

# Legal Alert

We are where your  
business is

Tax & Legal  
November, 2014

**Deloitte.**



## *Draft Civil Procedural Code of Republic of Kazakhstan*

The new Draft Civil Procedural Code has made changes to (hereinafter-“Draft”):

- the institution of court representation;
- the institution of conciliatory procedures;
- the preparation of a case for court;
- procedural deadlines.

Thus, at the request of those participating in court cases, only people with higher legal training may represent someone in court. Furthermore, the Draft Code specifies which representatives are entitled to participate in which court instances. For example, coparties, at the request of other coparties and individuals permitted by the court at the request of parties in a particular case may not represent others in cassational courts, while only barristers, corporate employees and authorised officials may act as a representative in the Supreme Court.

The new Draft has:

- a “Simplified Court Proceedings” section, which includes “Written Proceedings” and “Mandatory Proceedings”;
- a “Conciliation Procedure” chapter, which incorporates the resolution of disputes (conflicts) through mediation participatory procedure and reaching an amicable settlement. Participatory procedure is new to the Draft and does not involve the participation of judges, rather negotiations by the parties with the assistance of both parties’ barristers

When the Draft enters into force, issues related to filing counter-claims, changing the basis or subject of a lawsuit; increasing or reducing stated claims may only be resolved when a case is being prepared for court.

The duration of judicial process has also changed significantly, so that:

- the period for preparing a case for court has been extended from 7 to 15 working days, with an extension possible up to a month;
- the period for reviewing a civil case in special court proceedings to dispute the legality of normative legal acts has been extended from 10 working days to 1 month;
- the deadline for filing an appeal has been extended from 15 days to 1 month, while the case review period has been extended to 2 months;
- the deadline for filing a cassational appeal or protest has been reduced from 6 months to 1 month, while the review period is now 30 working days;
- the deadline for filing a petition or protest against a cassational court ruling or verdict under review procedures has been reduced from a year to 3 months, while the review period is 30 working days.

The Draft also stipulates the examination of cases by several judges in the appeal instance, and a limitation of cases subject to review procedures.

**The Draft is currently being written.**

## **Government Resolution № 1153 dated 30 October 2014 On approving Regulations for the Activities of the Investment Ombudsman**

A Government Resolution has approved the core functions of the investment ombudsman as an official appointed by the government to assist in protecting the rights and legal interests of investors. The ombudsman's activities are assured by the authorised investment body.

The investment ombudsman:

- 1) reviews investors' questions arising during investment activities in Kazakhstan, and makes recommendations to resolve them, including interacting with the state authorities;
- 2) assists investors resolve any issues that arise, out of court or before court proceedings start;
- 3) drafts and forwards recommendations to the government to improve Kazakhstan law;

Thus, to assist investors resolve any issues that may arise, the investment ombudsman:

- 1) explains to investors their rights and legal interests, including the forms and methods for protecting them as stipulated by law;
- 2) holds meetings, consultations and meetings of record with state bodies and organisations to resolve investor issues; listens to the leaders of interest state bodies and organisations, or their deputies, regarding the review of investor issues;
- 3) analyses investor questions and the results of meetings with state bodies and organisations;
- 4) analyses legislation and highlights any provisions that violate investor rights or hinder business activities, and subsequently develops recommendations to restore investors' violated rights and legal interests;
- 5) send recommendations aimed at restoring investors' violated rights and legal interests to the relevant state authorities and (or) officials whose actions (inaction) violated investors rights and legal interests.

According to the Resolution, the investment ombudsman should:

- 1) review and requests for assistance within 30 calendar days of their receipt;
- 2) when necessary, review investor requests at meetings, in the presence of the interested state authorities and organisations, and once a month hold official meetings;
- 3) send a report to the government on the results of its activities each March.

