



GRATA
INTERNATIONAL

**Expected changes in the legislation
of the Republic of Kazakhstan on
personal data**

Leila Makhmetova
Counsel
Ph. +7 701 221 90 16
Email: lmakhmetova@gratanet.com

Zarina Malikova
Lawyer
Ph. + 7 747 141 05 33
Email: zmalikova@gratanet.com

Expected changes in the legislation of the Republic of Kazakhstan on personal data

The Parliament of the Republic of Kazakhstan is considering a draft law of the Republic of Kazakhstan 'On the Introduction of Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Regulation of Digital Technologies' (hereinafter - the '**Draft Law**').

The Draft Law introduces a number of amendments to the Law of the Republic of Kazakhstan, dated 21 May 2013, 'On Personal Data and Protection Thereof' (hereinafter – the '**Law**'). Main changes to the Law are summarised below.

Competent Authority for Personal Data Protection

The Draft Law proposes to introduce the concept of a competent authority for personal data protection (hereinafter - the 'Competent Authority'). This body is defined as the central executive authority managing in the area of personal data protection. Its competence will include, inter alia:

- 1) taking part in the implementation of state policy in the area of personal data protection;
- 2) development of rules for the implementation by the Owner¹/Operator²/third parties³ of measures to protect personal data;
- 3) addressing applications of the Subjects⁴ for compliance of the personal data content and methods of their processing to the purposes of their processing and taking an appropriate decision;
- 4) taking measures to make persons, who has violated the legislation of the Republic of Kazakhstan on personal data and protection thereof, liable;
- 5) requiring from the Operator to clarify, block or destruct personal data, where they are unreliable or were obtained illegally;
- 6) approval of the Rules for the Personal Data Collection and Processing.

We believe that the creation of the Competent Authority should lead to increased control over the activities of persons involved in the collection and processing of personal data.

Accessibility of Personal Data

The Draft Law provides for the inclusion of several additions in Article 6 of the Law ('Accessibility of Personal Data') that strengthen the position of the Personal Data Subject.

First, it is proposed to define “publicly available personal data” as “personal data or information that is not subject to the requirements of confidentiality in accordance with the legislation of the Republic of Kazakhstan, and that are freely accessible with the consent of the Subject”. This wording means that to recognise certain personal data as First, it is proposed to define “publicly available personal data, two conditions must be met simultaneously: 1) confidentiality of the personal data is not required by law, and 2) access to personal data is free with the consent of the Subject.

The current version of the article provides that publicly available personal data shall include personal data that is freely accessible with the consent of the Subject or that, in accordance with the legislation of the Republic of Kazakhstan, is not subject to confidentiality requirements.

¹ The owner of the personal database (hereinafter - the 'Owner') means a state authority, individual and(or) legal entity that, in accordance with the laws of the Republic of Kazakhstan, exercise the right to own, use and dispose of the database containing personal data.

² Operator of the database containing personal data (hereinafter - the 'Operator') means the state authority, individual and(or) legal entity engaged in the collection, processing and protection of personal data.

³ Third party means a person, which is not the Subject, Owner and(or) Operator, but is connected therewith by legal circumstances or relations for the collection, processing and protection of the personal data.

⁴ Personal Data Subject (hereinafter - the 'Subject') means an individual, to whom the personal data refers.

Besides, the Draft Law suggests including the following new provisions in Article 6 of the Law:

- 1) details of the Subject, which were collected and processed in violation of the legislation of the Republic of Kazakhstan, shall be excluded from public sources at any time at the request of the Subject or by decision of the court or other competent state authorities;
- 2) in this case, the costs related to the removal of the personal data from publicly available sources shall be incurred by the Owner and (or) the Operator, a third party;
- 3) the amount of costs arising from the withdrawal of the Subject's consent to the distribution of its personal data in public sources, or those related to the removal of the personal data from such sources, as well as the persons, who are charged with these expenses, if necessary, shall be determined in court.

Thus, if the Draft Law is adopted as proposed, the Owners, Operators and third parties will have to exercise great discretion when disseminating personal data, as well as provide for mechanisms for the removal of personal data from public sources in cases, where the law considers it is necessary.

Conditions of Collection and Processing of Personal Data

The Draft Law provides for the inclusion of two new paragraphs in Article 7 of the Law ('Conditions of Collection and Processing of Personal Data') that refer to the personal data processing:

- 1) processing of personal data shall be limited to the achievement of specific, predetermined and legitimate goals. Personal data processing unsuitable for the purposes of personal data collecting shall be prohibited;
- 2) personal data, which content and volume are redundant with respect to the purposes of their processing, shall not be subject to processing.

Thus, in case of adoption of the Draft Law in its current version, when developing documents confirming consent to the collection and processing of personal data and intended for signing by personal data Subjects, the Owner and (or) Operator will have to provide for:

- 1) an exhaustive list of specific purposes for the use of personal data;
- 2) an exhaustive list of the types of personal data necessary to achieve the intended purposes. At the same time, storing redundant personal data (which, as we understand, will include personal data that are unnecessary to achieve the intended purposes) will be unacceptable, because actions aimed at storing personal data are covered by the concept of 'processing'.

