OECD Public Governance Reviews

OECD Integrity Scan of Kazakhstan

PREVENTING CORRUPTION FOR A COMPETITIVE ECONOMY



OECD

OECD Public Governance Reviews

OECD Integrity Scan of Kazakhstan

PREVENTING CORRUPTION FOR A COMPETITIVE ECONOMY

OECD
BETTER POLICIES FOR BETTER LIVES

This document was approved by the Public Governance Committee on 23 February 2017 and prepared for publication by the OECD Secretariat.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:
OECD (2017), *OECD Integrity Scan of Kazakhstan: Preventing Corruption for a Competitive Economy*, OECD Public Governance Reviews, OECD Publishing, Paris.
http://dx.doi.org/10.1787/9789264272880-en

ISBN 978-92-64-27287-3 (print)
ISBN 978-92-64-27288-0 (PDF)

Series: OECD Public Governance Reviews
ISSN 2219-0406 (print)
ISSN 2219-0414 (online)

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Photo credits: Cover © Olya Tropinina / Shutterstock.com.

Corrigenda to OECD publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

© OECD 2017

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to *rights@oecd.org*. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at *info@copyright.com* or the Centre français d'exploitation du droit de copie (CFC) at *contact@cfcopies.com*.

Foreword

Many of the world's ills can be traced, at least in part, to corruption. Indeed, corruption is recognised as one of the main barriers to sustainable economic growth, political and institutional stability and social cohesion. It generates added costs to doing business, deterring investment and stifling an economy's competitive advantage. It weakens the rule of law and threatens security. It diverts resources and public services from those who need them most, undermining their chances of achieving greater well-being and prosperity. It strips ordinary citizens of their voice in democratic processes, cementing or exacerbating social inequalities and ultimately eroding trust in, and the legitimacy of, institutions.

Making matters worse, snuffing out corruption has proven to be extremely challenging. It is often systemic and deeply engrained in organisations' and individuals' ways of working and thinking. It is both adaptive and agile, finding new avenues and ignoring national and international jurisdictions. It thrives on legal loopholes, or, more blatantly, in the open, by influencing the content of laws themselves. It is no surprise, then, that governments are recognising that real, effective anti-corruption reform requires a coherent and comprehensive approach. Adopting an "all hands on deck" tactic is needed to eliminate corruption and cultivate cultures of integrity both within the public and private sectors, as well as society more broadly. Nevertheless, such approaches are not without their own challenges; they require strong leadership and continual monitoring, effective inter-institutional co-ordination, and adequate resources and capacities.

In Kazakhstan, government, firms, civil society and individual citizens alike are all too familiar with these challenges. Corruption is a principal barrier to completing the ongoing economic transition and to ushering in much-needed governance reforms. As such, the government has made tackling corruption one of its main priorities and has embarked on a series of anti-corruption reforms, including restructuring the Anti-Corruption Bureau, revising the Law on Combating Corruption, and introducing new laws to increase transparency and civil society participation in government decision-making.

To support these efforts, and under the auspices of the OECD's CleanGovBiz Initiative, the OECD has undertaken an "integrity scan" of Kazakhstan, based on OECD instruments and tools in 15 specific policy areas. The scan provides examples of international good practices in each area. By focusing on the four key pillars of healthy governance, effective prevention, robust prosecution and recovery, and sharp detection, the integrity scan helps identify both potential gaps and synergies in a country's integrity systems. An initial diagnostic exercise for future work, these scans focus more on the existing legal and policy frameworks than on the effective implementation or impact of policies.

As a transitional economy, addressing corruption will become increasingly important for Kazakhstan to continue to move forward in strengthening its economy and improving wellbeing for citizens. As foreign investment and trade flows continue to increase, it will

be more important than ever that opportunities for corruption be mitigated. As the middle class grows and citizens demand more of their institutions, ensuring quality public services and building trust in institutions will be essential. Curbing corruption and achieving these goals will be key to the country's continued path to more inclusive and competitive growth.

Acknowledgements

This Integrity Scan was prepared by the Public Sector Integrity Division of the Public Governance and Territorial Development Directorate under the leadership of Janos Bertók and Julio Bacio Terracino. Contributions from across the OECD were coordinated by Natalia Nolan Flecha, Carissa Munro, Yukihiko Hamada and Chad Burbank.

Contributions were received from Daniel Trnka of the Regulatory Policy Division in the Public Governance and Territorial Development Directorate, GOV (Chapter 1: Improving regulatory governance in Kazakhstan); Lynn Robertson and Sabine Zigelski of the Competition Division in the Directorate for Financial and Enterprise Affairs, DAF (Chapter 2: Competition policy in Kazakhstan: Promoting efficient and sound markets); Ronnie Downes and Annamaria Tuske of the Budgeting and Public Expenditures Division, GOV (Chapter 3: Open budgeting for integrity and accountability in Kazakhstan); Lena Diesing of the Public Sector Integrity Division, GOV (Chapter 4: Development Co-operation in Kazakhstan); Carissa Munro of the Public Sector Integrity Division, GOV (Chapter 5: Strengthening public sector integrity in Kazakhstan, Chapter 9: Regulating lobbying in Kazakhstan to prevent policy capture, Chapter 11: Empowering civil society in Kazakhstan, Chapter 13: Encouraging reporting of corruption in Kazakhstan through stronger whistleblower protection, and Chapter 14: Supporting an independent, vibrant media in Kazakhstan); Lena Diesing and Petur Matthiasson of the Public Sector Integrity Division, GOV (Chapter 6: Ensuring integrity in public procurement in Kazakhstan); Martine Milliet-Einbinder of the Tax and Development Programme in the Centre for Tax Policy and Administration, CTP (Chapter 7: Creating a level playing field in Kazakhstan through tax transparency and Chapter 12: Enabling the tax administration in Kazakhstan to better detect corruption); Marianne Aalto from the Corporate Affairs Division, DAF (Chapter 10: Corporate governance and business integrity in Kazakhstan); Julian Paisey of the Export Credits Division in the Trade and Agriculture Directorate (TAD) (Chapter 8: Deterring and detecting bribery in export credits in Kazakhstan); and Dmytro Kotliar from the Anti-Corruption Network for Eastern Europe and Central Asia, DAF (Chapter 15: Criminalising bribery in Kazakhstan).

The publication was edited by Ulrika Bonnier. Special thanks go to Alpha Zambou and Thibaut Gigou for their assistance in preparing the document for publication, and to Miguel Castro, Yerim Park, Anara Makatova, Kanat Kaiyrberli and Dauren Zakumbayev for their support and useful insights on the Study.

The OECD expresses its gratitude to Ministries, government institutions and civil society organisations who were involved in this Integrity Scan, namely: Mr. Askarbek Ertaev and Mr. Ayan Tazhibay of the Ministry of National Economy, the Ministry of Civil Service Affairs and Anti-Corruption, the Ministry of Finance, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Culture and Sport, the Strategic Development Department Accounts Committee, KazExportGarant, and the Development Bank of Kazakhstan as well as Transparency International Kazakhstan, Soros Foundation Kazakhstan, Sange Research Centre, the Legal Policy Research Centre, Social Fund: Legal Media Centre, and the Almaty Office of Friedrich Ebert Stitftung.

Table of contents

Executive summary ... 13

Assessment and recommendations ... 15

Chapter 1. **Improving regulatory governance in Kazakhstan** ... 19

Role of regulatory policy in promoting integrity and combating corruption ... 20
Current status and critical analysis ... 22
Action Plan and potential OECD support ... 30
Note ... 32
References ... 33

Chapter 2. **Competition policy in Kazakhstan: promoting efficient and sound markets** ... 35

Role of competition to promote integrity and combat corruption ... 36
Current status and critical analysis ... 37
Action Plan and potential OECD support ... 49
References ... 54

Chapter 3. **Open budgeting for integrity and accountability in Kazakhstan** ... 55

Role of open budgeting in promoting integrity ... 56
Current status and critical analysis ... 59
Action Plan and potential OECD support ... 72
Notes ... 74
References ... 75

Chapter 4. **Development co-operation in Kazakhstan** ... 77

Role of development co-operation in promoting integrity and combating corruption ... 78
Current status and critical analysis ... 80
Action Plan and potential OECD support ... 87
Notes ... 88
References ... 89

Chapter 5. **Strengthening public sector integrity in Kazakhstan** ... 91

Role of strong public sector integrity systems in promoting integrity and combating corruption ... 92
Current status and critical analysis ... 94
Action Plan and potential OECD support ... 119
Notes ... 122
References ... 123

Chapter 6. **Ensuring integrity in public procurement in Kazakhstan** ... 125

Promoting integrity and combating corruption in public procurement ... 126
Current status and critical analysis ... 128
Action Plan and potential OECD support ... 144
Notes ... 146
References ... 147

Chapter 7. **Creating a level playing field in Kazakhstan through tax transparency** 149

The role of tax transparency in promoting integrity and combating corruption 150
Current status and critical analysis 151
Action Plan and potential OECD support 155
Notes 156
References 157

Chapter 8. **Deterring and detecting bribery in export credits in Kazakhstan** 159

Role of Export Credits in promoting integrity and combating corruption 160
Current status and critical analysis 164
Action Plan and potential OECD support 177
References 181

Chapter 9. **Regulating lobbying in Kazakhstan to prevent policy capture** 183

Role of lobbying legislation in promoting integrity and combating corruption 184
Current status and critical analysis 185
Action Plan and potential OECD support 192
Note 193
References 194

Chapter 10. **Corporate governance and business integrity in Kazakhstan** 195

Role of effective corporate governance practices for promoting business integrity and combating corruption 196
Current status and critical analysis 197
Action Plan and potential OECD support 208
References 211

Chapter 11. **Empowering civil society in Kazakhstan** 215

Role of civil society in promoting integrity and combating corruption 216
Current status and critical analysis 218
Action Plan and potential OECD support 230
Note 232
References 233

Chapter 12. **Enabling the tax administration in Kazakhstan to better detect corruption** 235

Role of the tax administration in promoting integrity and combating corruption 236
Current status and critical analysis 237
Action Plan and potential OECD support 243
Notes 245
References 246

Chapter 13. **Encouraging reporting of corruption in Kazakhstan through stronger whistleblower protection** 247

Role of whistleblower protection in promoting integrity and combating corruption 248
Current status and critical analysis 251
Action Plan and potential OECD support 268
Notes 271
References 272

Chapter 14. **Supporting an independent, vibrant media in Kazakhstan** 275

Role of independent and vibrant media in promoting integrity and combating corruption 276
Current status and critical analysis 278
Action Plan and potential OECD support 293
Note 294
References 295

Chapter 15. **Criminalising bribery in Kazakhstan** 297

Role of bribery criminalisation in promoting integrity and combating corruption 298
Current status and critical analysis 302
Action Plan and potential OECD support 307
Notes 309
References 310

Tables

2.1. Estimated benefits from lifting the specific regulations 47
3.1. Legal Framework for Open Budgeting in Kazakhstan 59
5.1. Amount of hours for public official anti-corruption training 100
5.2. Corruption Risk Mapping in Kazakhstan 112
13.1. Varying degrees of whistleblower protection in the public sector 251
13.2. Australia Tier Systems for Disclosure 262
13.3. Remuneration Amounts, Calculated in Monthly Calculation Indices 266
14.1. Breadth of freedom of information laws (2010) 279

Figures

3.1. OECD Open Budget Principles 57
3.2. The budget structure in Kazakhstan 61
3.3. Open Local Budget Index:
Openness and comprehensiveness of processes and documents, 2015 65
3.4. Comprehensiveness and availability of budget documents in regions and main cities 2015 66
3.5. LMTI ratings in the first quarter of 2016, on a scale of 1 to 10 from least to most transparent 69
4.1. ODA support to different sectors in Kazakhstan, 2014 (USD million, 2013 prices) 82
4.2. ODA to different sectors in Kazakhstan: highlighting support to governance issues 83
4.3 Kazakhstan's ODA support to different sectors 2014 (USD millions, 2013 prices) 84
5.1 Restrictions on pre-public employment, 2014 106
5.2. Disciplinary actions imposed, 2015 117
5.3. The structure of Brazil's federal disciplinary system (SisCor) 118
6.1. Bribery risk in public procurement is high in all phases of the public procurement cycle 126
6.2. Kazakhstan's public procurement reform progress differs from area to area 130
6.3. Number of complaints received and considered by the Financial Control Committee 142
10.1. Main reasons for seeking to detect, prevent and address misconduct 196
10.2. Organisation of the integrity function 206
11.1. Percentage of CSOs who can freely express opinions against
government policies and actions without fear of retaliation 220
11.2. Functional activities undertaken by NGOs (2014) 222

11.3. Perceptions of corruption in civil society in Kazakhstan 229
13.1. Provision of legal protection to whistleblowers in the public sector 249
13.2. Kazakhstan's Complaint Consideration Procedure 264
14.1. Weighting of the seven elements of the RTI Legislation 281
14.2. RTI Score for OECD Member Countries 281
14.3. Freedom of the Press Indicator, Freedom House, 2015 288
14.4. Media Sustainability Index – Kazakhstan 288
14.5. Overview of Active Media Outlets in Kazakhstan 292
14.6. Overview of Press Media in Kazakhstan, by type 292

Boxes

1.1. 2012 Recommendations of the OECD Council on Regulatory Policy and Governance 21
1.2. Consultation guidelines: The case of the United Kingdom 25
1.3. Consultation portal: The case of Denmark's Høringsportalen 26
1.4. Corruption Impact Assessment (CIA) in the Czech Republic 28
2.1. OECD Competition Tools 37
2.2. Fighting Bid Rigging in Public Procurement 40
2.3. The Mexican Institute of Social Security (IMSS) project on fighting collusion in public tenders 41
2.4. EU enforcement priorities 44
2.5. OECD Competition Assessment Reviews of Greece 46
3.1. OECD Principles on Budgetary Governance and Best Practices on Budget Transparency 58
4.1. OECD Guidance on Integrity for Development Assistance Providers 80
4.2. Slovenia: Recent accession to the Development Assistance Committee 86
5.1. OECD Recommendation of the Council on Public Integrity 93
5.2. The start of a shift to more prevention 96
5.3. Canada's Policy on Conflict of Interest and Post-Employment 102
5.4. Resolution and management options for conflict of interest situations 103
5.5. OECD Post-Public Employment Principles 104
5.6. Building accountability through the generation and transparency of key performance indicators (KPI) and metrics 115
5.7. Brazil's National Disciplinary Board and SisCor 118
6.1. The OECD Recommendation of the Council on Public Procurement 128
6.2. Korea's e-procurement system 132
6.3. Italy's "Open Expo" 136
6.4. Code of conduct for procurement in Canada 137
6.5. The National Review Commission in Slovenia 143
7.1. The internationally Agreed Standards on Exchange of Information: The Standard on Exchange-on-Request (EOIR) and Standard on Automatic Exchange (Common Reporting Standard) 151
7.2. Example of a Jurisdiction Rated as Compliant with the Standard on Transparency and EOIR by the Global Forum 153
7.3. Convention on Mutual Administrative Assistance on Tax Matters: Key Points 154
8.1. The 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits [excerpt] 161
8.2. Kazakhstan financial institutions providing government support to exporters 163
8.3. Multilateral developments bank debarment lists 165
8.4. Customer undertaking and disclosure 169
8.5. Undertaking enhanced due diligence 172
8.6. Credible evidence and proven bribery 176

9.1. OECD Principles on Transparency and Integrity in Lobbying 185
9.2. Lobbying Regulation Timeline 187
9.3. The value of connections to the government – An overview on recent research 188
9.4. Defining lobbying in national legislation: The cases of Austria and Slovenia 190
9.5. Greater transparency in lobbying in the context of the UK's open government policy 191
10.1. Selected OECD Business Integrity Standards 197
10.2. Samruk-Kazyna's work on corporate governance 200
10.3. Kazakhstan's national strategies and business integrity 201
10.4. OECD Trust and Business Project 205
10.5. The Principles for Responsible Investment Initiative 207
11.1. OECD Guiding Principles for Public Participation in Policy Making 217
11.2. An enabling environment for civil society organisations – a United Nations Perspective 219
11.3. CSO Self-Regulation Initiatives 230
12.1. OECD Anti-Bribery Convention and United Nations Convention Against Corruption (UNCAC) Address the Non Tax Deductibility of Bribes 237
12.2. Examples of Tax Legislation and Tax Provisions Denying the Tax Deductibility of Bribes 238
12.3. Raising the Awareness of the Tax Administration on the Non-Deductibility of Bribes to Domestic and Foreign Public Officials – OECD Council Recommendations and the Bribery Awareness Handbook for Tax Examiners 240
12.4. Payments Sent via Offshore Companies 241
13.1. OECD Tools on whistleblower protection 250
13.2. The G20 Guiding Principles Legislation on the Protection of Whistle-blowers 250
13.3. Comprehensive protection in Korea 254
13.4. Protecting Whistleblowers from Reprisal in Canada 256
13.5. A detailed definition of protected disclosures in Australia 257
13.6. Measures in place to preclude reporting in bad faith – examples from OECD member countries 259
13.7. Amounts collected and awards paid to whistleblowers by the United States' Internal Revenue Service (IRS) 265
14.1. OECD Handbook on governance development focus on media 277
14.2. The Right to Information Rating 280
14.3. Evaluating the Independence and Effectiveness of Media: The Freedom of Press Index and the Media Sustainability Index 285
15.1. OECD Anti-Bribery Convention 301
15.2. Article 367, Giving of a Bribe, Criminal Code of Kazakhstan 302

Follow OECD Publications on:

http://twitter.com/OECD_Pubs
http://www.facebook.com/OECDPublications
http://www.linkedin.com/groups/OECD-Publications-4645871
http://www.youtube.com/oecdilibrary
http://www.oecd.org/oecddirect/

Executive summary

The Republic of Kazakhstan's economic performance over the past 16 years has been impressive. The transition from a Soviet Republic to an independent market-based economy created significant economic turbulence during the 1990s, as did the Russian crisis in 1998. Since 2000, however, the economy has grown strongly, driven by price increases in its leading exports –oil, metals and grain – allowing the country to record double-digit growth rates.

