

CHANGES IN THE LEGISLATION ON THE ISSUES OF REGULATION OF DIGITAL TECHNOLOGIES AND PERSONAL DATA PROTECTION

IMPORTANT!

On 25 June 2020, Kazakhstan adopted the [Law](#) No. 347-VI "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on the Issues of **Regulation of Digital Technologies**" (the "Law"), which was put into effect on 7 July 2020.

Please see below the changes, which we deem most important for the business activities of companies.

■ Changes in the Legislation on Informatization

Many new concepts were introduced into the Kazakhstan legislation in the sphere of information technologies. Please see below the key concepts.

■ Digital asset

From now on, the [Law](#) on Informatization contains the concept of a "digital asset", which means *"property created in the electronic-digital form applying the cryptographic means and computer-based calculations, which is not a financial instrument, the underlying asset of which is securities, and the electronic-digital form of certifying property rights."*

According to the changes introduced into the [Civil Code](#), digital assets are referred to material benefits and rights (property). The concept and the types of digital assets, as well as the specifics of circulation of digital assets, are determined by the Kazakhstan legislation and acts of the Astana International Financial Center.

The Law determined the legal regime of circulation of digital assets, pursuant to which a digital asset is not a payment facility. Digital assets are divided into secured and unsecured assets. Secured digital assets include digital tokens and other digital assets that are a digital means of certifying property rights to goods and/or services produced (provided) by a person that issued a secured digital asset. Unsecured digital assets include digital tokens received as a reward for the participation in maintaining the blockchain consensus algorithm in accordance with the procedure established by the Kazakhstan legislation.

Issue and circulation of unsecured digital assets in the Kazakhstan territory is prohibited, except for the cases envisaged by the Kazakhstan legislation.

■ Blockchain

According to legislation, understood as blockchain is an *"information and communication technology, which ensures inalterability of information in the*

distributed data platform based on the chain of inter-related data blocks, specified integrity confirmation algorithms and encryption means."

Right to a digital asset is certified by a blockchain entry by a person issuing a digital asset on a distributed data platform in accordance with the procedure established by the Kazakhstan legislation.

Understood as a "**distributed data platform**" is a *"technological platform, components of which are connected with each other by the specified algorithms and located at different network nodes, and may have one or more owners and different data identity levels."*

"Digital mining" is determined as the *"process of calculation operations performed using the computer, generating capacities as per the specified encryption and data processing algorithms, which ensures confirmation of the data blocks integrity in the computer systems by way of blockchain."*

"Digital token" is determined as a *"type of a digital asset, which is a digital means of accounting, exchange and certification of property rights."*

Understood as the **"space of the Kazakhstan segment of the Internet"** is the *"aggregate of Internet resources placed on hardware and software complexes located in the territory of the Republic of Kazakhstan."*

The law-maker also introduced the concepts of "digital document service," "electronic information resources," "electronic industry," "authorized agency in the sphere of electronic industry," "intelligent robot" and some other.

■ Changes in the Personal Data Legislation

The [Law](#) on Personal Data and Protection Thereof underwent the key amendments, as follows:

- **Establishment of an authorized agency in the personal data protection sphere.** The authorized agency's competence embraces, among other things, approval of the rules for collection and processing of personal data and taking of measures to bring the persons violating the legislation on personal data and protection thereof to liability as per the Kazakhstan legislation.
- **Introduction of the concept of "service ensuring safety of personal data",** which means a *"service ensuring information interaction of owners and/or operators with the subject, including obtainment of the subject's consent to collection and processing of personal data or transfer thereof to third parties, including by way of implementing such interaction independently by owners and/or operators."*

In light of the latest amendments, consent to collection and processing of personal data must be given in writing in the form of an electronic document or by using the *service ensuring safety of personal data* or by any other means applying the protective action elements that do not contradict the Kazakhstan legislation. Please note that legislation is silent as to the elements of protective actions an owner/operator of the database of personal data may/must apply when obtaining consent to the personal data collection and processing.

