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Shaimerden has extensive knowledge of infrastructure regulation and experience in reforming tariff systems, power, utilities and natural monopolies regulation, as well as drafting laws and orders in Kazakhstan, agreeing legislative amendments and new laws among various stakeholders and approving them at various levels in the Government of Kazakhstan.

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Kazakhstan - Data Protection in the Financial Sector

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1. Introduction and overview

Over the past 25 years Kazakhstan has developed its own financial sector, which is considered to be the most advanced in Central Asia. With the evolution of financial sector and the complexities of key players involved, the need for regulation of dealing with data arose.

The following legal acts contain provisions that regulate data protection and/or secrecy in the financial sector:

- [Constitution of the Republic of Kazakhstan of 30 August 1995 \('the Constitution'\)](#);
- [Civil Code of the Republic of Kazakhstan \(General Part\) of 27 December 1994 \('the Civil Code'\)](#);
- [Civil Code of the Republic of Kazakhstan \(Special Part\) of 1 July 1999 No. 409-I \('the Civil Code'\)](#);
- [Entrepreneurial Code of the Republic of Kazakhstan of 29 October 2015 No. 375-V \('the Entrepreneurial Code'\)](#), available in Russian [here](#);
- [Law of the Republic of Kazakhstan of 21 May 2013 No. 94-V on Personal Data and Its Protection \('the PDP Law'\)](#);
- [Law of the Republic of Kazakhstan of 31 August 1995 No. 2444 on Banks and Banking Activity in the Republic of Kazakhstan \(the 'Banking Law'\)](#);
- [Law of the Republic of Kazakhstan of 18 December 2000 No.126-II on Insurance Activity \('the Insurance Law'\)](#);
- [Law of the Republic of Kazakhstan of 6 July 2004 No. 573-II on Credit Bureau and Formation of Credit Histories in the Republic of Kazakhstan \('the Credit Bureau Law'\)](#);
- [Law of the Republic of Kazakhstan of 26 November 2012 No. 56-V on Microfinance Organisations \('the MFO Law'\)](#);
- [Law of the Republic of Kazakhstan of 28 August 2009 No.191-IV on Combating the Legalisation \(Laundering\) of Revenues Received by Criminal Means and Financing of Terrorism \('the AML Law'\)](#);
- [Decree of the Government of the Republic of Kazakhstan of 23 November 2012 No. 1484 on Approval of the Rules of Provision of Data and Information Regarding Transactions that are Subject to Financial Monitoring by the Subjects of Financial Monitoring and Features of Determining Suspicious Transactions \('the Decree No. 1484'\)](#), available to download in Russian [here](#);
- [Decree of the Minister of the Republic of Kazakhstan of 15 February 2010 No. 56 on the Approval of the List of Documents Required for the Due Diligence of the Customers of the Subject of Financial Monitoring \('the Decree No. 56'\)](#), available to download in Russian [here](#).

2. Managing Personal and Financial Data

2.1. Managing Data Generally

2.1.1. Overview

Article 18 of the Constitution guarantees the right to privacy. The Constitution guarantees the integrity of private life, personal and family secret, protection of honor and dignity, confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages.

In addition, the provisions protecting commercial and service secret are contained in Article 126 of the Civil Code and Article 28 of the Entrepreneurial Code. Article 126 of the Civil Code guarantees protection of commercial and service secret in case when the information has an actual and potential commercial value due to its nonpublic nature in relation to third parties, there is no free access to it on legal grounds, and the possessor of such information takes measures to keep it confidential.

Article 28 of the Entrepreneurial Code contains provisions on protection of commercial secret and measures that could be taken to secure it.

2.1.2. Personal Data Protection

Provisions on personal data protection are outlined in the PDP Law. Under Article 1(of the PDP Law, personal data means information related to the definite subject or related to the subject definable on the basis of such information, recorded on an electronic, paper and (or) other or tangible form, e.g. name, surname, age, address etc. Personal data subject is an

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individual, to whom the personal data refers, i.e. personal data protection cover information about individuals and does not cover information about legal entities).

The PDP Law recognises (i) owners of databases containing personal data, (ii) operators of databases containing personal data; and (iii) so called 'third parties'.