Economic growth has been accompanied by public sector reforms to strengthen institutions. Despite these initiatives, in the area of public sector integrity - and corruption more generally - Kazakhstan lags behind OECD member countries. Transparency International, which produces the Corruption Perception Index measuring perceived levels of public sector corruption from 0 (highly corrupt) to 100 (very clean), considers Kazakhstan as a highly corrupt country with a score of 29. This score ranks the country 131st out of 176 and, while in line with those from neighbouring countries, shows Kazakhstan's weak performance compared to other benchmark countries.

The Government of the Republic of Kazakhstan has identified controlling corruption as one of its key priorities, and has undertaken a series of anti-corruption reforms. These have been launched under the auspices of a broader economic, social and institutional reform agenda, setting an objective of becoming one of the 30 most developed countries in the world by 2050. To support the implementation of this 2050 Strategy a national plan has been developed with "100 Concrete Steps" covering five areas of institutional reform: (i) creation of a modern and professional civil service; (ii) ensuring the rule of law; (iii) industrialisation and economic growth; (iv) a unified nation for the future; (v) and transparency and accountability of the state.

Corruption is a cross-cutting issue, and this assessment uses the OECD's framework of four key pillars for curbing corruption: healthy governance, effective prevention, robust prosecution and recovery, and sharp detection. Healthy governance is necessary for a solid legal and institutional framework to ensure functioning markets and effective public governance, which in turn curb incentives for corruption. Regulatory and competition policies, as well as open budgeting and development co-operation are the issues assessed under this pillar in the can.

Second, effective prevention establishes safeguards, integrity frameworks and permits greater scrutiny in risk areas of corruption. Public sector integrity, integrity in public procurement, tax transparency, export credits, lobbying rules, business sector integrity, as well as civil society empowerment are important elements of prevention. Third, governments need sharp detection mechanisms to identify where corruption is taking place. An analysis of institutions such as the tax administration, whistle-blower protection measures and an independent and active media looks at how they can strengthen their efforts. Finally, robust prosecution and recovery ensures that acts of corruption are criminalised and punished, and that the assets amassed through corruption are reclaimed. The final chapter on criminalising bribery and ensuring enforcement examines this issue.

Across the 15 areas assessed, three common trends emerged: the need for strengthening the legal and institutional framework in several areas; moving beyond legal and policy reform towards supporting implementation and ensuring enforcement; and promoting greater transparency and inclusion of non-governmental stakeholders in the fight against corruption.

The package of reforms established to implement the 100 Concrete Steps have brought many of the country's laws, rules, and institutions closer to international standards. While this is a positive step forward, gaps remain that can allow corruption to flourish. Without sufficient legislation to clarify, for instance, the rules of interaction between the public and private sectors, the risk of policy capture remains high. Similarly, some new laws and policies still fail to address issues of institutional independence, restricting the effectiveness of bodies such as the competition authority or the National Bureau for Counteraction of Corruption.

New laws and institutions are one way to promote integrity, but without a focus on implementation, the reforms will be ineffective. Unless new legislation is buttressed by awareness-raising and capacity-building efforts and supported by appropriate resources, they will likely remain a reality only on paper. Likewise, without enforcement, new laws and policies will remain hollow. Across the integrity system in Kazakhstan, providing the legislative and practical tools to ensure enforcement is imperative. To ensure tax transparency, for instance, Kazakhstan should enact legislation for enforcing and applying sanctions in cases of noncompliance with exchange of information request standards. The fight against foreign bribery is also dependent upon an enforcement regime that has the skills and tools to investigate and prosecute bribery. To that end, Kazakhstan could improve the capacity of law enforcement authorities through regular, practical trainings.

A well-functioning integrity system relies on the engagement of stakeholders in the design, implementation and respect of the country's integrity laws and policies. A common theme throughout the scan is the need to increase transparency and co-operate with non-governmental stakeholders to fight corruption. In Kazakhstan, the government is realising this, as demonstrated by the passing of the Law on Public Councils and Law on Access to Information. However, implementing consistent and transparent criteria to guide the establishment of public councils and the selection of stakeholders in each government ministry is crucial to ensure open access to policy making for all members of society. Moreover, stakeholder engagement will not be sustainable without the transparent and competitive distribution of funds to civil society organisations. Likewise, fair and equitable rules of access for all civil society, including the media, under the Law on Access to Information, are crucial. Publishing citizens' versions of the national budget documents throughout the budget cycle is another way to enable citizens to participate in the policy making process. Finally, as the private sector is a key player in any country's efforts to fight corruption, Kazakhstan could strengthen the guidance offered to companies and make compliance with the Code of Corporate Governance mandatory.

Assessment and recommendations

As an integral part of effective public governance - the foundation for building integrity - regulatory policy helps shape the relationship between the state, citizens and businesses. In Kazakhstan, there has been undeniable progress in strengthening the rule of law. Going forward however, Kazakhstan must focus on the implementation of the reforms. This will involve strengthening the regulatory impact procedure when preparing regulations to capture the full consequences of draft regulations. Additionally, Kazakhstan should continue with existing administrative simplification efforts and consider developing a systemic programme on administrative burden measurement. To be effective, these efforts must be accompanied by improved regulatory transparency through a pro-active approach to public consultation.

While Kazakhstan has made significant strides in moving from a centrally planned economy to a competitive, market-based economy, further efforts are required to effectively implement and ensure a functioning competitive environment. To that end, Kazakhstan should consider deleting provisions that allow for intervention based solely on an infringement upon consumers' rights or interests and instead focus on "harm to competition". Kazakhstan should also consider refining the analysis of markets, market positions and the effects on competition in order to properly capture key competition problems. In all competition cases, interventions by the Competition Authority should aim to tackle the causes of the competition problem, rather than symptoms like price increases. Finally, Kazakhstan should consider introducing a rule of reason analysis for vertical competition restraints; increasing transparency of enforcement processes and decisions and grant essential procedural rights to parties to the proceedings; ensuring independence of the competition authority from political interventions and influence; and increasing regional integration and international co-operation and adopting the competition law framework of the Eurasian Economic Union (EAEU).

With respect to budget transparency and openness, there are a number of initiatives that could be taken in Kazakhstan to ensure an open, transparent and inclusive budgeting process at both the national and subnational levels, such as publishing citizens' versions of the national budget documents and improving the comprehensiveness of budget documents throughout the budget cycle. In terms of accountability and oversight, internal and external audit and control systems should focus on the cost-effectiveness of individual programmes, as well as assessing the quality of performance accountability and governance frameworks. Furthermore, continued efforts to promote integrity and accountability in extractive industries and within sovereign wealth funds are needed.

Development co-operation offers promising avenues for tackling corruption. While Kazakhstan receives relatively small amounts of official development assistance (ODA), the country is also an emerging provider of development co-operation that is in the process of developing its systems for managing the funds that are disbursed. In terms of the ODA that Kazakhstan receives, external support and development co-operation could be solicited to support integrity reforms in Kazakhstan, for example through technical co-

operation and exchange between countries that are facing similar challenges. In terms of the ODA that Kazakhstan provides, the creation of a development co-operation agency that operates with integrity and transparency will be key. To that end, Kazakhstan could consider developing structures and policies to ensure the integrity of its development co-operation systems, for instance by developing a code of conduct for the area of development co-operation. Furthermore, Kazakhstan could work towards increasing the transparency of ODA that is both provided to and provided by the country by publishing details on projects supported with ODA online in real-time.

While a series of legal and institutional reforms have taken place over the past several years to enhance public sector integrity, further work is required to clarify responsibilities for integrity, build a culture of integrity, and ensure effective accountability. To that end, Kazakhstan could include in the Law on Combating Corruption provisions to ensure that the National Bureau has the independence to carry out its functions effectively and is organisationally autonomous from any political body. Likewise, government ministries in Kazakhstan are encouraged to adapt the recently revised Code of Ethics to fit the context of its specific work. Similarly, Kazakhstan could consider adapting the Code of Ethics to high-risk positions (e.g. procurement and tax and customs officials). Furthermore, Kazakhstan is encouraged to align the risk mapping function in the Law on Combating Corruption with the broader risk management function in the Law on State Audit and Financial Control.

In Kazakhstan, recent public procurement reforms show a promising path for further transparency and integrity in the procurement system. Nevertheless, a number of areas require further reform, including reducing the high number of exceptions to the procurement regulations, extending the applicability of the regulations to state-owned enterprises, and developing a risk-based preventative framework specific to public procurement to reduce fraud and corruption.

In regards to tax transparency in Kazakhstan, a number of reform areas are necessary, including ensuring that ownership information on foreign companies with sufficient links with Kazakhstan is available in all cases, as well as clarifying legislation to ensure that the Kazakh competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements. Likewise, ensuring that the Kazakh legislation provides for effective enforcement measures and sanctions applicable in cases where the requested information is not provided is an important reform necessary for further tax transparency.

To deter and detect bribery in export credits, the two institutions providing government-backed support to exporters, KazExportGarant Export Credit Insurance Corporation JSC (KazExportGarant) and the Kazakhstan Development Bank (KDB), should clarify in their transaction documentation that corrupt activities include bribery offences, as well as money laundering and terrorism financing. Moreover, these two institutions should consider making information on the legal consequences of such corrupt activities more widely available to customers. KazExportGarant and the KDB should encourage customers to develop, apply and document appropriate management control systems which help prevent bribery and in turn should undertake an appropriate level of due diligence on agents (e.g. verifying whether they are on debarment lists, the basis of the work that they undertake, and confirming that the amounts paid are consistent with standard market practice for the industry sector and project country concerned.)

Kazakhstan has taken strides towards creating a space within which stakeholders can provide input into the policy making process. While this can serve to positively inform

and improve policies, there is also a risk that they can open the doors for the lobbying of officials. Kazakhstan could therefore consider establishing rules on interaction between public and private and not-for-profit sector through the Code of Conduct and Regulations of the Republic of Kazakhstan. Additionally, Kazakhstan could consider designing and implementing legislation that adequately manages the revolving-door phenomenon.

In Kazakhstan, business integrity-related legislation is in certain cases still insufficient, particularly in terms of the guidance it offers for corporate compliance with either voluntary or mandatory standards. Amongst other reforms, Kazakhstan should strengthen the guidance offered to companies and make compliance with the Code on Corporate Governance mandatory.

In Kazakhstan, significant work is needed to ensure an enabling environment for Civil Society Organisations (CSOs). The recent implementation of a new funding scheme for CSOs could benefit from further revision in concert with CSO input and involvement on the design of the measures. Additionally, while the Law on Public Councils indicates a willingness on the part of the government to open the door for stakeholder engagement, unclear criteria for selection of members may allow either for policy capture or for selecting members to 'rubber-stamp' government decisions.

Tax administrations have an important role to play in combating financial crimes such as bribery and corruption. Contrary to the current legal situation, Kazakhstan should adopt a law that expressly disallows tax deductions for bribes paid to national and foreign public officials and to officials of public international organisations. Kazakhstan is also encouraged to raise the awareness of the tax administration on the potential of the Convention on Mutual Administrative Assistance in Tax Matters to counteract bribery and corruption. Finally, Kazakhstan should make the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors available on the intranet of the Kazakh tax administration and organise trainings for new staff and tax examiners to raise their awareness on issues regarding bribery and other forms of corruption.

Although some progress towards whistleblower protection in Kazakhstan has been made, such as including a legal requirement to report corruption and establishing a complaint system within the National Bureau of Corruption Counteraction, considerable effort is required to create a robust system for whistleblower protection. The focus on witness protection raises concerns regarding the protection of those who bring forward information in good faith that does not eventually lead to prosecution. The legal framework therefore needs to clearly specify the protections afforded to whistleblowers, the process through which a whistleblower can bring forward complaints regarding retaliation, as well as identify sanctions and or remedies against those who retaliate.

The role of the independent media is critical in promoting integrity, and detecting, reporting, and raising public awareness on corruption. In turn, the effectiveness of the media depends on its access to information and freedom of expression, the plurality of media options, as well as a professional and ethical cadre of investigative journalists. In order for media to fulfil its role, a series of reforms are recommended for Kazakhstan, including improving media's access to information under the recently implemented Law on Access to Information. Additionally, more can be done to enhance freedom of expression in Kazakhstan, particularly by removing measures that result in censorship.

In regards to criminalising bribery and ensuring enforcement, Kazakhstan has made significant progress through the adoption of Article 367 of the Criminal Code in 2014, and more recently, including the definition of "foreign officials" to be in line with

international standards. Relevant incriminations, however, fall short of international standards and Kazakhstan should cover all necessary elements of bribery in its law, and extend the definition of a bribe to non-pecuniary and intangible benefits. Kazakhstan should also introduce effective legal requirements for corporate liability for bribery with dissuasive and proportionate sanctions. Moving forward, Kazakhstan should raise the capacity of law enforcement authorities to effectively investigate and prosecute bribery, as well as provide and receive international assistance in criminal cases based on the bilateral or multilateral treaties or, in their absence, based on a request and according to the mutuality principle.

Chapter 1.

Improving regulatory governance in Kazakhstan

Regulation, i.e. tools which the government use to intervene in the economy and life of their citizens (laws, secondary legislation, and other alternative tools), is of critical importance in shaping the welfare of economies and societies, and contributes to promoting a strong integrity system. For example, overly complex regulatory frameworks, lack of transparency in the preparation of new regulations, plus ineffective and inappropriate application of the rules, are all factors which combine to favour corruption and dishonest behaviour. This chapter assesses how regulatory governance could support integrity in the Republic of Kazakhstan and explores issues related to the rule of law, regulatory transparency, quality of regulations, administrative implications, and enforcement and inspection, and presents recommendations for their improvement.

Role of regulatory policy in promoting integrity and combating corruption

An overly complex regulatory framework, lack of transparency in the preparation of new regulations, plus ineffective and inappropriate application of the rules – these are all factors which combine to favour corruption and dishonest behaviour. When regulations are too complicated, difficult to understand for 'normal' citizens and entrepreneurs, it creates opportunities for administrators as well as private agents to bypass the regulation using semi or non-legal ways. Insufficient clarity and uniformity of the process through which regulations are delivered and implemented creates room for corruption from the side of those not complying with the rules. Inefficient regulatory enforcement that is not oriented towards increasing compliance but focuses on deterrence and punishment is another factor opening space for bribes and corruption. Non-transparent procedures and institutions for developing and reviewing regulations enable regulatory capture and undue influence by vested interests on the content and quality of regulations. Introduction of an effective regulatory policy makes it possible to foster a system of integrity, cut the risks of corruption, reduce the economic and social effects of corruption and clearly define the relationship between the State, the citizen and the business sector.

Regulation, i.e. tools which the government use to intervene in the economy and life of their citizens (laws, secondary legislation and other, alternative tools), is of critical importance in shaping the welfare of economies and societies. The objective of regulatory policy is to ensure that regulations support economic growth and development as well as the achievement of broader societal objectives such as social welfare, environmental sustainability, and the respect of the rule of law. It addresses the permanent need to ensure that regulations and regulatory frameworks are justified, of high quality and achieve policy objectives. Regulatory policy helps policy makers reach informed decisions about what to regulate, whom to regulate, and how to regulate. As an integral part of effective public governance and the foundation for building integrity, regulatory policy helps to shape the relationship between the state, citizens and businesses.

The use of regulatory policy to inform and improve policy formulation and decision-making has various dimensions. A range of tools must be deployed in a consistent and mutually supporting manner if systemic quality improvement is to be assured. The essential tools include regulatory impact analysis, the consideration of regulatory alternatives, administrative simplification, ensuring regulatory transparency and ex-post evaluation of existing regulation. Regulatory governance is grounded in the principles of democratic governance and engages a wider domain of players including the legislature, the judiciary, sub-national and supra-national levels of government as well as standard setting activities of the private sector. Effective regulatory governance maximises the influence of regulatory policy to deliver regulations which will have a positive impact on the economy and the society, and which meet underlying public policy objectives.

The following will analyse the current regulatory environment in Kazakhstan as it relates to integrity. Rule of law, regulatory transparency, quality of regulations, administrative simplification, and enforcement and inspection will be discussed, and possible recommendations made for their improvement.

Box 1.1. **2012 Recommendations of the OECD Council on Regulatory Policy and Governance**

On 22 March 2012, the Council of the OECD adopted the Recommendation of the Council on Regulatory Policy and Governance.

The Recommendation is the first international instrument to address regulatory policy, management and governance as a whole-of-government activity that can and should be addressed by sectoral ministries, regulatory and competition agencies.

The Recommendation sets out the measures that governments can and should take to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society. These measures are integrated in a comprehensive policy cycle in which regulations are designed, assessed and evaluated ex ante and ex post, revised and enforced at all levels of government, supported by appropriate institutions.

The Recommendation includes 12 principles:

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits are maximised.
2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.
5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent, and delivers the intended policy objectives.
6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools, such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations, are functioning in practice.
7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.

Box 1.1. **2012 Recommendations of the OECD Council on Regulatory Policy and Governance** *(continued)*

9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supra-national, the national and sub-national levels of government. Identify cross cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
11. Foster the development of regulatory management capacity and performance at sub-national levels of government.
12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

Source: OECD (2012).

Current status and critical analysis

The rule of law

The fundamental principle of the rule of law is that no institution or person within the state can unilaterally or arbitrarily revise the legal framework or refuse to be subject to it. An effective integrity strategy relies on the credibility of a legal system that operates uniformly and provides equal justice to all persons.

The main document governing the rule of law in Kazakhstan is the Constitution. The Constitution stipulates the fundamentals of the constitutional form of government, the most important rights, freedoms and obligations of citizens, their constitutional guarantees, sets the judicial basis for the functioning of the civil society, the form of state, and other norms and principles.

The Kazakhstani legal framework is based on the uniform system of law, implemented on the basis of the Constitution and the laws in accordance with the principle of division into legislative, executive and judiciary branches, and interaction between them, using a checks-and-balances method.

The Constitution recognises the right of each to protect his/her rights and freedoms. The basic principles and norms regarding legal standing of individuals and entities, civil rights and freedoms, obligations and liabilities of individuals and entities are only provided by the laws. According to the Rule of Law index published by the World Justice Project, Kazakhstan ranks 65th out of 102 countries (7th out of 13 Eastern Europe and Central Asia countries, 22nd among 31 upper middle income countries) with the overall score 0.5 (maximum score is 1) (The World Justice Project, 2015). Most of the OECD countries have a score between 0.61 and 0.87, only Mexico has a lower score than Kazakhstan - 0.47. Some of the issues mentioned are the independence of the judiciary and legislative powers, civic participation in the rule-making process and complaint mechanism.

