DATA PROTECTION & PRIVACY

Kazakhstan

LEXOLOGY
Getting The Deal Through

Consulting editor
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Data Protection & Privacy

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Quick reference guide enabling side-by-side comparison of local insights into the legislative framework; relevant authorities; treatment of breaches; legitimate processing; data handling responsibilities of PII owners; security obligations; internal controls, including the data protection officer; registration formalities transfer and disclosure of PII; rights of individuals; judicial supervision; specific data processing use cases such as cookies, electronic communications marketing, and cloud services; and recent trends.

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LAW AND THE REGULATORY AUTHORITY

Legislative framework

Summarise the legislative framework for the protection of personal information (PI). Does your jurisdiction have a dedicated data protection law? Is the data protection law in your jurisdiction based on any international instruments or laws of other jurisdictions on privacy or data protection?

Kazakhstan protects personal information in the context of a fundamental constitutional right to the inviolability of private life. The Constitution of the Republic of Kazakhstan (article 18) protects the right to inviolability of private life, personal and family secrets, honour and dignity of a person, the secret of deposits and savings, the secret of correspondence, telephone conversations, postal, telegraphic and other messages. The Constitution prohibits any persons and the state from restricting these rights and provides that any restrictions can be established in cases strictly defined by the Constitution and laws.

The norms of constitutional, criminal, administrative, civil legislation and special legislative acts clarify and supplement the constitutional norm. The main legal acts protecting the PI are the Civil Code of the Republic of Kazakhstan , the Criminal Code of the Republic of Kazakhstan , the Code on Administrative Infractions of the Republic of Kazakhstan , the Code on Criminal Procedure of the Republic of Kazakhstan , the Code of the Republic of Kazakhstan dated 7 July 2020 'On Public Health and Healthcare System ', Law of the Republic of Kazakhstan dated 24 November 2015 'On Informatisation' , Law of the Republic of Kazakhstan dated 16 November 2015 'On Access to Information' , Law RK dated 30 December 2016 'On Fingerprint And Genomic Registration' , Law of the Republic of Kazakhstan dated 5 July 2004 'On Communications' , Law of the Republic of Kazakhstan dated 15 September 1994 'On Operational Investigations' , Law of the Republic of Kazakhstan dated 6 January 2011 'On Law Enforcement Service' , Law of the Republic of Kazakhstan dated 19 March 2010 ' On State Statistics' , Law of the Republic of Kazakhstan dated 31 August 1995 'On Banks And Banking Activities in the Republic of Kazakhstan' and others.

In 2013 Kazakhstan adopted the special Law of the Republic of Kazakhstan dated 21 May 2013 'On Personal Data And Their Protection' (the Personal Data Law). The Personal Data Law provides general requirements for collecting, processing, and protecting PI. In some cases, the special Personal Data Law applies in combination with above mentioned legal acts. The scope of regulation of the Personal Data Law does not include the protection of PI for personal and family needs, for storage in the National Archive Fund and archives, to PI classified as state secrets, as well as in connection with intelligence, counterintelligence, criminal-intelligence operations, and ensuring the security of protected persons and objects.

The OECD guidelines, Convention 108, EU Directive 95/46/EC, and EU Directive 2002/58/EC, were considered by the scientific and economic experts of the Ministry of Internal Affairs of Kazakhstan while drafting the Personal Data Law in 2012. However, the provisions of the Law are not as detailed as international and European legal instruments on PI protection.

Law stated - 07 August 2023

Data protection authority

Which authority is responsible for overseeing the data protection law? What is the extent of its investigative powers?

The Personal Data Law states that the government develops the primary policy in the data protection sphere. Under the Law, the Prosecutor's office of the Republic of Kazakhstan and the Ministry of Digital Development, Innovation and

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Aerospace Industry of the Republic of Kazakhstan oversee the data protection legislation.

The Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan (the DPA) is a multi-sectoral central executive body that carries out leadership and cross-sectoral coordination in the areas of the electronic industry, the field of innovation, scientific and technological development of the country, geodesy, cartography and spatial data, information security in the fields of informatisation, 'electronic government', personal data and their protection, digital assets, project management, as well as in the field of communications, development of state policy in the area of public services and data management.

The Entrepreneurial Code of the Republic of Kazakhstan provides general requirements and procedures for conducting inspections of business entities by state bodies and a list of areas of activity (business) subject to the state inspections. The list does not expressly indicate the area of personal data protection. However, the facts of non-compliance with the data protection legislation can be detected during inspections in the field of informatisation, legislation on media, television and radio broadcasting, communications and others. In the event that the data protection requirements are violated during inspections, state bodies transfer materials to the Data Protection Authority to initiate proceedings on an administrative infraction under the Code of Administrative Infractions.

Separately from the Entrepreneurial Code, the Code on Administrative Infractions allows the DPA to initiate an administrative case on personal data protection based on materials from law enforcement agencies, statements from any person, and media reports. According to the Code on Administrative Infractions, the DPA considers administrative offences in data protection cases and imposes administrative penalties. Within the framework of administrative proceedings, the DPA may inspect premises, property, and documents, seize evidence, gain access to databases and exercise other powers based on the legislation.

The DPA also considers appeals of data subjects on any issues in the field of personal data protection following the procedure provided for by the Administrative Procedural and Process-Related Code of the Republic of Kazakhstan.

The Prosecutor's office oversees the observance of the law in the field of personal data and their protection.

Law stated - 07 August 2023

Cooperation with other data protection authorities

Are there legal obligations on the data protection authority to cooperate with other data protection authorities, or is there a mechanism to resolve different approaches?

The Personal Data Law does not provide for the legal obligation of the DPA to interact or cooperate with other DPAs. Still, a general rule exists to exercise other powers according to the legislation. One of the tasks and functions of the Kazakhstani DPA is international cooperation in regulated areas within its competence following the legislation of the Republic of Kazakhstan, as well as the implementation of international agreements to which the Republic of Kazakhstan is a party.

The legislation of Kazakhstan does not contain any mechanism to resolve different approaches, and there are no international agreements in the field of personal data protection, except for the sphere of cooperation on criminal offences, the fight against terrorism, violations of immigration laws and the financing of terrorism. The EAEU is developing a draft international agreement on data circulation in the EAEU (including the protection of personal data), which may include provisions on the interaction of the DPA within the union.