**The Resolution enters into force on 24 November 2014.**

## **Government Resolution № 1175 dated 4 November 2014 On approving Rules for providing Investment Subsidies**

Investment subsidies for investment priority projects are provided to newly created Kazakhstan legal entities if they meet the following conditions:

1) the recipient is an operating newly created Kazakhstan legal entity as at the application date, and which has made an investment of at least two million times the monthly calculation index. At the same time, the legal entity should not:

- operate in a quasi-public sector in accordance with budget law;
- be an autonomous educational institution in accordance with tax law and education-related law;
- be an organisation operating in a special economic zone, in accordance with tax law and legislation dealing with special economic zones.

2) the founder and (or) shareholder of the Kazakhstan legal entity that filed an investment priority project application are not the state and (or) entity operating in a quasi-public sector;

3) budget funds are not used to realise an investment priority project as finance sources or guarantees;

4) investment activities are not performed within the framework of a concession agreement;

5) a government resolution is in place regarding the provision of investment subsidies.

To receive investment subsidies, legal entities should send an application to the authorised body together with the following documents:

1) certificate of the state registration (re-registration) of a legal entity;

2) copy of a charter signed by the CEO and stamped;

3) a business plan for the investment project drafted in accordance with requirements established by the authorised body;

4) copies of the documents established by law and justifying the estimated cost of construction and assembly work and costs to purchase fixed assets, materials and (or) supplies used to realise an investment project, signed by the CEO and stamped;

5) a certificate from the local tax authorities confirming the absence of overdue taxes, pension payments and social contributions;

6) pre-project documentation signed by a CEO and stamped, and incorporating the opinion from a state review in accordance with the procedure established by law.

After reviewing an application over a 10 day period, the authorised body should send a written response to the investor within 3 working days.

After deciding to provide investment subsidies, the authorised body should register an application and send the application a written response within three working days from the registration of its application.

Within 10 working days from the official publication of a decision, the authorised body should prepare an investment contract based on a model contract for signing. Investment contracts are registered by the authorised body within five working days from the day they are signed and enter into force on the day they are registered.

Investment subsidiaries are provided in the form of compensation of up to 30% of the actual cost of construction and assembly work and the purchase of equipment, exclusive of value added tax and excise duties. After realising a work programme, an investor should provide the authorised body with an audit opinion, after which a decision is taken on the investment subsidy to be paid, and within 2 working days, the investor should receive written confirmation of the same.

**The Resolution enters into force from 8 December 2014, except for the points dealing with payments, which enter into force from 1 January 2015.**

***Law № 257-V dated 28 November 2014 On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Taxation***

According to the new law, late payment interest accrued in personal accounts and also fines for tax violations, violations of pension and social insurance legislation as at 1 January 2014 and still unpaid as at 1 October 2014 should be written off.

Late payment interest and fines for all taxes, for all taxpayers, whether they are individuals or legal entities, will be written off, except for:

- major taxpayers subject to monitoring;
- taxpayers participating in international arbitration with respect to their execution of tax liabilities;
- subsoil users;
- taxpayers operating in the gaming business;
- taxpayers producing excisable goods.

**The Law will enter into force from 1 January 2015.**

# Contacts

## Almaty / Astana

**Vladimir Kononenko**

Tel: +7(727) 258 13 40

Fax:+7(727) 258 13 41

Email: vkononenko@deloitte.kz

## Atyrau / Aktau

**Anthony Mahon**

Tel: +7(727) 258 13 40

Fax:+7(727) 258 13 41

Email: anmahon@deloitte.kz

## Agaisha Ibrasheva

Tel: +7(727) 258 13 40

Fax:+7(727) 258 13 41

Email: aibrasheva@deloitte.kz



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see [www.deloitte.com/ru/about](http://www.deloitte.com/ru/about) for a detailed description of the legal structure of Deloitte CIS.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 210,000 professionals, all committed to becoming the standard of excellence.

Deloitte's professionals are unified by a collaborative culture that fosters integrity, outstanding value to markets and clients, commitment to each other, and strength from diversity. They enjoy an environment of continuous learning, challenging experiences, and enriching career opportunities. Deloitte's professionals are dedicated to strengthening corporate responsibility, building public trust, and making a positive impact in their communities.