Owner of the database means the state authority, individual and(or) legal entity executing in accordance with the laws of the Republic of Kazakhstan the right of possession, use and disposal of the database containing personal data. Operator of the database means the state authority, individual and (or) legal entity engaged in the collection, processing and protection of personal data. Third party means a person, which is not the subject, owner and (or) operator, but is connected therewith by circumstances or legal relations on collection, processing and protection of the personal data.

Article 7.1 of the PDP Law provides that collection and processing, ie. actions aimed on storage, keeping, amendment, supplement, use, disposal, depersonalisation, blocking and elimination of the personal data, is generally possible upon the receipt of the written or electronic consent provided to the owner/operator by the personal data subject or its representative, unless otherwise provided by the law. Collection and processing of the personal data without such consent is possible only in cases provided by the PDP Law, e.g. to the authorised state bodies, based on international treaties etc.

Owners, operators and third parties are obliged to take necessary measures for the protection of personal data that ensure (i) prevention of unauthorised access to personal data; (ii) timely detection of unauthorised access to personal data, if such unauthorised access could not be prevented; (iii) minimisation of negative impact of the unauthorised access to personal data. Pursuant to Article 16.2 of the PDP Law, personal data may only be transferred from the Republic of Kazakhstan to a foreign country, including for purposes of processing, so called 'cross-border transfers', without prior permission from the personal data subject for cross-border transfer only if the recipient of the personal data is located in a country that protects personal data, at either the national level, ie. by adopting national laws and regulations, or the international level, ie. through international treaties, for example, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 1981. If no such protection is available, any cross-border transfer of the personal data is possible only:

- upon individual's specific consent;
- in cases specified by international agreements ratified by Kazakhstan;
- in cases stipulated by laws of Kazakhstan in order to protect the constitutional order, public order, rights and freedoms of an individual and a citizen, public health and morality;
- in the case of protection of constitutional rights of an individual and citizen if getting the consent of an individual is impossible.

The PDP Law does not specify the level of national protection which would be acceptable for the purposes of cross-border transfer and does not clarify whether the national protection needs to be provided through specific or general regulations. The cross-border transfer of personal data may be restricted or prohibited by the Kazakh law. However, as mentioned above, under Article 22 of the PDP Law, protection of personal data shall be performed by taking a set of measures, including legal, organisational and technical measures, which guarantees: (i) prevention of unauthorised access to personal data; (ii) timely detection of unauthorised access to personal data, if such unauthorised access could not be prevented; (iii) minimisation of negative impact of the unauthorised access to personal data.

Pursuant to Article 12.2 of the PDP Law, personal data should be stored in the territory of the Republic of Kazakhstan by the owner and/or operator, as well as third parties.

2.1.3. Financial Data Protection

In addition to the above general provisions on data protection, certain regulation applies to data protection in financial sector by subject of data users:

- 1) banks, and organisations performing certain types of banking operations;
- 2) microfinance organisations;
- 3) insurance organisations;
- 4) credit bureaus;
- 5) so called "subjects of financial monitoring" as provided by the AML Law.

2.2 Banking and Microcredits Secrecy

2.2.1. Banking Secrecy

Pursuant to Article 50.1 of the Banking Law, information regarding the bank's clients and correspondents, their transactions and relations with banks in connection with receipt of banking services. This includes, but is not limited to, information on the availability of such services, owners and numbers of bank accounts and correspondent accounts, outstanding amount and movement of money under such account and accounts of the bank, restriction on such accounts, decisions of government authorities on halting debit transactions, arrests and pledges, transactions of the clients, correspondents and the bank itself, save for general terms of conducting such transactions, as well as availability, owners, the nature, and value of the clients' assets kept in the safe boxes, safe rooms and bank's premises, information regarding loans received by the clients, save for certain situations, payment and money transfer transactions, including transactions carried out without setting up a bank account.

Generally, under Article 50.4 of the Banking Law, information covered by banking secrecy can be disclosed only to the client or any third party upon the consent of the owner of the account (asset) in writing or by means of the identification medium of the owner of account,

credit bureau in relation to bank loan transactions, finance lease transactions, factoring and forfeiting transactions, promissory notes discounting, as well as warranties, guarantees and credit letters issued by the bank pursuant to the laws of the Republic of Kazakhstan. For a full list of these circumstances, please see Article 50.4 of the Banking Law).