Law stated - 07 August 2023

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Breaches of data protection law

Can breaches of data protection law lead to administrative sanctions or orders, or criminal penalties? How would such breaches be handled?

Any breach of data protection law leads to administrative sanctions or criminal liability, depending on the gravity of the violation.

Administrative liability is provided for such data protection breaches as illegal collection and processing of PI; non-compliance with measures to protect PI, including non-compliance resulting in the loss, illegal collection and (or) processing of PI; distribution in the media or telecommunications networks of personal and biometric data, other information that allows identifying the identity of a minor; and other violations.

The DPA initiates the administrative case based on materials other state authorities provide, under the application of the natural person or legal entity, or the information in the mass media. Based on the administrative inspection results, evidence collection, and other proceedings, the DPA issues a resolution on imposing administrative penalties. In some instances, the Code on Administrative Infractions allows exemption from administrative liability for the illegal collection and processing of personal data due to the reconciliation of the victim with the person who committed the administrative offence.

Criminal liability is provided for similar offences if they cause significant harm to the rights and legitimate interests of persons. Among the criminal violations are:

- illegal collection of information constituting a personal or family secret of a person, without his or her consent and their illegal distribution, including the media, telecommunications networks and the Internet;
- illegal collection or processing of other personal data;
- non-compliance with measures to protect personal data by a person who should take these measures; and
- illegal violation of the secrecy of correspondence, telephone conversations, postal, telegraphic or other communications of individuals, including those committed by a person using his or her official position or special technical means, or by illegal access to electronic information resources, information system or illegal interception of information transmitted over networks telecommunications.

Depending on the type, criminal offences in personal data protection are considered cases of private, private-public, or public prosecution. Under a private prosecution procedure, a natural person files a complaint with the court to bring a person to criminal responsibility. The prosecutor opens a criminal case of private prosecution or a private-public prosecution case. Before the court passes a verdict, the law allows closing the case of a private and private-public prosecution because of reconciliation between the victim and the accused.

All applications and reports of criminal offences are subject to pre-trial investigation by the internal affairs bodies or the economic investigation service. Only in private prosecution cases are materials sent to the court without pre-trial investigation.

The prosecutor receives a report on the completion of the pre-trial investigation and draws up an indictment if there are no grounds for additional investigation or dismissal of the case. The prosecutor acquaints the accused with the indictment and submits the case to the court. The court issues a verdict if there are no grounds for additional investigation or dismissal of the case.

The Criminal Code establishes higher penalties for these criminal offences. In addition, instead of a fine, violators may face more severe punishment such as community service, restriction or imprisonment, and deprivation of the right to hold certain positions or engage in certain activities.

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Law stated - 07 August 2023

Judicial review of data protection authority orders

Can PI owners appeal to the courts against orders of the data protection authority?

Yes, the legislation provides the right of PI owners to appeal to the courts against the resolutions of the DPA. Also, the resolution of the courts could be appealed in the higher courts.

Law stated - 07 August 2023

SCOPE

Exempt sectors and institutions

Does the data protection law cover all sectors and types of organisation or are some areas of activity outside its scope?

The Personal Data Law does not apply to the collection, processing and protection of data in the field of:

- exclusively personal and family needs;
- formation, storage and use of archival documents, including documents of the National Archival Fund of the Republic of Kazakhstan;
- state secrets; and
- intelligence, counterintelligence, operational-search activities, and the implementation of security measures to ensure the safety of protected persons and objects. The Law dated 3 October 1995 'On the State Security Service of the Republic of Kazakhstan' ensures the security of the President, former presidents, the heads of Parliament's chambers, the Prime Minister, representatives of international organisations, national and foreign states officials and other persons. The buildings and structures intended for protected persons to reside in and the adjacent territory refer to the protected objects.

However, in any field of activity, any collection and processing of personal data should not violate the rights of other individuals and (or) legal entities and be carried out in strict compliance with the requirements of the laws of the Republic of Kazakhstan.

Law stated - 07 August 2023

Interception of communications and surveillance laws

Does the data protection law cover interception of communications, electronic marketing or monitoring and surveillance of individuals?

The Constitution restricts the secrecy of correspondence, telephone conversations, postal, telegraphic, and other communications only in cases established by law and only to the extent necessary to protect the constitutional system, public order, human rights and freedoms, health, and morality. The Personal Data Law prohibits the collection and processing of personal data without the data subject's consent or the requirement of law.

In addition to the Personal Data Law, the Law 'On Communications' obliges telecom operators to ensure the secrecy of correspondence, telephone conversations, postal items, telegraphic and other messages transmitted over telecommunications networks. Violation of secrecy entails liability under the laws of the Republic of Kazakhstan.

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However, communication and correspondence interception is allowed to protect the constitutional system, public order, human rights and freedoms, health, and morality. The Constitutional Law dated 5 November 2022 'On the Prosecutor's Office' , the Law dated 6 January 2012 'On National Security' , the Law 'On Operational Investigations', and other legislation in the sphere of criminal law and national security govern the interception of communications, monitoring and surveillance of individuals. The Law on Operational Investigations allows law enforcement agencies to secretly get acquainted with the content of correspondence, letters, telegrams, and radiograms; carry out covert audio or video monitoring of a person or place, or both; secretly receive information about connections between subscribers; secretly listen and record voice information transmitted by telephone or other devices; intercept voice information, written text, images, video images, sounds and other information transmitted via wire, radio, optical and other electromagnetic systems. However, any law enforcement activity should be based on principles of lawfulness, priority of human rights, and maintaining a balance of interests of a person, society, and the state.

According to the Law on Informatization, Kazakhstan has introduced the National Video Monitoring System, which collects, processes and stores video images solely to ensure national security and public order. The National Security Committee and the State Security Service determine the list of objects that are connected to the National Video Monitoring System. The video surveillance systems of the central state and local governing bodies, video surveillance systems of terrorist-vulnerable facilities, video surveillance systems for public and road safety must be connected to the National Video Monitoring System.

