



CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM KAZAKHSTAN

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

1. Specify the courts which have jurisdiction over IPR infringement cases.

According to the legislation in force, civil and administrative courts have jurisdiction over IPR infringement cases. In addition, IPR infringement cases may be reviewed in an arbitration court.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

The IPR right holder, its authorized representative, governmental authorities within their competence, as well as non-governmental organizations that carry out activities in this field, have standing to assert IPRs.

According to the Civil Procedure Code of the Republic of Kazakhstan (Article 57), citizens have the right to process their cases in court in person or via their representatives. Personal participation does not deprive the right holder of the right to have a representative in this case.

Cases initiated by juridical persons are processed by their heads, acting within their competences provided by the law, other regulations or founding documents, and (or) by their representatives. Heads of juridical persons shall submit to the court the documents proving their official position or authority.

Therefore, according to the current civil legislation, personal presence of the right holder in the court is not mandatory in the event of presence of his/her/its representative.

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?

According to Article 69 of the Civil Procedure Code of the Republic of Kazakhstan, the persons participating in the case and having a reason to doubt that submission of evidence necessary for them will subsequently become impossible or difficult, can request the court to produce this evidence.

Producing evidence shall be provided by the court by questioning of witnesses, ordering and performing expertise, examining the evidence in places where they are stored, sending letters of request, and by other ways.

The application requesting the production of evidence should indicate: that evidence should be produced, the circumstances of the case for confirmation or refutation of which production of evidence is required, and the reasons proving that the submission of the necessary evidence is

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difficult. The application should indicate the case for which the requested evidence is necessary and had been refused to produce before.

Upon the results of consideration of the application on producing evidence, the court issues a ruling according to which it performs procedural actions to produce evidence or refuses to do so. The ruling can be appealed to the court of appeal, whose decision is final and cannot be challenged.

According to Article 770 of the Administrative Offences Code of the Republic of Kazakhstan, the parties that have a reason to doubt that provision of necessary evidences will be impossible or difficult, may ask a judge or state body (official) reviewing the case on administrative offences, to secure these evidences.

Production of evidences is carried out by requesting organizations to provide documents, information, opinions, expertise and on-site inspection as well as by other means regardless of their participation in the case.

According to Article 771 of the Administrative Offences Code of the Republic of Kazakhstan, the application for producing evidence must specify: evidence which is necessary to provide; circumstances to be confirmed by this evidence; reasons to apply for producing evidence and the case which requires this evidence.

Application shall be submitted in writing, or in the form of electronic document certified by electronic digital signature, to the court or to the body (official) reviewing the case of an administrative offence.

According to Article 73.10 of the Civil Procedure Code of the Republic of Kazakhstan, the parties to the arbitration proceedings with the consent of the arbitration may apply motion to the court for assistance in obtaining evidence.

4. What means exist to identify and protect confidential information brought forward as evidence?

According to paragraph 1 Article 19 of the Civil Procedure Code of the Republic of Kazakhstan, legal proceedings of civil cases in all courts are open. Judicial acts are announced in public.

At the same time, examination and resolution of the cases, including announcement of decisions that contain state secrets, are held in a closed court session.

A civil case may be considered and settled upon motion of a person participating in the case at the closed court hearing if it is necessary to ensure confidentiality of child adoption, privacy of life, protection of personal, family, commercial or other secret protected by law or there are other available circumstances, which prevent open proceedings.

Personal correspondence and other personal messages may be announced in an open court hearing only upon consent of persons between whom such correspondence has taken place and to whom such personal messages concern. In case of unavailability of such a consent, correspondence and messages shall be announced and studied in a closed court hearing.

According to Article 16 of the Code of the Administrative Offences of the Republic of Kazakhstan, privacy as well as personal, family, commercial and other secret information is protected by law. Everyone has the right to secrecy of personal deposits and savings, correspondence, telephone conversations, postal, telegraphic and other communications. Limitations of these rights in the course of administrative proceedings are allowed only in cases and manner expressly established by law.

According to Article 5 of the Law "On Arbitration" of the Republic of Kazakhstan, dated 8 April 2016 № 488-V, arbitration is carried out in accordance with the principle of confidentiality, meaning that arbitrators and participants of arbitration proceedings may not disclose information that has become known during an arbitration hearing without consent of the parties or their successors and may not be questioned as witnesses about information they have learnt during arbitration proceedings, except for cases stipulated by the laws of the Republic of Kazakhstan.

According to Article 32 of the Law "On Arbitration" of the Republic of Kazakhstan, dated 8 April 2016 № 488-V, unless otherwise agreed by the parties, arbitration proceedings shall be conducted in a closed session of an arbitration court with the participation of the parties and (or) their representatives.

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

According to Article 970 of the Civil Code of the Republic of Kazakhstan, protection of exclusive intellectual property rights is carried out by the means provided in Article 9:

recognition of rights; restoration of situation that existed before infringement of right; suppression of actions that infringe the right or create a threat of infringement thereof; judgment for specific performance of an obligation; recovery of damages; recognition of a transaction as invalid; compensation for moral damage; termination or modification of legal relations; recognition of an act of a government body as invalid; collection of fine from a state body or official preventing a citizen or legal entity from acquiring or exercising the right, as well as by other means provided in legislative acts.

