

04 December 2014

To all our clients and friends

INFORMATION LETTER regarding amendments to the Republic of Kazakhstan legislation in the sphere of advertising of medications, medical products and medical equipment

The amendments to legislation involving advertising of medical services and goods (Law No. 257-V of 28 November 2014) have entered into legal force starting 20 November 2014 (retroactively), according to which the advertising of medical services and goods is again permitted.

However, please note as follows.

- 1) Due to all introduced amendments, the Code "On Public Health and Healthcare System" (Code) now does not contain a reference to a necessity to obtain a permit to advertise medications, medical products and medical equipment (Goods). The new version of paragraph 1 of Article 18 of the Code "medications, medical products and medical equipment shall be advertised according to a procedure determined by an authorized agency" implies that the authorized agency is to approve a special normative legal act intended to regulate the Goods advertising procedure.
- 2) According to the verbal comments of the representatives of the authorized agency, they anticipate such act to be adopted soon (for example, in the form of an order of the healthcare authorized agency); however, we do not have its draft or any information regarding the presence of any draft of such act and, accordingly, we are currently not able to provide any definite comments.
- 3) At the same time, the Order No. 167 of the Minister of Health of the Republic of Kazakhstan establishing the procedure for obtainment of the Goods advertising permit (Rules) has not been cancelled yet. Paragraph 1 of the Rules refers to the fact that they were developed in pursuance of paragraph 1 of Article 18 of the Code, i.e. they are actually the very normative legal act regulating the Goods advertising procedure.
- 4) The Law No. 202-V of 16 May 2014 (Permitting System Law) introduces an exhaustive list of permits issued by the authorized agencies, which does not include the Goods advertising permit. Furthermore, according to paragraph 1 of Article 18 of the Permitting System Law, "permitting or notification procedure shall be introduced only by way of including relevant permit or notification to the lists of permits or notifications provided for in Attachments 1, 2 and 3 hereto."
- 5) In view of the above, we believe that there is a contradiction among the provisions of the normative legal acts of different levels. However, according to legislation on normative legal acts, provisions of the laws and codes prevail over the provisions of the ministers' orders. Accordingly, in view of the contradiction, it is necessary to apply the provisions of the Permitting System Law and Code.



Summarizing the above, we believe that it is not necessary to obtain the Goods advertising permit starting 21 November 2014. However, the authorized agencies may have different opinion on this issue.

A possible option allowing to determine the necessity to obtain the Goods advertising permit is the submission of the official inquiry to the authorized agency for its opinion on this issue. However, subject to the fact that, as we mentioned above, the authorized agency plans to adopt a special normative legal act, we do not exclude that it will not be able to provide any comprehensible comments until such act is adopted.

Should you have any additional questions, please do not hesitate to contact us. We would be happy to provide you with the required advice.

Best regards,

ÆQUITAS Law Firm

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