The Personal Data Law, the Law of the Republic of Kazakhstan dated 19 December 2003 'On Advertising' , and the Law of the Republic of Kazakhstan dated 12 April 2004, 'On the Regulating of Trading Activities' do not provide specific requirements or restrictions to data collection and processing in electronic marketing. The data subject's consent is the main requirement for data collection and processing for targeted advertisements and other marketing methods using electronic means.

Law stated - 07 August 2023

Other laws

Are there any further laws or regulations that provide specific data protection rules for related areas?

Among the notable acts, the following laws shall be indicated: the Law 'On Informatisation'; the Law 'On Access to Information', the Law 'On Fingerprint And Genomic Registration'; the Law 'On Communications', the Law 'On Operational Investigation', the Law 'On Banks And Banking Activities in the Republic of Kazakhstan', the Code 'On Public Health And the Healthcare System' and other legislation.

Law stated - 07 August 2023

PI formats

What categories and types of PI are covered by the law?

The Personal Data Law lays down general requirements for collecting, processing, and protecting all types of PI. However, other laws could provide specific requirements for certain PI types. For instance, the Code 'On Public Health and the Healthcare System' provide requirements for personal medical data. Another example is the Law 'On Informatisation', which establishes additional provisions for the protection of personal data of limited access, PI in electronic-digital form, including the functioning of e-Government and providing the state services in electronic form. The Law 'On Fingerprint And Genomic Registration' covers the collection, processing, and protection of fingerprint and genomic information, establishes the state agencies authorised to data collection and processing, the grounds and

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cases of collection and processing of PI.

Law stated - 07 August 2023

Extraterritoriality

Is the reach of the law limited to PI owners and processors physically established or operating in your jurisdiction, or does the law have extraterritorial effect?

The Personal Data Law does not have an extraterritorial effect. According to the Law of the Republic of Kazakhstan dated 6 April 2016, 'On Legal Acts' , the legislation on personal data protection applies within the territory of Kazakhstan.

Law stated - 07 August 2023

Covered uses of PI

Is all processing or use of PI covered? Is a distinction made between those who control or own PI and those who provide PI processing services to owners? Do owners', controllers' and processors' duties differ?

The Personal Data Law regulates all processing and using PI, namely, the accumulation, storage, modification, addition, use, distribution, depersonalisation, blocking and destruction of personal data.

Instead of the concept of the owner, processor and data controller, Kazakhstani law contains similar concepts of the owner of the database containing personal data, the operator of the database containing personal data, and a third party who is associated with the owner or operator of the database by circumstances or legal relations for the collection, processing and protection of personal data.

The obligations of the owner and operator of the database containing personal data, and the third party, on protecting personal data do not differ.

Law stated - 07 August 2023

LEGITIMATE PROCESSING OF PI

Legitimate processing – grounds

Does the law require that the processing of PI be legitimised on specific grounds, for example to meet the owner's legal obligations or if the individual has provided consent?

Yes, the law provides the processing is legitimate if the data subject consented or in cases when the consent is not required by the legislation. The Regulations for the Collection, Processing of Personal Data requires collecting PI after the consent is received.

The consent should be given in writing, by way of government service, non-government service or in any other way that allows confirming the identity of the person and obtaining consent. As a determining condition for obtaining consent, government and non-government services imply the passage of identification. A public service user, including e-government, is identified using a biometrics system; electronic digital signature; one-time password; Digital ID systems; paper media. In other cases, the legislation also provides for the use of digital certificates, tokens, smart cards, and one-time password generators.

The law provides requirements for the content of the data subject's consent. The consent must include:

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- the name and identification number of the data operator;
- full name of the data subject;
- the term or period during which the consent is valid;
- information about the possibility or lack of transferring personal data to third parties;
- information about the presence or absence of cross-border transfer of personal data in their processing;
- information about the dissemination of personal data in public sources;
- list of collected data related to the data subject; and
- other information is determined by the database owner, the database operator, or both.

Although data collection should be carried out based on data minimisation and purpose limitation principles, these requirements often are not observed in practice. In Kazakhstan, the Personal Data Law does not establish these requirements for consent as freely given and informed.

Law stated - 07 August 2023

Legitimate processing – types of PI

Does the law impose more stringent rules for processing specific categories and types of PI?

The Personal Data Law divides personal data by accessibility into two categories: public personal data and personal data of limited access. However, the legislation does not provide an exhaustive list of personal data of limited access. It follows from the Personal Data Law that personal data have limited access if they are confidential under the law, or the subject has not consented to access his data and information. The Personal Data Law establishes a general obligation for owners and operators, as well as third parties, to ensure the confidentiality of personal data of limited access by complying with the requirements to prevent their distribution without the consent of the subject or his or her legal representative, or other legal grounds. When processing personal data of limited access, the database owner ensures the transfer of personal data of limited access to other persons via secure communication channels using encryption; ensures the use of cryptographic information protection tools for the reliable storage of personal data of limited access; and uses means of identification and authentication of users when working with personal data of limited access. Storage and transfer of personal data of limited access are carried out using cryptographic information protection tools that have parameters not lower than the third level of security following the standard of the Republic of Kazakhstan.

The following can be distinguished among the laws that define personal data of limited access and impose more strict requirements for collecting and processing data. The Law 'On Fingerprint And Genomic Registration' clearly indicates that fingerprint and genomic information refer to personal data of limited access. The Law 'On State Statistics' indicates that primary statistical data are confidential with some exceptions. The Law of the Republic of Kazakhstan dated 22 December 2003, ' On State Legal Statistics and Special Accounts' regulates the collection, storage, and processing of personal data for special accounts, which, as a rule, relate to law enforcement functions of the state. The Code of the Republic of Kazakhstan 'On Public Health And Healthcare System' strictly outlines the conditions for collecting and processing personal medical data, prioritising the subject himself and limited medical personnel. The Law 'On Communications' establishes the requirements for collecting and processing service information about subscribers, which contains personal data.

The collection and processing of personal data for employment or credit purposes is carried out following the general requirements of the Personal Data Law.