According to the EU-Central Asia Rule of Law Platform, "Kazakhstan has already reformed substantially its Criminal Code and its Criminal Procedure Code. Nonetheless, corruption of the judiciary and the need to promote the right to a fair trial and defence rights still need to be tackled in order to align the criminal justice system with international standards. The need to reinforce procedural safeguards at pre-trial stage is perceived as a priority in the Kazakh context" (EU-Central Asia Rule of Law Platform, 2013).

The improvement of the rule of law from 1996 to 2014 is the most striking feature of the data shown in the Worldwide Governance Indicators elaborated by the World Bank (2015). There has been significant improvements in the Business Enterprise Environment Survey and the Economist Intelligence Unit data showing grater trust in the functioning of courts and the enforcement of laws and contracts in general, while, at the same time, the scoring on the Freedom House's Judicial framework and independence has been declining.

The National Development Plan "100 Steps Toward a New Nation" sets improving the rule of law as one of the five directions of the Plan (Kazakhstan Institute for Strategic Studies, n.d.). In particular, further reforms of the judicial system will be aiming at the accessibility, simplification and quick resolution of disputes, as well as strengthening of trust of society to the judicial system. A set of measures is to be implemented in order to reinforce the supremacy of law and independence of judicial authorities. In order to ensure time-efficient resolution of disputes, activities of amicable settlement institutions shall be improved, using mediation and reconciliation procedures.

Improvement of law enforcement system will be aiming at elimination of any forms of misconduct, formation of zero tolerance to any forms of offence, ensuring of supremacy of law and improvement of society trust.

Regulatory transparency

Transparency is one of the central pillars of effective regulation. Transparent procedures and institutions for developing, implementing and reviewing regulations makes the regulatory framework less prone to regulatory capture and undue influence of selected interests.

In recent years, Kazakhstan has made considerable efforts to improve its public consultation process. Most common are consultations via public councils and online consultations with the wider public. Consultations via public councils have been made mandatory by the 2009 amendment to the Law on Private Entrepreneurship, which required each ministry to set up such a council.

One third of the public councils consist of other state bodies involved in the development of the respective draft regulation, the other two thirds are representatives of accredited non-governmental organisations (NGOs), which are defined very broadly and may include, for example, business associations. It is important to note in this context that NGOs operating in Kazakhstan have to reapply for their NGO status every three years (please see Chapter 11: Civil Society Empowerment for more information). If the draft regulation were to impact businesses, it is mandatory to also consult with business associations (in case they are not already part of the council).

The wider public has the possibility to comment on draft regulations once they are uploaded on the website of the ministry in charge and on the Open Data Internet Portal. According to the Rules of Placement and Public Discussion of the Draft Bill’s Concept

and Draft Regulations on the Internet Portal of Open Public Regulations, the drafting authority has ten days after closing the consultations to either implement the received comments or to justify their rejection.

All normative legal acts, including presidential decrees, are included in the Official Gazette and are also available on a single website. Not included are implementing orders and circulars. The website, operated by the Ministry of Justice and accessible free of charge, makes consolidated, up-to date versions of normative legal acts available and can be searched via keywords. The regulations are available in both Kazakh and Russian.

The 2016 Law on Legal Acts contains a formal requirement for plain-language drafting. Implementing regulations are currently being updated to be brought in line with the new law, therefore it is premature to evaluate what are the effects of these changes. Many regulations, however, are still complex, hard to understand for non-experts, and thus hard to comply with. This is aggravated by the lack of guidance or training for those drafting normative texts. Providing systematic guidance for citizens and businesses on how to comply with a specific piece of legislation is still rather rare. Nevertheless, each ministry is required to answer any questions on the content of its regulations within five working days.

The current framework for public consultations should be improved in order to yield more and better consultation inputs. It is particularly important to improve the consultation process of ministries with public councils. The consultation period of minimum ten working days is very short. For comparison, in OECD countries with mandatory consultation periods, stakeholders have on average four to six weeks. Consultations with the wider public, though widespread and accessible via the respective ministry's website, are not sufficiently user-centric, nor are they pro-active enough. Online consultation with the wider public lacks an explicit call for comments, clear timelines, consultation periods and guidance as well as a government-wide online consultation platform. For each type of public consultation, attention should be paid to not only fulfil formal consultation requirements but to actively reach out to all those concerned by the proposed regulation.

Recommendations for reform

Kazakhstan should continue adding implementing orders to the online database. Furthermore, Kazakhstan should consider providing training in plain-language drafting to rule makers, developing and promoting guidance for plain-language drafting, and developing and promoting guidance for compliance with complex regulations for citizens and businesses.

Kazakhstan should also adopt a more pro-active approach to public consultation. This should be done by developing a government-wide policy on stakeholder engagement, aiming to consult with all stakeholders in a pro-active manner. Furthermore, Kazakhstan should provide government ministries with appropriate consultation guidance and establish a single electronic portal for consultation.

It is not clear what the criteria are for selecting public council members. This may allow either for policy capture, if some interests are not sufficiently represented, or for selecting members that are in favour of solutions or policies selected by the Government leading to just 'rubber-stamping of government decisions).

Box 1.2. **Consultation guidelines: The case of the United Kingdom**

Increasing the level of transparency and increasing engagement with interested parties improves the quality of policy making by bringing to bear expertise and alternative perspectives, and identifying unintended effects and practical problems.

Prior to replacing it with the much shorter "Consultation Principles" in 2012 (updated in 2013), the United Kingdom had a detailed "Code of Practice on Consultation", which aimed to "help improve the transparency, responsiveness and accessibility of consultations, and help in reducing the burden of engaging in government policy development."

Although not legally binding and only applying to formal, written consultations, the Code of Practice constitutes a good example of how a government can provide its public officials with a powerful tool to improve the consultation process. The 2012-13 Consultation Principles highlighted the need to pay specific attention to proportionality (adjusting the type and scale of consultation to the potential impacts of the proposals or decision being taken) and to achieve real engagement rather than merely following a bureaucratic process.

The 16-page Code of Practice issued in 2008 was divided into seven criteria, which were to be reproduced as shown below in every consultation.

- Criterion 1: When to consult. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- Criterion 2: Duration of consultation exercises. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Criterion 3: Clarity of scope and impact. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Criterion 4: Accessibility of consultation exercises. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- Criterion 5: The burden of consultation. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Criterion 6: Responsiveness of consultation exercises. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Criterion 7: Capacity to consult. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

An example of a UK government response to consultation can be found at:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/181637/dla-reform-response.pdf.

Sources: Better Regulation Executive Department for Business, Enterprise and Regulatory Reform (2008); Cabinet Office (2015).

Box 1.3. **Consultation portal: The case of Denmark's Høringsportalen**

In 2005, the Danish administration set up a dedicated portal to ensure greater transparency in the consultation process when preparing new regulations. The Consultation Portal (*Høringsportalen*) is hosted on the citizens' portal "borger.dk", which has a specific page on law-making.

The Consultation Portal collects consultation documents, dating back to mid-2005, relating to the preparation of regulation by all ministries and agencies. Publication is mandatory for all draft bills and executive orders. Other documents are also published for consultation. They include policy or strategy papers, European Commission's draft regulations, draft technical standards, and guidelines.

Documentation includes the draft, the call for consultation (which specifies the deadline) and the list of institutions and people, which have been called for hearing. Once the consultation period is over, the government also publishes the written comments, which have been received. Comments to draft law must be published no later than when the bill is forwarded to the parliament.

Draft regulations can be searched by category of document, date, authority, as well as key words. The portal also includes the possibility to receive regular updates, electronic notices and a newsletter on consultation.

Denmark's Consultation Portal can now be found at https://hoeringsportalen.dk.

Source: OECD (2010).

Ensuring the quality of regulations

Poor quality regulation can potentially corrupt the intended policy aims of the regulation, providing opportunities to advantage certain interest groups at the expense of the wider social good. This may as easily result from the opportunistic behaviour of officials, as simply through an inadequate consideration of the effects of regulation.

Kazakhstan has detailed procedures for preparing new regulations or amending regulations, which are specified in several legal acts, the 2016 Law on Legal Acts being the most recent one. The production of new draft laws and resolutions by the government takes place within the framework of long-term and short-term plans.

The Ministry of Justice is responsible for controlling the legal quality of draft laws and resolutions initiated by the government. Legal quality is also checked by the legal department of the Office of the President, and in parliament by the Legal Department of the Majilis, which examines draft laws submitted by the government as well members of the parliament.

The Law on Legal Acts requires that draft laws and regulations should be accompanied by an explanatory note and a scientific expertise evaluation. The explanatory note explicates the need for and the objectives of the draft law, and the scientific expertise is conducted to assess the quality, relevance, timeliness, appropriateness of the project, to determine the potential effectiveness of the law and identify its possible negative implications. The drafters of the text define the scope of the analysis to be undertaken. It can extend from an analysis on a specific part of the text to the whole text. The content may also vary. Depending on the text, it can include legal and economic consequences analysis, anti-corruption analysis, legal analysis, environmental analysis, and/or financial analysis.

The procedure for preparing new laws in Kazakhstan includes elements of a regulatory impact analysis (RIA). According to the law, draft documents of state planning systems, draft laws and their concepts, drafts of some normative legal acts and technical regulations have to include RIA. The Rules of Conducting Analysis and Use of RIA by the Order of the Minister of National Economy of the Republic of Kazakhstan of November 30, 2015 No. 748 provide a methodology for conducting RIA. This includes a definition of the objective and structure of the text, a description of the issue addressed by the text, consideration of different methods and tools to address this issue, and an analysis of the consequences of these tools. The main issue is the implementation of these rules. Most RIAs are not used to help finding the best available solution (whether regulatory or non-regulatory. There is no control procedure on the quality of the assessment and therefore the responsible agencies are not taking RIA seriously enough to provide sufficient background information on justification of the legislative proposal.

Currently, the Ministry of Justice is drafting the new Rules of Organisation of Legislative Work in the Authorised Bodies of the Republic of Kazakhstan which will change the procedure for the organisation of legislative work in Kazakhstan including preparation of the scientific expertise.

Recommendations for reform

Kazakhstan should consider strengthening the regulatory impact assessment procedure when preparing regulations to capture the full consequences (benefits and costs) of draft regulations, building on the existing requirements. Impact assessment needs to be prepared in the early stage of preparation of new legislation, when a concept paper is considered. To reap full benefits, it also needs to be open for public consultation. This requires attaching it to the documentation for public consultation. Kazakhstan should also ensure that the impact assessment is communicated to parliament along with the draft legislation. A system of quality control over the RIA process independent from the drafting agency should be established. It is necessary that public servants in ministries get fully involved in the process so that the assessment is effectively used as a tool for making high quality regulations.

Administrative simplification

Regulatory frameworks that are too complex and causing excessive regulatory burdens create possibilities for corruption and encourage the growth of an informal economy. The more restrictive and complex the regulations are, the more possibilities there are for public servants on one side and specialised private agents on the other to find ways to bypass the regulation using semi or non-legal ways. The excessive complexity of the regulatory framework makes regulations difficult to understand for day-to-day users, especially citizens, entrepreneurs and small and medium enterprises (SMEs). This creates opportunities for officials to “be creative” in providing guidance to those who fully depend on it.

A formal obligation to review periodically all the existing regulations exist in Kazakhstan. According to the Law on Normative Legal Acts, all ministries and administrative bodies should conduct “legal monitoring” of legislation in their area of competence. If needed, they should then, based on the results of this review, “take timely measures to introduce amendments or to abolish these regulations”.

The Government decree No. 964 of 25 August 2011 on Rules of Legal Monitoring of Regulatory Legal Acts states that “legal monitoring of regulatory legal acts in the

Ministry shall be conducted on a regular basis, on collection, assessment, analysis of information on status of legislation of the Republic of Kazakhstan, as well as on prognosis of dynamics of its development and application practice for purposes of identifying regulations that conflict with the legislation of the Republic of Kazakhstan, or are otherwise dated or corruptogenic, as well as evaluation of the efficiency of their implementation." In practice, all ministries keep a list of regulations in their area of competence and review them "from time to time". The frequency of these reviews is not legally set. Most ministries choose to conduct these reviews annually.

According to the Rules of Conducting Analysis and Use of RIA, an ex post review of existing regulations should be conducted by regulatory agencies according to their plans in such way that all regulations are reviewed using RIA after 5 years of their implementation. Another area ex post reviews are supposed to focus on is the identification of potential opportunities for corruption. The Corruption Impact Assessments used in Korea or the Czech Republic could serve as a basis for a methodology to be used in Kazakhstan (see Box 1.4 for an example).

Box 1.4. **Corruption Impact Assessment (CIA) in the Czech Republic**

CIA must be carried out for all legislative proposals in the Czech Republic as part of the Regulatory Impact Assessment process. The aim is to carry on a proportional analysis with different depth and extent depending on the nature of the proposal used to evaluate the corruption risks of the proposed legislative solutions. It was implemented in January 2014. The body responsible for the draft has to analyse risks of corruption connected with implementing the legislative proposal. The analysis should be based on the following principles:

1. Proportionality - The body has to justify that a legal solution is the best one available and that the competences of public authorities are not widened extensively as well as the level of potential sanctions.
2. Clarity - Rights and duties as well as the process to fulfil those and criteria for taking decisions must be clearly stipulated. The level for discretion in the decision making process must also be evaluated and properly justified.
3. Consistency - The processes must be consistent with similar process in the administration, any deviation must be justified.
4. Controllability and accountability - The decision-making process must be clearly described, controllable and sufficient appeal procedures must be established.
5. Transparency - The process must be transparent, all the necessary information and data must be published regularly, etc.

Source: Government of the Czech Republic, *Doprovodné metodiky procesu RIA [Corruption Impact Assessment CIA]*, www.vlada.cz/cz/ppov/lrv/ria/metodiky/doprovodne-metodiky-procesu-ria-134038/.

Ministries do not have dedicated capacities for conducting such reviews. Therefore, only limited resources can be devoted to the task. In addition, public officials do not seem to be sufficiently trained in evaluation of regulations, especially when it comes to economic analysis of benefits and costs.

The administrative simplification efforts in Kazakhstan have so far largely focused on reducing the number of licences and consolidating them, and on developing e-government tools in the administration. Progress achieved in both of these areas has been remarkable, such as reducing the number of licenses for business activities or creating citizen one-stop shops (OECD, 2014b). Excessive red tape is still, however, considered a key problem in Kazakhstan.

Contrary to most OECD countries, Kazakhstan has not engaged into the measurement of regulatory or administrative burdens stemming from the existing regulations as part of its simplification policy. Therefore, it is impossible to evaluate the current level of administrative burdens. It is also impossible to set quantitative goals for reducing administrative burdens.

The Kazakh government has invested a lot of resources into developing e-government tools and policies. The results are fairly impressive. An electronic database of licences has been created and it is now possible to obtain 100% of licences electronically. Many administrative procedures now can be dealt with online through the government electronic portal. The state-of-the-art physical one-stop shop for citizens (the Civil Service Centres) is an example of international good practice. These electronic public services are provided through a government website1 and/or also through physical one-stop shops – Civil Service Centres.

A solid legal basis for a review of the existing regulations is in place. The review is however focusing mostly on legalistic aspects, redundancy, etc. No dedicated capacities have been created for conducting such reviews.

Recommendations for reform

Kazakhstan should continue with existing administrative simplification efforts and should consider developing a systemic programme on administrative burden measurement. According to OECD best practice, the most burdensome and irritating regulations or areas of regulation should be identified in co-operation with stakeholders. Administrative burdens should be measured using the standard cost model (SCM) with a focus on these areas. A quantitative target for administrative burden reduction should be set and the programme should result in producing proposals that would simplify the regulatory environment.

Kazakhstan should consider improving the established system of review of existing regulations and set comprehensive criteria for selecting existing regulations to be reviewed. Only a limited number of regulations should, based on clear criteria, be selected for review each year, and full regulatory impact assessments should be conducted on these selected regulations. The review mechanism needs to give more importance to economic analysis than is currently done. It should give consideration to whether the benefits of the regulation outweigh its regulatory costs.

Enforcement and inspections

Agencies responsible for implementing and enforcing regulations can play an important role in preserving public trust, integrity and order in society. To fight against corruption, it is critical to eliminate incentives and opportunities in the enforcement process causing corruption. In this respect, a regular, effective, risk-based and professionally performed inspection can easily detect systemic risk and failures which offer significant opportunities for waste, fraud and corruption.

Inspections of business enterprises in Kazakhstan served in the past as disincentives to entrepreneurs due to their intrusive and burdensome nature. Recognising this, a new "Concept for Inspections" was adopted that described the free-market principles upon which the new inspections' regime should be based. This new approach analysed the risks of particular business activity according to objective criteria and assigned resources for inspections. This approach was designed to minimise the burden on compliant companies and also increase the professionalism of government agencies conducting inspections.

The new risk management systems and checklists were developed with the assistance of USAID. Despite the high analytical quality of the new systems recognised both by public officials and by businesses, problems persist with their implementation. Public officials in the responsible ministries and inspectorates are not fully aware of the purpose of such systems (OECD, 2014b). Awareness raising, capacity building and cultural change are necessary preconditions for the new system to bring positive effects. This requires developing specific training activities in ministries and inspectorate bodies.

The Ministry of National Economy is currently working on the digitalisation and automation of the risk management system. The automation would enable automatic planning of inspections, including automatic notification of inspected companies, which in turn would represent another important step in eliminating potential corruption.

Further reform of enforcement, especially in the sanctions area, was one of the priorities of the Concept of State Regulation of Business Activities by 2020. These reforms should help those companies that are generally compliant with regulations, and should also promote compliance over sanctions and punitive actions. In addition to the above-mentioned automation of risk management and planning of inspections as well as the reform of the system of sanctions, the Concept suggests developing and taking stock of control and inspection functions to strengthen co-ordination and avoid duplications.

Recommendations for reform

Kazakhstan should increase the efficiency of regulatory enforcement by improving implementation of the risk management system for inspections. Kazakhstan should provide sufficient training to ministries and inspectorates, explaining the purpose and use of these systems. Furthermore, the process of automation should continue in order to further prevent corruption. Compliance and enforcement issues need to be considered when making ex post reviews of the effectiveness of existing regulations compared with expectations, as well as when making ex ante impact assessment.

