

A composite image featuring a central tree. The left side of the tree is bare and set against a dark, stormy sky with falling snow and a snowy landscape. The right side of the tree is full of vibrant yellow and green leaves, set against a bright, sunny sky with a green field. A large, bold yellow letter 'L' is positioned on the left side of the image, partially overlapping the snowy background.

LEGAL ALERT ON RECENT CHANGES
IN LEGISLATION OF KAZAKHSTAN



In keeping with GRATA's practice of informing clients regarding important legal developments that might influence their business, we draw your attention to the following recent changes in Kazakhstan legislation that occurred during the period of January - December 2015.

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- 1) Law of the Republic of Kazakhstan dated 8 June 2015 no. 316-V "On Special Defensive, Antidumping and Compensation Measures in relation to the Third Countries".
- 2) Law of the Republic of Kazakhstan dated 17 July 2015 no. 333-V "On Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Issues of Ownership Right Further Protection, Guaranteeing of Contractual Obligations Protection and Increase of Liability for the Relevant Breach".
- 3) Law of the Republic of Kazakhstan dated 29 October 2015 no. 372-V "On Agricultural Cooperatives".

1) LAW ON SPECIAL DEFENSIVE, ANTIDUMPING AND COMPENSATIONAL MEASURES

The Law on Special Defensive, Antidumping and Compensation Measures¹ came into effect on 10 July 2015.

The main purpose of the Law is to make national legislation compliant with international treaties executed by Kazakhstan in the frameworks of Eurasian Economical Union (the "EAEU") and international treaties of the World Trade Organization (the "WTO") in anticipation to official accession of Kazakhstan to the WTO on 15 December 2015.

¹ Law of the Republic of Kazakhstan dated 8 June 2015 no. 316-V "On Special Defensive, Antidumping and Compensation Measures in relation to the Third Countries".

Please note the following major provisions of the Law:

Special Defensive Measures

Special defensive measures are aimed at limitation of import of the certain goods to the customs territory of EAEU in case if increased import of such goods has caused or may cause serious damage to economic sector of the member states. The damage or threat of damage shall be investigated and confirmed by a special investigation body appointed by the Eurasian Economic Commission (the "Investigation Body").

Special defensive measures can be introduced only upon decision of the Eurasian Economic Commission after investigation mentioned above.

The Law on Special Defensive, Antidumping and Compensational Measures provides for the following types of special defensive measures: (i) import quote²; (ii) special quote³ and (iii) special duty⁴ (including preliminary special duty⁵).

Special defensive measures can be introduced for not more than 4 years with prolongation option for another 4 years (8 years in total), except preliminary special duty that can be introduced for up to 200 calendar days.

Antidumping Measures

Antidumping measures apply in case of import to the customs territory of EAEU of the goods export price of which is lower than normal price of such goods (the "dumping import").

Antidumping measures apply only in case the dumping import to the customs territory of EAEU causes or may cause

² Limitation of import of certain goods in terms of their quantity and(or) price

³ Establishment of certain level of import below which the goods are delivered free of special duty and above which the goods are delivered subject to special duty

⁴ Duty payable in addition to import customs duty

⁵ Duty introduced in urgent circumstances when it is not clear whether or not the import of certain goods cause/may cause damage to economic sector of the member states and the Investigation Body has issued preliminary conclusion that the import of such goods caused/may cause damage.

material damage to economy sector of member-states or substantially delays the establishment of relevant economy sector of member-states. The fact of material damage, threat of material damage or delay in the establishment of relevant economy sector of member-states shall be investigated and confirmed by the Investigation Body.

Antidumping measures can be introduced only upon decision of the Eurasian Economic Commission after investigation mentioned above.

Antidumping measure can be introduced by the way of (i) introduction of antidumping duty⁶ (including preliminary antidumping duty⁷); or (ii) approval of pricing obligations accepted by the relevant exporter⁸.

Antidumping measures can be generally introduced for not more than 5 years, except preliminary antidumping duty that, depending on circumstances, can be introduced for up to 9 months.

Compensation Measures

Compensation measures are aimed at neutralization of negative effect on EAEU economy of specific subsidy provided to the foreign exporters by the exporting third country⁹. Compensation measures apply in case of import to the customs territory of EAEU of the goods produced, exporter or delivered with the use of the specific subsidy provided by the third exporting country (the "subsidized import").

⁶ Duty payable in addition to import customs duty

⁷ Duty introduced in case of preliminary conclusion of the Investigation Body according to which the dumping import of certain goods caused or may cause material damage to economy sector of member-states or substantially delays the establishment of the relevant economy sector of member-states

⁸ The investigation by the Investigation Body is put on hold or terminated, and no preliminary antidumping duty or antidumping duty is introduced if the relevant exporter accepts the obligations on reconsideration of price for the relevant goods or termination of dumping import into the territory of EAEU and if the Investigation Body holds that acceptance of such obligations will rectify the damage caused by the dumping import

⁹ A country that is not a member-state of EAEU

Compensation measures apply only in case the subsidized import to the customs territory of EAEU causes or may cause material damage to economy sector of member-states or substantially delays the establishment of relevant economy sector of member-states. The fact of material damage, threat of material damage or delay in the establishment of relevant economy sector of member-states shall be investigated and confirmed by the Investigation Body. Compensation measures can be introduced only upon decision of the Eurasian Economic Commission after investigation mentioned above.

Compensation measure can be introduced by the way of (i) introduction of compensation duty¹⁰ (including preliminary compensation duty¹¹); or (ii) approval of voluntary obligations accepted by the subsidizing body of the exporting third country or the relevant exporter¹².

Compensation measures can be generally introduced for not more than 5 years, except preliminary antidumping duty that can be introduced up to 4 months.