Law stated - 07 August 2023

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DATA HANDLING RESPONSIBILITIES OF OWNERS OF PI

Transparency

Does the law require owners of PI to provide information to individuals about how they process PI? What must the notice contain and when must it be provided?

Kazakhstani legislation does not expressly provide for the obligation of the operator or controller to notify the subject of the data collection. A collection notice is not required.

The Personal Data Law establishes the general obligation of the owner and the operator, at the subject's request, to report information relating to him or her. Regulations for the Collection And Processing of Personal Data establish three business days from receipt of the subject's application.

The Personal Data Law establishes the right of the subject to know about the existence of his or her PI at the owner, operator and third party, the list of PI, confirmation of the fact, purpose, sources, methods of collecting and processing PI, and terms of processing and storage. Also, the state and non-state services controlling access to personal data notify the data subject about actions with his or her PI (access, viewing, modification, addition, transfer, blocking and destruction). For example, an employment contract is subject to state registration in the state electronic labour exchange. To conclude an employment contract, the employer needs an individual entrepreneur about the address of the employee's residence, information about a criminal record, and alcohol or drug addiction (for certain positions). The employer requests access to such IP through the egovernment service. The employee receives an automatic message about the employer's requests and the opportunity to agree or deny access. The egovernment service automatically notifies the data subject of any individual or legal entity that wants to access and process personal data.

Law stated - 07 August 2023

Exemptions from transparency obligations

When is notice not required?

Kazakhstani legislation does not expressly provide either the exemption or the obligation of the operator or controller to notify the subject of collecting, processing, and using personal data. The provisions of the legislation relate to the consent of the data subject.

In general, consent is not required in the course of the activities of law enforcement agencies, courts and other authorised state bodies that initiate and consider cases of administrative offences, criminal investigations, enforcement proceedings, carrying out the legitimate professional activities of a journalist or the activities of the Mass Media; implementation by the state of control and supervision of the financial market and financial organisations; implementation of tax, customs administration and control; and in other cases established by the laws of the Republic of Kazakhstan. The Constitutional Court explains that the invasion of privacy into personal and family secrets may be considered necessary if this invasion meets the urgent needs of the state and society in specific situations, pursues constitutionally recognised goals (protection of the constitutional order, protection of public order, human rights and freedoms, health, and morality); is proportionate and not excessive. The public good resulting from the restriction in a particular situation may be greater than the harm caused by it.

Law stated - 07 August 2023

Data accuracy

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Does the law impose standards in relation to the quality, currency and accuracy of PI?

The legislation of Kazakhstan does not have requirements for the quality, currency and accuracy of personal data. The subject can require the database owner/operator to change and supplement his or her data if the relevant documents confirm the grounds. After that, the owner/operator must provide information or a reasoned refusal within three working days.

Also, the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan (the DPA) may require the database owner/operator and the third party to clarify, block or destroy false or illegally obtained personal data.

Law stated - 07 August 2023

Data minimisation

Does the law restrict the types or volume of PI that may be collected?

The Personal Data Law lays down a general prohibition to processing personal data, the content and volume of which are excessive for the purposes of their processing. The Law requires the collection of personal data necessary and sufficient to perform the tasks carried out by the owner and (or) operator and a third party. Government Decree No. 1214 , dated 12 November 2013, approved the Rules, according to which the owner/operator determines the list of personal data necessary and sufficient to perform their tasks. Before collecting personal data, owners and operators analyse their activities for the use of personal data, draw up a list of tasks and purposes, and draw up a list of necessary and sufficient personal data corresponding to them, as well as the basis for their collection, for example, a legal requirement, performance of a contract or other document. Owners and operators annually analyse their activities, tasks, and goals and, if necessary, change and supplement the list of personal data collected.

Law stated - 07 August 2023

Data retention

Does the law restrict the amount of PI that may be held or the length of time for which PI may be held?

The Personal Data Law establishes a general requirement for processing, limiting the amount of personal data consistent with predetermined and legitimate purposes.

The storage period of personal data is determined either by the achievement of the purpose of processing or by law. The storage of personal data is carried out by the owner/operator and by a third party in a database located in Kazakhstan.

After the expiration of the storage period, personal data is subject to destruction unless the law contains other requirements.

The data subject has the right to request the owner/operator to provide information and the terms of storage of personal data.

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Purpose limitation

Are there any restrictions on the purposes for which PI can be used by owners? If there are purpose limitations built into the law, how do they apply?

The Personal Data Law contains a general requirement to limit the processing of personal data to the achievement of specific, predetermined and legitimate purposes. Government Decree No. 1214 regulates the procedure for determining the tasks and goals of the activities of operators and owners, corresponding to the goals and objectives of the list of personal data for collection and processing and an indication of the basis for collection and processing. The Personal Data Law requires the use of personal data for collection purposes. However, unlike the GDPR, the legislation of Kazakhstan does not contain detailed requirements for the notification of the collection of personal data and provisions on how the purposes have been made known to the data subject.

The Personal Data Law prohibits the processing of personal data incompatible with the purposes of collecting personal data. The owner, operator, and third party determine the purpose of the collection. Accordingly, what is compatible with the purposes of processing is determined by the owner and operator of the database. Therefore, these persons can manipulate the data subject and form an unreasonably broad list of personal data.

The restriction on the purpose is provided for by the provisions of articles 7, 12, 14, and 15 of the Personal Data Law. The Law also establishes that the transfer of personal data or the provision of access to them in cases beyond the previously stated purposes of their collection is carried out with the subject's consent.

Law stated - 07 August 2023

Automated decision-making

Does the law restrict the use of PI for making automated decisions without human intervention that affect individuals, including profiling?

The Personal Data Law does not contain provisions restricting automated data processing and profiling as provided by the GDPR.

The Law ‘On Informatisation’ contains some requirements for the automated processing of personal data that affect individuals as follows:

- owners and possessors of electronic information resources, including an intelligent robot, must inform the data subject about automated processing;
- decisions made based solely on automated processing are prohibited unless the data subject consented to this processing or the Kazakhstani legislation allows this processing; and
- by affecting individuals' rights, the legislation means the PI processing that results in the creation, change or termination of the data subject's rights or legitimate interests.

