Bloomberg BNA | Bloomberg Law®: Privacy & Data Security

Country Profile: KAZAKHSTAN

Aset Shyngyssov , Bakhytzhan Kadyrov , and Aida Akhmetova of Morgan Lewis, Almaty, provided expert review of the Kazakhstan Country Profile and wrote the Risk Environment Section.

I. Applicable Laws and Regulations

Privacy in Kazakhstan is guaranteed under Article 18 of the Constitution of the Republic of Kazakhstan of 1995 (official English translation), which was enacted following Kazakhstan's independence from the Soviet Union and transition to a free market economy. The Constitution states that "everyone shall have the right to inviolability of private life, personal or family secrets, protection of honor and dignity," and "the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages."

In 2013, pursuant to the constitutional provision, Kazakhstan adopted its general data protection law, Law No. 94-V on Personal Data and its Protection (PDP Law) (in Russian). Prior to this enactment, Kazakhstan afforded privacy protections for employees through Labor Code Chapter V, Employee Personal Data Protection (Labor Code) (official English translation). Additional privacy protections for limited sectors were provided through Law No. 217-III on Informatization (Law on Informatization) (official English translation), which specifically addresses electronic databases; Law No. 2444 on Banks and Banking Activity (BBA) (official English translation); and Code No. 193-IV on Public Health and Health Care System (Code on Public Health or CPH) (official English translation).

The PDP Law was accompanied by amendments to the earlier privacy laws designed to recognize the effect of the PDP Law, in some instances by deleting provisions now redundant to the PDP Law. Thus, pursuant to the Law Amending Certain Legislative Acts in Relation to Personal Data and its Protection No. 95-V dated 21 May 2013 (Amendments Law) (in Russian) the relevant provisions of the Labor Code were either deleted or moved to the PDP Law. The Labor Code now only contains rights and obligations of the employer and rights of the employee. Such rights and obligations are generally in line with the PDP Law; for example, an employee's right to request changes to his or her own personal data or access to such personal data. The Amendments Law introduced provisions on criminal and administrative liability for breach of PDP Law requirements and aligned, along with CPH, the Law on Informatization and the Civil Code of the Republic of Kazakhstan, General Part (Dec. 27, 1994) (official English translation) with the PDP Law requirements.

A. Information Protected

The PDP Law distinguished "public personal data" such as that found in reference books, and telephone and address books, from "restricted personal data," defined as "information relating to an identified or identifiable subject recorded on an electronic, paper and (or) other physical medium" (art. 1(2)). Under the PDP Law, the collection of personal data must be "necessary and sufficient to perform the tasks carried out" by the data controller (art. 25(2)(1)).

The remaining statutes address data in specific sectors. Labor Code provisions apply to "personal data of the employee," which is defined as "information about the employee required on the initiation, continuation, and termination of labor relations" (art. 64). The BBA provisions on bank secrecy address "information on availability, ownership and numbers of bank accounts of depositors, clients and correspondent bank balances and cash flow in these accounts and the accounts of the bank ... and information availability, ownership, nature and value of

client assets in its custody in the safe deposit boxes, cases and bank premises" (art. 50(1)).

B. Who Is Covered?

The PDP Law regulates the collection, processing and protection of personal data (art. 3(1)), without limitation as to the identity of the data subject or the data processor, except with respect to the collection, processing and protection of personal data exclusively for personal and family needs, or as needed for national security, the protection of state secrets, or operation of the National Archives of Kazakhstan. Among sector specific privacy statutes, the Law on Informatization has the broadest reach, covering information contained in electronic information resources (art. 3(1), and "state bodies, individuals and legal entities, carrying out activity or entering into legal relations in the field of informatization" (art. 3(2)). The remaining statutes address information processors in specific sectors—specifically, employers under the Labor Code, banks under the BBA, and information processors in the health sector under the CPH.

C. Privacy Notice, Consent, Access, and Correction

Under the PDP Law, a data controller must obtain the consent of the data subject prior to the collection of any personal data (art. 7), except as provided by international treaties, by law enforcement agencies and courts, for the maintenance of government statistics, or for certain journalistic, scientific, or artistic purposes (art. 9). Consent may be provided in writing, or in electronic form with a verified digital signature, or by any other means that do not contradict the law of Kazakhstan (art. 8(1)).

The privacy laws of Kazakhstan do not specifically require notice to be provided in connection with data collection, except where such data falls into one of the exceptions noted above. When such data is transferred, the transferor must notify the data subject or his legal representative within ten working days (PDP Law, art. 19).

Under the PDP Law, data subjects must be given access to their personal data upon their request or a request by their legal representatives, unless such access is otherwise contrary to the laws of Kazakhstan (art. 10(2)). The Labor Code provides employees with the rights to "free-of-charge access to their personal data," "deletion and correction of incorrect or incomplete personal data, as well as data processed in violation of the requirements of this Code," and requires "that the employer notify persons that previously received the incorrect or incomplete personal data of the employee concerning the corrections made therein" (art. 68 (1)–(3)).