Protection of exclusive rights may also be carried out by:

- (1) seizure of material objects, use of which infringes exclusive rights as well as material objects created as a result of such infringement;
- (2) publication about infringement, including information about right holders;
- (3) other means provided by legislative acts.

Moreover, in accordance with Article 113 of the Civil Procedure Code of the Republic of Kazakhstan, the court can order the infringer to compensate attorney's fees born by the winning party; however, the amount cannot exceed 10% of the amount of the claim.

According to Article 1032 of the Civil Code of the Republic of Kazakhstan, a person who violated the owner's right on trademark is obliged immediately to discontinue violation and recover the loss suffered by owner of trademark.

Similar liability is provided in Article 1037 of the Civil Code of the Republic of Kazakhstan in respect of appellation of origin.

According to Article 158 of the Code of the Administrative Offences of the Republic of Kazakhstan, unlawful use of someone's trademark, service mark, appellation of origin and brand name lead to confiscation of infringing goods and their further destruction, except for cases where release of such goods is needed in the public interest and do not violate requirements of the consumer protection legislation of the Republic of Kazakhstan (provided that illegally used trademark or a sign having a degree of similarity close to confusion to this trademark is removed from the goods and their packaging).

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?

Provisions with regard to authorities specified in question are not directly stipulated in legislation of the Republic of Kazakhstan. However, according to Article 73 of the Civil Procedure Code of the Republic of Kazakhstan, in cases when provision of evidence by the parties and other persons involved in the case is difficult, the court assists them in requesting evidence. In addition, if a party retains the evidence requested by the court and does not submit it at the request of the court within the time-limit established by the court, it shall be assumed that the information contained in it is directed against the interests of this party and shall be considered as recognized by it.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

According to Article 9 of the Civil Code of the Republic of Kazakhstan, the losses which are inflicted upon a citizen or a legal entity as a result of issuing by a governmental body of an act which does not comply with legislation, or by any other state body, and also by acts (failure to act) of the officials of those bodies, shall be subject to compensation by the Republic of Kazakhstan or by the relevant administrative and territorial unit.

According to Article 113 of the of the Civil Procedure Code of the Republic of Kazakhstan, by the motion of the party, in favour of which the decision was made, the court shall adjudge expenses, incurred by it on payment for the assistance of a representative (several representatives), participated in the process and who is not in labour relations with this party, in the amount of actually incurred expenses by the party. Total amount of these expenses on recovery claims shall not exceed 10% of the satisfied part of the claim. Amount of expenses by non-property claims shall be recovered within due limits, but shall not exceed three hundred monthly calculation indexes.

In addition, according to Article 114 of the Civil Procedure Code of the Republic of Kazakhstan, at the request of party, the court can reimburse damages for actual loss of time in favour of one party, if another party declared clearly ungrounded claim or dispute against substantiated claim (the person knew or should have known), or systematically prevented correct and prompt consideration and resolution of the case.

According to Article 109 of the Civil Procedure Code of the Republic of Kazakhstan, the party in favour of which the decision was made, the court shall adjudge all court expenses incurred during the case.

Pursuant to Article 113 of the Civil Code of the Republic of Kazakhstan, the Republic of Kazakhstan shall be liable for its obligations with the property of the State treasury, while an administrative and territorial unit shall be liable for its obligations with the property of the local treasury. Therefore, if losing party is a state or public body (official), recovery of expenses and damages, mentioned in Articles 113, 114 and 109 of the Civil Procedure Code of the Republic of Kazakhstan, is implemented at the expense of State or Local treasury.

Remedial measures mentioned above are also available in arbitration unless otherwise is not stipulated by arbitral agreement or arbitral clause.

According to Article 861 of the Code of the Administrative Offences of the Republic of Kazakhstan, judge, body (official) shall take all the measures provided by the Law on recognition of a person as innocent and on restitution of personal non-property and property rights violated as a result of illegal actions of a judge, body (official).

According to Article 862 of the Code of the Administrative Offences of the Republic of Kazakhstan, damage inflicted to a person as a result of illegal application of the provisional measures in the case shall be compensated from republican budget in its entirety independently from guilt of a judge, body (official) authorized to consider cases on administrative offences.

According to Article 863 of the Code of the Administrative Offences of the Republic of Kazakhstan, persons in respect of whom administrative proceedings were initiated in violation of the law have the right to compensation of property damage in its entirety, elimination of consequences of moral damage and restitution in all lost or impaired rights.

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

According to Article 183 of the Civil Procedure Code of the Republic of Kazakhstan, the period for review of civil case by a first-instance court has to correspond to its actual complexity and to the interests of the persons participating in the case.

Civil cases shall be reviewed and resolved by the court within the period of up to two months from the date of completion of the preparatory work of the case for the court trial.