The Law ‘On Advertising’ and the Law ‘On the Regulating of Trading Activities’ do not contain any provisions restricting the use of PI for making automated decisions without human intervention that affect individuals, including profiling.

On 10 July 2023, the President of Kazakhstan signed the Law of the Republic of Kazakhstan ‘On Online Platforms and Online Advertising’ , coming into force on 10 September 2023. The Law allows for processing personal data based on profiling, a set of algorithms to determine users' preferences, interests or both. However, the Law prohibits profiling based on race or nationality, political opinions, biometric or personal data that can identify an individual and

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information about the user's health.

Law stated - 07 August 2023

SECURITY

Security obligations

What security obligations are imposed on PI owners and service providers that process PI on their behalf?

The collection and processing of PI is allowed if PI protection is ensured. The Personal Data Law obliges owners, operators and third parties to take the necessary measures to prevent unauthorised access, detect an incident and minimise the consequences. The Government Decree No. 909 dated 3 September 2013, and the DPA's Order No. 179/ НҚ dated 12 June 2023, approve the Rules for the implementation by the owner/operator and a third party of measures to protect personal data .

The Rules establish what legal, organisational, and technical measures the owners, operators, and third parties must take. In particular, the Rules contain obligations common to all as follows:

- identify business processes containing PI;
- divide PI by type of public access and limited access;
- determine the list of persons with access to PI;
- appoint a data protection officer;
- establish the procedure for access to PI; and
- approve internal documents and policies for the collection, processing and protection of PI to ensure the safety of PI media.

Additionally, the Rules establish requirements for the protection of personal data of limited access:

- establish the purposes of processing PI;
- determine the procedure for processing, distribution and access to PI;
- determine the procedure for blocking;
- notify the DPA of information security incidents;
- install protection tools and software updates on technical means of processing PI;
- transfer PI of limited access via secure communication channels or using encryption, or both; and
- use cryptographic information protection tools for reliable storage of PI and other measures to protect PI.

JSC 'State Technical Service' (a state company under the control of the National Security Committee of the Republic of Kazakhstan (the STS)) may verify the implementation by owners, operators and third parties of security measures and protective actions during PI processing, storage, distribution and protection. The STS can access informatisation objects and analyse the measures taken. Based on the analysis and survey results, the STS draws a report and recommends eliminating the identified discrepancies. The legislation does not establish risk assessment obligations for owners, operators and third parties.

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Notification of data breach

Does the law include (general or sector-specific) obligations to notify the supervisory authority or individuals of data breaches? If breach notification is not required by law, is it recommended by the supervisory authority?

The Personal Data Law does not have the concept of a data breach and the requirement to notify the supervisory authority or individuals of the data breach. The Personal Data Law establishes obligations for owners, operators and third parties to prevent unauthorised access, detect an incident and minimise the consequences.

Close to the concept of data breach, the Law on Informatisation contains the term information security incident, which means a failure in the operation of information and communication infrastructure facilities that threatens their proper functioning or illegal receipt, copying, distribution, modification, destruction or blocking of electronic information resources, including information and data.

Personal data in Kazakhstan falls into two categories: publicly available personal data and personal data of limited access. Those objects of information and communication infrastructure that contain PI of limited access ('electronic government', databases, software, platforms, internet resources, electronic media and other objects) the law classifies as critical objects of information and communication infrastructure (COICI). The Law on Informatisation obliges the owners of COICI to notify the STS about the identified information security incidents.

The Order of the Minister of Defense and Aerospace Industry of the Republic of Kazakhstan dated 28 March 2018 No. 52/HҚ, establishes the procedure and terms for notification of an information security incident. The owner or possessor of COICI should notify the relevant authorities within 15 minutes of the incident being detected. Later, within 24 hours of the incident being detected, the owner or possessor of the COICI must provide more detailed information about the incident (description, signs, severity level, type of incident, source, consequences and other information).

The legislation does not provide for obligations to notify the subject of personal data about security incidents.

Law stated - 07 August 2023

INTERNAL CONTROLS

Accountability

Are owners or processors of PI required to implement internal controls to ensure that they are responsible and accountable for the PI that they collect and use, and to demonstrate compliance with the law?

The Personal Data Law does not oblige owners and operators to demonstrate to government agencies or data subjects compliance with the requirements of the legislation on personal data.

The Personal Data Law contains a general obligation to comply with the legislation on personal data and to take and comply with the necessary measures, including legal, organisational and technical ones, to protect personal data following the legislation of Kazakhstan. Government Decree No. 909 lists several measures to protect personal data. In particular, it requires owners and operators to determine the list and type of personal data (public or restricted access) and the list of persons collecting and processing data and the procedure for internal access to data; approve documents defining the operator's policy regarding the collection, processing and protection of personal data; appoint a data protection officer who exercises internal control over compliance with data protection legislation.

Data subjects may contact the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan (the DPA) to obtain information on the methods and procedures used by the owners/operators to comply

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with the requirements of the Personal Data Law, and the latter is obliged to provide the requested information to the DPA.

Law stated - 07 August 2023

Data protection officer

Is the appointment of a data protection officer mandatory? What are the data protection officer's legal responsibilities? Are there any criteria that a person must satisfy to act as a data protection officer?

Under the Personal Data Law, if the owner and/or operator are legal persons, they must appoint a person responsible for organising the processing of personal data (this requirement does not apply to the activities of courts). The legislation does not prohibit the appointment of a person who is not an employee of this organisation as responsible for organising the processing of personal data.

The data protection officer has the following duties:

- to monitor and ensure compliance by the owner/operator of the database, as well as their employees, with the Personal Data Law;
- to inform employees of the owner/operator of the provisions of the Personal Data Law, including requirements for the protection of personal data; and
- to exercise control over the reception and processing of applications from data subjects or their legal representatives.

Law stated - 07 August 2023

Record-keeping

Are owners or processors of PI required to maintain any internal records relating to the PI they hold?