Action Plan and potential OECD support

Recommendations

- Kazakhstan should continue adding implementing orders to the online database. Furthermore, Kazakhstan should consider providing training in plain-language drafting to rule makers, developing and promoting guidance for plain-language drafting, and developing and promoting guidance for compliance with complex regulations for citizens and businesses.
- Kazakhstan should also adopt a more pro-active approach to public consultation. This should be done by developing a government-wide policy on stakeholder engagement, aiming to consult with all stakeholders in a pro-active manner. Furthermore, Kazakhstan should provide government ministries with appropriate consultation guidance and establish a single electronic portal for consultation.
- Kazakhstan should consider strengthening the regulatory impact assessment procedure when preparing regulations to capture the full consequences (benefits and costs) of draft regulations, building on the existing requirements. Impact assessment needs to be prepared in the early stage of preparation of new legislation, when a concept paper is considered. To reap full benefits, it also needs to be open for public consultation. This requires attaching it to the documentation for public consultation. Kazakhstan should also ensure that the

impact assessment is communicated to parliament along with the draft legislation. A system of quality control over the RIA process independent from the drafting agency should be established. It is necessary that public servants in ministries get fully involved in the process so that the assessment is effectively used as a tool for making high quality regulations.

- Kazakhstan should continue with existing administrative simplification efforts and consider developing a systemic programme on administrative burden measurement. According to OECD best practice, the most burdensome and irritating regulations or areas of regulation should be identified in co-operation with stakeholders. Administrative burdens should be measured using the SCM with focus on these areas. A quantitative target for administrative burden reduction should be set and the programme should result in producing proposals that would simplify the regulatory environment.
- Kazakhstan should consider improving the established system of review of existing regulations and set comprehensive criteria for selecting existing regulations to be reviewed. Only a limited number of regulations should, based on clear criteria, be selected for review each year, and full regulatory impact assessments should be conducted on the selected regulations. The review mechanism needs to give more importance to economic analysis than is currently done. It should give consideration to whether the benefits of the regulation outweigh its regulatory costs.
- Kazakhstan should increase efficiency of regulatory enforcement by improving implementation of the risk management system for inspections. Kazakhstan should provide sufficient training to ministries and inspectorates, explaining the purpose and use of these systems. Furthermore, the process of automation should continue to further prevent corruption. Compliance and enforcement issues need to be considered when making ex post reviews of the effectiveness of existing regulations compared with expectations, as well as when making ex ante impact assessments.

Action Plan Table

It is up to the Kazakh Government to express interest in specific areas where further assistance could be provided by the OECD. The following table contains some examples of potential future co-operation.

Reform Areas	Potential OECD Support
Measuring regulatory performance	A workshop on techniques and approaches used in OECD countries to review performance of existing regulations and evaluating whether they are fit for purpose. This could be organised as part of a more general seminar/workshop focusing on performance measurement in public administration.
Extending the OECD Indicators of Regulatory Quality (iREQ)	Conducting a survey on regulatory quality in Kazakhstan which was conducted in 2014/15 in OECD countries and in 2015/6 in LAC countries. That would give Kazakhstan a possibility to benchmarks its situation with OECD and some non-OECD countries.

Further reading

OECD (2015), *Regulatory Policy Outlook,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en

OECD (2014a), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264208117-en

OECD (2014b), *Regulatory Policy in Kazakhstan: Towards Improved Implementation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264214255-en

Note

1. For example, see http://egov.kz/wps/portal?lang=en.

References

Better Regulation Executive Department for Business, Enterprise and Regulatory Reform (2008), *Code of Practice on Consultation*, Better Regulation Executive Department for Business, Enterprise and Regulatory Reform, London, www.bis.gov.uk/files/file47158.pdf

Cabinet Office (2015), *Consultation Principles*, Cabinet Office, London, www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

EU-Central Asia Rule of Law Platform (2013), *Kazakhstan*, http://ruleoflaw.eu/partners/kazakhstan-country-presentation-list-of-main-partners-per-country/

Kazakhstan Institute for Strategic Studies (n.d.), *National Plan "100 Precise Steps"*, Kazakhstan Institute for Strategic Studies, http://kisi.kz/en/pages/national-plan-%E2%80%9C100-precise-steps%E2%80%9D

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance,* www.oecd.org/gov/regulatory-policy/49990817.pdf.

OECD (2010), *Better Regulation in Europe: Denmark 2010*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084551-en.

The World Justice Project (2015), *Rule of Law Index 2015: Kazakhstan*, The World Justice Project, Washington, D.C., http://data.worldjusticeproject.org/#/groups/KAZ

World Bank (2015), *Worldwide Governance Indicators*, The World Bank Group, Washington, D.C., http://info.worldbank.org/governance/wgi/index.aspx#reports

Chapter 2.

Competition policy in Kazakhstan: promoting efficient and sound markets

It is widely accepted that more competition drives productivity and innovation, key factors that contribute to macroeconomic growth. However, high levels of corruption can undermine competition by creating entry barriers into lucrative markets. Ultimately, corruption replaces a virtuous circle of competition and growth with a system that rewards inefficient and sometimes outright criminal behaviour. This chapter assesses the role of status of competition policy in the Republic of Kazakhstan, analysing the country's competition framework underpinned by the "Law on Competition" adopted in 2008 against OECD best practice. It explores issues related to restrictive agreements and concerted practices, dominance and monopolisation and concentration control. It also discusses actions taken by Kazakhstan's competition authority KREMZK against public actors restricting competition, as well as issues related to the institutional structure and procedural aspects of KREMZK.

Role of competition to promote integrity and combat corruption

It is widely accepted that more competition drives productivity and innovation, key factors that contribute to macroeconomic growth (OECD, 2014). Furthermore, there is also a general consensus that competition benefits consumers with greater choice, quality and lower prices.

However, high levels of corruption can undermine competition by creating entry barriers into lucrative markets. The resulting uneven playing field thus impedes economic growth and imposes high prices on consumers. For example, businesses may be tempted to gain an advantage over their competitors, by persuading the authorities to give them preferential treatment and protection against competition. Ultimately, corruption replaces a virtuous circle of competition and growth with a system that rewards inefficient and sometimes outright criminal behaviour.

While certainly more competition tends to lead to less corruption in the long run, the relationship between competition and corruption is complicated and dependent upon a country's specific conditions. In transition countries, increased competition in the short-run might temporarily lead to a proliferation of corruption. The advent of new markets and new regulations may generate opportunities for corruption, for instance, in licensing procedures for newly opened markets.

A highly concentrated oligarchic economy, like Kazakhstan's, with pervasive state ownership and a number of monopolised sectors, presents conditions that are conducive to corruption and market capture. The corruption can facilitate and encourage cartels, abusive conduct of dominant businesses and mergers that lead to a significant weakening of competition.

Along with the necessary economic structural reforms, the state in a transition economy must legislate to prevent anti-competitive behaviour. Specifically, the OECD stipulates that to promote competition effectively, governments should adopt competition laws to prevent:

- businesses from colluding to restrict competition by jointly agreeing on prices or allocating and fixing their respective market shares;
- businesses in a position of power in the market from abusing that power by foreclosing these markets and thus restricting competition;
- mergers that would reduce competition and lead to higher prices not compensated by efficiency gains.

Kazakhstan is still in a process of transition from a centrally planned economy to a market economy. The competition law and institutions are subject to continued legislative and institutional changes reflecting Kazakhstan's efforts to tackle economic challenges. Competition law and economic regulation have always been interrelated and a highly regulatory approach remains the main characteristic of Kazakhstan's competition law today. The following section analyses against OECD best practice the competition framework underpinned by the "Law on Competition" adopted in 2008. It should be noted that on 1 January 2016 a new Entrepreneurial Code which regulates issues of entrepreneurial activity, including competition, came into force. The OECD has not studied this Code. At this stage, it would be premature to comment on the enforcement and implementation of this new legislation.

Box 2.1. **OECD Competition Tools**

To assist competition authorities in achieving these standards, the OECD has developed a series of tools, recommendations and guidelines. For example, but not exhaustive:

- OECD Council Recommendation on Hard Core Cartels (1998) advises member countries to ensure that their competition laws effectively halt and deter hard core cartels by providing for effective sanctions and adequate enforcement procedures and institutions to detect and remedy hard core cartels.

- The Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement (2012) calls for governments to assess their public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

- The Recommendation includes the Guidelines for Fighting Bid Rigging in Public Procurement developed in 2009. The Guidelines help governments improve public procurement by fighting bid rigging. They are designed to reduce the risks of bid rigging through careful design of the procurement process and to detect bid rigging conspiracies during the procurement process. The Guidelines include two checklists: a Checklist for Detecting Bid Rigging in Public Procurement and a Checklist for Designing the Public Procurement Process to Reduce the Risks of Bid Rigging.

- The Recommendation of the Council on Merger Review (2005) aims to contribute to greater convergence of merger review procedures, including co-operation among competition authorities, towards internationally recognised best practices. It helps to make merger review procedures more effective, while at the same time helping competition authorities and merging parties to avoid unnecessary costs in multinational transactions.

- The Recommendation of the OECD Council on Competition Assessment (2009) calls for governments to identify existing or proposed public policies that unduly restrict competition and to revise them by adopting more pro-competitive alternatives. The Recommendation also calls for governments to establish institutional mechanisms for undertaking such reviews.

- Supporting this recommendation is the OECD Competition Assessment Toolkit which helps governments to eliminate barriers to competition by providing a method for identifying unnecessary restraints on market activities and developing alternative, less restrictive measures that still achieve government policy objectives.

- The Recommendation of the OECD Council concerning International Co-operation on Competition Investigations and Proceedings (2014) calls for governments to adapt their competition laws and practices so as to promote further international co-operation among competition authorities to effectively fight cross-border restrictions of competition.

- The OECD Competition Committee promotes regular exchanges of views and analysis on competition policy issues. The proceedings from these discussions, including submissions from countries and invited experts, are published within the Best Practice Roundtables on Competition Policy series.

Sources: OECD (2014); OECD (2012); OECD (2011); OECD (2009); OECD (2005); OECD (1998).

Current status and critical analysis

All policy areas were covered by the generally applicable "Law on Competition" adopted in 2008 and the "Law on Natural Monopolies and Regulated Markets", which now cover a vast range of important industries and economic sectors. The Law on

Competition was repealed on 1 January 2016. The Entrepreneurial Code came into force on that same date. The Law on Competition contained provisions typical for most competition jurisdictions: anti-competitive agreements and concerted actions; abuse of dominance; economic concentration; and unfair competition. The law also contained provisions that are relatively unusual for OECD countries, but common for transition economies. These included anti-competitive actions and agreements of state bodies and de-monopolisation mechanisms. The law regulated administrative procedures within the authority and covered its investigative powers. Administrative and criminal sanctions are stipulated in the specialised codes on administrative and criminal violations.

The Law on Competition exempted abusive conduct of natural monopolies from the scope of its regulation with regards to activities constituting a naturally monopolistic sphere. Abusive conduct by these market subjects is regulated solely by the Law on Natural Monopolies and Regulated Markets. The Law on Competition also provided for other exemptions. State monopolies, for example, are defined in classical terms as an exclusive right granted by the state to exercise certain types of commercial activities and intellectual property rights.

Restrictive agreements and concerted practices

The Law on Competition prohibited both "anti-competitive agreements" and "anti-competitive concerted practices". The law formally distinguished such categories as cartels, vertical and horizontal agreements, concerted practices, and agreements involving state bodies and officials. Horizontal agreements are prohibited if it can be shown that they infringe upon consumers' rights and/or lead – or might lead – to anti-competitive effects. Vertical anti-competitive agreements as defined in the law are prohibited per se. While horizontal agreements can be exempt from the prohibition if it can be shown that they increase consumer benefit and do not unduly restrict competition, this does not apply to vertical agreements.

The OECD Peer Review of Kazakhstan's Competition Law and Policy noted that at the time of the Review, a major reform is under way that would incorporate the competition law in a wider "Entrepreneurial Code". Intended changes are, among others, the elimination of the criterion "infringement upon consumers' rights", which led to a rather unpredictable enforcement practice, and a prohibition of bid rigging in government procurement procedures also relating to "groups of undertakings" in order to prevent a circumvention of the existing rules.

The analysis of the enforcement practices of the Kazakh authority (KREMZK) was undertaken when the Law on Competition was in force. At that time, enforcement practices were directed towards observed cases of parallel price increases and reflected the political will that the competition authority should prevent price increases, rather than focusing exclusively, as it should, on practices that effectively harm competition. Price increases should not be unduly suppressed given that there may be many legitimate reasons for them. Price changes are an important signal in a market economy, creating incentives to expand production, enter markets, change suppliers and actively look for substitutes. It remains to be seen if the provisions of the new Entrepreneurial Code rectify this situation.

Importantly, for the purposes of this Integrity Scan, it must be highlighted that the Law on Competition did not provide for effective cartel detection tools, such as unannounced inspections, and that the leniency programme is ineffective. The risk of detection of anti-competitive agreements or concerted actions is very low. It is hoped that

the new Entrepreneurial Code allows for unannounced inspections and this provision will be implemented.

For vertical agreements, the former law did not reflect that these can, in many cases, be efficiency enhancing. This will also stall economically beneficial developments.

Recommendations for reform

The practice of prosecuting parallel price increases without proving an actual collusion of the businesses involved was characteristic for the application of the law under the former Law on Competition. Finding proof of collusive agreements would be facilitated if the authority received effective detection and enforcement powers such as the right to conduct unannounced inspections and the ability to impose fines based on turnover instead of cartel surplus. The latter is difficult to calculate and might not even have materialised at the time of cartel detection. It is too early to assess the efficacy of the new Entrepreneurial Code in this regard.

A legal provision in the Law on Competition allowing for intervention in the case of an infringement upon consumers' rights should be deleted. Harm to competition is a sufficient criterion which covers harm to consumers and helps to focus on cases which harm larger parts of the economy instead of just a few individual consumers. Anti-competitive vertical agreements should be analysed under a rule of reason approach, carefully balancing benefits and harm. It is understood that the new Entrepreneurial Code allows for the analysis of vertical agreements under a rule of reason approach.

Box 2.2. **Fighting Bid Rigging in Public Procurement**

Bid rigging involves groups of firms conspiring to raise prices or divide markets or customers between them. It occurs in all types of industries and circumstances, and in all parts of the world. When bid rigging impacts public procurement, it has the potential to cause great harm. One reason for this is that public procurement is often a large part of a nation's economy. In OECD countries, it amounts to, on average, 12 per cent of the gross domestic product and in most developing countries, it is substantially more than this. Bid rigging continues to cost governments and taxpayers billions of dollars every year across OECD and non-OECD countries (OECD, 2016).

The 2012 Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement calls for governments to assess their public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

The 2009 Guidelines on Fighting Bid Rigging in Public Procurement are designed to reduce the risks of bid rigging through careful design of the procurement process and to detect bid rigging conspiracies during the procurement process.

An effective procurement policy must be designed to obtain goods and services at the lowest possible price or, more generally, to achieve the best value for money. Vigorous competition among suppliers helps governments attain this objective. However, the formal rules that govern procurement, the way in which an auction is carried out, and the design of the auction itself, can all act to hinder competition and help promote or sustain bid-rigging conspiracies.

The OECD Guidelines on Fighting Bid Rigging in Public Procurement help to identify:

- Markets in which bid rigging is more likely to occur so that special precautions can be taken
- Suspicious pricing patterns, statements, documents and behaviour by firms, that procurement agents can use to detect bid rigging
- Methods that maximise the number of bids
- Best practices for tender specifications, requirements and award criteria
- Procedures that inhibit communication among bidders.

The Guidelines provide the most comprehensive strategy available to date for the design of tenders to hinder bid rigging and for the detection of bid rigging during the tender process. They can be applied in a decentralised manner across the government at both national and local levels. The Guidelines can be used by public officials with no specialised economics or competition policy training. The Guidelines are available in a large number of languages in order to encourage broad consideration of the methods outlined.

Sources: OECD (2016a); OECD (2016b).

Box 2.3. **The Mexican Institute of Social Security (IMSS) project on fighting collusion in public tenders**

Bid rigging, which is illegal in all OECD countries, occurs when suppliers conspire secretly to increase the prices or lower the quality of goods and services which are purchased by private and public organisations through a bidding process, instead of genuinely competing to win a tender. International research has found that bid rigging can increase the prices paid by governments by 20 per cent or more (OECD 2015). Collusion is particularly harmful in public procurement (which, on average, represents 13 per cent of GDP in OECD countries) because governments will end up paying more for procured goods or services, increasing the burden on taxpayers (OECD 2015). The 2012 OECD Recommendation on Fighting Bid Rigging in Public Procurement provides practical and relevant checklists for designing effective public procurement procedures to reduce bid rigging.

The Process

In January 2011, the Mexican Institute of Social Security (IMSS) signed a Memorandum of Understanding with the OECD and the CFC (the Mexican competition authority, now COFECE) to obtain the OECD's support for its adoption of international best practices for fighting bid rigging. The OECD conducted a comprehensive review of the integrity of IMSS's procurement practices.