- **Setting out the personal data collection and processing conditions in a detailed manner.** According to such conditions, personal data processing must

be limited by reaching specific predetermined and lawful purposes. Personal data processing inconsistent with the personal data collection purposes is not allowed. Personal data, the content and scope of which are excessive with respect to the processing purposes, are not subject to processing.

- **Introduction of voluntary cyber insurance**, the purpose of which is to compensate for property damages caused to a subject, owner and/or operator, third party, in accordance with the Kazakhstan legislation on insurance and insurance activities. Voluntary cyber insurance is taken out by virtue of the parties' expression of will. Types, conditions and procedure for taking out voluntary cyber insurance are determined by the parties' agreement.
- **Establishment of additional obligations of an owner and/or operator, person responsible for the organization of the personal data processing:** (i) to afford an opportunity on a free-of-charge basis to a subject or his/her legal representative to review personal data relating to such subject; (ii) to appoint a person responsible for the organization of the personal data processing in the event an owner and/or operator are legal entities.

According to the changes, a person responsible for the organization of the personal data processing must: (i) exercise internal control over compliance by the owner and/or operator and their employees with the Kazakhstan legislation on personal data and protection thereof; (ii) bring provisions of the Kazakhstan legislation on personal data and protection thereof relating to personal data processing and requirements to personal data safety to the notice of employees of the owner and/or operator; (iii) exercise control over the acceptance and processing of applications from subjects or their legal representatives.

■ **Changes in the Legislation on Electronic Document and Electronic Digital Signature**

The below key changes were introduced into the [Law](#) on Electronic Digital Document and Electronic Digital Signature:

- **Establishment of the authorized agency in the sphere of ensuring information security**, whose competence embraces, among other things, the development and approval of the rules for accreditation of certification centers.
- **Changes in instances where a foreign electronic digital signature is recognized in Kazakhstan**, which includes as follows: (i) authentication of a foreign electronic digital signature by a trusted third party of the Republic of Kazakhstan; (ii) person signing an electronic document lawfully owns a private key to a foreign electronic digital signature; (iii) foreign electronic digital signature is used in accordance with the information specified in the registration certificate; and (iv) formed by means of an electronic digital signature of a foreign certification authority registered in the trusted third party of the Republic of Kazakhstan, or in a foreign certification authority registered in the trusted third party of a foreign country registered in a trusted third party of the Republic of Kazakhstan.

■ **Changes in the sphere of immovable property transactions**

According to the changes, in the event of non-cash settlements under a transaction with immovable property effected in a simple written form, the registration authority

sends a notice subject to the parties' agreement concerning the effected registration to a send-tier bank or the National Postal Operator where the bank account is opened in order to secure the transaction.

In the event a transaction is effected at a notary, the notary provides the above persons with information concerning certification of the transaction and information of the registration authority concerning the effected registration or refusal or suspension of the state registration of rights to immovable property using the unified notarial information system.

■ Changes in the Legislation on Banks and Banking Activities

The law-maker supplemented the instances that do not constitute banking secrecy disclosure, which include, pursuant to the changes, as follows:

- Provision of information pursuant to the state revenue authority's request on taxpayers – individual registered as an individual entrepreneur or a privately practicing person, legal entity – *on total amounts of payments for a calendar year coming to the current account by using the equipment (device) intended for making payments using payment cards.*
- In the event of certification of the immovable property alienation contract effected by a notary, provision of information in the electronic form by a bank pursuant to the notary's request in the electronic form submitted with consent of the bank's client on the presence and amount of money on the escrow account opened for the bank's client to effect a non-cash transaction with immovable property.

Other changes include establishment of the **Unified Duty Dispatcher Service "112,"** whose activities will commence starting from 1 January 2023. This service will coordinate the activities of interacting duty dispatcher services and departments on prompt responses in the event of violations, accidents, critical emergencies, emergency aid, natural calamities and other emergencies.

Should you have any additional questions in connection with this Legal Update, we would be happy to provide more detailed information.

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Legal Update shall not be treated as a legal advice or a reason for making specific decisions on the Kazakh law issues. Should you need a legal advice, we would be happy to assist.

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