Nevertheless, the Banking Law provides for some cases when the disclosure of information does not constitute the breach of the banking secrecy. These include, among others, instances when banks in certain cases notify the state revenue authority for the purpose of tax administration or provide data and documents to the Committee on Financial Monitoring (as defined below) for the purposes of the AML Law or the provision to other banks of the documents confirming the provision of a bank loan etc. For a full list of exceptions please refer to Article 50.4 of the Banking Law.

2.2.2. Microcredits Secrecy

Microcredits secrecy is guaranteed by microfinance organisations. Pursuant to Article 21.1 of the MFO Law, the microcredits secrecy includes data on borrowers, amounts of the microcredits provided, other terms of an agreement on provision of microcredit related to the borrower, and data on transactions conducted by a microfinance organisation, save for the microcredit provision rules. It shall be noted that the data regarding the agreements on provision of microcredits concluded by a microfinance organisation does not constitute the microcredits secrecy if such microfinance organisation is in the liquidation procedure.

Generally, under Article 21.3 of the MFO Law, microcredit secrecy can only be disclosed to the borrower or any third party upon the written consent of the borrower provided in person in the microfinance organisation, to the credit bureau in relation to the provided microcredits. In addition, considering certain exceptions, among others, microcredit secrecy can be disclosed to law enforcement agencies sanctioned by the general prosecutor, national security agencies, the borrower's representatives, banking ombudsman, when a microfinance organisation provides negative information to the credit bureau and the credit bureau provides negative information about the subject of credit history in relation to the overdue payment exceeding 180 calendar days etc. For a full list of exceptions please refer to Articles 21.4, 21.5, 21.5-1, 21.6 of the MFO Law.

2.3. Insurance

Provisions of the law related to data protection in the insurance industry are contained in the Civil Code. In particular, the definition of an insurance secrecy is provided for in Article 830.1 of the Civil Code according to which the insurance secrecy includes information on the amount of insurance, redemption sum, and paid insurance premium, other terms of the insurance agreement (reinsurance) related to the identity of the insurant, insured or beneficiary. Information on the insurance (reinsurance) agreement entered into by an insurance (reinsurance) organisation in the process of winding up does not constitute the insurance secrecy.

Generally, the insurance secrecy can be disclosed to a third party upon a written consent of the insurant (insured, beneficiary). Should the insurer disclose the information deemed as the insurance secrecy, the insurant (insured, beneficiary) have the right to claim losses and in certain cases claim for moral harm.

2.4. Credit bureaus

Credit bureaus are organisations that, on commercial basis, collect and provide credit history reports and other information about the borrowers to the persons (including financial institutions) that are interested in getting such information for the purposes of their lending business.

Pursuant to Article 18 of the Credit Bureau Law, providers of information to credit bureaus are banks, microfinance organisations, debt recovery agencies, entrepreneurs, government bodies, natural monopolies and other parties based on agreements on provision of such information.

For example, under Article 24 of the Credit Bureau Law, banks and organisations carrying out certain types of banking activity provide the following information to a credit bureau:

1. Outstanding amount under the loan received by a person in this particular bank or organisation carrying out certain types of banking activity, as well as the general amount of outstanding amount under all the loans received in accordance with conditional and possible obligations;
2. Disbursement date and repayment date, as well as conditional and possible obligations;
3. Information on composition and means of securing obligations (save for a collateral kept in safe boxes, safe rooms or bank premises);
4. Negative information on the subject of credit history, if any;
5. Other data pursuant to the agreement with credit bureau.

Generally, the following consents are required in connection with use of credit bureau services:

1. Consent of the borrower for the disclosure of information by the providers of information to the credit bureau, except to a state credit bureau, for the disclosure to which the consent of the borrower is not required;
2. Consent of the borrower for the receipt of credit report from credit bureau by the recipient.

In both circumstances mentioned above, the consent shall be provided as hard copy (on paper) and kept by the relevant entity within 10 years.

Please take into consideration that banks, organisations carrying out certain types of banking activity and other providers of information to credit bureaus, generally obtain consent from

their customers at the moment of the conclusion of agreements with them on banking and other services, e.g. bank account or bank loan agreement.

3. Anti-Money Laundering

3.1. Financial Monitoring of Transactions

Pursuant to Article 1.7) of the AML Law, measures involving collection, analysis and use of data and information regarding operations with money and/or other property are considered to be as 'financial monitoring' that is conducted by the Committee on Financial Monitoring of the Ministry of Finance (the 'Committee on Financial Monitoring') of the Republic of Kazakhstan for the purposes of combating legalisation (laundering) of revenues received by criminal means and financing of terrorism.