The general requirement of personal data legislation is to separate personal data of limited access, in other words, to have separate records of these personal data and take measures to protect them. The Personal Data Law requires registration and records of activities relating to:

- the period of data subject's consent and term of data storage;
- the transfer of PI to third parties;
- the existence or lack of facts of cross-border data transfer in the course of PI processing; and
- the dissemination of personal data in publicly available sources;

The DPA's Order No. 179/HK obliges owners, operators and third parties to keep a user event log of database management systems. The Law 'On Informatisation' obliges them to keep a log of information security incidents. The DPA requires recording of two separate objects: (1) the event log of data management systems and (2) the log of actions of users, who accessed personal data of limited access.

Law stated - 07 August 2023

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Risk assessment

Are owners or processors of PI required to carry out a risk assessment in relation to certain uses of PI?

The Personal Data Law does not require owners and operators to conduct risk assessments.

The Law on Informatization establishes that COICI's owner, who processes data containing secrets protected by law, may, on his or her initiative, conduct an independent audit of information security.

Order No. 263 of the Minister of Information and Communications of the Republic of Kazakhstan, dated 13 June 2018, approved the Rules for auditing information systems .

The owner or possessor of the information system organises an audit at least once a year. The audit is carried out by individuals and legal entities with knowledge and experience in information and communication technologies. During the audit, analysis and evaluation of security policies and other organisational and administrative documents for the protection of information systems is carried out as follows; security risk analysis; analysis of the degree of participation in the training of users and maintenance personnel to ensure information security; assessment of the security level of information systems, including application software and databases; and other tasks. The auditor provides recommendations as a result of the audit.

Law stated - 07 August 2023

Design of PI processing systems

Are there any obligations in relation to how PI processing systems must be designed?

The Personal Data Law does not contain obligations to design systems for processing PI, including obligations under privacy-by-design or by default.

The legislation on personal data and informatisation contains a general requirement for owners, operators, third parties, and owners and possessors of information and communication infrastructure facilities to protect personal data and the facilities themselves. According to the Law 'On Informatisation', the government approved the Uniform requirements in the field of information and communication technologies and information security . These Uniform Requirements establish requirements for antivirus, cryptographic information protection tools, certification compliance and other requirements other than privacy-by-design or by default.

Law stated - 07 August 2023

REGISTRATION AND NOTIFICATION

Registration

Are PI owners or processors of PI required to register with the supervisory authority? Are there any exemptions? What are the formalities for registration and penalties for failure to do so?

The legislation does not require owners or operators to register with the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan (the DPA).

Law stated - 07 August 2023

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Other transparency duties

Are there any other public transparency duties?

The legislation does not contain any public transparency duties (for example, making public statements about the nature of the processing).

Law stated - 07 August 2023

SHARING AND CROSS-BORDER TRANSFERS OF PI

Sharing of PI with processors and service providers

How does the law regulate the sharing of PI with entities that provide outsourced processing services?

Third-party processors of personal data must comply with the general requirement for processing data with the subject's consent, restrictions on the purpose and sufficiency of data, and maintaining the confidentiality of personal data of limited access.

The transfer of PI must be carried out with the subject's consent or other legal grounds. Consent to the collection and processing of personal data must contain the following:

- information about whether the operator will transfer personal data to third parties;
- information about the presence or absence of cross-border transfer of personal data; and
- information about disseminating personal data using public sources.

Any transfer of PI must be limited to the achievement of specific, predetermined and legitimate purposes. The Personal Data Law requires the subject's consent to transfer personal data or provide access in cases beyond the previously stated purposes of PI collection. The Personal Data Law prohibits data processing that is incompatible with the purposes of data collection.

Unlike GDPR, Kazakhstani law does not require owners or processors to adopt and approve standard contractual clauses or binding corporate rules that the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan (the DPA) accepts or agrees upon.

Law stated - 07 August 2023

Restrictions on third-party disclosure

Are there any specific restrictions on the sharing of PI with recipients that are not processors or service providers?

The legislation does not have specific restrictions on sharing PI with third parties. The Personal Data Law lays down general requirements for owners, operators, third parties, and any persons who access PI in connection with professional and service needs, as well as labour relations, to keep the secrecy of the data and share data only if the data subject has consented or if the legislation requires it.

Law stated - 07 August 2023

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Cross-border transfer

Is the transfer of PI outside the jurisdiction restricted?

Cross-border data transfer must be carried out with the data subject's consent or under other legal grounds. Consent to PI collection and processing must contain information about the presence or absence of cross-border transfer of personal data.

Cross-border data transfer must be limited to achieving specific, predetermined and legitimate purposes. The transfer of personal data or the provision of access to them in cases beyond the previously stated purposes of their collection is carried out with the subject's consent.

The law allows cross-border data transfer to the territory of foreign states only if this foreign state ensures the protection of personal data. However, suppose there is no personal data protection in the recipient state. In that case, the consent of the subject, the requirement of an international treaty, or another legal basis is necessary to protect the constitutional order, constitutional human rights and freedoms, public order, public health and morality. It is important to note that the laws of the Republic of Kazakhstan may prohibit or restrict the cross-border transfer of PI. For example, the Law on Communications prohibits the transfer of service information about subscribers and aggregated data outside the Republic of Kazakhstan, except in cases where Kazakhstani subscribers are abroad and use communication services. Service information about subscribers is intended solely to conduct counterintelligence activities and operational investigations on communication networks. Service information includes information about subscriber numbers, information about the identification number of the individual or legal entity that owns the subscriber number, information about identification codes of cellular subscriber devices; billing information; the location of the subscriber device in the network; addresses in the data network; addresses of access to internet resources; internet resource identifiers; and data network protocols.

Law stated - 07 August 2023

Further transfer

If transfers outside the jurisdiction are subject to restriction or authorisation, do these apply equally to transfers to service providers and onwards transfers?

Personal Data Law does not establish restriction or authorisation requirements for transfers outside the jurisdiction to a service provider and subsequent transfer. Any person who legally accesses PI must maintain confidentiality. The Personal Data Law lays down general requirements for owners, operators, third parties, and any persons who access PI in connection with professional and service needs, as well as labour relations, to keep the secrecy of the data and share data only if the data subject has consented or if the legislation requires it.

Law stated - 07 August 2023

Localisation

Does the law require PI or a copy of PI to be retained in your jurisdiction, notwithstanding that it is transferred or accessed from outside the jurisdiction?

