

# DATA PROTECTION COMPLIANCE in the CIS and neighboring countries:

## Top 10 Frequently Asked Questions



# Kazakhstan



## | What information is defined as personal data?

Personal data means: information relating to the data subject identified, or to be identified, on the basis of such information, recorded on an electronic, paper and/or any other tangible medium. Personal data includes: full name, address of residence, information on citizenship, date of birth, information on education, marital status, biometric data, individual identification number, etc. The source, or the subject, of personal data may be an individual only.

The law defines two types of personal data – public and restricted data. Public personal data is the data considered as such, by virtue of the Kazakh legislation (such as the name of an individual entrepreneur, name, place and date of birth, within the state statistical accounting, etc.) or by virtue of the individual's consent to use such data in a publicly-available manner.

The personal data protection laws do not contain an exhaustive list of restricted personal data, but provide for an obligation of a person collecting personal data, for its needs, to elaborate and approve the “List of Personal Data Required and Sufficient for Achievement of the Objectives Pursued by an Owner and/or Operator”.

## | Do data protection laws in Kazakhstan apply to foreign companies?

The requirement to localize personal data applies only to persons carrying out their activities in Kazakhstan. The data protection laws apply to foreign companies doing business in Kazakhstan through their dependent agents (for example, distributors), even without the establishment of a local legal entity, representative office, or a branch.

## | Are there any local data storage/localization requirements in Kazakhstan?

The Law establishes a direct obligation of the personal data database owner, or operator, to store personal data in a database located in Kazakhstan. The owner of a database containing personal data is a person who collects data, uses the database in its business activities and has the right to dispose of such database itself, at its own discretion. The database operators are persons who use databases in their activities, with the owner's consent, or render data storage, or processing services to the owner. Kazakhstan citizens' personal data shall be stored mainly in Kazakhstan. It may be transferred to other states, only subject to compliance with requirements on personal data database localization and necessity, to ensure appropriate personal data protection.

## | How is the use of cookies and other tracking technologies regulated from the data protection perspective?

Processing of personal data, with the use of tracking technologies, is governed by the general rules of the Kazakh laws: there are no specific regulations in this regard. Cookies relate to electronic information resources containing restricted personal data, so local information laws govern their protection. Owners and possessors of information systems must take measures to protect cookies, from the moment of access to cookies containing personal data, until their destruction or anonymization.



**| Are there any local privacy policy requirements in Kazakhstan? How can global policies (e.g., GDPR-based) be implemented locally?**

Owners and/or operators and third parties that have access to restricted personal data must ensure its confidentiality, by preventing distribution of such personal data, without consent of the data subject (or its legal representative), or any other legal ground. In this sense, implementation of the local privacy policy serves as a basic measure for the protection of personal data.

The Kazakh legislation does not provide for a legal mechanism of implementing global policies in the area of personal data, such as the GDPR; however, Kazakhstan pursues the general principles of ensuring personal data protection. From the practical perspective, it is possible to implement global policy locally, provided that it is reviewed, as per the Kazakhstan legal requirements, and translated into Russian, or Kazakh language.

**| Are there any requirements relating to data disclosures/transfers to the third parties?**

Transfer, or disclosure, of personal data to a third party, is only allowed with the consent of an individual or his/her legal representative.

The Kazakh laws provide for a number of cases where personal data may be transferred without the individual's consent (in the course of activities of law-enforcement authorities and courts, enforcement proceedings, or state statistical activities, etc.).

**| Are there any specific requirements relating to personal data processing performed for direct marketing purposes?**

Personal data processing for direct marketing purposes is not directly regulated by the Kazakhstan legislation; however, based on the general rules, it is only allowed in case of complying with requirements relating to protection of rights and liberties of man and citizen, when collecting and processing personal data (there must be an individual's consent, the purpose limitation principle shall be met, etc.).

**| Are there any other data protection/privacy requirements companies in Kazakhstan to comply with?**

In order to regulate the scope of "personal data" being processed each legal entity must draft, and approve, the list of personal data required and sufficient for attaining the pursued objectives.

## | What data protection/privacy rights do individuals enjoy in Kazakhstan?

The individuals enjoy the rights to:

- know that an owner and/or operator, or a third party, has his/her personal data and receive information on the fact, purpose, sources and methods of collecting and processing personal data, obtain a list of personal data, term of personal data processing, including the term of storage;
- request that an owner and/or operator changes, or supplements, the data subject's personal data, if there is a basis to do so, verified by relevant documents;
- request an owner and/or operator, or a third party, to block and to destroy the data subject's personal data that was collected and processed, in violation of the Kazakh legislation;
- withdraw a consent to personal data collection and processing;
- give a consent to an owner and/or operator to distribution of the data subject's personal data in public sources, or refuse to do so;
- seek for the protection of own rights and legitimate interests, including to claim compensation of reputational and material damages suffered; etc.

## | What are the sanctions for non-compliance with data protection laws?

The Kazakh laws do not set out specific sanctions for the failure to comply with the localization requirement. However, it may constitute a general offence associated with unlawful processing of personal data and failure to comply with the security requirement. This entails administrative fines up to 1,000 Monthly Calculation Indices (“MCI”) and, in some cases, seizure of the tools used for unlawful data processing. MCI is an index used in Kazakhstan for calculation of various social payments as well as penal sanctions, etc. Now its unit is valued at KZT 2,778 (approx. USD 7), so the maximum administrative fine now is about USD 7,000.

There is also a criminal liability for data protection offences (e.g., where failure to comply with the requirements entails substantial damages). Applicable penalties include criminal fines, imprisonment, limitation of liberty, corrective labor or community service, and disqualification.