D. Information Disclosure

The PDP Law specifically prohibits the cross-border transfer of personal data to a foreign country unless the receiving country ensures the protection of personal data, or with "the consent of the subject or his legal representative," or if provided by an international treaty ratified by Kazakhstan (art. 16).

Within specific sectors, the BBA requires that banks and banking institutions provide confidentiality to their account holders (art. 50(2)), and requires that information about an account holder may be "disclosed only to the account holder" or to a "third person with the written consent of the account holder" (art. 50(4)).

The Labor Code, addressing employers, specifies that the employer shall "not disclose personal data to a third party without the employee's written consent, except in cases stipulated by this Code and other laws of the Republic of Kazakhstan" (art. 65(8)). Within the company, the employer shall "permit access to personal data of employees only to specially authorized persons" (art. 65(9)), and those authorized persons must be warned that "they are obliged to use them exclusively in the previously stated purposes and may not transfer them to third parties, except in cases prescribed by the laws of the Republic of Kazakhstan" (art. 65(11)). The CPH, addressing medical personnel, specifies that such personnel may only access personal data for the purposes of carrying out limited number of medical activities, such as: (i) providing medical care to the data subject; (ii) lab diagnostics; (iii) pathoanatomical diagnostics; (iv) blood banking; (v) activity in the area of sanitary and epidemiological welfare; (vi) scientific and educational activity in the area of healthcare; and (vii) healthcare expertise. Medical personnel may not allow this information to be used to harm the individual (CPH art. 28.4). The CPH further establishes the so-called "national preventative mechanism" (NPM; a national program to prevent human rights violations) and requires that NPM personnel (including, e.g., medical personnel) "shall not disclose any information about the private life of individuals that have become known to them during preventive visits, without the consent of that person" (CPH 184-10(1)).

II. Regulatory Authorities and Enforcement

Kazakhstan has not established a data protection authority. Instead, the PDP Law generally assigns the national government the role of developing data privacy policies and procedures (art. 26), and empowers competent state authorities of Kazakhstan to carry out the enforcement of the law (art. 27). Further, the PDP

Law states that "bodies of the prosecutor's office on behalf of the state shall exercise the highest supervision over exact and uniform application of this Law and other legal acts of the Republic of Kazakhstan in the field of personal data" (art. 28(1)). Thus, for instance, only prosecutors may initiate the administrative proceedings in case of breach of the data protection requirements (Code of the Republic of Kazakhstan No. 235-V, On Administrative Violations, art. 805 (July 5, 2014)).

III. Risk Environment

In general, the PDP Law seems to be tailored to regulate the activity of entities that deal with personal data on a day-to-day basis (e.g., telecommunication service providers, entities in charge of forming and operating state databases, mass media, banks) and to address modern challenges such as use of biometric data, electronic trade, cross-border transfer, etc. However, the current version of the PDP Law defines personal data very broadly and thereby extends its scope to any information that pertains to a natural person or allows a person to be identified. As a result, PDP Law is triggered in a broad variety of situations ranging from the collection and processing of personal data for the purposes of providing telecom services to the day-to-day activities of the private sector.

While the general prosecutor's office has general supervisory authority over application of the PDP Law, other state authorities (e.g., National Bank of Kazakhstan, labor and healthcare authorities) are also responsible for data protection in their respective sectors. A breach of the personal data laws may be revealed during regular, complex, or unscheduled audits. The risk of enforcement in such a case generally depends on the industrial sector to which an operator belongs and types of data that the operator handles.

Generally, one should expect stricter liability if the operator belongs to a regulated business area, such as the financial or telecommunication services, where stricter standards apply, or if the nature of affected data is sensitive, such as credit card data or health-condition-related data. And finally, there are very few clarifications from competent state authorities that could shed light on application of the PDP Law. Relevant court practice has not developed to date.

IV. Emerging Issues and Outlook

A. The Untested Nature of the PDP

The adoption of the PDP Law effected a substantial change across the entire privacy regime of Kazakhstan, as it was accompanied by the Amendments Law in 2013, which was designed to make operations conform to the new rules and standards of the PDP Law. It remains to be seen how these changes will affect the operation of these laws. It also remains to be seen how robustly and how consistently the state authorities empowered to enforce the PDP Law will carry out this authority.

B. Server Localization Law

Under the Law on Amendments to Certain Legislative Acts on Informatization of 24 November 2015 (in Russian; in Kazakh), all companies that hold personal data of Kazakh citizens must store that data on servers located within Kazakh territory, beginning January 1, 2016. This follows the example of the Russian localization law enacted in 2014 (see Russia Country Profile IV.A.). Like the Russian law, the Kazakh law is vague with respect to identifying the data that is covered and the parties to whom it applies. The Kazakh law does not affect the existing regime for cross-border transfer of personal data.