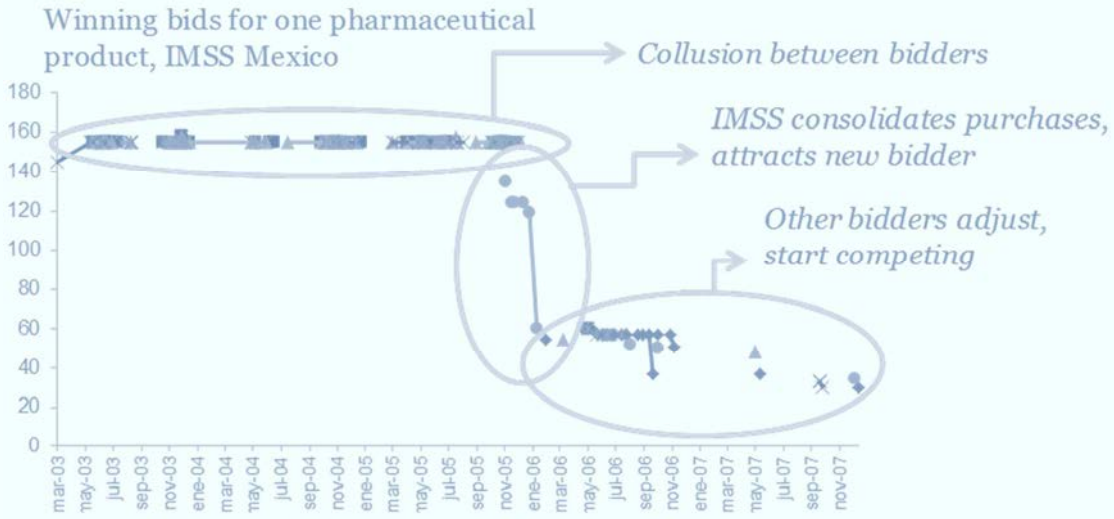
In May 2011, over 200 IMSS procurement officials attended training sessions led by the OECD and CFC that included the involvement of international experts. In December 2011, the OECD completed its study of the Mexican federal procurement laws and regulations and IMSS's procurement practices. The report made over 30 recommendations. The report was released to the public in January 2012. The OECD's recommendations were made in three areas:

- Proposals for changes to the law, as a result of the problems we diagnosed (for example, removing requirements for meetings and other opportunities for bidders to learn about one another's bids)
- Proposals for changes to IMSS's procurement systems, such as consolidation of bids and changes to the auction system. Bidding cartels will always adjust and re-emerge in time, so there is no 'best' system. Procurement needs to be designed and operated intelligently to disrupt cartels, by experts aware of the dangers of bid-rigging. This leads to the requirement for the OECD's third contribution:
- Training for procurement officials to raise awareness of bid-rigging, the danger signs and when to call in the competition agency.

The Benefits

The OECD's work in Mexico provides an example of how the OECD can help public institutions achieve significant savings in their procurement as a result of implementing OECD best practices, as the chart below demonstrates. This shows an index of prices for successful bids for a single high-volume drug. Different bidders are shown with different colours and shapes of data points. IMSS reduced its cost by 70% by consolidating purchases, but this effect was not achieved through some 'economies of scale'. Rather, the larger volumes attracted a new bidder, who broke the existing (evident) price-fixing agreement among the incumbent bidders.

Box 2.3. **The Mexican Institute of Social Security (IMSS) project on fighting collusion in public tenders** *(continued)*



Source: adapted from Carlos Mena-Labarthe (2012), Mexican Experience in Screens for Bid-Rigging, Competition Policy International Antitrust Chronicle, March 2012, at www.competitionpolicyinternational.com/assets/Uploads/LabartheMAR-121.pdf.

This one policy change saved IMSS about US$250m annually. IMSS has estimated that its annual cost saving from all of the procurement reforms it undertook following OECD advice on fighting bid-rigging is of the order of US$700m annually.

Source: IMSS (2015) Informe Al Ejecutivo Federal Y Al Congreso De La Unión Sobre La Situación Financiera Y Los Riesgos Del Instituto Mexicano Del Seguro Social 2014-2015 at www.imss.gob.mx/conoce-al-imss/informe-2014-2015

Dominance and monopolisation

In 2001, the priorities of Kazakhstan's competition policy shifted from an unsuccessful attempt at large-scale demonopolisation, which characterised the 1990s, to extensive price and behavioural control of dominant firms. This shift and evolution has resulted in a unique mechanism of conduct regulation aimed at dominant firms in Kazakhstan's generally highly concentrated markets.

Under the Law on Competition, the competition authority had far reaching powers to control dominant enterprises. Dominance was established based on market shares and without any in-depth analysis of market conditions. Once undertakings crossed the legal market share thresholds, they are entered into a "State Register for Dominant Undertakings". This system was another means by which the authority attempted to control prices and profits, this time for all enterprises that were defined as dominant. The register has been recognised as one of the weaknesses of Kazakh competition law and will be abolished as of 1 January 2017.

The former Law on Competition gave the competition authority far reaching powers and a long list of behaviours that were considered as abusive, and therefore the

enforcement practice raised concerns. It is too early to assess the enforcement practice under the new Entrepreneurial Code.

According to Kazakh authorities the new Code addresses concerns that dominance was established on weak grounds and abuse could be found if one consumer felt harmed, resulting in a high risk of a potentially excessive and overly regulatory approach. There also seemed to be a focus on so-called monopolistically high and low prices, price regulation is the logical consequence of this approach. Many competition authorities struggle, and even avoid, excessive pricing cases because of their inherent difficulties. Comparable markets are hard to find and costs can be measured in many different ways. The question of what a justified profit is has yet to be answered. The risks of 'getting it wrong' are considerable for these kinds of abuses, with substantial harm to productivity, growth and ultimately consumer welfare. For these reasons, many authorities concentrate more on exclusionary kinds of abuses in order to keep markets open and to allow competitive forces to act. This is likely to be more difficult in the context of highly concentrated markets which prevail in Kazakhstan.

However, price regulation does not appear to lead to efficient outcomes either. Price regulation can only deal with symptoms, while a more rigorous analysis of markets and market behaviours that create or reinforce entry barriers has the potential to get to the source of the competition problems and thus lead to solutions. Only the dissolution of economic power will help to create structures that prevent undue political influence exercised by economically powerful actors.

Recommendations for reform

The abolition of the register of dominant undertakings on 1 January 2017 is an important step towards reform of the competition framework. The removal of the register should be replaced by an analysis of markets, market positions and abusive practices which is based on sound economic criteria instead of prescriptive and mostly market share based methods. The enforcement priorities should shift from price and profit control to a focus on exclusionary practices exercised by dominant undertakings. This enforcement focus would help to open up markets and facilitate competition against the powerful incumbent firms. Markets would be given the chance to correct themselves. The current practice of direct price intervention by the competition authority does not reduce the incumbents' market power and risks further distortion of markets with more harm than benefits to consumers. It will not break up existing positions of market power and risks the entrenchment the monopolistic and oligarchic structures.

Box 2.4. **EU enforcement priorities**

The European Commission provides comprehensive guidance to the business community and competition law enforcers at the national level on how the Commission uses an economic and effects-based approach to establish its enforcement priorities under Article 102 TFEU in relation to exclusionary conduct. The guidance can be found at: http://ec.europa.eu/competition/antitrust/art82/index.html.

The European Commission has published guidance on its enforcement priorities in applying EC Treaty rules on abuse of a dominant market position (Article 82 – now Art. 102) to abusive exclusionary conduct by dominant undertakings. Such conduct aims to exclude actual competitors from expanding or would-be competitors from entering a market, thereby potentially depriving customers of more choice, more innovative goods or services, and/or lower prices. The guidance sets out the Commission's determination to prioritise those cases where the exclusionary conduct of a dominant undertaking is likely to have harmful effects on consumers.

The main principles of the effects-based approach to Article 82 (now Article 102 TFEU) are the following:

- Fair and undistorted competition is the best way to make markets work better for the benefit of EU business and consumers. Healthy competition, including by dominant undertakings, should be encouraged.
- The focus of the Commission's enforcement policy should be on protecting consumers, on protecting the process of competition and not on protecting individual competitors.
- The Commission does not need to establish that the dominant undertaking's conduct actually harmed competition, only that there is convincing evidence that harm is likely.
- Since the focus of the Commission's enforcement policy is on conduct that harms the competitive process rather than individual competitors, the Commission examines whether the conduct is likely to prevent competitors that are as efficient as the dominant undertaking from expanding in or entering the market and that can be expected to be most relevant to consumer welfare.
- Since the focus of the Commission's enforcement policy is on the likely effects of a dominant undertaking's conduct on consumers, the Commission will examine claims put forward by dominant undertakings that their conduct is justified on efficiency grounds – as is already the case under Article 81 (now Art. 101) and for merger control.

Source: European Commission press release, 3 December 2008, http://europa.eu/rapid/press-release_IP-08-1877_en.htm?locale=en.

Concentration control

The provisions of the Law on Competition, which should be continued into the new Entrepreneurial Code, on concentration control are sound and in line with international best practices. The notification value threshold for turnover was increased with a 2013 amendment, with the system requiring mostly pre-merger notification. It remains to be seen if this will continue under the new Entrepreneurial Code. The examination of a merger had to be conducted within deadlines that in most cases did not exceed 90 days and a concentration shall be prohibited if it may lead to a restriction of competition, including the creation or strengthening of a dominant position. Concentrations could be cleared on a conditional basis, attaching remedies and conditions to a clearance.

The competition authority deals with a large number of merger cases. Up to end 2015, the authority's process to examine merger cases was not transparent and the decisions on mergers were neither published nor had any decisions been appealed. It can be assumed

that the competitive analysis was largely based on pre-determined markets and market shares with little analysis of actual merger effects. There also appears to have been a mismatch between highly concentrated market structures on one side, and a very low intervention rate on the other side. One explanation may be that many clearances came with behavioural conditions that merely obliged the merging parties to refrain from anti-competitive agreements and abuse practices. If this is the case, then the merger control system largely missed the point. The new Entrepreneurial Code should implement a system of merger control coherent with international best practice. It is particularly important in already highly concentrated markets that merger control should prevent a further increase in market power in order to keep the markets as open as possible and to make more competition possible – now or in the future.

Recommendation for reform

As in dominance and monopolisation, Kazakhstan should move towards a more effects-based analysis of mergers and focus on unilateral or co-ordinated merger effects. Publishing merger decisions would give guidance and provide legal certainty to the business community. Conditions and obligations should, whenever possible, be based on predominantly structural measures.

Action against public actors restricting competition

The Kazakh competition authority under the Law on Competition enjoyed wide powers to apply the competition law prohibitions on anti-competitive acts, actions and agreements to state bodies, if these prevent, restrict or eliminate competition or "infringe upon consumers' rights". The provisions applied to executive agencies of the central government, to all regional bodies, and to bodies of local administrations. The powers go even further and require all state-owned companies and state enterprises to ask for the competition authorities' consent to its existence. These strong powers targeting de-monopolisation and the promotion of competition could enable the authority to become a transformative force behind the structural change in the still highly concentrated and state managed economy of Kazakhstan. The competition authority is also engaged in the competition assessment of draft laws or decrees or of general policy proposals.

KREMZK makes good use of its mandate to advocate pro-competitive change and to monitor and prosecute anti-competitive behaviour by state undertakings, authorities and officials and can show an impressive enforcement track record. Before the merger of the competition authority and the regulators for state and natural monopolies and regulated markets, the regulators were frequently targeted by the competition authority. This has decreased since the regulator and competition enforcer now form one authority. The enforcement against anti-competitive acts by state actors and the competition assessment work are among the best instruments to introduce a competition culture in a country and to decrease barriers to competition – leading to more open and competitive markets. This activity also directly addresses areas where there is a large potential for cronyism and corruption, exercised by actors with vested interests best protected by markets that face little change and competition.

Recommendations for reform

The competition authority needs to have sufficient resources to conduct systematic reviews of economic sectors and their laws and regulations. New legal rules need to be reviewed by it in good time before their enactment. The institutional structure of the competition authority should allow it to conduct its mandate as independently and

objectively as possible, particularly regarding cases that may involve state-owned enterprises or strategically important economic sectors. The competition authority and the competition law should not be used as tools to achieve policy goals that are not consistent with encouraging an efficient competitive process. At present, the competition authority is integrated into the Ministry of the National Economy and has recently been merged with the regulators for state and natural monopolies and regulated markets. The institutional set-up may encourage direct or indirect political influence on competition enforcement decisions, and the merger with the previously separate regulators seems to decrease the critical oversight previously exercised by the competition authority. It also increases the risk of regulatory capture.

Box 2.5. **OECD Competition Assessment Reviews of Greece**

Competition assessment is a powerful tool to help policy makers improve the workings of the economy by identifying and removing regulations that restrict competition in product markets, service and network sectors, as well as rules governing public tenders. The OECD's Competition Assessment Toolkit supports government efforts to improve regulatory impact assessment to eliminate barriers to competition. The Toolkit provides a straightforward method for identifying unnecessary regulatory restraints on market activities and developing alternative, less restrictive, measures that still achieve government policy objectives. One of the main elements of the Competition Assessments is a "Competition Checklist" that asks a series of simple questions to screen laws and regulations that have the potential to unnecessarily restrain competition. The Checklist helps focus limited government resources on the areas where competition assessment is most needed. The assessment is designed for use by government officials that draft and review regulation, whether at national or sub-national level. It is not particularly addressed to competition experts. The reason for designing the materials with this flexibility is that restrictions on competition can be implemented at many different levels of government and competition assessment can be helpful at all these levels.

Following a sovereign debt crisis, Greek GDP contracted for seven successive years until 2013, and the rate of unemployment rose to 26%. Severe structural problems underpin the economic crisis, including poor competitiveness. The OECD's product market regulation indicators suggest that in Greece, many of the constraints on competition arise from regulation. In 2013 and 2014, the OECD, in collaboration with the Hellenic Competition Commission (HCC), carried out a project to identify and assess anti-competitive regulation and legislation, based on the OECD's Competition Assessment methodology. The findings were used to pinpoint the necessary measures to lift these restrictions to stimulate the emergence of a more competitive environment for Greek and foreign businesses to operate in. The project's central aim was to improve competition in the sectors of the Greek economy under scrutiny. In 2013, four sectors were analysed: food processing, retail trade, building materials and tourism. These sectors had a combined turnover of EUR 44 billion in 2011, equivalent to 21% of GDP, and represented almost 1.5 million jobs or 26% of total employment in Greece in 2011. Lifting the restrictions to competition in these sectors is likely to have a significant positive economic impact, both short term and long term. The OECD identified 555 regulatory restrictions and made 329 individual recommendations on specific legal provisions that should be amended or repealed. Overall, the 2013 OECD study found a total of €5.2billion (2.5% of GDP) in economic benefits from lifting the 329 restrictions identified (Table 2.1).

Box 2.5. **OECD Competition Assessment Reviews of Greece** *(continued)*

2.1. Estimated benefits from lifting the specific regulations

Issue	Annual Benefit	Number of provisions affected	Value to economy, EUR (million)	Implementation
"Fresh" milk	EUR 33m (consumer benefit/year)	2	33	Partially implemented
Levy on flour	EUR 8m-11m (value of levy/year)	1	8	implemented
Sunday trading	EUR 2.5bn (annual expenditure), plus 30,000 new jobs	3	2 500	Not implemented
Sales and discounts	EUR 740m (annual turnover)	9	740	Not implemented
Over-the-counter pharmaceuticals	EUR 102m (consumer benefit/year)	23	102	Partially implemented
Marinas	EUR 2.3m (annual turnover)	10	2	Implemented
Cruise business	EUR 65m (annual turnover)	4	65	Implemented
Advertising	EUR 1.8b (consumer benefit/year)	14	1 800	Not implemented

Source: OECD (2014), *OECD Competition Assessment Reviews: Greece*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264206090-en.

During 2014, a second review of four manufacturing sub-sectors was carried out: beverages; textiles, wearing apparel and leather; machinery and equipment; and coke and refined petroleum products. Out of the 88 OECD recommendations on specific provisions to be amended or abolished, some concerned the implementation of stockholding obligations for petroleum producers, wholesalers and importers. The implementation of these recommendations is part of the new agreement with the institutions – the ECB, the IMF and the EU. There is no reason to suppose that these problems are confined to the sectors that have been studied. Indeed, the analysis so far has revealed the existence of overlapping or adjacent regulation that appeared equally important, but was outside the scope of the projects.

Building Capacity

Working alongside the project team in Athens also contributed to build the capacity of officials from the government and the Hellenic Competition Commission to conduct competition assessment independently in line with international best practices through the application of the Competition Assessment Toolkit. The substantive knowledge gained can then be applied to similar exercises in other sectors or to new laws and regulations.

Source: OECD (2014).

Institutional and procedural aspects and international co-operation

The competition authority is integrated into the Ministry of the National Economy and has recently been merged with the regulators for state and natural monopolies and regulated markets. Under the Law of Competition, the procedural provisions of the competition law did not require the publishing of decisions; did not grant the right of full access to file; and did not grant the right to be heard before a decision is taken. The procedural deadlines for cartel and abuse proceedings and their legal review were very short in comparison to most OECD jurisdictions. Kazakhstan is a member of the Eurasian Economic Union (EAEU) which offers the opportunity for a regionally integrated approach to competition problems. As a member of the EAEU, Kazakhstan is obligated to align its competition law framework with EAEU standards. This should rectify many of the current weaknesses. It is hoped also that the new Entrepreneurial Code will address these weaknesses as well.

The enforcement process, at the time of the OECD's Peer Review of Kazakhstan's Competition Law and Policy (2016) was not transparent and was incoherent with an overall commitment to the rule of law. Businesses involved in the authority's proceedings were not granted the right to be heard or access to file. The denial of these rights decreases the legitimacy and credibility of the enforcer and the enforcement process and raises questions as to its independence and objectivity. Court review procedures have suffered from a lack of sufficiently trained or specialised judges and short deadlines. The institutional set-up may encourage direct or indirect political influence on competition enforcement decisions, and the merger with the previously separate regulators seems to decrease the critical oversight previously exercised by the competition authority. It also increases the risk of regulatory capture.

The adoption of EAEU rules will obligate the Member States to adopt and grant powers to their competition authorities. Furthermore, the rules enhancing co-operation with and between Member States' competition authorities provide a sound framework for establishing consistent competition enforcement practices across the EAEU and its Member States. Since the EAEU competition rules were only introduced recently, there has not yet been any implementation practice to speak of. The EAEU has not yet taken any decisions, nor have the Member States' competition authorities, on the basis of the EAEU competition rules.

Recommendations for reform

OECD best practices call for an incorporation of basic legal rights into the procedural rules to increase the overall transparency of the proceedings. Legal deadlines should be extended to enable a better legal and economic analysis. Courts should be either specialised, or, at the very least, cases should be concentrated on a few generalist judges

Kazakhstan should consider removing the competition authority from the Ministry of National Economy and establishing it as an independent state authority in order to minimise the risk of conflicts of interest and undue influence.

Ongoing integration into the EAEU and the adoption of the EAEU legal framework to ensure a harmonised approach to competition enforcement and consistent rules for domestic and cross-border cases should be pushed forward.

Action Plan and potential OECD support

Recommendations

Under the former Law of Competition, the practice of prosecuting parallel price increases without proving an actual collusion of the businesses involved needed to be reconsidered, and therefore, should be under the new Entrepreneurial Code. Finding proof of collusive agreements will be facilitated if the authority is granted, under the Code, effective detection and enforcement powers such as the right to conduct unannounced inspections and the ability to impose fines based on turnover instead of cartel surplus. The latter is difficult to calculate and might not even have materialised at the time of cartel detection.