The following entities are considered as so called “subjects of financial monitoring” that shall mandatorily disclose information on their clients and certain transactions to the Committee on Financial Monitoring (See Article 3.1 of the AML Law):

1. Banks and organisations allowed to conduct certain types of banking operations;
2. Stock exchanges;
3. Insurance (reinsurance) companies and insurance brokers;
4. Pension funds;
5. Professional securities market professionals and the central securities depository;
6. Notaries public engaged in actions with money and/or other property;
7. Lawyers or other legal specialists engaged in actions with money and/or other property;
8. Bookkeeping organisations;
9. Organisers of the gambling industry and lotteries;
10. Postal services carrying out money transfers;
11. Microfinance organisations;
12. Payment organisations;
13. Pawn broker's shops;
14. Entrepreneurs and legal entities carrying out financial leasing as lessors without a license;
15. Entrepreneurs and legal entities carrying out operations with gemstones and precious metals, and on jewellery;
16. Entrepreneurs and legal entities providing agency services regarding the purchase and sale of the immovable property;
17. The medical social insurance fund.

It must be noted that government authorities are not considered as subjects of financial monitoring.

Moreover, Article 4 of the AML Law lists a number of transactions with money and/or other property that are subject to financial monitoring. Generally, such transactions refer to:

1. winnings, including in electronic form, as a result of a bet, gamble in gambling establishments, as well as a lottery on the amount equal or exceeding 3,000,000 (three million) Tenge (approx. €7,700) or on such amount in foreign currency equal or exceeding 3,000,000 (three million) Tenge (approx. €7,700);
2. purchase, sale and exchange of foreign currency in cash through exchange offices on the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700); or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
3. receipt of money by check or promissory note in the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
4. withdrawal or allocation of money to a bank account of a client as well as receipt from or disbursement to the client of cash in the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
5. allocation or transfer of money into a bank account by an individual or legal entity with appropriate registration, place of residence or location in the offshore zone, as well as having a bank account registered in the offshore zone, or transfer of money by the client in favor of the specified category of persons in the amount equal or exceeding 5,000,000 (five million) Tenge (approx. €12,800) or on such amount in foreign currency equal or exceeding 5,000,000 (five million) Tenge (approx. €12,800);
6. money transfers abroad to anonymous accounts (deposits); receipt of money from abroad, from anonymous account (deposit) in the amount equal or exceeding 5,000,000 (five million) Tenge (approx. €12,800) or on such amount in foreign currency equal or exceeding 5,000,000 (five million) Tenge (approx. €12,800);
7. payments and transfers of money, accomplished by a client to another person on a gratuitous basis in the amount equal or exceeding 7,000,000 (seven million) Tenge (approx. €18,000); or on such amount in foreign currency equal or exceeding 7,000,000 (seven million) Tenge (approx. €18,000);
8. purchase (sale), import or export to/from the Republic of Kazakhstan of cultural valuables in the amount equal or exceeding 45,000,000 (forty five million) Tenge (approx. €115,000); or on such amount in foreign currency equal or exceeding 45,000,000 (forty five million) Tenge (approx. €115,000);
9. transactions, accomplished by legal entities, after the state registration, which took place less than three months ago in the amount equal or exceeding 10,000,000 (ten million) Tenge