Pursuant to Article 108 of the Civil Procedure Code of the Republic of Kazakhstan, the following expenses are incidental to proceedings: amounts payable to witnesses, experts and specialists; expenses related to production of on-site inspection; expenses related to storage of material evidence; expenses for search of a defendant and (or) a child; expenses for publication of announcements and notifications related to the case; expenses for notification and summons to the court of parties and other participants of the case; travel expenses of the parties and third parties and rent of housing incurred in connection with attendance in the court; expenses for representatives' assistance; other expenses recognized as subject to reimbursement by the court, including those incurred by the parties in the procedures for compulsory pre-trial settlement of the dispute at subsequent court proceedings.

Pursuant to Article 109 of the Civil Procedure Code of the Republic of Kazakhstan, the party, in favour of which the decision was made, is awarded by the court with all the legal expenses incurred in the case by the other party. If the claim is satisfied partially, the expenses are awarded to the plaintiff in proportion to the size of the claims satisfied by the court, and to the defendant - in proportion to that part of the claim in which the claimant was refused.

According to Article 817 of the Administrative Offences Code of the Republic of Kazakhstan, the cases on administrative offences shall be reviewed within fifteen days from the date of receipt of a protocol on administrative offence and other case materials by judge, body (official) legally competent to consider a case.

In case of receipt of motions from participants of the proceeding on administrative offence or necessity of additional clarification of the circumstances of the case, the duration of review of the case may be extended by judge or body (official) reviewing the case but not more than for one month. A reasoned ruling shall be issued explaining extension of the duration.

According to Article 764 of the Administrative Offences Code of the Republic of Kazakhstan, injured party, witness, expert, specialist, interpreter and attesting witness are compensated for expenses incurred by them due to appearance in court, body (official) the proceeding of which includes the case on administrative offence in the manner established by the civil procedure legislation, including the cost of travelling of the mentioned persons from the place of residence or stay to the place of proceeding and return, and in cases when it is associated with staying at the other place – the cost of rent of a residential premise, as well as per diem.

The average salary of the person called upon to the court as injured party, witness, expert, specialist, interpreter and attesting witness shall be preserved for the time-period of their absence due to appearance in court, body (official) reviewing the administrative proceeding.

Work of an expert, specialist and interpreter shall be paid in the manner established by the legislation.

According to Article 35 of the Law "On Arbitration" of the Republic of Kazakhstan, dated 8 April 2016 № 488-V, disputes are considered and resolved by an arbitration court within a period of up to two months from the day of completing the preparation of a case for arbitration, unless another time-period is established by the rules or agreement of the parties. In addition, the established timeline may be extended by an arbitration court given the complexity of a dispute under consideration.

According to Article 41 of the Law "On Arbitration" of the Republic of Kazakhstan, dated 8 April 2016 № 488-V, expenses related to dispute resolution in arbitration include: arbitrator fees; expenses incurred by arbitrators in connection with participation in arbitration proceedings, including travel expenses to the place of dispute consideration, accommodation and meals; amounts which are subject to payment to experts and translators; expenses incurred by arbitrators in connection with the survey and examination of written and material evidence at their location; expenses incurred by witnesses; costs of services of the representative by the party, in whose favour the arbitral award has been made; expenses for organizational and material support of arbitration proceedings.

In accordance with Article 42 of the Law "On Arbitration" of the Republic of Kazakhstan, dated 8 April 2016 № 488-V, the allocation of expenses, related to the resolution of a dispute, between the parties by an arbitration court shall be made by an arbitration court in accordance with the agreement of the parties, and in the absence thereof - in proportion to the satisfied and dismissed claims.

(b) Administrative procedures and remedies

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

See the answers for each civil judicial procedures and remedies above.

Provisional Measures

(a) Judicial measures

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

Pursuant to Article 155 of the Civil Procedure Code of the Republic of Kazakhstan, upon application of persons participating in the case of arbitration or court proceedings, the court may take measures to secure the claim, if the failure to take such measures may make the court decision difficult or impossible to fulfil. According to Article 156 of the Civil Procedure Code of the Republic of Kazakhstan, the measures to secure the claim can be the following: (i) seize the defendant's property; (ii) prohibit the defendant from taking certain actions; (iii) prohibit other persons from transferring property or performing certain actions in respect to the defendant; (iv) suspend the sale of property in cases where a claim was filed to cancel the seizure of property; (v) suspend a contested legal act issued by a State body, organization or an official; (vi) suspend a penalty imposed by an executive document, contested by the debtor in court; (vii) suspend tenders for enforcement of the pledge out of court; (viii) suspend contested acts and actions of the executor related to the foreclosure of property performed in execution proceedings. If necessary, the court may take other measures to secure a claim that meet the purposes specified in part one of Article 155 of present Code. The court may take several measures to secure the claim. In case of violation of the prohibitions specified in this article, the offender shall bear responsibility established by laws. In addition, the plaintiff has the right to demand the compensation of losses caused by failure to fulfil the ruling on securing the claim.

According to Article 785 of the Administrative Offences Code of the Republic of Kazakhstan, administrative court may order following provisional measure:

- warrant.

11. In what circumstances may such measures be ordered *inaudita altera parte*?

Pursuant to Article 157 of the Civil Procedure Code of the Republic of Kazakhstan, the application for securing the claim shall be reviewed and resolved by the judge without notifying the participants of the case or the parties to the arbitration and without holding a court session.