The existing legal provision allowing for intervention in the case of an infringement upon consumers' rights should be removed in the new Entrepreneurial Code. Harm to competition is a sufficient criterion which covers harm to consumers and helps to focus on cases which harm larger parts of the economy instead of just a few individual consumers. Anti-competitive vertical agreements should be analysed under a rule of reason approach, carefully balancing benefits and harm.

The abolition of the register of dominant undertakings scheduled for 1 January 2017 is to be congratulated. The analysis of markets, market positions and abusive practices should then be based on sound economic criteria instead of prescriptive and mostly market share based methods.

The enforcement priorities should shift from price and profit control to a focus on exclusionary practices exercised by dominant undertakings. This enforcement focus would help to open up markets and facilitate competition against the powerful incumbent firms. Markets would be given the chance to correct themselves. The current practice of direct price intervention by the competition authority does not reduce the incumbents' market power and risks further distortion of markets with more harm than benefits to consumers. It will not break up existing positions of market power and risks the entrenchment the monopolistic and oligarchic structures.

As in dominance and monopolisation, the authority should move towards a more effects-based analysis of mergers and focus on unilateral or co-ordinated merger effects. Publishing merger decisions would give guidance and provide legal certainty to the business community. Conditions and obligations should, whenever possible, be based on predominantly structural measures.

The competition authority needs to have sufficient resources to conduct systematic reviews of economic sectors and their laws and regulations. New legal rules need to be reviewed by it in good time before their enactment. The institutional structure of the competition authority should allow it to conduct its mandate as independently and objectively as possible.

Legal deadlines should be extended to enable a better legal and economic analysis. Courts should be either specialised, or, at the very least, cases should be concentrated on a few generalist judges.

Kazakhstan should consider removing the competition authority from the Ministry of National Economy and establishing it as an independent state authority in order to minimise the risk of conflicts of interest and undue influence.

Integration into the EAEU and the adoption of the EAEU legal framework should continue to ensure a harmonisation of competition enforcement across the Member States.

Delete provisions that allow for intervention based solely on an infringement upon consumers' rights or interests

Anti-competitive conduct will ultimately harm consumers and therefore these are essentially sound provisions. However, the focus might be better placed on "harm to competition" – a provision which was also in the Law on Competition. Focusing on harm to competition, in regards to the Entrepreneurial Code, would help the authority to better differentiate complaints and to prioritise the anticompetitive practices that have the largest potential for harm to competition and the highest potential for welfare losses to society as a whole. The Entrepreneurial Code adopted on 1 January 2016, Article 216 should address this issue.

Refine the analysis of markets, market positions and the effects on competition

In order to properly capture competition problems, anti-competitive agreements, abusive conduct and concentrations have to be analysed on a case-by-case basis at the time when the competition problems arise or are discovered. This requires a proper definition of markets, the determination of market positions and competitive conditions, the use of full investigative powers, and the use of an adequate economic methodology.

In all competition cases, tackle the causes of the competition problem and not the symptoms like price increases

Competition law interventions should rectify the underlying competition problem. Anti-competitive agreements should be broken up and abusive behaviour foreclosing markets should be abolished. Mergers that harm competition have to be prohibited or remedied under predominantly structural conditions. Only measures like these can promote and reinstate competitive market structures. Price or profit prescriptions and supervision bear a high risk of further distorting markets and preventing pro-competitive changes.

Introduce a rule of reason analysis for vertical competition restraints

Vertical competition restraints have many beneficial and pro-competitive effects. They will only have an anti-competitive effect if market power is involved in one or more stages of the markets and markets can be foreclosed. The analysis requires a careful balancing of pro- and anti-competitive effects.

Increase transparency of enforcement processes and decisions and grant essential procedural rights to parties to the proceedings – access to file, right to be heard, protection of business secrets, publication of decisions and adequate appeal procedures

The Entrepreneurial Code should ensure that businesses receive proper guidance and sufficient transparency in the enforcement process. The adherence to the rule of law has to be established and will benefit businesses and a more informed decision-making by the authority. Specialised or better informed judges will help to install a consistent enforcement system. Taken together, this will increase the credibility and independence of the competition law enforcement system and will contribute to a better and widely accepted competition culture. Revisions to the Code, notably Article 220, should address this issue.

Ensure independence of the competition authority from political interventions and influence

Competition authorities need to conduct their activity independently of political and/or economic influence. This requires institutional structures that do not allow for outside influence and that grant the authority sufficient resources to fulfil its mandate. This also enhances trust in the integrity of the authority and the processes.

Increase regional integration and international co-operation and adopt the competition law framework of the EAEU

Opening of markets within the EAEU and the decrease of trade barriers will help open domestic markets to competition and rectify many problems that stem from a structural lack of competition. This will also help decrease the influence of established powerful economic actors. The EAEU competition rules reflect best international practices and are a good model to bring the Kazakh competition law more in-line with international standards.

Action Plan Table

Reform Areas	Potential OECD Support
Effective investigation and enforcement tools	OECD Guidance on fighting bid rigging in public procurement – workshops and seminars; Trainings on investigative practices and procedures
Good market definition and analysis	OECD workshop on market definition and analysis
Effects-based analysis of competition restraints	OECD workshop on economic analysis in competition cases
Rule of reason in vertical restraints cases	OECD workshop on analysis of vertical restraints
Sound remedies (mostly structural)	OECD workshop on remedies in competition cases
Increased transparency	OECD workshop on drafting of decisions/handling of business secrets
Governance of rule of law	OECD workshop on procedures in competition law
Judicial weaknesses, weak rule of law, lack of transparency and due process	Training for judges
International co-operation	Introduction to best practices in international co-operation cases and handling of business secrets and information exchange
Strengthen advocacy efforts	Competition assessment toolkit training
Strengthen institutional independence	OECD workshop on institutional designs, consideration of non-competition concerns and accountability of competition authorities

Further reading

European Commission (2009), "Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings", in *Official Journal of the European Union*, EU Publications, Belgium, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52009XC0224(01).

OECD (2016), *Competition Law and Policy in Kazakhstan – A Peer Review*, www.oecd.org/competition/competitionlawandpolicyinkazakhstan2016.htm.

OECD (2015) *Competition Assessment Toolkit - Volume 3: Operational Manual.* www.oecd.org/competition/assessment-toolkit.htm.

OECD (2014) *Guide for helping competition authorities assess the expected impact of their activities,* www.oecd.org/competition/guide-impact-assessment-competition-activities.htm.

OECD (2014) *Factsheet on How Competition Affects Macroeconomic Outcomes,* www.oecd.org/competition/factsheet-macroeconomics-competition.htm.

OECD (2014), Challenges of International Co-Operation in Competition Law Enforcement, www.oecd.org/competition/challenges-international-coop-competition-2014.htm.

OECD (2010), *Competition Assessment Toolkit - Volume 1: Principles,* www.oecd.org/competition/assessment-toolkit.htm.

OECD (2010) *Competition Assessment Toolkit - Volume 2: Guidance,* www.oecd.org/competition/assessment-toolkit.htm.

OECD (2009), *OECD Guidelines on Fighting Bid Rigging in Public Procurement,* www.oecd.org/daf/competition/guidelinesforfightingbidriggininpublicprocurement.htm.

Tóth, T. (2014), *The Competition Law of the European Union*, Budapest, www.oecdgvh.org/menu/news/eulaw_book.html.

Selected OECD Best Practice Roundtables on Competition Policy documents:

- OECD (2014), "Changes in Institutional Design of Competition Authorities", www.oecd.org/competition/changes-in-competition-institutional-design.htm.
- OECD (2014), "Enhanced Enforcement Co-operation", www.oecd.org/daf/competition/enhanced-enforcement-cooperation.htm.
- OECD (2014), "Fighting Corruption and Promoting Competition", www.oecd.org/competition/fighting-corruption-and-promoting-competition.htm.
- OECD (2014) "Evaluation of Competitive Impacts of Government Interventions", www.oecd.org/competition/evaluation-competitive-impacts.htm.
- OECD (2012), "The Role of Efficiency Claims in Antitrust Proceedings", www.oecd.org/competition/EfficiencyClaims2012.pdf.

- OECD (2012), "Market Definitions", www.oecd.org/daf/competition/Marketdefinition2012.pdf.
- OECD (2011) "Promoting Compliance with Competition Law, www.oecd.org/daf/competition/Promotingcompliancewithcompetitionlaw2011.pdf.
- OECD (2011) "Procedural Fairness: Competition Authorities, Courts and Recent Developments", www.oecd.org/daf/competition/Procedural FairnessCompetition%20AuthoritiesCourtsandRecentDevelopments2011.pdf.
- OECD (2011), "Economic Evidence in Merger Analysis", www.oecd.org/daf/competition/EconomicEvidenceInMergerAnalysis2011.pdf.
- OECD (2011), "Remedies in Merger Cases", www.oecd.org/daf/competition/RemediesinMergerCases2011.pdf.
- OECD (2011), "Excessive Prices", www.oecd.org/daf/competition/abuse/49604207.pdf
- OECD (2010), "Procedural Fairness: Issues in Civil and Administrative Enforcement Proceedings", www.oecd.org/daf/competition/48825133.pdf.
- OECD (2010), "Collusion and Corruption in Public Procurement", www.oecd.org/competition/cartels/46235884.pdf.
- OECD (2009), "State-Owned Enterprises and the Principle of Competitive Neutrality", www.oecd.org/daf/competition/46734249.pdf.
- OECD (2009), "Standard for Merger Review", www.oecd.org/competition/mergers/45247537.pdf.

References

OECD (2016a), Fighting bid rigging in public procurement, www.oecd.org/daf/competition/fightingbidriggininpublicprocurement.htm.

OECD (2016b), "Public Procurement", www.oecd.org/gov/ethics/public-procurement.htm (accessed 23 January 2017).

OECD (2015), *Government at a Glance 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2015-en.

OECD (2014), *OECD Competition Assessment Reviews: Greece*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264206090-en.

OECD (2014), *Recommendation of the OECD Council concerning International Co-operation on Competition Investigations and Proceedings*, As approved by Council on 16 September 2014, [C(2014)108], www.oecd.org/daf/competition/2014-rec-internat-coop-competition.pdf.

OECD (2014), *Factsheet on how Competition Policy Affects Macro-economic Outcomes,* www.oecd.org/competition/factsheet-macroeconomics-competition.htm.

OECD (2012), *Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement*, As approved by Council on 17 July 2012, [C(2012)115 - C(2012)115/CORR1 - C/M(2012)9], www.oecd.org/daf/competition/RecommendationOnFightingBidRigging2012.pdf

OECD (2011), *Competition Assessment Toolkit: Guidance Volume II*, OECD Publishing, Paris, www.oecd.org/daf/competition/45544507.pdf.

OECD (2009), *Guidelines for Fighting Bid Rigging in Public Procurement: Helping governments to obtain best value for money*, www.oecd.org/competition/cartels/42851044.pdf.

OECD (2009), *Recommendation of the OECD Council on Competition Assessment*, As approved by Council on 22 October 2009, C(2009)130-C/M(2009)21/PROV, www.oecd.org/daf/competition/OECDCoucilRecommendation-CompetitionAssessment.pdf.

OECD (2005), *Recommendation of the Council on Merger Review*, 23 March 2005, C(2005)34, http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=195&InstrumentPID=191&Lang=en&Book=False.

OECD (1998), *Recommendation of the Council on concerning Effective Action Against Hard Core Cartels*, adopted by the Council at its 921st Session on 25 March 1998, [C/M(98)7/PROV], www.oecd.org/daf/competition/2350130.pdf

Consolidated version of the Treaty on the Functioning of the EU - Part Three: Union Policies and Internal Actions - Title VII: Common Rules on Competition, Taxation and Approximation of Laws - Chapter 1: Rules on competition - Section 1: Rules applying to undertakings - Article 102 EC Treaty rules on abuse of a dominant market position, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008E102.

Chapter 3.

Open budgeting for integrity and accountability in Kazakhstan

The budget has a central role in impacting citizens' lives through translating public policy objectives into budget lines, and improving the openness of the budget process and documents. This is crucial to strengthening the integrity, accountability, and strategic approach of public governance. This chapter assesses the status of open budgeting in the Republic of Kazakhstan, describing the specific practices of open, transparent, and inclusive budgeting and oversight in the country's public sector. The overview of the legal framework and the budget cycle is followed by the assessment of budget transparency on national and sub-national levels, the extent of social accounting and audit, and the adoption of participative budgeting practices - including those targeted at ensuring women play a larger role in the budget process ("gender budgeting").

Role of open budgeting in promoting integrity

Kazakhstan is a country characterised by a diversity of cultures, religions and ethnic backgrounds. A country endowed with abundant natural resources and independent since the break-up of the former Soviet Union, Kazakhstan has made significant progress in the area of public financial management (PFM) over the last 25 years. The first law on the budget system was passed in 1991, followed by updates in 1997 and 1999. In 2005, a Budget Code was adopted, governing all financial procedures, including budgeting, implementation and control, radically revising pre-existing budget, revenue and expenditure budgets, and introducing medium-term budget planning and fiscal policy-making. The current Budget Code adopted in 2008 establishes the main provisions, principles and mechanisms of the budgetary system, provides for the formation and use of the National Fund of the Republic of Kazakhstan and regulates intergovernmental relations. Further reforms and development are fostered by the "100 concrete steps" plan set out by President Nursultan Nazarbayev to implement the five institutional reforms (May 2015). Several factors support the agenda of open budgeting for integrity and accountability, including political will and openness on the highest level; social media, IT technologies, civil society organisations; and interest in improving the ability of the country to open and diversify its economy and to attract investments.

Improving the openness of the budget process and documents is important for several reasons. Within the budgetary process, transparency and participation reinforce each other and strengthen the integrity, accountability and strategic approach of public governance. The budget has a central role in impacting citizens' lives through translating public policy objectives into budget lines. Being a key instrument in providing funding for taking action, budget lines set incentives, and provide opportunities and constraints to achieve outcomes corresponding to national objectives. Potentially, the budget process can inform and influence societal choices of resource allocation. Though budgeting is typically technical and to a large extent opaque, proactive engagement between public bodies and citizens can help to make it more transparent and understandable. A more transparent budget process allows for improved responsiveness and evidential basis in policy-making which in turn supports accountability for how public resources are allocated. A transparent budgeting process which can be influenced by citizens proves that public governance can deliver inclusive growth outcomes.

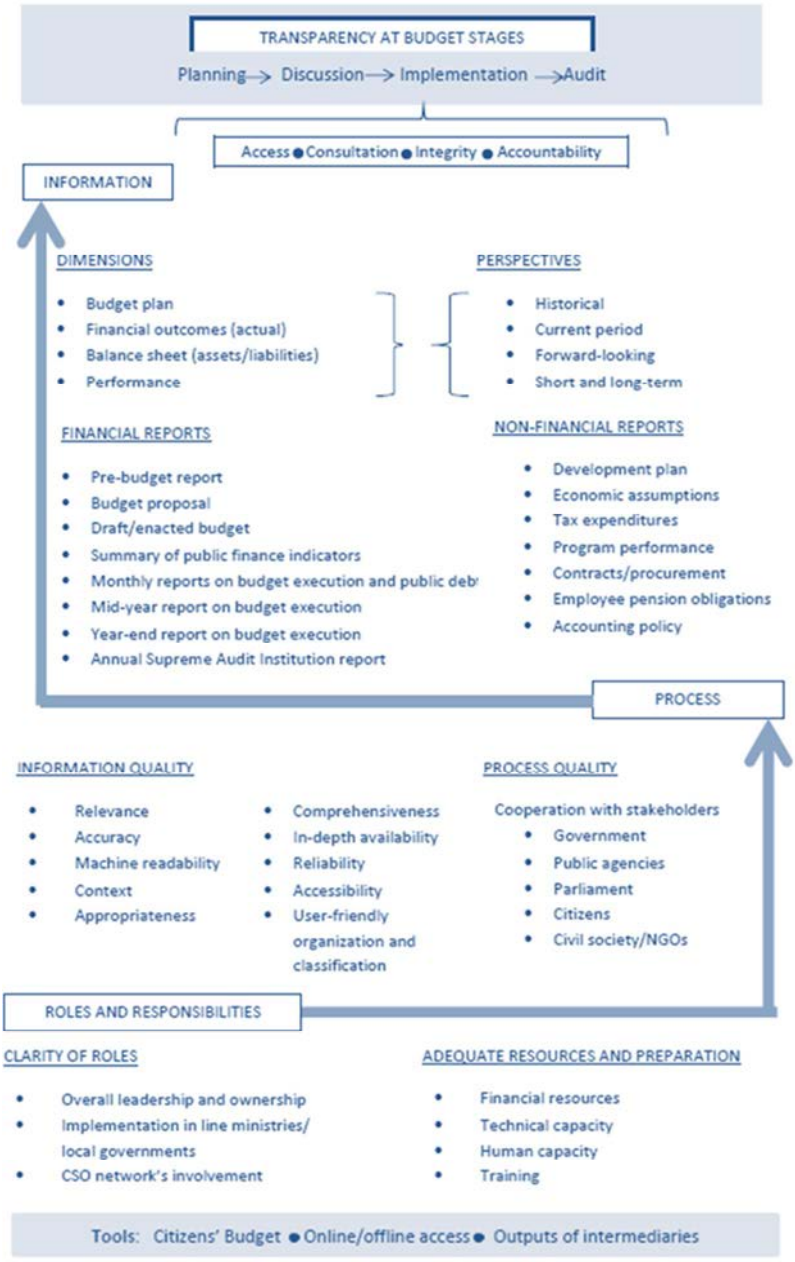
Ensuring transparency is crucial also for allowing citizens to have oversight of public expenditures and to monitor fiscal sustainability over the longer term, laying the foundations for greater legitimacy and trust in government. Strong and independent oversight grants quality assurance, accuracy and compliance with set procedures. Apart from civil society, oversight can be carried out by national audit bodies, ombudsman, fiscal councils, etc. Transparency regarding public revenues is particularly important in resource-rich countries such as Kazakhstan where the management of these resources strongly affect the well-being of current and future generations.

