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Amendments to the Code of the Republic of Kazakhstan on Administrative Offences relative to noncommercial organizations

New amendments to the Code on Administrative Offences came into effect as of January 1, 2008 in accordance with the Law #314-III "On insertion of amendments to the Code of the Republic of Kazakhstan on Administrative Offences" dated July 27, 2007.

As often happens, some of the amendments turned out to be favorable for noncommercial organizations (NCOs) and some of them are not.

The *favorable* amendments lowered the amount of administrative penalties that can be imposed on NCOs for certain types of offences, including those described in the following articles of the Code on Administrative Offences (underlined articles are of particular interest for NCOs):

- Article 87 Violation by employer or official of the labor law of the Republic of Kazakhstan...
- Article 128 Illegal usage of an invention, useful model, industrial pattern...
- Article 344 (point 4) Production, storage, importation, transportation, distribution on the territory of the Republic of Kazakhstan of goods unrelated to the mass media and containing the information and materials directed to propaganda or agitation of forcible change of the constitutional system, violation of integrity of the Republic of Kazakhstan...

The *unfavorable* changes included amendments establishing administrative responsibility for NCOs for actions which had not been subject to penalties between January 2006 and January 2008, including actions described in the following articles:

- Article 118 Illegal occupation or exchange of state-owned land plots...
- Article 182 Violation by individuals or legal entities of the deadline for submission of documents for the certificate on notification about currency transactions...
- Article 188 Carrying out of exchange operations with foreign currency not through the authorized banks and their exchange offices...
- Article 205 Violation of the terms established by the legislative acts of the Republic of Kazakhstan for submission of an application for registration at the tax authority
- Article 220 Violation of the regulations for production, storage, disposal, destruction, usage, utilization, transportation or other kind of handling of the explosives, pyrotechnical items, radioactive, bacteriological, chemical and other

ecologically dangerous agents...

- Article 221 Violation of the regulations for the safe operations in the fields of industry, mining and construction ...

- **Article 235** Construction, reconstruction and complete overhaul of objects without state inspection when required by the legislation, or conducting of mentioned activities without permits for construction works

- Article 244 Violation of the operating rules, as well as non-use of the equipment for purification of atmospheric discharge and discharge of waste water

- Article 248 Operation of new and reconstructed enterprises, constructions and other objects, which do not conform to requirements for protection of atmospheric air

- **Article 229** Violation of regulations for storage of industrial and domestic wastes, non-observance of requirements for protection of atmospheric air and fire protection while burning of the mentioned wastes

- Article 251 Irrational use or non-use of agricultural lands

- **Article 253** Failure to use the lands in accordance with designated purpose

- Article 272 Violation of regulations for liquidation and conservation of objects of subsoil mining

- Article 275 Violation of regulations for conducting mining operations, as well as violation of terms of the mining contracts

- Article 294 Violation of regulations for transportation, storage and usage of plant –protecting agents, stimulant fertilizers, mineral fertilizers...

- Article 306-1 Providing by the auditable person during the ecological audit of the deliberately false or incomplete information resulted in preparation of unreliable report of ecological audit

- Article 310 Violation of the legislation on veterinary medicine

- Article 323 Violation of the regulatory legal acts in the sphere of sanitary and epidemiological welfare of the population, as well as violation of the hygienic standards ...

- **Article 333** Violation of the silence during the night time (from 11 p.m till 6 a.m), including carrying out of noisy works inside and outside of living accommodations, which are not caused by urgent necessity and prevents people from having normal rest and disturbs their calmness

- **Article 344** (points 1-3) Production, storage, importation, transportation, distribution on the territory of the Republic of Kazakhstan of goods unrelated to the mass media and containing the information and materials directed to propaganda or agitation of forcible change of the constitutional system, violation of integrity of the Republic of Kazakhstan...

- **Article 357-2 (point 1)** Violation of licensing rules and standards, established by the legislation...

- **Article 357-2 (point 2)** Submission by a licensee of the deliberately false information during the process of license obtaining

- **Article 364** Violation of the regulations for record-keeping, storage or usage of multicolor copying devices (quick printing, copying-duplicating devices, ink-jet, laser printers and scanners)

- Article. 368-1 Violation of the procedure for storage, record-keeping, usage, transportation, destruction, import, export of the non-military pyrotechnical items ...

- **Article 387** Violation of the regulations for improvement of the territories of cities and settlements, as well as destruction of infrastructural objects of cities and settlements

- Article 494 Violation of regulations for registration and exploitation of radio electronic or radio frequency facilities, as well as usage of radio waves and importation of radio electronic or radio frequency facilities without special permission.

Consequently, these amendments, on the one hand, significantly increase the scope of administrative offences applicable to NCOs. On the other

hand, NCOs were added to the list of those organizations subject to the lowest possible penalties. This can therefore be considered a positive change for NCOs in that it demonstrates the intention of the government to streamline and harmonize the legislation on administrative responsibility of legal entities in accordance with best international practice.

Background:

Due to the adoption of a new law “On private entrepreneurship” (January 31, 2006) the legal entities subject to penalties under the Code on Administrative Offences in 2006 were divided into two categories. Under the old edition of the Code the amounts of penalties were the same for all types of legal entities. Starting from 2006 penalties were differentiated based on the following two categories:

- 1) Small and medium enterprises, (as defined in accordance with the Law “On private entrepreneurship”), and noncommercial organizations; and
- 2) Large enterprises.

Penalties for entities in category 1) were set at lower rates than for entities in category 2). However, when the 2006 penalties were adopted, the drafters simply forgot to include NCOs into all revised articles. As a result NCOs enjoyed a 2-year “holiday” from penalties for certain administrative offences. In some articles penalties were not differentiated at all, i.e. the same size of penalty was applied to all types of legal entities, including NCOs.

The 2008 amendments were developed to fix the technical gaps that occurred during the initial reforming of the penalty system of the Code in 2006.

It should be noted, however, that although local NCOs are included in the same category as small or medium enterprises, the situation with branches and representative offices of international NCOs remains uncertain. Point 1-1 of Article 37 of the Code provides that “Branches and representative offices of foreign and international noncommercial nongovernmental associations bear the same administrative responsibility for violation of the legislation of the Republic of Kazakhstan as do locally organized legal entities.” But this article does not specify the category of legal entity that should be applied. It would be logical to conclude that branches and representative offices of international NCOs should be treated the same as “small or medium enterprises and local noncommercial organizations”. Nevertheless, the absence of a clear definition creates the opportunity for inconsistent interpretation by law enforcement officials.

For your convenience, the International Center for Not-for-Profit Law has prepared a comparative chart indicating the penalties imposed upon noncommercial organizations in accordance with old and new editions of the Code, as well as new penalties imposed upon noncommercial organizations starting from January 1, 2008 (*see the attached file (Russian text only)*).

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