Based on results of examination of the application, the judge issues a ruling on securing the claim, indicating the provisional measure provided for in Article 156 of the Code, or on refusing to satisfy the application.

According to Article 743 of the Administrative Offences Code of the Republic of Kazakhstan, participants of proceeding on cases of administrative offences are informed on time and the place of consideration of the case or commission of separate procedural actions and subpoenaed, body (to official) notices.

Refusal of an addressee from acceptance of a notification is not an obstacle of consideration of the case or commission of separate procedural actions.

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

Pursuant to Article 158 of the Civil Procedure Code of the Republic of Kazakhstan, the ruling on securing the claim shall be sent by the court or handed to the person who applied for provisional measures in order to be presented to the relevant persons for its immediate execution.

Articles 159 and 160 provide for possibility of replacing or cancelling the measure on securing a claim that can be carried out by court at the request of the participant of the case or parties to the arbitration.

In accordance with Article 161 of the Civil Procedure Code of the Republic of Kazakhstan, it is also allowed to appeal or protest the rulings on matters of securing the claim in the court of appeal, the decision of which is final.

With the purpose of protecting the defendant's legitimate interests, the court, by allowing secure of claim according to Article 162, may require the plaintiff to provide collateral for the defendant's losses. Provision of collateral for possible losses shall be carried out by depositing an amount specified in the court's ruling to the authorized body.

After entry into legal force of the decision the claim for which is refused, defendant has the right to bring a claim for compensation of losses caused by provisional measures.

According to Article 790 of the Administrative Offences Code of the Republic of Kazakhstan, the warrant is made by Law-enforcement bodies, Anti-corruption Service and Service of Economic Investigations on the basis of determination of the judge, body (official) considering case of administrative offence in the order established respectively by the Agency of the Republic of Kazakhstan for Public Service and to Anti-corruption, the Ministry of Internal Affairs, Ministry of Finance of the Republic of Kazakhstan on the cases of administrative offenses which are in production of the specified bodies.

According to Article 744 of the Administrative Offences Code of the Republic of Kazakhstan, the person concerning whom proceeding of administrative offence is conducted has the right to address with the complaint on application of provisional measures.

13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

According to Article 157 of the Civil Procedure Code of the Republic of Kazakhstan, the application for securing the claim shall be reviewed and resolved by the judge on the day of issuing the ruling on initiation of a civil case if it was attached to the statement of claim or indicated in the statement of claim. In other cases, the application for securing the claim shall be resolved by the judge on the day of its submission to the court.

(b) *Administrative measures*

14. Reply to the above questions in relation to any administrative provisional measures.

As it was mentioned in reply to question 3 above, according to Article 770 of the Administrative Offences Code of the Republic of Kazakhstan, the parties that have a reason to doubt that provision of necessary evidences will be impossible or difficult may ask a judge or state body (official) reviewing the case on administrative offences to secure these evidences.

Securing of evidences is carried out by requesting organizations to provide documents, information, opinions, expertise and on-site inspection as well as by other means regardless of their participation in the case.

According to Article 771 of the Administrative Offences Code of the Republic of Kazakhstan, the application for securing evidence must specify: evidence which is necessary to provide; circumstances to be confirmed by this evidence; reasons to apply for securing evidence and the case which require this evidence.

Application shall be submitted in writing or in the form of electronic document certified by electronic digital signature, to the court or to the body (official), reviewing the case of an administrative offence.

Special Requirements Related to Border Measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

According to Article 458 of the Code on Customs Regulation of the Republic of Kazakhstan, customs authorities shall take measures to protect the rights to intellectual property objects, when goods are placed under the customs procedures, except for placement of goods under the customs procedure of customs transit, the customs procedure of destruction and a special customs procedure.

Measures to protect the rights to intellectual property objects shall not be taken by the customs authorities during placement under the customs procedures of goods, transported across the customs border of the Eurasian Economic Union (hereinafter – EEU), intended for official use by diplomatic missions, consular agencies, missions of states in international organizations, international organizations or their representative offices, other organizations or their representative offices, located in the territory of the Republic of Kazakhstan.

Measures to protect the rights to intellectual property objects shall not be taken by the customs authorities in respect of goods, moved across the customs border of the EEU by individuals for personal use, including those sent to their address in international postal items.

16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?

Suspension of release of goods by customs authorities (Article 51)

Pursuant to Article 458.5 of the Code on Customs Regulation of the Republic of Kazakhstan, the customs authorities take measures to protect the rights of rights holders to intellectual property

objects, included in the *unified customs register of intellectual property objects of the member states of the EEU* and (or) *the customs register of intellectual property objects of the Republic of Kazakhstan*, as well as those not included in such registries.

Unified customs register of intellectual property objects of the member states of the EEU:

Pursuant to Article 459.3 of the Code on Customs Regulation of the Republic of Kazakhstan, the intellectual property objects that can be included in a unified customs register of intellectual property objects of member states of the EEU, shall be the objects of copyright and related rights, trademarks, service marks and appellations of origin of goods.

