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**10 questions to a lawyer regarding consumer protection**

Over the last few years, the state has been actively developing business by implementing major reforms, restricting inspections of governmental agencies with respect to private business entities, and launching other measures aimed at encouragement of business development. At the same time, development of the market economy gives rise to certain consumer protection issues on the market of goods, work and services.

Everyone acts a consumer of goods, work and services one way or another and as a participant of legal relations existing within the country's economy. Consumers are more vulnerable participants of business relations as compared with businessmen who enjoy social, administrative and legal support.

The key law determining legal, economic and social bases of consumer protection, as well as the measures on provision of consumers with safe and high-quality goods (work, services), is the Law No. 274-IV «On Consumer Protection» dated 4 May 2010. Below is brief information in the form of 10 questions and answers regarding rights of consumers, conditions of violations, and consumer protection measures.

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### 1. What are the general rights of consumers?

Consumers have the right to:

- freedom of contracts for purchase of goods, performance of work and provision of services;
- public awareness activities in the sphere of consumer protection and enhancement of legal literacy regarding protection of own rights and legitimate interests;
- receive information on goods, work, services, relevant sellers, manufacturers, and contractors;
- purchase safe goods, work and services;
- free choice of goods, work and services;
- proper quality of goods, work and services;
- exchange or return goods of both proper and improper quality;
- full compensation for losses and harm caused to their lives, health and/or property as a result of defects in goods, work and services;
- receive a document from a seller, manufacturer or contractor, which confirms the fact of purchasing goods, performing work or providing services, or a contract entered into when purchasing goods, performing work or providing services;
- file claims against an initiator, organizer of games regarding quality of goods, work or services transferred, performed or provided in the form of a prize;
- set up public associations of consumers;
- compensation for moral harm;
- protection of rights and legitimate interests; and
- exercise other rights stipulated by legislation.

No coercion to enter into a contract for purchase of goods, performance of work or provision of services shall be allowed.

### 2. What are the consumers' rights in case of selling goods of poor quality?

A consumer who has been sold goods of improper quality, provided that no defects have been mentioned by a seller, may claim at his/her sole discretion for:

- proportional reduction of the purchase price;
- free-of-charge elimination of defects in goods;
- reimbursement of own costs incurred in connection with elimination of defects in goods;
- replacement for the goods of a similar brand, model or article;
- replacement for the same goods of another brand, model or article with respective recalculation of the purchase price;
- cancellation of contract and refund of the amount paid for goods.
- In a situation where a seller of goods of improper quality is not a manufacturer of such goods, the requirements on (i) free-of-charge eliminatic defects in goods, (ii) replacement for the goods of a similar brand, model, article, and (iii) replacement for the same goods of another brand, m article with respective recalculation of the purchase price may be filed either to a seller or to a manufacturer at the buyer's discretion.

### 3. What are the deadlines for filing claims by a consumer regarding defects in goods?

As regards the goods with the expiration date, a consumer may file claims regarding defects in goods in case of detecting them before the expiration date.

If there is a guarantee period for the goods, claims in connection with defects in such goods may be filed within the guarantee period. According to the general rule, a guarantee period for a component part is deemed to be equal to the guarantee period for the principal item and starts running concurrently with the guarantee period for the principal item. In case of replacing goods or a component part, the guarantee period starts running over again, unless a sale and purchase agreement provides for otherwise.

If there is no guarantee period or expiration date established for the goods, claims may be filed in case defects in the sold goods have been detected within 2 years of the date of transferring the goods to a consumer, unless a longer period is established by legislation or a contract.

If the guarantee period is less than 2 years and defects have been detected upon expiration of the guarantee period, but within 2 years of the date of transferring the goods to a consumer, a seller will bear liability in case the consumer proves that defects in the goods originated before transferring the goods to the consumer or for the reasons occurring before this moment.

When selling goods by units by way of email or electronic commerce and in cases where the moment of entering into a contract and transferring the goods to a consumer do not coincide, the guarantee period or the period for detecting defects in goods shall start running from the date of transferring or delivering goods to the consumer or, in case such goods require special installation, connection or assembly – from the date of such installation, connection or assembly.

