

Kazakhstan has adopted new Civil Procedure Code which introduces significant changes to civil proceedings in Kazakhstani courts.

On October 31, 2015, the President of Kazakhstan has signed the Civil Procedure Code with new rules for civil trials in the Kazakhstani courts.

The Civil Procedure Code (the “CPC”), coming into force on 1 January 2016, has the following key novelties:

- ✓ The new CPC provides for a three-tiered judicial system comprising the courts of original jurisdiction, appellate jurisdiction and cassation jurisdiction instead of a previous four-tiered system which also included the court of supervisory jurisdiction. Now, the revisory powers to rule upon the decisions which came into force will be exercised by the cassation tier represented by a special judicial panel of the Supreme Court of the Kazakhstan. Hence, oblast (regional) and equal-status courts will not act as the courts of cassation jurisdiction any more.
- ✓ The CPC now determines the jurisdiction over investment disputes. The general rule is that such disputes are referred to the Court of Astana city (equal to oblast court), while the disputes involving large investors are referred to the Supreme Court which hears such cases as a court of original jurisdiction.
- ✓ Starting from January 1, 2016, all evidence must be presented to court at the stage of pretrial examination. In exceptional cases, evidence may be also presented in the course of court proceedings and in the court of appeal jurisdiction. However, the party providing such evidence must prove to the court that the evidence could not be presented at the stage of pretrial examination.
- ✓ The CPC prevents the withholding of evidence by prohibiting the party to present new evidence to courts of higher jurisdiction and by allowing the parties to refer only to the evidence which was disclosed during pretrial examination or, in exceptional cases, during court proceedings, as mentioned above.
- ✓ Whereas the significance of pretrial examination grows, the time period for completing this stage is increased from 7 to 15 business days, with possible extension for one month, although in exceptional cases.
- ✓ The CPC provides new guidelines for calculating the amount of the court fee, e.g. in cases to recover moral damages it is based on the amount being claimed, and in actions to invalidate the sale and purchase, pledge, donation or other agreements - on the market value of the assets on the date of the claim. There is still enough time (before the New Year) to file such claims for the minimal court fee of ½ of the monthly calculation index (approximately 1,000 tenge, or USD 3).
- ✓ The CPC changed the requirements to documents accompanying the statement of claim. Now, a claimant has to attach, among other documents, the confirmation that copies of the statement of claim and the relevant supporting documents were sent to the defendant (or their counsel) and third parties involved.
- ✓ The CPC widens the choices for amicable settlement of disputes, starting with the judge’s obligation to try to reconcile the parties at the stage of pretrial examination and, subsequently, at all stages of judicial proceedings; the introduction of various alternative conciliation procedures (conciliation, mediation, participation and others); the possibility to refer a dispute to arbitration; and the detailed description of the procedure for execution and performance of an amicable agreement.
- ✓ The CPC clearly regulates the notification procedure and lists the cases when parties are deemed to be duly notified.
 - ✓ For example, a subpoena or another notice addressed to a legal entity may be delivered not only to its representative or managerial staff, but also to a security guard or any

another employee who should sign the receipt of the subpoena/notice or a copy thereof and specify his/her position, family name and initials .

- ✓ A subpoena or another notice is deemed to be delivered to a legal entity at its registered address even if such entity is not found at the specified address.
- ✓ The refusal of the addressee to accept a subpoena or another notice shall not preclude the legal proceedings or certain procedural actions to go on, and the addressee shall be deemed as duly notified.
- ✓ Generally, an appeal may be filed by the party or prosecutor within one month after the final court decision. Until the new CPC comes into force, the period for filing an appeal is 15 days after receiving the copy of such decision.
- ✓ The new CPC cancels the requirement of the court fee for filing an appeal. However, such requirement is still applicable to the cassation petitions.
- ✓ An appeal may not contain any claims which were not made during initial court proceedings.
- ✓ The court of appellate jurisdiction is again vested with the power to send the case back to the court of original jurisdiction for retrial. Besides, while reviewing an appeal, the court of appeals may decide to retry a case on merits as a court of original jurisdiction.
- ✓ As a general rule, a cassation petition may be filed by the party or prosecutor within six months after the relevant judicial act enters into force.
- ✓ Generally, decisions and other court acts will not be reviewed by the court of cassation jurisdiction if they were not properly appealed, or if the dispute involves proprietary interests of individuals amounting to less than 2,000 monthly calculation indices (about 4 mln. tenge, or USD 13,000) or proprietary interests of legal entities amounting to less than 30,000 monthly calculation indices (about 60 mln. tenge, or USD 52,000). Some other categories of judicial acts are also not subject to cassation review.