The rights holder who has sufficient grounds to believe that there may be a violation of his rights to intellectual property objects, provided for by the customs legislation of the EEU and (or) the Republic of Kazakhstan, and other legislation of the Republic of Kazakhstan in connection with the movement of goods across the customs border of the EEU or when performing other actions with the goods that are under a customs control, shall have the right to apply for inclusion of intellectual property into a unified customs register of intellectual property objects of the member states of the EEU.

An application on behalf of the rights holder, who does not have a permanent representation in the customs territory of the EEU, may be filed through the individuals, having a permanent location (registered) in the territory of one of member states of the EEU.

The customs register of intellectual property objects of the Republic of Kazakhstan:

According to Article 461.1 of the Code on Customs Regulation of the Republic of Kazakhstan, inclusion of objects of copyright and related rights, trademarks, service marks and appellations of origin of goods (hereinafter – intellectual property objects) into the customs register shall be carried out by the authorized body at the request of the rights holder or a person, representing the interests of the rights holder.

The rights holder, or other person representing the interests of the rights holder, who has sufficient grounds to believe that during the placement of goods under the customs procedures containing intellectual property objects, their rights to intellectual property objects are violated or can be violated, shall be entitled to submit an application in the form approved by the authorized body on protection of rights to intellectual property objects to the authorized body.

Requirements for filing of application (Article 52)

Unified customs register of intellectual property objects of the member states of the EEU:

In accordance with Article 459.5 of the Code on Customs Regulation of the Republic of Kazakhstan, the application shall be submitted to the Commission of the EEU in respect of one type of intellectual property objects.

The application shall be attached with the documents, confirming the rights to intellectual property objects in each member state of the EEU (certificates, contracts, including those on transfer of rights and licence, other documents, which the rights holder or the person representing the interests of the rights holder (several rights holders), may submit in support of his rights to intellectual property objects in each member state of the EEU in accordance with the legislation of such member state of the EEU), as well as the documents, confirming the information to be included in the application.

The application and the attached documents shall be submitted in Russian or another language. In case of submission of documents in another language, the application shall be attached with their translation into Russian language.

The customs register of intellectual property objects of the Republic of Kazakhstan:

Pursuant to paragraphs 3 and 4 of Article 461 of the Code on Customs Regulation of the Republic of Kazakhstan, the application shall contain the following information:

- about the rights holder, and in case, if the application is submitted by another person, representing the interests of the rights holder, also about such person;

- information, including in electronic form, about the relevant intellectual property objects, the time-period during which the rights holder will need the assistance of customs authorities in protection of his rights, as well as a description of the goods, containing intellectual property objects, with the codes of goods indicated at the level of the first six digits in accordance with the unified Commodity nomenclature of foreign economic activity, the detailed information of the rights holder about the goods, allowing the customs authorities to identify the goods with violation of rights to intellectual property objects;
- a document, confirming the fact of movement of goods across the customs border of the EEU in violation of the rights to intellectual property objects;
- about the persons, to whom the rights holder provided the consent for the use of intellectual property objects.

The application shall be attached with:

- documents (originals or notarized copies thereof), confirming the existence and ownership of intellectual property rights (certificate or contract on transfer of rights, including the licensing, or an extract from the state register of intellectual property objects of the Republic of Kazakhstan or a certificate (extract) about the legal status of a trademark under the international registration or other documents that the rights holder or other person, representing the interests of the right holder, may submit in support of his rights to intellectual property objects);
- the power of attorney, issued by the rights holder to the person, representing his interests;
- the images of the distinguishing features of the original goods, containing intellectual property objects, and of the goods, containing the signs of infringement of the rights to intellectual property objects;
- the obligation of the rights holder or a person, representing the interests of the rights holder, about the compensation for property damage to the declarant and other persons, which may arise due to suspension of release of goods, containing intellectual property objects, in respect of which it is assumed that they are the goods with violation of rights to intellectual property objects, - in cases if it is established that the goods are not the goods with violation of the rights to intellectual property objects;
- a contract of liability insurance of the applicant for damage to other persons.

Security or equivalent assurance (Article 53)

Unified customs register of intellectual property objects of the member states of the EEU:

According to Article 459.9 of the Code on Customs Regulation of the Republic of Kazakhstan, simultaneously with the application, the obligation of the rights holder (several rights holders) shall be submitted on compensation for material harm that may be caused to the declarant, owner, recipient of goods or other persons due to suspension of release of goods.

The rights holder, in order to guarantee the fulfilment of obligation, indicated in para. 9 of this article, shall be obliged, within one month from the date of his notification about the possibility of inclusion of intellectual property objects into the unified customs register of intellectual property objects of the member states of the EEU, to submit to the Commission the contract (contracts) of liability insurance for causing property damage to persons due to suspension of release of goods or a contract (contracts), confirming the fulfilment of the said obligation, that are legally effective in all member states of the EEU.

At the same time the insured sum or the sum of security of fulfilment of an obligation shall be the amount equivalent to not less than ten thousand euro at the exchange rate in force on the day of

conclusion of a contract (contracts) of liability insurance or other contract (contracts) or changes to such contracts.

Otherwise, in case of failure of condition, mentioned above, objects of intellectual property shall not be subject to inclusion into Unified customs register of intellectual property objects of the member states of the EEU.