- (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
10. import or export to/from the Republic of Kazakhstan of foreign currency in cash documentary bearer securities, promissory notes, checks, except for import or export, carried out by the National Bank of Kazakhstan, banks and the National Post Office in the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
 11. insurance payment or receipt of insurance premium on the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
 12. deposition, transfer of voluntary pension contributions to the unified savings pension fund and (or) the voluntary savings pension fund, as well as the accomplishment of pension payments from the unified savings pension fund and (or) the voluntary savings pension fund at the expense of voluntary pension contributions in the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
 13. receipt or provision of property under financial lease agreement in the amount equal or exceeding 45,000,000 (forty five million) Tenge (approx. €115,000); or on such amount in foreign currency equal or exceeding 45,000,000 (fort five million) Tenge (approx. €115,000);
 14. deals for rendering the services, including contracting shipment, transport expedition, storage, commissions, trust property management except for safe deals on lease of safe boxes in the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
 15. purchase and sale and other transactions with precious metals, precious stones and articles thereof on the amount equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700) or on such amount in foreign currency equal or exceeding 10,000,000 (ten million) Tenge (approx. €25,700);
 16. transactions with immovable and other property subject to obligatory state registration on the amount equal or exceeding 200,000,000 (two hundred million) Tenge (approx. €513,000); or on such amount in foreign currency equal or exceeding 200,000,000 (two hundred million) Tenge (approx. €513,000);
 17. transactions with bond and state securities, save for repo transactions on the established securities market by means of open bid in the amount equal or exceeding 45,000,000 (forty five million) Tenge (approx. €115,000); or in such amount in foreign currency equal or exceeding 45,000,000 (forty-five million) Tenge (approx. €115,000);
 18. transactions with shares and stocks of investment funds, save for repo transactions on the established securities market by means of open bid in the amount equal or exceeding 7,000,000 (seven million) Tenge (approx. €18,000); or in such amount in foreign currency equal or exceeding 7,000,000 (seven million) Tenge (approx. €18,000);
 19. pawnbroker transactions with money, securities, precious metals and precious stones and articles thereof in the amount equal to or exceeding 3,000,000 (three million) Tenge (approx. €7,700) or on such amount in foreign currency equal or exceeding 3,000,000 (three million) Tenge (approx. €7,700);
 20. depositing, allocation of payments to the social medical insurance fund in the amount equal or exceeding 7,000,000 (seven million) Tenge (approx. €18,000); or in such amount in foreign currency equal or exceeding 7,000,000 (seven million) Tenge (approx. €18,000);
 21. so called "suspicious operations" (as defined by the Decree No.1484).

Information regarding the transactions which are subject to financial monitoring are transferred to the Committee on Financial Monitoring by the subjects of financial monitoring (article 10.2 of the AML Law). The Committee of Financial Monitoring is entitled to suspend the suspicious transactions (article 13.3 of the AML Law).

3.2. Due Diligence of Customers

Article 5.2 of the AML Law provides that the due diligence of the customers (their representatives) and beneficiary owners is conducted by the subjects of financial monitoring in case of (i) establishment of business relations, (ii) conduction of transactions with money and (or) other property which are subject to financial monitoring, including suspicious transactions, and (iii) sufficient reasons to question the authenticity of the previously received data on the customer (their representative), beneficial owner^[1]. Due diligence is conducted in accordance with the rules of internal control of the subject of financial monitoring.

Due diligence of the customers (their representatives) and beneficiary owners conducted by the subjects

of financial monitoring includes the following measures:

- (b) Recording of data required to identify the identity of an individual;
- (c) Recording of data required to identify the identity of a legal entity;
- (d) To reveal the beneficial owner and recording of data required to identify them;
- (e) Determination of goals and nature of business relations;
- (f) Conducting of a regular audit of the business relations and examination of transactions conducted by the customer via the respective subject of financial monitoring, including, if necessary, recording of data on the sources of financing such a transaction; and

(g) Verification and update of data regarding the customer (their representative) and the beneficial owner.

Under Article 10 of the AML Law, the subjects of financial monitoring when conducting a due diligence of their customers shall document the required information concerning its customers in accordance with the list of documents provided by the Decree No.56 depending whether such customer (or their representative) an individual or a legal entity (for a full list of documents please refer to the Decree No.56). Pursuant to the provisions of the Decree No.56, the customer (or their representative) shall provide the subject of financial monitoring with the originals or notarised or apostilled copies of documents.

4. Banking Secrecy and Confidentiality Rules

Pursuant to Article 50.1 of the Banking Law, information regarding the bank's clients and correspondents, their transactions and relations with banks in connection with receipt of banking services. This includes, but is not limited to, information on the availability of such services, owners and numbers of bank accounts and correspondent accounts, outstanding amount and movement of money under such account and accounts of the bank, restriction on such accounts, decisions of government authorities on halting debit transactions, arrests and pledges, transactions of the clients, correspondents and the bank itself, save for general terms of conducting such transactions, as well as availability, owners, the nature, and value of the clients' assets kept in the safe boxes, safe rooms and bank's premises, information regarding loans received by the clients, save for certain situations, payment and money transfer transactions, including transactions carried out without setting up a bank account.