One evidence-based measure of transparency and increasingly of public participation is the *Open Budget Index* (OBI), an output of the International Budget Partnership's Open Budget Initiative which aims to foster accountable budgeting and citizens' access to relevant and understandable information about the budget. The OBI is produced biannually starting from 2006, assigning country ratings based on publicly available information throughout the budgeting process, in order to provide citizens, legislators and

civil society advocates with information on the government's commitment to budget transparency, accountability and integrity.

Based on OECD good practices, Figure 3.1 highlights how combining elements of open budgeting results in synergies within the budgeting process. Clearly defined roles and responsibilities, adequate resourcing of the various actors and the use of tools that facilitate understanding such as citizens' guides are basic requirements to open up the budget process.

Figure 3.1. OECD Open Budget Principles



Source: OECD (2015), *Open Government in Morocco*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264226685-en.

Budget implementation should be led by a specific authority, with clear alignment of roles and responsibilities for line ministries, local governments and indeed the wider body of stakeholders and the public. There are a number of prerequisites for efficient and effective budget implementation. To ensure a broad engagement, the involvement of civil society should be encouraged and public awareness raised. Equally, open budgeting practices require the relevant human-resource and technical capacities within government.

Both information and process quality are also of key importance in open budgeting. To support informed decision-making, relevant and accurate data should be publicly available in the required depth. Accompanied by contextual information, facts, figures, statistics and data should be classified and organized in a user-friendly way and published in a machine readable format to facilitate understanding and the work of the intermediaries. The active co-operation of stakeholders contributes to the higher quality of both the process and the outcomes. Open budgeting refers to methods, framework conditions, and co-operation with stakeholders, in order to provide a better informational and evidence base throughout the budgeting process, including planning, discussions, implementation and oversight. By adopting these attributes, financial and non-financial reports are prepared differently in an open budgeting process, often also accompanied by citizens' versions of the reports. Open budgeting has impacts on all dimensions of budgeting, including on short-, medium- and long-term. By realising transparency and inclusiveness, it has the potential to raise the efficiency and effectiveness of budgeting.

The OECD Recommendation on Budgetary Governance (2015) explains how also the quality of budgeting can be improved through "inclusive, participative and realistic discussion on budgetary choices". Citizen consultation and inclusion can support accountability measures which support integrity (see Box 3.1). Active participation acknowledges a productive and respectful partnership between the different parties, although the responsibility for the final decision rests with the public body involved in the process.

In addition to transparency and inclusiveness, effective planning, management and monitoring of the implementation of the budget is key to promoting integrity. Effective planning and management ensures that budget allocations are implemented fully and faithfully by public bodies for their intended purposes. It also limits the use of special purpose funds and ensures line ministries and agencies do not exceed discretionary powers.

Box 3.1. **OECD Principles on Budgetary Governance and Best Practices on Budget Transparency**

The OECD Recommendation on Budgetary Governance (2015) identifies transparency, openness, participation, integrity and accountability as some of the key pillars of modern budgetary governance. The recommendation calls for "an inclusive, participative and realistic debate on budgetary choices at all key stages of the budget cycle, both ex ante and ex post as appropriate", by "facilitating the engagement of parliaments, citizens and civil society organisations in a realistic debate about key priorities, trade-offs, opportunity costs and value for money". This new global standard sets out ten principles of good budgeting, underpinning the role of fiscal transparency and going beyond it to include issues of accessibility, engagement and participation. In addition, the OECD Best Practices on Budget Transparency (2002) is a key reference document of global influence, identifying best practices in the production of budget reports, discussing their contents and disclosures, and recommending ways of meeting quality and integrity standards.

Sources: OECD (2015), OECD Recommendation on Budgetary Governance; OECD (2002), OECD Best Practices on Budget Transparency.

Apart from citizens and civil society organisations, the parliament and its committees should also be offered opportunities to engage with the budget process enriching it with their strategic approach, both ex ante and ex post of the key phases. All important stakeholders should be engaged in order to pursue a realistic debate about key priorities, trade-offs, opportunity costs and value for money. In the right conditions and with proper support, an inclusive and participative budget process can produce high-quality outputs for budgeting, thus strengthening social inclusion, accountability and integrity. Fostering accountability and integrity in turn increases trust and the legitimacy of government.

Section II describes the specific practices of open, transparent and inclusive budgeting and oversight in Kazakhstan's public sector. The overview of the legal framework and the budget cycle is followed by the assessment of budget transparency on national and sub-national levels. The analysis then focuses on integrity, accountability and oversight mechanisms and finally, on the participation of stakeholders in budgeting.

Current status and critical analysis

Legal framework of budget transparency, accountability and integrity in Kazakhstan

The legal framework for budgeting and public financial management emerged following the declaration of independence in 1991. It comprises relevant laws in the areas of budgeting, regional governance, state auditing, anti-corruption and disclosure of public information. The primary legal documents that govern the budgeting and financial system in Kazakhstan are outlined in Table 3.1.

Table 3.1. Legal Framework for Open Budgeting in Kazakhstan

Law	Key Points
Budget Code (Budget Code of the Republic of Kazakhstan dated December 4, 2008 under No. 95-IV)	This law regulates the budget, intergovernmental relations, establishing the main provisions, principles and mechanisms of the budgetary system, the use of public funds, as well as the formation and use of the National Fund of the Republic of Kazakhstan. It is a single law governing all financial procedures including budgeting, implementation and control.
Unified Budget Classification (Order of the Minister of Finance of the Republic of Kazakhstan of 14 November 2014 "On Approval of Rules of preparing of Unified Budget Classification in the Republic of Kazakhstan")	This law outlines the unified budget classification in Kazakhstan.
Law on State Audit and Financial Control (Law of the Republic of Kazakhstan "On State Audit and Financial Control" of 12 November 2015 No. 392-V ZRK)	The State Audit and Financial Control law stipulates that the purpose of state audit is to improve the management and use of budget funds, state assets and quasi-public sector entities. This law also outlines the tasks of internal public audit such as analysis, evaluation and testing of the achievements of state audit as set out in the documents of state planning; the reliability and accuracy of financial and management information; the efficiency of internal processes of the organisation of public authorities; the quality of public services as well as the preservation of state assets.

Law on Public Councils (Law of the Republic of Kazakhstan dated November 2, 2015 No. 383-V "On Public Councils")	According to this law, the discussion of drafts budget of administrator's budget programs, drafts of strategic plans and territorial development programs, drafts of state and government programs are referred to the authority of public councils at the national and local levels of government. This Law determines the legal status, procedure of formation and organisation of the activities of public councils, aimed at the realisation of the state policy on the formation of accountability of the state to the people, to ensure broad participation of non-profit organisations and citizens in decision-making by public authorities at all levels.
Law on Freedom of Information (Law of the Republic of Kazakhstan dated November 16, 2015 No. 401-V "On access to information")	The FOI law sets clear rules of providing information, both online and offline. This Law regulates social relations arising from the implementation of the constitutional right of everyone to freely receive and disseminate information by any means not prohibited by law.
Law on Combating Corruption (Law of the Republic of Kazakhstan dated November 18, 2015 No. 410-V "On Combating Corruption")	This Law regulates social relations in the sphere of combating corruption and is aimed at implementing anti-corruption policy of the Republic of Kazakhstan.

Source: 2016 OECD questionnaire, Issatayeva et Adambekova (2016).

Budget transparency in Kazakhstan

Information on performance, outputs and impacts can help parliament and citizens to understand not just what is being spent, but what is being bought on behalf of citizens – i.e. what public services are actually being delivered, to what standards of quality and with what levels of efficiency. Budget transparency encompasses the availability of budgetary information via the publication of key budget documents, estimates and actual outcomes and in broader terms to make the budget process transparent by providing opportunities for the citizens to follow up and to engage in it by conducting activities carried out by public bodies throughout the budget cycle in a transparent way. The section starts with an overview of the budget process in Kazakhstan followed by the assessment of budget transparency on national and local level. Next, integrity, accountability and oversight mechanisms are outlined and finally, the section addresses the participation of stakeholders in budgeting.

Budget cycle

The Budget Code of the Republic of Kazakhstan dated December 4, 2008 No. 95-IV provides the legal framework of the budget cycle in Kazakhstan. The budget cycle in Kazakhstan includes five stages. In the first stage, the Pre-Budget Statement is made available to the public at least four months in advance of the budget year, and at least one month before the Executive's Budget Proposal is introduced in the legislature. In the second stage, the proposed bill on the republican budget is submitted by the Government of the Republic of Kazakhstan (GoK) to the Parliament of the Republic of Kazakhstan no later than the 1 September of the current fiscal year. This is followed by the third stage, where the approval of the republican budget comes at separate sessions of the Chambers of Parliament through consecutive consideration first in the Majilis (Lower Chamber) and then in the Senate (Upper Chamber) by no later than 1 December of the current fiscal year. Within two weeks after the budget has been passed, the Enacted Budget is made available to the public. This represents the fourth stage of the budget cycle. Finally, the republican financing plan for the first quarter of the next fiscal year must be approved

before 25 December of the year corresponding to one quarter of the forecast of the republican budget for the next fiscal year. According to the Order of the Minister of Finance of the Republic of Kazakhstan of 14 November 2014 "On Approval of Rules of preparing of Unified Budget Classification in the Republic of Kazakhstan", the unified budget classification groups revenues and expenditures by functional, departmental and economic characteristics, in a unified budget structure (see Figure 3.2).

Figure 3.2. The budget structure in Kazakhstan

The structure of the budget
Revenue
Tax revenue
Non-tax revenue
Proceeds from sales of basic capital
Transfers
Costs
Net budget crediting
Budget credits
Repayment of budget credits
Balance of operation on financial assets
Acquisition of financial assets
Proceeds from sales of financial assets of state
Surplus/deficit budget
Financing of budget deficit (use of surplus)
Loan income
Repayment of loan
Used balance of budget funds

Source: 2015 OECD Questionnaire on Public Financial Management.

Transparency of the budgeting cycle at the national level

Most of the budget documents (Pre-budget report, Executive's budget proposal, Enacted budget, In-year reports, Mid-year report, Year-end report, Audit report) are published and available to the public with varying degrees of information content. It is worth noting, however, that in 2015, no Citizens budget was produced, and in 2012, the Mid-term report was missing.

The Pre-budget report includes some estimates of government borrowing and debt, as well as multi-year expenditure estimates, and is published more than a month before the Executive's budget proposal (EBP) is brought to the legislature.

The EBP contains among others basic information on the macroeconomic forecasts such as the discussion on estimates of real GDP growth, nominal GDP, inflation and interest rates. However, no sensitivity analysis is presented showing the impact of different assumptions for the above core elements on expenditure, revenue and debt, and new policy proposals' impacts on expenditure and revenue are not included either. An EBP including the above analyses contributes to transparency, informed policy making and it facilitates the understanding of stakeholders.

The EBP covers all expenditure of administrative units and programs. Expenditures are presented by functional classification compatible with international standards. Multi-year estimates are presented covering all program related expenditures. Alternative displays of expenditures (by gender, age, region, etc.) illustrating financial impacts of policies are not part of the EBP, even though they would contribute to evidence based policy making, and to a realistic debate on trade-offs in the budget among relevant stakeholders. With the exception of a fraction of programs (accounting for less than two-thirds of expenditures), no actual data on expenditures are presented for previous years. Multi-year revenue estimates are shown by category, and they cover all sources of revenue. Some estimates of government borrowing and debt are presented in the EBP, however, no information on the composition of total debt outstanding is presented. Some information regarding extra-budgetary funds is included in the EBP. Without narrative discussion, estimates of all intergovernmental transfers and transfers to public corporations are included as well. No information can be found on long-term (10+ years) future liabilities and the sustainability of finances in the EBP.

Before 1 September, the Government of Kazakhstan submits the following documents to the Parliament together with the EBP:

- Forecast of social and economic development
- Draft of strategic plans, amendments and additions to the strategic plans of central government bodies
- Draft budget programs of administrators of budget programs
- Data on the state of public and publicly guaranteed debt as of the last reporting date
- The explanatory note disclosing the decisions incorporated in the draft of the republican budget, the information in the context of the administrators of republican budget programs, comprising:
  - a brief description of the achieved performance indicators for the previous year

- a brief description of the current situation and the existing problems
- a description of the ways to improve the situation, solve the problems and achieve the objectives of the planned target indicators defined in the draft strategic plan of the state body
- a description of the objectives of budget programs and planned outcomes of budget programs.

No citizens' versions of budget documents are published, and there are no mechanisms in place to identify public demand for budgetary information to be included in the citizens' versions of these documents. Overall, the EBP and related documents convey useful but restricted information. The public has no access to the timetable for formulating the EBP (i.e. deadlines for submissions from government entities); however, it is published prior to parliamentary approval and at least three months prior to the next budget year.

With regard to reporting, the quarterly reports contain information about the implementation of the budget, including actual program expenditures, actual tax and non-tax revenues accounting for all expenditures and revenues. Information about the current state of the public debt of Kazakhstan, the amount of money paid as repayment of public debt, and the amount of money paid for the guarantees and warranties are also published in the quarterly official publication on budget implementation as statistical information provided by the central authorised body. The Mid-Year Report includes updated macroeconomic forecast and revenue estimates, explaining the deviation between the original and updated estimates. Estimates of some program expenditures are presented as well. In turn, estimates on government debt and borrowing are not updated. The Mid-Year Report is released public between six and nine weeks after the mid-point of the fiscal year. The Year-End Report is made available to the public within six months after the end of the budget year presenting expenditure estimates and estimates for some programs. Differences between the original macroeconomic assumptions for the fiscal year and the actual outcome, between the enacted and actual revenue outcomes, as well as between the estimated and actual government debt and borrowing are accompanied by a narrative discussion. Estimates about the differences between the enacted policies targeting the most impoverished populations and the actual outcome are presented along with a narrative discussion as well.

The Supreme Audit Institution (SAI) conducts financial, performance and compliance audits, making them available to the public, including an executive summary. The majority of the expenditures within the SAI's mandate are audited. In contrast, no extra-budgetary funds are audited. The Executive does not report on steps taken to address audit recommendations or findings, however, the SAI publishes a report tracking actions taken by the Executive related to some audit recommendations. Within six months after the end of the fiscal year, the actual expenditures of public departments are audited and released.

As for budget documents, timeliness of making them publicly available is extremely important in order to enable the public to contribute to the due stage of the budget process. In particular, the Citizens' Budget, the EBP and the audit reports are crucial for public involvement.

Transparency of the budgeting cycle at the sub-national level

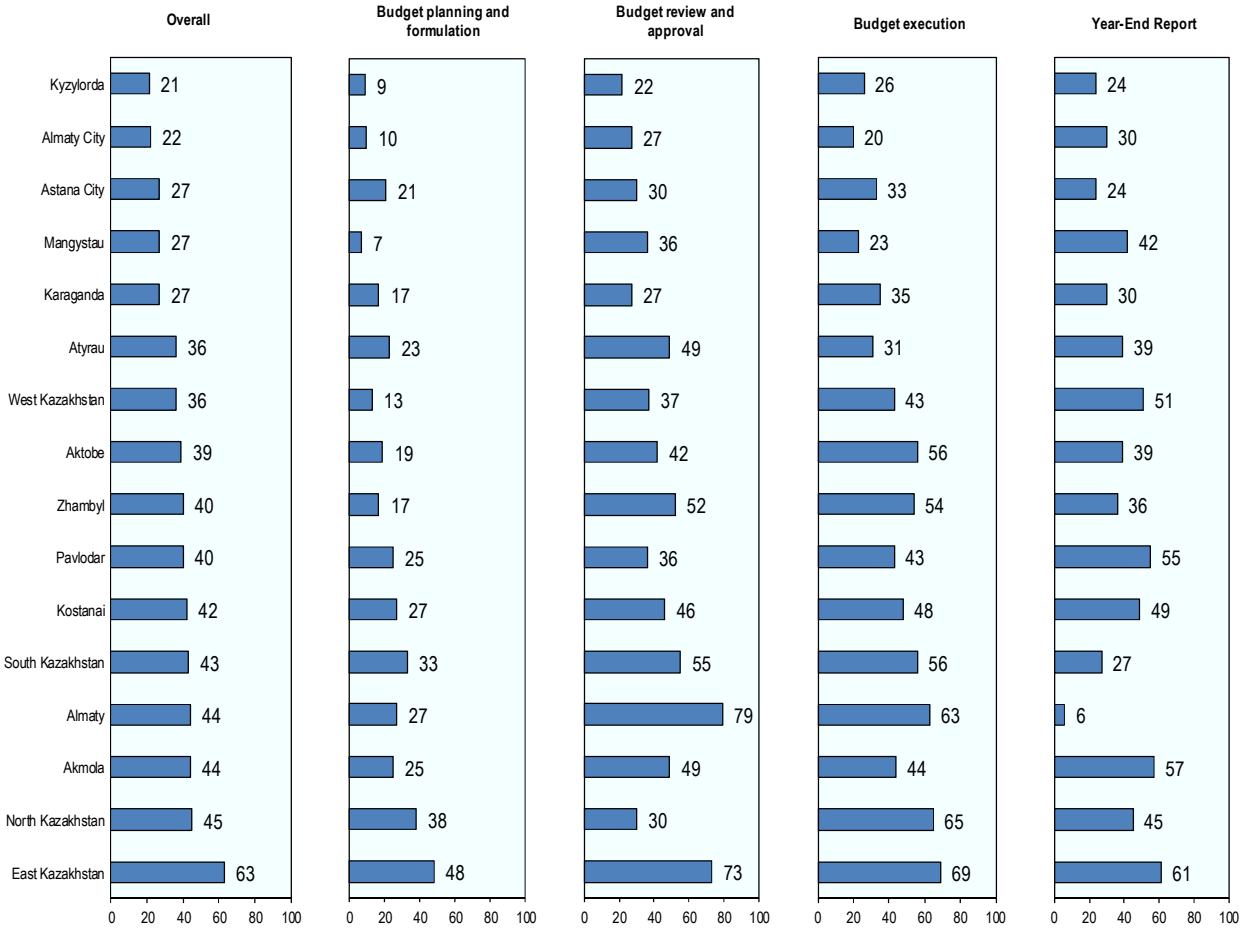
Local authorities provide the public with minimal information on budgeting and public financial management and as a result, citizens do not have access to detailed budgetary information at the sub-national levels. This is a serious constraint in monitoring the regional budgets as well as in holding the local government accountable, considering that about two-thirds of the state budget expenditures correspond to the local budgets. Since basic social services such as education and health care are provided at local level, transparent local budgeting is of key importance.

