

Data Localization Laws: Overview (Kazakhstan)

by Aset Shyngyssov, Bakhytzhan Kadyrov, and Zhamilya Bilisbekova, Morgan Lewis, with Practical Law Data Privacy Advisor

Law stated as at 29 May 2019 • Kazakhstan

This Q&A provides a high-level summary of the key data localization requirements in Kazakhstan. It identifies general requirements, sector-specific requirements, regulatory guidance, and best practices. It also addresses data localization law exceptions, cross-border data transfer requirements, and enforcement risks.

1. What are the key data localization laws in your jurisdiction?

The key data localization laws in Kazakhstan are summarized below:

- [The Law of the Republic of Kazakhstan on Personal Data and Its Protection, No. 94-V](#) (May 21, 2013) (Data Protection Law):
 - Article 12(2) requires organizations subject to the Data Protection Law to store databases containing personal data in the Republic of Kazakhstan. The law defines databases as sets of ordered personal data (Article 1(8), Data Protection Law).
- [The Law of the Republic of Kazakhstan on Informatization, No. 418-V](#) (November 24, 2015) (Informatization Law):
 - Article 56 requires organizations to store electronic databases containing personal data in the Republic of Kazakhstan.
- [Order No. 38/NK of the Minister for Defense and Aerospace Industry of the Republic of Kazakhstan](#) ("On the Approval of the Rules for Registration, Use, and Distribution of Domain Names in the Area of Kazakhstani Segment of the Internet") (as amended on March 13, 2018) (in Russian) (Order No. 38/NK):
 - Order No. 38/NK governs the procedures for registering domain names in the Kazakhstani segment of the internet, defined as set of internet sites hosted on hardware and software located in the Republic of Kazakhstan (Paragraph 2(5), Order 38/NK). The domain registration application contains a provision requiring server hardware to be located in the Republic of Kazakhstan (see Note, Appendix to the Rules for Registration, Use, and Distribution to the Kazakhstani Segment of the Internet).
- [Law of the Republic of Kazakhstan on Communications, No. 567-II](#) (July 5, 2004) (Communications Law):
 - Article 15 requires the storage of communications service information in the Republic of Kazakhstan.
- [Government Resolution of the Republic of Kazakhstan No. 246](#) (March 30, 2010) ("On Approval of the Rules on Conduction of Collection and Storage of Service Information on Subscribers by Operators") (in Russian) (Communications Resolution):
 - Paragraph 6-1 prohibits the storage of subscriber information outside the Republic of Kazakhstan.

2. What do the data localization laws cover?

Data Protection Law

The Data Protection Law applies to all organizations subject to the Data Localization Law that store personal data. Personal data is electronic and non-electronic data:

- That relates to an identified person.
- Where there is a basis for the individual to be identified from the data.

(Article 1(2), Data Protection Law.)

Personal data includes, but is not limited to:

- First or last name.
- Birthdate and place of birth.
- Nationality.
- Marriage status.
- Individual identification number.
- Identification document details.

Informatization Law

The Informatization Law:

- Applies to organizations that develop electronic databases, websites, software, and hardware for organizational, socio-economic, scientific, and technical purposes (Articles 1(2) and 1(8), Informatization Law).
- Covers electronic databases containing personal data as defined under the Data Protection Law.

Order No. 38/NK

Order No. 38/NK covers domain names, defined as alphanumeric character designations that identify specific network addresses under the Internet Corporation for Assigned Names and Numbers (ICANN) rules (Paragraph 2(2), Order No. 38/NK).

Communications Law and Communications Resolution

The Communications Law and the Communications Resolution cover information that providers maintain on subscribers solely for intelligence and law enforcement purposes, including:

- The subscriber identification number.
- Identification codes for the subscriber's cellular device.
- Billing data.
- Location information.
- Network addresses.
- Internet resource identification strings.
- Data communication network protocols.

(Paragraph 2(2), Communications Resolution.)

3. What sectors, individuals, and entities do the data localization laws in your jurisdiction apply to?

Data Protection Law and Informatization Law

The Data Protection Law and the Informatization Law apply to all individuals and legal entities in the Republic of Kazakhstan covered by the laws, unless an exception applies (Article 48, The Law of the Republic of Kazakhstan on Legal Acts, No. 480-V (April 6, 2016)).