Generally, under Article 50.4 of the Banking Law, information covered by banking secrecy can be disclosed only to the client or any third party upon the consent of the owner of the account (asset) in writing or by means of the identification medium of the owner of account, credit bureau in relation to bank loan transactions, finance lease transactions, factoring and forfeiting transactions, promissory notes discounting, as well as warranties, guarantees and credit letters issued by the bank pursuant to the laws of the Republic of Kazakhstan. For a full list of these circumstances, please see Article 50.4 of the Banking Law).

Nevertheless, the Banking Law provides for some cases when the disclosure of information does not constitute the breach of the banking secrecy. These include, among others, instances when banks in certain cases notify the state revenue authority for the purpose of tax administration or provide data and documents to the Committee on Financial Monitoring (as defined below) for the purposes of the AML Law or the provision to other banks of the documents confirming the provision of a bank loan etc. For a full list of exceptions please refer to Article 50.4 of the Banking Law.

Microcredits secrecy is guaranteed by microfinance organisations. Pursuant to Article 21.1 of the MFO Law, the microcredits secrecy includes data on borrowers, amounts of the microcredits provided, other terms of an agreement on provision of microcredit related to the borrower, and data on transactions conducted by a microfinance organisation, save for the microcredit provision rules. It shall be noted that the data regarding the agreements on provision of microcredits concluded by a microfinance organisation does not constitute the microcredits secrecy if such microfinance organisation is in the liquidation procedure.

Generally, under Article 21.3 of the MFO Law, microcredit secrecy can only be disclosed to the borrower or any third party upon the written consent of the borrower provided in person in the microfinance organisation, to the credit bureau in relation to the provided microcredits. In addition, considering certain exceptions, among others, microcredit secrecy can be disclosed to law enforcement agencies sanctioned by the general prosecutor, national security agencies, the borrower's representatives, banking ombudsman, when a microfinance organisation provides negative information to the credit bureau and the credit bureau provides negative information about the subject of credit history in relation to the overdue payment exceeding 180 calendar days etc. For a full list of exceptions please refer to Articles 21.4, 21.5, 21.5-1, 21.6 of the MFO Law.

5. Data Breach Notification

There is no specific legal requirement to notify government authorities or clients regarding the breach of data related to individuals and legal entities.

6. Marketing, New Media and Communications

There is no separate regulation or guidance governing the use of data for marketing purposes or the use of social media, email, text and other forms of new media.

7. Insurance

Provisions of the law related to data protection in the insurance industry are contained in the Civil Code. In particular, the definition of an insurance secrecy is provided for in Article 830.1 of the Civil Code according to which the insurance secrecy includes information on the amount of insurance, redemption sum, and paid insurance premium, other terms of the insurance agreement (reinsurance) related to the identity of the insurant, insured or beneficiary. Information on the insurance (reinsurance) agreement entered into by an insurance (reinsurance) organisation in the process of winding up does not constitute the insurance secrecy.

Generally, the insurance secrecy can be disclosed to a third party upon a written consent of the insurant (insured, beneficiary). Should the insurer disclose the information deemed as the insurance secrecy, the insurant (insured, beneficiary) have the right to claim losses and in certain cases claim for moral harm.

8. Other areas of interest

There are no other regulations of significant concern relevant to the banking/financial sector.

9. Conclusion

To summarise the above information, we suggest to consider the following requirements of the Kazakhstani legislation related to the data protection in the financial sector of Kazakhstan:

- In the event customers of financial services are individuals, financial institutions in capacity of owners of databases and operators of databases should obtain a consent from the personal data subject to collect and process personal data, including cross-border transfer of personal data pursuant to the PDP Law;
- In the event of financial services provided by the banks or organisations carrying out certain types of banking activity or microfinance organisations providing microcredits, the consents to disclosure of banking/microcredit secret, as appropriate, shall be obtained from the borrower;
- If a person would lie to provide information on the borrower/ receive credit report on the borrower to/from credit bureaus, relevant consent of the borrower shall be obtained;
- If an entity is recognised as subject of financial monitoring by the AML Law, such entity shall carry out due diligence regarding its customers and provide the data and information on the certain transactions of its customers to the Committee on Financial Monitoring.

[1] 'Beneficial owner' means an individual who, directly or indirectly, owns more than 25% of participatory interest in a charter capital or placed shares, less the preference shares and bought shares by the joint-stock company, of the legal entity-customer, as well as an individual who controls the customer otherwise or in the interest of which the customer conducts transactions with money and (or) other property.

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