The customs register of intellectual property objects of the Republic of Kazakhstan:

According to Article 461.4 of the Code on Customs Regulation of the Republic of Kazakhstan, applicant also shall submit following documents:

- the obligation of the rights holder, or a person representing the interests of the rights holder, about the compensation for property damage to the declarant and other persons, which may arise due to suspension of release of goods, containing intellectual property objects, in respect of which it is assumed that they are the goods with violation of rights to intellectual property objects, - in cases if it is established that the goods are not the goods with violation of the rights to intellectual property objects;
- a contract of liability insurance of the applicant for damage to other persons.

At that the insurance amount cannot be less than 1,000-fold amount of monthly calculation index, established for the relevant financial year by the law on the republican budget.

Requirements related to the duration of suspension (Article 55)

According to Article 198 of the Code on Customs Regulation of the Republic of Kazakhstan, if, in the course of carrying out of customs operations involving the placement of goods under customs procedures, containing intellectual property objects included in the unified customs register of intellectual property objects of the member states of the EEU or the customs register of intellectual property objects of the Republic of Kazakhstan, the customs authority has found the signs of violation of the rights of the rights holder to the intellectual property objects, the time-period for the release of such goods shall be suspended for ten business days.

At the request of the rights holder or a person representing his interests or interests of several rights holders, this period shall be extended by the customs authority, but not more than ten business days if the rights holder or a person representing his interests or interests of several rights holders appealed to the court for protection of rights of the rights holder in accordance with the laws of the Republic of Kazakhstan.

Decisions on suspension of the time-period for the release of goods and the extension of the time-period for suspension of the time-period for the release of goods is taken by the head of the customs authority or by the person authorized by him.

Compensation for damage to the importer and the owner of the goods (Article 56)

According to Article 198.7 of the Code on Customs Regulation of the Republic of Kazakhstan, property damage caused to the declarant, the owner, the recipient of goods containing intellectual property objects as a result of suspension of the time-period for the release of goods, shall be compensated by the rights holder in case if the court does not establish a violation of the rights of the rights holder.

Right for inspections and information (Article 57)

According to Article 198.5 of the Code on Customs Regulation of the Republic of Kazakhstan, the customs authority shall notify the declarant and the rights holder or a person representing his interests or interests of several rights holders, not later than one business day following the day when the decision is made on suspension of the time-period for the release of goods, containing intellectual property objects, and shall also inform the declarant about the name (surname, name, patronymic (if it is indicated in the identity document) and the location (place of residence) of the rights holder and (or) of a person representing his interests or interests of several rights holders, and to the right holder or a person representing his interests or interests of several rights holders -

the name (surname, name, patronymic (if it is indicated in the identity document) and the location (place of residence) of the declarant.

17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

Inclusion of objects of intellectual property into the customs register, and in the unified customs register of intellectual property objects of the member states of the Customs Union, is free of charge.

As it was mentioned above, if, in the course of carrying out of customs operations involving the placement of goods under customs procedures, containing intellectual property objects included in the unified customs register of intellectual property objects of the member states of the EEU or the customs register of intellectual property objects of the Republic of Kazakhstan, the customs authority has found the signs of violation of the rights of the rights holder to the intellectual property objects, the time-period for the release of such goods shall be suspended for ten business days.

This period may be extended by the customs body upon the request of the right holder or a person representing his or her interests, but not more than for ten business days, if the rights holder or a person representing his interests or interests of several rights holders appealed to the court for protection of rights of the rights holder in accordance with the laws of the Republic of Kazakhstan.

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?

Pursuant to Article 199 of the Code on Customs Regulation of the Republic of Kazakhstan, the customs authorities shall have the right to suspend the time-period for the release of goods containing intellectual property objects (trademarks) not included in the unified customs register of intellectual property objects of the member states of the EEU or the customs register of intellectual property objects of the Republic of Kazakhstan, without the rights holder's application if there are signs that the goods moved across the customs border of the EEU are the goods with violation of the rights to intellectual property objects, if there is information about the rights holder or his representative on the territory of the Republic of Kazakhstan.

If there are signs of violation of the rights of the rights holder to intellectual property objects in the course of customs operations related to the placement of goods under customs procedures, the customs authority shall suspend the time-period for the release of goods containing intellectual property objects for a period of up to three business days, and immediately notify the rights holder and (or) a person representing his interests or interests of several rights holders, and the declarant about such suspension, reasons and time-periods for suspension.

The decision to suspend the release of goods shall be subject to cancellation, and the release of goods shall be resumed if, within a period of up to three business days, the rights holder:

- did not submit to the customs authority a written application for extension of the time-period for suspension of the release of goods up to ten business days;
- submitted a written application for cancellation of the decision to suspend the release of goods.