The Personal Data Law and the Law ‘On Informatisation’ oblige owners, operators and third parties to store PI in a database, including an electronic database and a server room in Kazakhstan. Generally, the legislation does not prohibit the storage of a copy of PI, including outside of Kazakhstan, subject to the subject’s consent and compliance with the requirements of the law.

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However, special legislation may contain other requirements. For example, the Law 'On Communications' requires the storage of service information about subscribers in the territory of Kazakhstan. It prohibits the transfer of it and aggregated data outside the country.

Law stated - 07 August 2023

RIGHTS OF INDIVIDUALS

Access

Do individuals have the right to access their personal information held by PI owners? Describe how this right can be exercised as well as any limitations to this right.

Personal Data Law enshrines the subject's right to access his or her PI. Article 24 of the Law clarifies that the data subject can learn about the availability of the owner, operator and third party of their data, as well as receive information containing the following: confirmation of the fact, purpose, sources, methods of collecting and processing personal data; list of personal data; and terms of processing and storage of personal data. Regulations for the Collection, Processing of Personal Data establish the procedure for exercising the right to access PI. The subject (or his or her legal representative) sends a request to the owner, operator, or third party in writing, in the form of an electronic document or in another secure way. The owner or operator then informs the subject of information within three working days from receipt of the request or a reasoned refusal.

The Constitution establishes a general restriction on the right to access information. Restrictions may be established only by laws to protect constitutional or public order, human rights and freedoms, and the health and morality of the population. Owner, operator and third parties cannot limit data subjects to obtain information about personal data.

Law stated - 07 August 2023

Other rights

Do individuals have other substantive rights?

Article 24 of the Personal Data Law also establishes the right of the data subject to request that their data be changed and supplemented if relevant documents confirm the grounds. In addition, the subject has the following rights enshrined in the Personal Data Law: to demand blocking or destruction of their data if there are violations of data collecting and processing, as well as in other cases established by legislation; to give or withdraw consent to distribute personal data in publicly available sources; to protect their rights and legitimate interests, including compensation for moral and material damage; and to exercise other rights provided for by the laws of Kazakhstan.

The Personal Data Law does not provide for a specific right of the subject to object to or opt out of particular disclosures or processing activities. The law contains the general right of the data subject to also withdraw consent to the collection, processing, distribution in public sources, transfer to third parties and cross-border transfer of personal data unless it is contrary to the laws of Kazakhstan, or the data subject has an unfulfilled obligation. In other words, the data subject can exercise this general right to withdraw consent concerning a particular data processing method. However, the new Law 'On Online Platforms and Online Advertising' obliges online platforms to provide content to users without profiling; that means the online platforms, by default, should use profiling under opt-out terms.

The law provides for blocking personal data if there is a violation of the conditions for collecting or processing data. The Regulations for the Collection, Processing of Personal Data establishes the following blocking procedure: the subject applies to the Data Protection Authority (DPA) to check the owner for compliance with the requirements for collecting and processing personal data. The DPA considers the subject's appeal, investigates the actual circumstances, hears the owner, operator or third party, and takes other actions following the law. The DPA completes

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the verification at the data subject's request within 15 working days with a possible extension. If there is information about violating the conditions for collecting and processing personal data, the subject requires the owner to block or destroy his or her data.

Law stated - 07 August 2023

Compensation

Are individuals entitled to monetary damages or compensation if they are affected by breaches of the law? Is actual damage required or is injury to feelings sufficient?

Kazakhstani Civil Code lays down the right to protection of personal non-property rights, compensation for losses and moral damage.

The legislation provides for compensation for non-pecuniary damage due to violation of the legislation on the inviolability of the person, the secrets of personal life, and the legislation on personal data. Injury to feelings is enough to apply for monetary compensation. However, the court determines the amount of compensation based on the criteria of reasonableness and fairness.

To date, the relevant practice has just begun to take shape in Kazakhstan. The satisfaction of claims depends on the severity of the moral suffering and harm caused to the citizen due to the illegal use of his or her personal data, particularly the illegal placement of a photo or video of the subject on social networks without obtaining consent.

Law stated - 07 August 2023

Enforcement

Are these rights exercisable through the judicial system or enforced by the supervisory authority or both?

The DPA protects these rights by considering the requests and appeals of data subjects, conducting inspections, and imposing administrative penalties. Also, data subjects may apply to the court to protect their rights.

In addition, citizens may apply to the Human Rights Ombudsman of the Republic of Kazakhstan on actions and decisions of officials and organisations that violate their rights and freedoms as guaranteed by the Constitution, including violating personal data. The Ombudsman, having accepted the complaint for consideration must explain the ways and means that the applicant has the right to use to protect his or her rights and freedoms; and must transfer the appeal to the appropriate authorities, whose competence includes the resolution of the complaint on the merits.

Law stated - 07 August 2023

EXEMPTIONS, DEROGATIONS AND RESTRICTIONS

Further exemptions and restrictions

Does the law include any derogations, exclusions or limitations other than those already described?

The Personal Data Law's scope does not include the protection of PI classified as state secrets and the protection of PI for personal and family needs, for storage in the National Archive Fund and archives, in connection with intelligence, counterintelligence, operational intelligence, and ensuring the security of protected persons and objects.

Article 9 of the Personal Data Law provides a non-exhaustive list of grounds (cases) when the law does not require the

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subject's consent to collect and process PI. Exceptions include:

- activities of law enforcement agencies, as well as financial and tax control bodies;
- conducting state statistical activities;
- legal professional activity of a journalist, television, radio channels, periodicals, news agencies, online publications, or scientific, literary, or other creative activity; and
- publication of personal data following the laws of the Republic of Kazakhstan, including the data of candidates for elected public office and other cases established by the laws of the Republic of Kazakhstan.

The Personal Data Law does not provide any other derogations, exclusions, or limitations for the ordinary business conduct by business entities.

Law stated - 07 August 2023

SPECIFIC DATA PROCESSING

Cookies and similar technology

Are there any rules on the use of 'cookies' or equivalent technology?