If a consumer has no possibility to use goods for the circumstances under control of a seller or a manufacturer, the guarantee period or the period for detecting defects in goods shall not start running until elimination of such circumstances. If it is not possible to determine the date of transfer, delivery, installation, connection or assembly of goods, or elimination of the circumstances under control of the seller, due to which the consumer cannot use goods according to designation, this period shall start running from the date of entering into a sale and purchase agreement.

If it is impossible to establish the date of transfer, such periods shall be calculated from the date of manufacturing the goods. If the date of manufacturing the goods contains only a month and a year or only a year, the last day of the month or the year shall be accordingly considered as the date of manufacture.

### 4. What goods cannot be replaced and/or returned?

According to legislation, the following types of non-food items cannot be replaced or returned:

- medicines and medical products[1];
- underwear;

hosiery;

- animals and plants;
- yardgoods, specifically, fabrics from fibers of all types, textile fabric and curtain fabric, fake fur, carpeting, non-woven fabric, narrow goods, lacework, tacking strips, wire, cords, cables, linoleum, moldings, film, oilcloth;
- subscriber communication devices.

It is worth mentioning that the Order No. 516 of the Minister of Health and Social Protection dated 25 June 2015[2] established the list of goods not referred to medicines, medical products and medical equipment. This list includes the following goods:

- sanitary and hygienic products;
- oral care products;
- patient care items;
- means for rehabilitation or restoration of disordered and/or lost functions of organisms of sick and disabled persons;
- childcare products, including for newborn children;
- baby food, dietary food, healthful and dietary meals, and dietary supplements;
- skincare and hairdressing cosmetic products, lip salves;
- mineral water, medicinal water, table water, medicinal table water, and potable water;
- disinfectants and insecticides (prepacked for retail sale); and
- optics, except for those used for vision correction.

Thus, the above goods do not refer to medicines and medical products and they are not subject to restrictions on replacement and return in case of preserving their marketable condition and packing.

### 5. What are the rights of consumers in case of detecting defects in the work performed/services provided?

When detecting defects in the work performed or services provided, a consumer may claim at his/her sole discretion for:

- free-of-charge elimination of defects in the work performed or services provided;
- respective reduction of fees for the work performed or services provided;
- free-of-charge manufacture of another thing from similar materials of the same quality or repeated performance of work or provision of services;
- compensation of own expenses incurred in connection with elimination of defects in a situation where the consumer's right to eliminate them is stipulated in a contract.

A consumer may also cancel a contract and claim for compensation for losses in case of the contractor's failure to eliminate defects in the work performed or services provided within the established period or in case work or services deviations from the contract conditions or any other defects in work or services are significant and irremediable.

The above claims may be filed in case of detecting defects when accepting work (services) or in the course of performance or provision thereof or use within the period specified above (*please see our answer to Question 3*), and if it is impossible to detect defects when accepting work (services) – within the guarantee period, or in case of detecting latent defects – 1 year, with respect to work relating to buildings and structures and, regardless of the type of work – with respect to defects intentionally concealed by a contractor – 3 years of the date of accepting the work results. Claim for free-of-charge elimination of such defects in work (services), which may pose threat to life and health of a consumer and other persons, may be filed by the consumer or the consumer's successor within 3 years of the moment of accepting the work (services). In this case, such claim may be filed, regardless of the moment of detecting the defects, including in case of detecting them upon expiration of the guarantee period.

Defects in work (services) detected in the course of performance (provision) and defect in the work performed (services provided) shall be eliminated within 10 calendar days of the moment of filing a relevant claim, unless any other period is stipulated by a contract. The defect elimination period specified by a consumer or agreed upon by the parties shall be secured in the contract. According to the general rule, in case of violating such period, a contractor shall pay a penalty in the amount of 1% of the cost of work (services) for each day of delay, unless otherwise stipulated by the contract or the Kazakhstan laws.

In case of detecting significant defects in work (services), a consumer may file a claim to a contractor for free-of-charge elimination of defects in case of proving that such defects occurred before the consumer's acceptance of the work (services) results or for the reasons occurring before this moment. This claim may be filed in case of detecting such defects upon expiration of two years (*five years with respect to immovable property*) of the date of accepting the work (services) results, but within the guarantee period established for the work (services) results or within 10 years of the date of accepting the work (services) result by the consumer if no guarantee period has been established.

