemming from an individual's life and health, privacy, personal and family privacy, and the right to a name.

The Draft envisages two types of arbitration:

- permanent – created by individuals and legal entities by approving arbitration regulations and a list of arbiters;
- arbitration for specific disputes – created by the parties to resolve disputes that have arisen from civil and legal relations, and in force until the dispute in question is resolved or until the parties transfer the dispute to a court for resolution.

The Draft does not allow the creation of arbitration in state bodies, enterprises, natural monopolies, entities with a dominant market position and legal entities in which 50% or more of the voting shares (share capital participation) belong directly or indirectly to the state.

In accordance with the Draft, a dispute in arbitration may be resolved:

- unilaterally by the arbiter;
- by a board made up of an odd number of arbiters appointed by the parties.

The Draft clearly regulates requirements and restrictions for potential arbiters. The Kazakhstan Arbitration Chamber will keep an integrated register of arbiters operating in Kazakhstan, which will be used as a database of arbiters.

The Draft regulates all stages of the arbitration process:

- filing a claim;
- instigating arbitration proceedings;
- preparing cases for arbitration;
- arbitration proceedings and the adoption of resolutions;
- the adoption of resolutions;
- execution.

It also provides for a procedure to make a counter claim and offset counter requirements, assist courts in assigning injunctions and obtaining evidence; a procedure for allocating expenses related to the resolution of a dispute in arbitration, and other core arbitration procedures.

**The Draft is currently under development.**

## ***Draft Law of the Republic of Kazakhstan On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Improvements to Civil Legislation***

To improve the conditions for doing business and manage civil law conflicts, the Draft Law envisages:

- the possibility for legal entities to create separate divisions, in addition to branches and representative offices (depots and departments);
- entities operating on the securities market are not permitted to maintain the register of participants of business partnerships;
- notarisation of the disposal of interests in business participants in which an individual is a party;
- the creation of terms such as “major legal entity”, and legal consequences for recognising a joint stock company as dependent;
- a clear differentiation of invalid transactions into nominal and disputable;
- a change in provisions for the payment of arrears;
- a pledge holder’s obligation to file an application with the registrar to register the termination of a pledge, if a secured liability has been executed;
- legislative cases where a failure to execute an obligation or a failure to do so correctly may be punished by a penalty;
- a procedure to value land plots disposed of for state requirements where the land plots in question were to be used for individual residential construction purposes, for personal business (apart from allotments), and on which a house stands, at market value only;

To bring normative legal acts into line with international civil law and general practices, a proposal was made to introduce a new chapter “Other Proprietary Rights” and include in inheritance the right to register a testator’s proprietary rights that had not been registered during his/her life.

**The Draft is currently under development.**

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