Kazakhstani legislation does not establish any requirements, restrictions or rules on the use of 'cookies' or equivalent technology.

Law stated - 07 August 2023

Electronic communications marketing

Are there any rules on marketing by email, fax, telephone or other electronic channels?

The Personal Data Law does not establish requirements or rules on marketing by email, fax, telephone or other electronic channels (for example, social media).

The Law 'On Online Platforms and Online Advertising' establishes the general obligation of online platforms and their users to comply with the laws of Kazakhstan, including protecting personal data. Users should not publicise or distribute illegal content (violating the legislation on personal data) and delete it in case of publication or distribution.

Law stated - 07 August 2023

Targeted advertising

Are there any rules on targeted online advertising?

The Personal Data Law does not establish special rules on targeted online advertising.

The new Law 'On Online Platforms and Online Advertising' obliges an online platform to describe the parameters of a recommender system that prioritises content and search results in the user agreement. In addition, the online platform must indicate the user's account who posted the advertisement, including the individual. The Law prohibits to disseminate targeted advertising among individuals identified as minors.

Law stated - 07 August 2023

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Sensitive personal information

Are there any rules on the processing of 'sensitive' categories of personal information?

Unlike GDPR, the Personal Data Law does not conceive of special or sensitive data. However, the new Law 'On Online Platforms and Online Advertising' prohibits profiling based on race or nationality, political opinions, biometric or personal data that can identify an individual and information about the user's health.

The Code 'On Public Health and Healthcare System' contains additional requirements for collecting and processing personal medical data - information about an individual's health and the medical services provided to him, recorded on electronic, paper, or other material carriers. The Code requires informed consent to collect and process personal data. It establishes a list of persons who, under the law, have access to medical personal data and the limits of this access, limited by appropriate medical care. Medical personal data constitute the secret of a medical worker and are not subject to disclosure without a legal basis.

The Order of the Minister of Health of the Republic of Kazakhstan dated 14 April 2021, No. ҚР ДСМ-30 approved the Rules for the collection, processing, storage, protection and provision of personal medical data by subjects of digital healthcare .

The Rules require informedness as a condition for legitimate consent of the data subject, establish the provision of medical care as the exclusive purpose of collection and processing, and lay down the procedure for changing, supplementing and depersonalising personal data.

Data collection and processing requirements for medical personal data supplement the general rules of the Personal Data Law. Transferring the patient's medical data for scientific research and using this information in the educational process requires the informed consent of the patient or his or her legal representative, or both. In addition, it is prohibited to disclose the patient's medical personal information by persons to whom they became known during training, the performance of professional, official and other duties.

The subjects of digital healthcare must store personal medical data on servers physically located in the territory of Kazakhstan. The retention period varies from one to 25 years, depending on the nature and content of the medical personal information.

The legislation does not establish other types of special personal data or any special regulations or requirements.

Law stated - 07 August 2023

Profiling

Are there any rules regarding individual profiling?

The Personal Data Law does not contain specific requirements regarding individual profiling (ie, automated processing performed on personal information to evaluate, analyse or predict personal aspects related to an individual.

The new Law 'On Online Platforms and Online Advertising' obliges an online platform to describe the parameters of a recommender system that prioritises content and search results in the user agreement. Additionally, the Law prohibits profiling based on race or nationality, political opinions, biometric or personal data that can identify an individual and information about the user's health.

Law stated - 07 August 2023

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Cloud services

Are there any rules or regulator guidance on the use of cloud computing services?

The legislation does not single out cloud computing services as a separate object of regulation. They refer to the object of informatisation, which is subject to the general requirements of the Law 'On Informatisation' and the Personal Data Law. Accordingly, persons providing cloud computing services must obtain the consent of the data subject to collect and process personal data; process data for a predetermined purpose; limit processing to only the necessary and sufficient data; and limit data storage by achieving the collecting and processing purpose, unless otherwise provided by law. Storage of personal data should be carried out in an electronic database in a server room on the territory of the Republic of Kazakhstan.

Law stated - 07 August 2023

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in international data protection in your jurisdiction?

The Law of the Republic of Kazakhstan dated 19 April 2023 'About changes and additions to some legislative acts of the Republic of Kazakhstan on Administrative Reform in the Republic of Kazakhstan' carried out a public administration reform. It reduced the role of the government in the sphere of regulation of issues related to the protection of personal data. In pursuance of the reform, the government delegated to the Data Protection Authority functions of adopting the procedure for implementing data protection measures and the list of personal data necessary and sufficient to perform their tasks.

The Law of the Republic of Kazakhstan dated 14 July 2022, 'On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Promotion of Innovation, the Development of Digitalization, Information Security and Education' established the obligation of owners and possessors of an intelligent robot to inform the data subject about automated processing affecting his or her rights and legitimate interests. Suppose the automated processing of personal data affects the rights and legitimate interests of the data subject. In that case, the decision on the results of the processing of personal data should not be based solely on automated processing. The law additionally secured the right of the data subject to appeal against decisions based solely on the automated processing of personal data.

On 10 July 2023 the President signed the Law 'On Online Platforms and Online Advertising'. The law provides for the obligation of owners to familiarise the user with the privacy policy and specify in the user agreement the parameters of the recommendation system of the online platform, which determines the priority of content and search results. The law establishes some requirements for targeted advertising, the prohibition of disseminating targeted advertising among minors, and the prohibition of profiling based on race or nationality, political views, biometric or personal data that can identify an individual and information about the user's health.

Law stated - 07 August 2023

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Jurisdictions

Australia	Piper Alderman
Austria	Knyrim Trieb Rechtsanwälte
Belgium	Hunton Andrews Kurth LLP
Brazil	Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados
Canada	.
Chile	Magliona Abogados
China	Mayer Brown
France	Aramis Law Firm
Germany	Hoffmann Liebs Fritsch & Partner
Greece	GKP Law Firm
Hong Kong	Mayer Brown
Hungary	VJT & Partners
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Indonesia	SSEK Law Firm
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Italy	ICT Legal Consulting
Japan	Nagashima Ohno & Tsunematsu
Jordan	Nsair & Partners - Lawyers
Kazakhstan	GRATA International
Malaysia	SKRINE
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