In the event that within a period of up to three business days the customs authority receives an application from the rights holder about the extension of the period for suspension of the release of goods, the release of goods shall be suspended up to ten business days from the date of the initial suspension of the release of goods. In this case, the rights holder and (or) a person representing his interests or interests of several rights holders shall be obliged to submit to the customs authority within ten business days from the date of the initial suspension of the release of goods, the following documents:

- determination of a judge on initiation of a civil case on a claim on violation of rights to intellectual property objects related to the fact of the movement of goods through the customs border of the EEU whose release is suspended;
- the obligation to compensate the property damage (damage) caused to the declarant, the owner, the recipient of goods containing intellectual property objects as a result of suspension of the time-period for the release of goods in accordance with this article, - in cases where the court does not establish a violation of the rights of the rights holder;
- the written evidence confirming the rights holder's appeal to the authorized body to include these goods in the customs register of intellectual property objects of the Republic of Kazakhstan in accordance with the procedure established by Article 460 of this Code.

Otherwise, the time-period for the release of goods shall be resumed.

However, time-period of IPR protection may not be more than two years from the date of inclusion in such registers.

In this case, the property damage caused to the declarant, the owner, the recipient of goods containing intellectual property objects, as a result of the suspension of the period for the release of goods up to ten business days, shall be compensated by the rights holder.

After the rights holder and (or) a person representing his interests or interests of several rights holders, submits the documents mentioned above, the time-period for suspension of the time-period for the release of goods, as well as the time-period for temporary storage of the said goods shall be extended until the court decision comes into force upon the rights holder's claim.

Property damage caused to the declarant, the owner, the recipient of goods containing intellectual property objects, as a result of the suspension of the time-period for the release of goods, shall be compensated by the rights holder in case if the court does not establish a violation of the rights of the rights holder.

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

According to Article 200 of the Code on Customs Regulation of the Republic of Kazakhstan, the customs authorities shall be obliged to transfer the goods in violation of the rights to intellectual property objects subject to destruction according to a court decision to the relevant authorized state body of the Republic of Kazakhstan.

In the event of a court decision on destruction of goods in violation of the rights to intellectual property objects, the relevant authorized state body of the Republic of Kazakhstan shall be obliged to immediately take measures to destroy them in accordance with the legislative acts of the Republic of Kazakhstan, regulatory decisions of the Government of the Republic of Kazakhstan.

Criminal Procedures

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.

According to Article 51 of the Criminal Procedure Code of the Republic of Kazakhstan, any criminal case in the Republic of Kazakhstan including the cases on violation of intellectual property are performed by: the Supreme Court of the Republic of Kazakhstan; regional and equated courts, military courts; district and equated courts; specialized inter-district criminal courts, specialized investigation courts, specialized inter-district investigation courts, specialized inter-district military criminal courts, specialized inter-district juvenile courts, military garrison courts.

21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?

According to Article 198 Criminal Code of the Republic of Kazakhstan, criminal sanctions are applied in relation to:

1. Illegal use of objects of copyright and (or) related rights, as well as acquisition, storage, transfer or production of pirated copies of objects of copyright and (or) related rights in order of sale or appropriation of authorship or compulsion to co-authorship.
2. The same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly.
3. The actions, provided by second part of this Article, committed:
 - (1) by group of persons on previous concert;
 - (2) on a large scale or inflicted heavy damage;
 - (3) by person with the use of his (her) official position.
4. The actions, provided by second or third parts of this Article, committed by criminal group.

According to Article 199 of the Criminal Code of the Republic of Kazakhstan, criminal sanctions are applied in relation to:

1. Disclosure of details before official publication without the consent of author or applicant of nature of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit, as well as appropriation of authorship or compulsion to co-authorship or illegal use of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit.
2. The same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly.
3. The actions, provided by second paragraphs of this Article, committed:
 - (1) by group of persons on previous concert;
 - (2) on a large scale or inflicted heavy damage;
 - (3) by person with the use of his (her) official position.
4. The actions, provided by second or third paragraphs of this Article, committed by criminal group.

According to Article 222 of the Criminal Code of the Republic of Kazakhstan, criminal sanctions are applied in relation to:

1. Illegal use of someone's trademark, service mark, firm name, appellations of origin of goods or names similar with them for similar goods or services if this action has inflicted a considerable damage.
2. Illegal use of warning marking in relation to trademark or appellations of origin of goods, which is not registered in the Republic of Kazakhstan, if this action has inflicted a considerable damage.

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

Liability for initiating criminal proceedings shall be borne by state bodies and officials carrying out the functions of criminal prosecution, including the investigator, the head of the investigative authority, the investigative authority and the prosecutor.

According to Article 32 of the Criminal Procedure Code of the Republic of Kazakhstan, depending on the nature and gravity of the criminal offence the criminal prosecution and accusation in court shall be carried out in private, private-public and public order.

Criminal cases indicated in paragraph 1 of the Article 198 and paragraph 1 of the Article 199 of the Criminal Code of the Republic of Kazakhstan are initiated only based on the complaint of the injured party. The proceedings for these cases shall start only with the complaint of the victim and are subject to dismissal after his/her (victim) reconciliation with the accused, the defendant.

Criminal cases indicated in paragraph 2 of the Article 198 and paragraph 2 of the Article 199 of the Criminal Code of the Republic of Kazakhstan are considered as the cases of private-public prosecution. Proceedings in these cases begin only upon complaint of the complainant and shall be subject to the termination for his (her) reconciliation with the suspected, accused, defendant only in the cases of releasing from criminal responsibility in connection with conciliation.