Please also note that according to the Draft Law, the collection and processing of personal data will be performed in the procedure to be determined by the Competent Authority.

Procedure for Granting (Withdrawal) of the Subject's Consent for Collection and Processing of Personal Data

The Draft Law provides for amendments to Article 8 of the Law ('Procedure for Granting (Withdrawal) of the Subject's Consent for Collection and Processing of Personal Data') that entitle the Subject and its legal representative to grant or withdraw its consent to the collection and processing of personal data through the personal data security service (hereinafter - the 'Service'). The Service means an electronic service that provides for information interaction between the Owners and (or) Operators and the Subjects in order to exercise the rights of the latter.

According to the clarifications of the Draft Law developers given in the comparative table thereto, the Service operation will ensure the protection of personal data from unauthorized access in state databases.

Use of Personal Data

The Draft Law proposes to include the following provision in Article 14 of the Law ('Use of Personal Data'): "Processing of personal data shall be limited to the achievement of specific, predetermined and legitimate goals. Thereat, personal data processing unsuitable for the purposes of personal data collecting shall be prohibited."

Since the use of personal data is covered in the concept of their processing, the use of personal data, in case of adoption of the Draft Law, will be only permitted to achieve specific, predetermined and legitimate goals.

Cyber Insurance

The Draft Law provides for the inclusion in the Law of new Article 23-1 'Cyber Insurance'. Pursuant to the Draft Law, the purpose of cyber insurance is to compensate for property damage caused to the Subject, Owner and (or) Operator, third party.

The Draft Law offers only voluntary insurance indicating that its types, conditions and procedure shall be determined by an agreement between the insurer and the insured.

The Draft Law developers in the comparative table thereto explain as follows: "Cyber insurance is an insurance product that protects large companies and individual users from the risks associated with the use of the Internet. Enterprises that provide data storage services can also insure their information resources (server, "cloud") and, in the future, in case of unauthorised access to these arrays, compensate their customers for losses incurred at the expense of the insurer." Cyber insurance is considered as an additional measure to protect the interests of the Owners, Operators and Subjects.

Person Responsible for Arrangement of Personal Data Processing

The Draft Law proposes to supplement Article 25 of the Law ('Rights and Obligations of the Owner and (or) Operator') with the following provisions.

The Owner and (or) the Operator, which is a legal entity, shall appoint a person responsible for arrangement of the personal data processing. This requirement will not apply to the processing of personal data by courts and judicial authorities.

The person responsible for the arrangement of the personal data processing is proposed to perform the following responsibilities:

- 1) internal control over the observance by the Operator and its employees of the legislation of the Republic of Kazakhstan on personal data, including the requirements for their protection;
- 2) informing the Operator's employees of the provisions of the legislation of the Republic of Kazakhstan on personal data, local acts on the personal data processing, requirements for the personal data protection;
- 3) control over the receipt and processing of applications and requests of the Subjects or their representatives.

Liability for Violation of the Legislation of the Republic of Kazakhstan on Personal Data and Protection Thereof

Small changes were also made to the Code of the Republic of Kazakhstan dated 5 July 2014 'On Administrative Violation' (hereinafter - the 'Administrative Code'), in terms of the liability for violation of the requirements of the legislation on personal data and protection thereof. Pursuant to Part 1 of Article 79 of the Administrative Code as amended, the illegal collection and processing of personal data shall entail a fine of 10 to 70 MCI⁵ with a possible seizure of objects or instruments of the administrative violation. In the wording proposed by the Draft Law, seizure of objects or instruments of the administrative violation is not provided. Moreover, the Draft Law proposes to supplement Article 79 with Part 3-1, under which the use of electronic information resources containing personal data about individuals in order to cause them property and (or) moral harm, restrict the rights and freedoms guaranteed by the laws of the Republic of Kazakhstan, shall entail a fine of 20 to 200 MCI.

Thus, if the Draft Law is adopted as is, the positions of the Subjects will be strengthened, and the requirements for the collection and processing of personal data will be tightened. In order to avoid risks, Owners and Operators will need to bring their processes for collecting, processing and protecting personal data, as well as related documentation, in line with the legislation of the Republic of Kazakhstan on personal data as amended.

⁵ Monthly Calculation Index (MCI) is a monetary amount defined by the laws of the Republic of Kazakhstan to calculate benefits and other social payments, as well as penalties, taxes and other payments in accordance with the legislation of Kazakhstan. In 2020, 1 MCI is 2,651 Tenge, which equals to 7 US Dollars.

We hope this Alert prepared by GRATA Law Firm would be useful for you. If you have any questions or require further comments, please feel free to contact us. We would be pleased to assist you. We are constantly trying to improve the quality of our services, in this regard we would be grateful for your recommendations or suggestions. Besides, if we missed something while working on your project, please let us know.

Regards,

Leila Makhmetova

Counsel

Ph. +7 701 221 90 16

Email: lmakhmetova@gratanet.com

Zarina Malikova

Lawyer

Ph. + 7 747 141 05 33

Email: zmalikova@gratanet.com

*This information is provided for your convenience and does not constitute legal advice. This information has been prepared to inform our clients and other persons concerned. This information should not be acted upon in any specific situation without appropriate legal advice. This information may contain links to websites other than **GRATA website**.*