

Personal Data Protection Law Updates



Dear friends,

From 1 January 2016, the Law On the Introduction of Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Informatisation (the "Amendments") established new requirements under the Personal Data Protection Law (the "Law").

The Law provides the following definitions:

Personal data is any data (names, addresses, telephone numbers and others) that directly or indirectly relates to an identified or identifiable individual and which is in electronic, hard copy and (or) other form. It can include for example, the personal data of local and foreign employees and their families, clients and contractors.

The personal data database operator is any public authority, legal entity or individual collecting, processing and protecting personal data.

Databases containing personal data are owned by the relevant state authority, legal entity or individual.

The data owner is any individual to whom personal data relates.

The key amendments to the Law primarily concern the following:

1. Location of personal data

The Amendments oblige personal data owners and users, and third parties, to store personal data on databases located in Kazakhstan. Even though the Law does not specify precisely the scope of the amendments, it would seem that companies registered in Kazakhstan, individual entrepreneurs and structural subdivisions of foreign companies registered in Kazakhstan (branches/representative offices) should also comply with the new rule.

It remains unclear whether foreign companies with no registered presence in Kazakhstan but pursuing commercial objectives in Kazakhstan (through on-line services/sales) are covered by the new rule. Law enforcement bodies will probably apply a rigorous approach to the new rule. With this in mind, it would be a good idea for personal data owners and users whose on-line resources are supported by hardware/servers in Kazakhstan to meet the personal data location requirement.

While the trans-border transmission of personal data has not been affected by the Amendments, personal data stored in Kazakhstan can only be transferred across its borders with the due consent of the data subject only.

2. Liability for violation of the personal data location requirement

The Amendments do not introduce specific liability for violating the personal data location requirement. Nevertheless, personal data owners and users can be made liable for violating the terms and conditions for processing personal data which also covers its storage. Administrative liability may range from US\$ 121 to US\$ 606 and the possibly of the confiscation of the tool (server or computer) used to commit the violation.

More importantly, individuals can be held criminally liable for violating the terms and conditions for protecting personal data if the violation causes material damage to the data subject. Criminal liability can reach US\$ 18,180. A court may substitute a fine with correctional work, or imprisonment for up to two years. Any entity found guilty of violating personal data location requirements may be banned from engaging in certain types of activities for up to three years.

Internationally, it seems that regulators have been clamping down on this type of activity. For example, recently a major UK telecom company, TalkTalk was fined GBP 400,000 for failing to safeguard adequately personal data when they were hacked in October 2015. The UK regulator found that hackers retrieved details of over 150,000 customers, including names, addresses, birthdates, phone numbers and email addresses and in some cases even got access to customer bank account details and sort codes.

3. New additional procedure for obtaining a data subject's consent to process personal data

Before the Amendments, consent to collect and process personal data was given by the data subject in writing or electronically (email) or other means containing protective elements that do not contradict Kazakhstan law (such as consent provided electronically using an electronic digital signature).

In light of the e-services offered by the government, access to which is secured by electronic digital signature, the Law now allows data subjects to provide

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their consent through the “e-government” web-portal. Furthermore, data subjects may register their mobile number on the portal, which allows them to provide a one-time password or text message in response to an inquiry received from the portal, which constitutes consent.

Given the Law’s scope of application, foreign nationals and locals may benefit from the technological advancement provided by the Amendments.

Please remember that this review does not cover all amendments to the Law.

How Deloitte can help

Companies should take care of their financial and reputational risks associated with the infringement of the personal data location rules and ensure that proper legal, organizational and technical measures are in place to protect the personal data they deal with.

Deloitte Legal in KZ would be delighted to assist you in auditing your current data protection storage systems to ensure compliance with new legislative provisions.

If you wish to receive more detailed advice on any of the above issues, please contact the Deloitte TCF Tax & Legal Department on tel.: +7 (727) 258 13 40 (Almaty).

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