In addition, prosecutor begins or continues the proceedings on the private and private-public accusation in the absence of the complainant's complaint, if the action affects the interests of person in a helpless or dependent condition or for other reasons is unable to make use of his (her) rights, or in the case of private-public accusation, affecting the interests of society or the state.

Criminal cases indicated in paragraphs 3 and 4 of the Article 198, paragraphs 3 and 4 of the Article 199 and Article 222 of the Criminal Code of the Republic of Kazakhstan are considered as the cases of public prosecution. Criminal prosecution of these cases shall be carried out regardless of the injured party's complaint.

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

See response to the question 22.

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- **imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

According to Article 198 of the Criminal Code of the Republic of Kazakhstan, the sanctions for infringement of copyright and (or) related rights are as follows:

- illegal use of objects of copyright and (or) related rights, as well as acquisition, storage, transfer or production of pirated copies of objects of copyright and (or) related rights in order of sale or appropriation of authorship or compulsion to co-authorship are punished by the fine in the amount of up to one hundred monthly calculation indices or correction works in the same amount, or community services for the term of up to one hundred twenty hours.
- the same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly are punished by the fine in the amount of up to three hundred monthly calculation indices or correctional works in the same amount, or

community services for the term of up to two hundred forty hours, or arrest for the term of up to seventy-five days.

- the actions, provided by second paragraph of Article 198, committed by group of persons on previous concert or on a large scale or inflicted heavy damage or by person with the use of his (her) official position are punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.
- the actions, provided by second or third paragraphs of Article 198, committed by criminal group are punished by imprisonment for the term of three to six years.

According to Article 199 of the Criminal Code of the Republic of Kazakhstan, the sanctions for infringement of rights to invention, utility models, industrial designs, selection achievements or topologies of integrated microcircuits are as follows:

- disclosure of details before official publication without the consent of author or applicant of nature of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit, as well as appropriation of authorship or compulsion to co-authorship or illegal use of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit are punished by the fine in the amount of up to one hundred monthly calculation indices or correctional works in the same amount, or community services for the term of up to one hundred twenty hours.
- the same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly are punished by the fine in the amount of up to three hundred monthly calculation indices or correctional works in the same amount, or community services for the term of up to two hundred forty hours, or arrest for the term of up to seventy-five days.
- the actions, provided by second paragraphs of Article 199, committed by group of persons on previous concert or on a large scale or inflicted heavy damage or by person with the use of his (her) official position are punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.
- the actions, provided by second or third paragraphs of Article 199, committed by criminal group are punished by imprisonment for the term of three to seven years.

According to Article 222 of the Criminal Code of the Republic of Kazakhstan, the sanctions for illegal use of trademark are as follows:

- illegal use of someone's trademark, service mark, firm name, appellations of origin of goods or names similar with them for similar goods or services if this action has inflicted a considerable damage is punished by the fine in the amount of up to eighty monthly calculation indices or correctional works in the same amount, or community service for the term of up to eighty hours, or arrest for the term of up to twenty days.
- illegal use of warning marking in relation to trademark or appellations of origin of goods, which is not registered in the Republic of Kazakhstan, if this action has inflicted a considerable damage, is punished by the fine in the amount of up to eighty monthly calculation indices or correctional works of the same amount, or community service for the term of up to eighty hours, or arrest for the term of up to twenty days.

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

The national legislation of Kazakhstan does not set limits for the consideration of the case in court, since the time-limits for its review depend on the circumstances of each specific case.

However, according to Article 529 of the Criminal Procedure Code of the Republic of Kazakhstan, cases on criminal misdemeanours (para. 1 and 2 of Article 198; para. 1 and 2 of Article 199 and Article 222 of the Criminal Code) are subject to judicial review within fifteen days of receipt by court. In the case of receipt of the applications of the participants in the process or the need for additional clarification of the circumstances of the case, the term of consideration of the case may be extended, but not more than one month.

Alongside with that, according to Article 629-4 of the Criminal Procedure Code of the Republic of Kazakhstan, in the case of simplified proceedings, the judge considers the case within three days.

Compensation of certain expenses, incurred by persons involved in criminal proceedings, is regulated by Article 176 of the Criminal Procedure Code of the Republic of Kazakhstan. By way of criminal proceedings the expenses of the injured party, civil claimant, their legal representatives, lawyers providing legal assistance as a defence counsel or representative of the injured party (private prosecutor) on the appointment of the body conducting the criminal proceedings, attesting witness, interpreter, specialist, expert, witness, potential jurors, called to court, but not selected for the jury, are compensated at the expense of budget funds.

According to Article 174 of the Criminal Procedure Code of the Republic of Kazakhstan, if attorney represents client's interests by appointment and without concluding a contract with him, remuneration of labour is implemented at the expense of budget funds.

According to Article 178 of the Criminal Procedure Code of the Republic of Kazakhstan, the question of recovery of procedural expenses is considered by the court in making a final decision in the criminal case. If the proceedings are completed at the pre-trial stage of criminal proceedings, the investigating judge shall consider the recovery of procedural expenses by presentation of the procurator. Procedural expenses may be imposed by the court on the suspected, accused, convicted or accepted by the state.