Order No. 38 N/K

Order No. 38/NK applies to all individuals or legal entities with registered domain names in the Kazakhstani segment of the internet (Paragraph 1(4), Order No. 38/NK).

Communications Law and Communications Resolution

The Communications Law and the Communications Resolution apply to providers and operators registered in the territory of the Republic of Kazakhstan who provide communication services or operate communication networks (Article 2(18), Communications Law and Paragraphs 2(5) and 3, Communications Resolution).

4. What are the main exemptions from the application of the data localization laws?

Data Protection Law

The Data Protection Law does not apply to the collection, processing, or use of personal data:

- Exclusively for personal or family needs.
- Contained in the national archive fund of the Republic of Kazakhstan.
- For purposes related to:
 - national security state secrets under the Law of the Republic of Kazakhstan on State Secrets, No. 349-1 (March 15, 1999); or
 - intelligence, counterintelligence, and security measures.

(Article 3(3), Data Protection Law.)

Communications Law and Communications Resolution

The Communications Law and the Communications Resolution do not apply to postal communication operators (Paragraph 3, Communications Resolution). Postal communication operators are any individuals or legal entities registered to provide postal services in the Republic of Kazakhstan.

5. Do the data localization laws allow for cross-border transfers after storing the data in your jurisdiction?

Data Protection Law

The Data Protection Law permits cross-border transfers of personal data under certain circumstances. The common understanding in Kazakhstan is that the localization requirement for personal data does not prohibit organizations from storing duplicate versions of that data in other jurisdictions.

Communications Law and Communications Resolution

The Communications Law and its Resolution prohibit the cross-border transfer of service information unless the transfer is necessary to render communication services to subscribers abroad (Paragraph 6-1, Communications

Resolution).

6. If yes to number (5), what are the requirements for transferring data outside of your jurisdiction under the data localization laws?

The Data Protection Law's localization permits cross-border transfers of personal data after storage of the personal data in Kazakhstan:

- To jurisdictions with adequate levels of data protection.
- To jurisdictions without adequate levels of data protection if:
 - the data subject provides consent;
 - an international treaty permits the transfer; or
 - the transfer is necessary for protecting a constitutional order, a public order, the rights and freedoms of persons or citizens, and the health and morals of the population;

(Article 16(3), Data Protection Law.)

7. Have regulators in your jurisdiction issued guidance on compliance with the data localization laws?

Regulators have not issued any guidance on the data localization laws.

8. Who enforces the data localization laws in your jurisdiction?

Data Protection Law

The General Prosecutor's Office of the Republic of Kazakhstan enforces the Data Protection Law.

Communications Law and Communications Resolution

The Ministry of Information and Communication of the Republic of Kazakhstan enforces the Communications Law and the Communications Resolution.

Order No. 38/NK

The Committee on Information Security of the Ministry of Digital Development, Defense and Aerospace Industry of the Republic of Kazakhstan enforces rules related to domain name registries.

9. What are the penalties for violating the data localization laws in your jurisdiction?

Data Protection Law

Non-compliance with Data Protection Law provisions may result in a fine up to 70 monthly calculation indexes (KZT176,750) (Article 79(3), Code No. 235-V of July 5, 2014 on Administrative Offenses) (Administrative Code).

Communications Law and Communications Resolution

Violations of the Communications Law or the Communications Resolution may result in a fine up to 500 monthly indexes (KZT1,262,500) (Article 637(3), Administrative Code).

Monthly calculation indexes are indicators for calculating pensions, social benefits, and fines in Kazakhstan.

10. What are the enforcement risks for violating the data localization laws in your jurisdiction?

There is no public information available regarding enforcement of localization requirements in the Republic of Kazakhstan. Organizations should consult with local counsel when conducting enforcement risk assessments.

11. Are there any additional requirements or best practices related to data localization laws not covered above that practitioners in your jurisdiction should be aware of?

Under the Data Protection Law, organizations may retain data only for as long as necessary to fulfil the purpose the organization collected it for. The other localization laws do not set up a time period for storing data.