2) LAW ON OWNERSHIP RIGHT FURTHER PROTECTION

¹⁰ Duty payable in addition to import customs duty

¹¹ Duty introduced in case of preliminary conclusion of the Investigation Body according to which the fact of subsidized import is confirmed and such subsidized import caused or may cause material damage to economy sector of member-states or substantially delays the establishment of the relevant economy sector of member-states

¹² The investigation by the Investigation Body is put on hold or terminated, and no preliminary compensation duty or compensation duty is introduced if (i) the exporting third country agrees to cancel or decrease the subsidy or take the measure in order to rectify the consequences of subsidy; or (ii) the relevant exporter agrees to reconsider the prices for the relevant goods if the Investigation Body holds that acceptance of such obligations will rectify the damage caused by the subsidized import

The Law on Ownership Right Further Protection¹³ came into effect on 1 August 2015.

The main purpose of the Law is to strengthen relevant provisions of legislation related to protection of ownership rights and guarantee of protection of contractual obligations.

Please note the following major provisions of the Law:

Clarification of “Expressly Insignificant” Criteria in Pledge Enforcement

Kazakh legislation provides that the court may refuse to levy execution on the pledged property in case of the breach of the secured obligation committed by the debtor is “extremely insignificant and the amount of the creditor’s claims is, accordingly, expressly inadequate to the amount to the value of the pledged property”. The law, however, did not previously provide any guidance as to what shall be considered as “extremely insignificant” and “expressly inadequate”. The court was able, accordingly, determine these criteria itself and refuse to levy execution on the pledged property at its sole discretion.

To address this issue, the Law clarified that the breach shall be considered “extremely insignificant” and the creditor’s claims shall be considered as “expressly inadequate” to the value of the pledged property if the following criteria are simultaneously met: (i) the amount of non-performed obligation (excluding fines) is less than 10% of the value of the pledged property determined by the parties in the pledge

¹³ Law of the Republic of Kazakhstan dated 17 July 2015 no. 333-V "On Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Issues of Ownership Right Further Protection, Guaranteeing of Contractual Obligations Protection and Increase of Liability for the Relevant Breach".

agreement; and (ii) the secured obligation is non-performed for the period of not less than 3 months.

This amendment, however, does not help in situations where non-financial obligations of the borrower are breached. Literal interpretation of the amendment suggests that, only non-payment for less than 10% of the value of the pledged property for the period of 3 months can be considered as “extremely inadequate”. Breach of any other non-financial obligations (e.g. non-provision of financial statements or absence of notification on change of address of the borrower) cannot now be considered by the court as “expressly insignificant” and the court will not be able to refuse levy execution on the pledged property in case of such breaches to the detriment of the borrowers and pledgers.

Introduction of Summary of Terms Requirement for Individual Borrowers

The Kazakh banking legislation contains a number of mandatory provisions of the bank loan agreement, without inclusion of which such bank loan agreement will be held invalid.

The Law introduced the summary of terms requirement in relation to the bank loan agreements with individual borrowers (except the loans issued for the period of less than 1 month, loans issued in the framework of credit line through the payment card and overdraft loans). The bank and individual borrower now will have to sign, in addition to bank loan agreement, the summary of terms document that shall contain the main terms of the bank loan including the amount, currency and tenor of the loan, number of payments under the loan, type of interest rate (fixed or floating), final amount of interests, fines under the loan etc.

3) LAW ON AGRICULTURAL COOPERATIVES

The Law on Agricultural Cooperatives¹⁴ was signed by the President on 29 October 2015 and will come into effect from 1 January 2016.

¹⁴ Law of the Republic of Kazakhstan dated 29 October 2015 no. 372-V "On Agricultural Cooperatives".

The Law is aimed to increase the attractiveness of membership in agricultural cooperatives, encouraging of competition for the purposes of development of agricultural sector in Kazakhstan.

Please note the following provisions of the Law:

Making Agricultural Cooperatives Commercial

Currently, most of agricultural cooperatives are established as non-commercial organizations (except agricultural cooperatives established in the form of so called production cooperatives). Non-commercial organizations cannot distribute dividends to its members. Accordingly, agricultural cooperatives were not really attractive for the members to join.

The Law provides that from 1 January 2016 all agricultural cooperatives shall be established and perform their activity in the form of production cooperative that is a commercial legal entity that allows to distribute dividends to its members. Agricultural cooperatives established as non-commercial organizations shall be reorganized and become commercial organizations (in the form of production cooperative) within 1 year from the effective date of the Law.

Introduction of Associated Members

The Law provides that, apart from other members, agricultural cooperative can have so called "associated" members.

The contribution of associated members can be made only with money (and not other property). Associated members receive dividends for the amount of their contribution, bear liability to the cooperative's creditors only for the amount of their contribution, are not entitled to participate in the management of agricultural cooperative (have a right of advisory vote only) and are not obliged to take part in business activity of agricultural cooperative. The total number of associated members shall not exceed one fifth of the total number of participants of agricultural cooperative.

The Law provides that associated participants can be individuals and legal entities that are agricultural producers who make contributions to the agricultural cooperative as a prepayment of agricultural raw materials in order to

guarantee the delivery of such materials. It is not clear whether non-agricultural producer can become an associated member of agricultural cooperative.

We hope this Legal Alert of the GRATA Finance & Securities Group is useful to you in your present work. Please let us know if you have any questions. We would be glad to be of assistance.

As we are constantly trying to improve the quality of our services, we would highly appreciate your recommendations or comments as to how we can serve you better. Furthermore, if there is anything we omitted to mention when working on a project of yours, please do let us know.

Comments and recommendations can be sent to schikanayev@gratanet.com. We will make sure we fix any problems and continue to offer you the best service we can.

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