

LEGAL ALERT

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MORATORIUM ON ADMINISTRATIVE RAID ACTIONS AGAINST SMALL BUSINESS WAS PROLONGED BUT WITH EXCLUSIONS

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On December 26th, 2019 the President of Kazakhstan signed a Decree No. 229, according to which all central executive bodies shall put on hold the administrative inspections (raid actions connected with visiting) against micro and small business entities.

Micro business entities shall correspond to the following requirements:

- A. Average annual number of employees shall be not more than 15 people; OR
- B. Average annual income 30 000 MCI¹.

Small business entities shall correspond to the following requirements:

- A. Average annual number of employees shall be not more than 100 people; AND
- B. Average annual income 300 000 MCI².

The term of moratorium started on January 1, 2020 and shall have ended on January 1, 2023.

The Decree No. 229 also provides certain exemptions, when the inspections can still be conducted. However, the inspections related to intellectual property rights, specifically

¹ Monthly calculated index. In 2023 1 MCI = 3450 KZT, approx. US \$7.3; 30 000 MCI = approx. US \$219 280

² 300 000 MCI = approx. US \$2 192 800

related to trademark rights infringements, were not exempted.

On December 7th, 2022 the term of Decree No. 229 was prolonged by January 1st, 2024. This prolongation happened under another Presidential Decree, particularly under Decree No. 44.

Along with prolongation of moratorium there was introduced another one exemption to the Decree No. 229. **From now on the moratorium does not spread over the unscheduled inspections that are conducted according to the Entrepreneur Code of Kazakhstan.**

It shall be noted that administrative raid actions against small business entities for the illegal trademark use are being conducted by the Justice Departments. Such raid actions are qualified as unscheduled inspections and are conducted in accordance with Sub-Clause 3) of Clause 3 of the Article 144 of Entrepreneur Code of Kazakhstan. In other words the raid actions against small business are being conducted according to the Entrepreneur Code of Kazakhstan, which falls under a new exemption to the Decree No. 299, and shall mean the resuming of the raid actions held by the Justice Departments.

The raid actions held by the Justice Departments have been an utmost effective instrument for most of the trademark owners for a number of years. At the same time most of the infringers involved into the counterfeiting are corresponding to the requirements of micro and small business entities.

For the successful registration of an application to the Justice Department on conducting a raid action such an application shall be supplied with documents confirming the fact of causing harm to the trademark owner's interests. Such documents could be the payment documents (cash receipts, goods release notes), customs documents (declarations, invoices), protocols of web-recourse observation certified by the notary and other types of notarial evidence, results of independent expertise and research, photos, samples of the counterfeit and genuine goods.

We will be happy to render legal services and represent in administrative and judicial bodies of Kazakhstan for the purpose of enforcement of trademark rights.

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