### 6. What conditions violate the consumers' rights when entering into contracts?

The conditions violating and/or derogating from the consumers' rights when entering into contracts are as follows:

- release or groundless limitation of liability of a seller, contractor or manufacturer in case of causing harm to life, health and/or property of a consumer;
- exclusion or restriction of consumer rights in case of a failure to perform in full or in part or improper performance of contractual obligations by a seller, contractor or manufacturer;
- establishment of the consumer's obligations with respect to paid goods (services) additionally forced by a seller, contractor or manufacturer;
- establishment of a requirement on the consumer's payment of a disproportionately large amount (*above 30% of the cost of goods, work, services*) in case of the consumer's failure to perform obligations under a contract, except for the contracts for tourist services and contracts for purchase of air tickets for no-return fares;
- establishment of prices for goods, work and services when accepting payments using the payment cards, which prices exceed the sale prices in case of paying by cash;
- granting of the right to a seller, contractor or manufacturer to unilaterally amend and/or cancel a contract without compliance with the Kazakhstan legislation rules regarding the grounds and procedure for the contract amendment and cancellation;
- granting of the right to a seller, contractor or manufacturer not to return the paid amount for non-provided goods, services or work in case of contract cancellation;
- provision of the opportunity to a seller, contractor or manufacturer to increase price without granting the right to a consumer to cancel a contract;
- granting of the right to a seller, contractor or manufacturer to determine whether the goods comply with the contract conditions or the right to interpret the contract;
- limitation of liability of a seller, contractor or manufacturer on obligations assumed by the representatives of the seller, contractor or manufacturer;
- establishment of the consumer's obligation to perform all obligations in case a seller, contractor or manufacturer fails to perform its obligations;
- granting of the right to a seller, contractor or manufacturer to transfer its rights and obligations under a contract to a third party without compliance with the Kazakhstan legislation rules on substitution of parties to a contract;
- other conditions violating and/or derogating from the rights and legitimate interests of consumers determined by the Kazakhstan legislation.

### 7. Are there any public associations of consumers?

Yes, there are public associations of consumers in Kazakhstan and they carry out activities aimed at implementation and protection of consumer rights. It is worth mentioning that private business entities are prohibited to finance public associations of consumers or their unions.

Over the years Kazakhstan has discussed the creation of a national association of consumer protection by analogy with National Chamber of Entrepreneurs of Kazakhstan «Atameken». However, to date, according to publicly available information, such association has not been created. It was contemplated that the key objectives of the association would be consolidation of public associations of consumers, representation of consumers' interests in the Government and Parliament of Kazakhstan, and introduction of a ranking system of independent evaluation of business entities and goods, work and services. It would also be possible to restructure certain public associations with respect to industries and unite them at the institutional level within the association.

To date, local public associations of consumers carry out their activities in different regions of Kazakhstan.

### 8. Who may represent the legitimate interests of consumers?

When protecting rights and legitimate interests, the representatives of consumers may be:

- public associations and unions of consumers;
- legal consultants who are the members of the chamber of legal consultants;
- advocates;
- other persons according to the Kazakhstan legislation.

Certain obligations are imposed on the representatives of legitimate interests of consumers, such as (i) proper performance of obligations with adoption of required measures for restoration of violated rights and legitimate interests of consumers, compensation for the caused losses and harm as a result of defects in goods, work and services, and (ii) provision of clarifications to consumers regarding potential results and consequences of the provided representation services, including the nature and amount of financial costs.

Kazakhstan is now considering a new draft Consumer Protection Law, which includes certain novelties, including creation of a new unit – consumer protection ombudsmen. The ombudsmen institution is an inherent part of a modern model of effective management in different spheres of people's life. Thus, it is contemplated to create a new unit to ensure solution of the issues of protection and restoration of rights and legitimate interests of consumers.

It is also contemplated to establish certain criteria to a person appointed to the position of ombudsmen, such as to be a Kazakhstan citizen and reside in Kazakhstan for the past 10 years, to have higher education and at least 5-years' work experience in the sphere of protection of rights and legitimate interests of individuals and legal entities, to be not younger than 35 and speak the Kazakh and Russian languages. The draft Law also contains the following prohibitions: to work for the government, be a deputy of a representative authority, engage in business activities, participate in the management of commercial organizations and other remunerable activities, except for teaching, scientific or other creative activities.

9. Can a consumer-related dispute be settled under a pretrial procedure?