Community meetings take place at the village level, which is the lowest level of government in Kazakhstan. Currently, these villages do not have rights in terms of budgeting. Starting from 2018, however, a new law will be introduced establishing budgeting on four levels: national; regional/main cities (oblast); district; and village. The proposed law will ensure that each level of government will have mechanisms in place to decide about the budget, and citizens will be able to actively participate at the different stages of the budget cycle.

Currently, there is equalisation between districts in terms of budgeting, in order to ensure development in the rural/poorer areas. To promote inclusiveness and to decrease inequality on sub-national levels, the most important areas of intervention are health care, education, water pipes to provide access to potable water, and infrastructure investments.

As shown in Figure 3.3, regions are widely dispersed in terms of the openness of their budgeting process, with regional Open Local Budget Index[1] scores ranging from 21 (minimal level of public awareness and engagement in the budget process) to 63 (average level of public awareness and engagement in the budget process). Across regions, the average score is 37, indicating minimal levels of openness regarding the local level of budgeting in Kazakhstan, and slow overall progress was observed from 2013 to 2015.

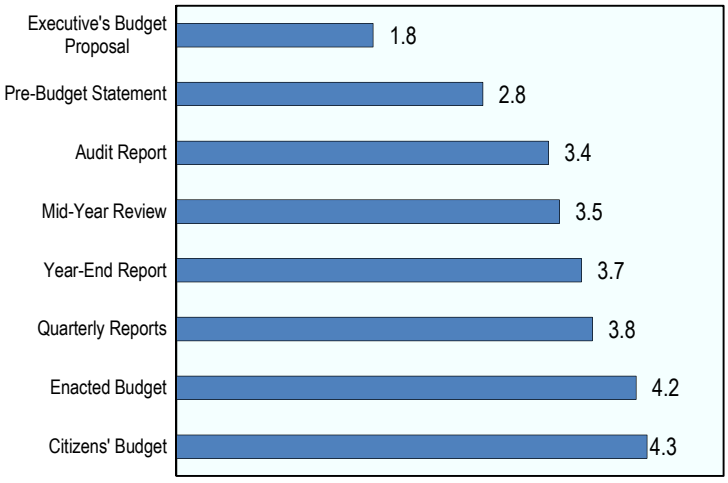
Figure 3.3. Open Local Budget Index: Openness and comprehensiveness of processes and documents, 2015



Source: Based on Soros Foundation Kazakhstan (2015), Open Local Budget Index.

As indicated in Figure 3.4, on sub-national levels, the Enacted Budget and the Citizens' Budget are the most comprehensive, publicly available budget documents. In contrast, documents prepared during the planning and legislative phase have the least information content.

Figure 3.4. Comprehensiveness and availability of budget documents in regions and main cities 2015, Index on a scale of 1 to 5 (from scant/no information to extensive information)



Source: OECD calculations based on Soros Foundation Kazakhstan (2015), Open Local Budget Index.

Recommendations for reform

In terms of the national level budgeting process, Kazakhstan could consider that clear and factual budget reports as well as audit reports are needed to inform key stages of the budget process such as policy formulation, consideration and debate as well as implementation and review. Information quality can be improved by focusing on relevance, accuracy, objectivity, machine readability (open data) and reliability. The presentation of budgetary information in comparable format at key stages of the budget process promotes effective decision making, accountability and oversight. Citizens, civil society organisations and other stakeholders should be able to routinely access full budget reports in a timely manner where the consistent level of informational content of the publicly available budget documents is ensured. The impact of budget measures should be presented in a standard and user-friendly format which can be achieved by using a budget summary or a Citizen's Budget. Citizens' versions of budget documents could be prepared in various formats such as simplified version of the budget document, versions referring to the local level and national level, and illustrated versions using infographics to facilitate understanding. Introducing mechanisms to identify public demand for information would ensure that the citizens' versions of budget documents contain the most relevant budgetary information.

Independent fiscal institutions or other structured, institutional processes can support the credibility of national budgeting, in particular, the professional objectivity of economic forecasting, adherence to fiscal rules, long-term sustainability and handling of fiscal risks. The EBP should contain information on the composition of total debt outstanding, on long-term (10+ years) future liabilities and the sustainability of finances. The Mid-Year Report should be released to the public within six weeks after the mid-point of the fiscal year. After the careful consideration of budgetary choices, all major decisions should be handled within the context of the budget process. Investment into the skills and capacity of staff – in the central budget authority, line ministries and other institutions – are crucial for effective performance taking into account national and international experiences, standards and practices. Special-purpose funds, and ear-

marking of revenues for particular purposes, should be kept to a minimum. Ministries and agencies should be allowed some limited flexibility, within the scope of parliamentary authorisations, to reallocate funds throughout the year in the interests of effectiveness. Well-planned and well-designed budget execution reports including in-year and audited year-end reports could inform future budget allocations and contribute to accountability. Extra-budgetary funds should be audited as part of the mandate of the SAI.

In terms of the sub-national budgeting process, Kazakhstan could consider improving the comprehensiveness of available budget documents throughout the budget cycle. As regions are widely dispersed in terms of the openness of their budgeting process, decreasing the differences among regions and improving the OLBI scores of the regions especially concerning the budget planning and formulation phase would be indispensable to ensure transparency of two-third of state budget expenditures which are spent through local budgets. Through more transparent sub-national budgeting, the accountability and integrity can be improved, allowing for a stronger relationship between the quality of public services and budget expenditures.

The level of implementation of open governance – and open budgeting in particular – varies between regions and cities. This might be due to the fact that some akims (mayors) are not incentivised in making progress in this area. An idea would be to link the increase in the OBI or OLBI to their performance evaluation to change the situation and to foster progress. Budget data should be designed and used in a way which supports other important government objectives such as open government, integrity, programme evaluation and policy coordination across national and sub-national levels of government.

Integrity, accountability and oversight

Integrity, accountability and efficient oversight mechanisms built into the budgeting process improve the feedback received from various stakeholders, including the parliament, SAI, expert groups and civil society. More informed feedback measures can provide for a more efficient budgeting cycle where trade-offs are given due attention, and resources are indeed used according to the strategic plans. By increasing the efficiency of budgeting, resource allocation can be better informed, influenced and aligned with societal choices.

Social accounting and audit

In Kazakhstan, CSOs are strong in coverage of the revenue raising side of public finances and budgeting. However, they are weak in the monitoring functions of the spending side at both the local and national level, which in turn prevents the efficient monitoring of public spending. Some CSOs are supporting the institution of social auditing, and there are promising results in areas where people experience problems with potable water, in spite of the significant budgetary provisions.

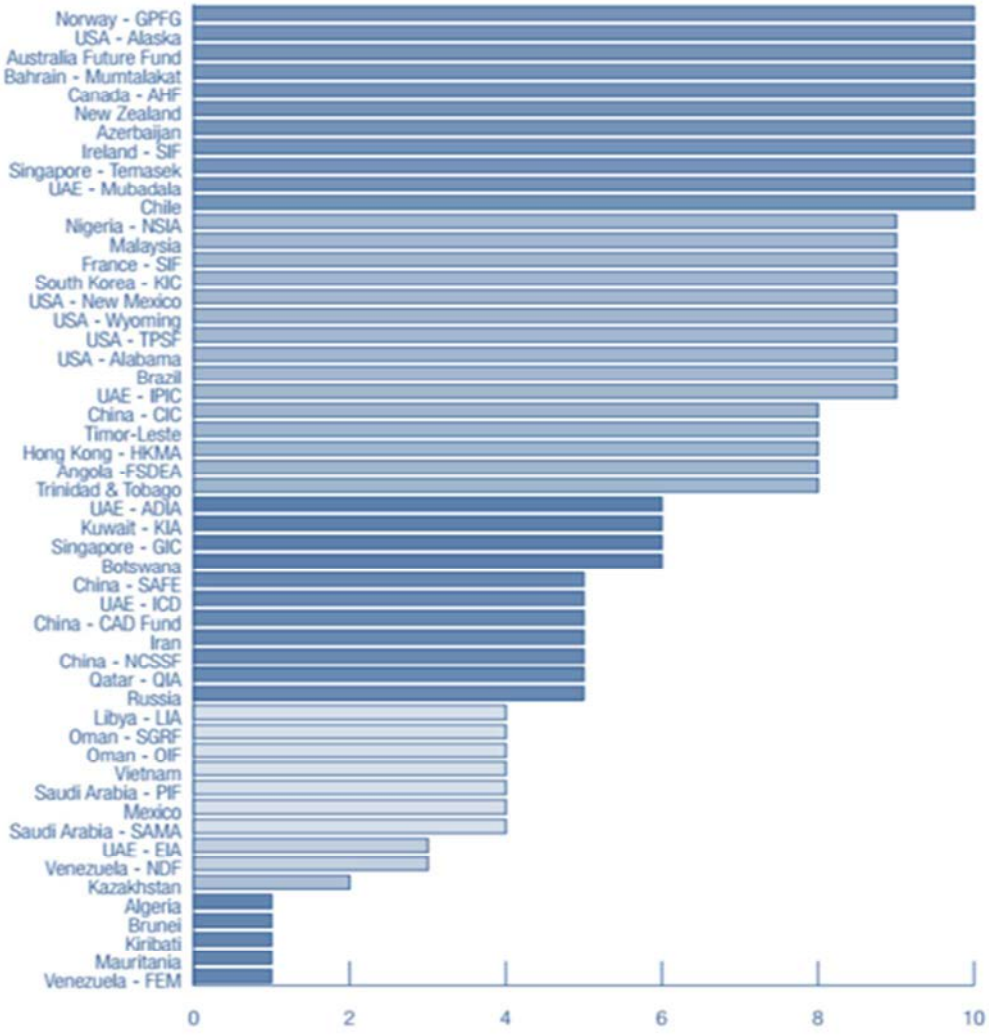
Corruption can be tackled by providing good examples, and starting education early enough. With sufficient monitoring, prevailing norms can be changed. It is worth mentioning the initiative of summer camps organised for kids where they have opportunities to learn about ethical conduct while managing money and developing good practices. Recently, a good system of passes used for public transportation was introduced in Almaty and which has resulted in the collection of significantly higher income for the city by preventing passengers to not pay the fare which could then be spent on transport development. Similar good solutions are needed in healthcare, etc.

Integrity and accountability in extractive industries and within sovereign wealth funds

The Extractive Industries Transparency Initiative (EITI) is an international standard to promote accountability and integrity through transparent reporting in countries endowed with abundant natural resources such as oil, gas and minerals. Kazakhstan became a candidate country for the EITI in 2007. The Ministry of Energy and Mineral Resources created Kazakhstan's EITI Secretariat with the mandate to promote and implement the EITI. During the process of implementation, the government has started to cooperate with extractive companies and with civil society to provide data based on the EITI requirements. The validation of compliance was performed by independent experts. In 2013, after the reconciliation of tax and other obligatory payments data received from extractive companies as well as the Ministry of Finance (MoF), and after the results were made publicly available, Kazakhstan became a designated compliant country. In 2015, regional and city akimates held public discussions to evaluate the effectiveness of the EITI implementation on the local level. The ten national reports prepared from 2005 to 2014 are available on the website of the Committee for Geology and Subsoil Use of the Ministry of Industry and New Technologies.[2]

Since the majority of revenues received from the extractive industries are submitted as payments to the Kazakhstan National Fund, the transparency of this sovereign wealth fund (SWF) is of key importance. The Linaburg-Maduell Transparency Index (LMTI) was developed at the Sovereign Wealth Fund Institute to rate the transparency regarding SWFs. Kazakhstan's National Fund has a score of 2 indicating rather "opaque" management of the SWF.

Figure 3.5. LMTI ratings in the first quarter of 2016, on a scale of 1 to 10 from least to most transparent



Source: Linaburg Maduell Transparency Index, www.swfinstitute.org/statistics-research/linaburg-maduell-transparency-index/.

Recommendations for reform

The integrity and quality of budget forecasts, fiscal plans and budgetary implementation should be fostered through rigorous quality assurance and independent audit. The supreme audit institution should be supported in its role of dealing authoritatively with all aspects of financial accountability, including the publication of its audit reports in a manner that is timely and relevant for the budgetary cycle. Acknowledging and facilitating the role of independent internal audit is an essential safeguard for the quality and integrity of budget processes. Internal and external systems of audit and control should focus on cost-effectiveness of individual programmes, as well as assessing the quality of performance accountability and governance frameworks more generally.

In order to promote and strengthen social accounting and audit by CSOs, Kazakhstan is recommended to facilitate their work by legal provisions. CSOs could monitor the implementation of the anti-corruption law regarding every stage and level, and they could

report on the implementation of getting access to information as well. Social audit practices in Poland and India provide good examples.

Increased transparency and compliance with EITI contributes to accountability in Kazakhstan, and lowers the risk of illegal use of funds received from extractive industries. Since payments from the oil and gas sector and payments from the mining sector have accounted for 66% of state revenue in 2014, transparent and accountable management of these funds are critically important. In relation to the EITI, Kazakhstan is recommended to continue the efforts pointed out in the national reports. Finally, in relation to sovereign wealth funds, Kazakhstan could consider improving the transparency of the management of the Kazakhstan National Fund, by providing data and information on a website among others regarding the portfolio market value, returns, management compensation and the identification of external managers, guidelines of ethical standards and their enforcement, investment policies, strategies and objectives, and contact information for inquiries.

Participation in budgeting

As outlined in the *OECD Recommendation on Budgetary Governance* (see Box 3.1), "facilitating the engagement of parliaments, citizens and civil society organisations in a realistic debate about key priorities, trade-offs, opportunity costs and value for money" is a key pillar of modern budgetary governance. The recommendation calls for "an inclusive, participative and realistic debate on budgetary choices at all key stages of the budget cycle, both *ex ante* and *ex post* as appropriate" emphasising the links between inclusiveness, participation and an informed, evidence-based debate throughout the budget cycle. In a more open budgeting process, stakeholders have more opportunities to participate and to articulate which actions raise concerns from an integrity perspective.

Involving civil society organisations and citizens

At the local level, "The 100 concrete steps" set out by the President foresees the introduction of independent budgets for local government and mechanisms allowing for citizens to participate in the discussions about prioritising budgetary spending. Public councils are one way to involve civil society organisations in a structured way into budgeting on the district level. So far, public councils have right to participate in drafting laws only, but this could be extended later, once the system is implemented. As for the implementation of the *Law on Public Councils*, representation is better in bigger cities like Almaty and Astana. Some of the akims show higher interest in turning the public councils into a viable and efficient body and it appears that it is easier to find skilled people in these cities. Additionally, on national level, there is an expert forum of 11 NGOs and CSOs, supporting the drafting of laws with their competences. Several initiatives of this forum were taken on-board by ministries, e.g. regarding open governance. Among others, CSOs' expertise helps to ensure compatibility with international standards.

Article 3, section 4 of the Law on Informatisation states that one of the principles of government regulation on public relations is the "provision of free access and mandatory submission of electronic information resources containing information on the activity of government agencies (presumption of openness), except electronic information resources, access to which is restricted in accordance with Laws of the Republic of Kazakhstan". Therefore, there is a legal backing for open data, and various ministries are proactive in implementation, however some issues remain to be solved. The idea behind the adoption

of open data is that everything should be available on one single website. A single software has been developed for managing and publishing open government data which is optimal in terms of providing an integrated, robust technical background. Within the government, several ministries are taking steps towards publishing information online, in accordance with the Law on Informatisation. The Ministry of Investment and Development (MID) for instance has shown interest early on in implementing towards open data and e-governance for their potential links with attracting foreign investment. Currently, the main implementation issues stem from the fact that the MID has no extra capacity to deal with the various formats of data available on Ministries' websites. Furthermore, currently, everything that is not classified is supposed to be published, which places a high administrative burden on government ministries (e.g. the Trade ministry).

Gender budgeting

Women enjoy equal rights by law in Kazakhstan; however, there are a number of remaining gaps and issues to be addressed to support gender equality, similarly to other OECD and partner countries. Gender budgeting is a tool used by more than one third of OECD countries to promote the gender perspective in order to eliminate existing gender gaps. International experience points to the fact that the thematic analysis of the budget and its implementation has the potential to increase the engagement of sub-groups of the society which face more constraints regarding their participation in the budgeting process (i.e. gender budgeting in Indonesia). Practices of gender budgeting are numerous and diverse in OECD countries. In Austria for example, federal ministries set targets and determine gender equality outcomes regarding the societal aspects of their activities which is based on gender-specific data. In turn, concrete measures and indicators are assigned to these outcomes in order to implement and monitor the progress in achieving gender equality.

In Kazakhstan's budget, there are some earmarked resources for gender related activities, however, systematic use of gender budgeting tools are not observable in the budgeting process. Although Kazakhstan has a Gender Strategy which outlines and integrates a gender approach in budget formulation, implementation is lagging behind. Some public bodies incorporate elements of gender budgeting in their budgetary planning. The State Programme of Health of the Republic of Kazakhstan "Salamatty Kazakhstan" contains output and outcome indicators to address specific health issues faced by women and there are budget appropriations assigned to achieve these goals. The National Commission of Women's Affairs, Family and Demographic Policy has a key role in facilitating transition to gender budgeting throughout the government. In addition, Kazakhstan is actively considering implementing results-based budgeting in an effort to link the budget with strategic priorities and objectives.

Recommendations for reform

Adequate resourcing of the various actors and use of tools that support participation in budgeting, such as Citizens' Guides, are contributing to and fostering a realistic dialogue between stakeholders throughout the budget process. Increasing the diversity and providing for broad representation of the civil society in public councils would enhance the capabilities of public councils to efficiently support law-drafting and possibly other activities of the government.

To address the problem arising from the large number of data formats used on line ministries' websites, it is recommended that the formats of budgets are standardised

across all public bodies. The MoF provides a good example with the publication of useful data in an open format that also includes infographics. Furthermore, what is considered useful content to publish should be discussed and decided upon involving public agencies as well as end-users. In many countries with significant participation in the budgeting process, media have an intermediary role in educating and informing citizens such that they understand the importance of budgeting, and by studying the available information and analyses, they become more skilled and competent in engaging in the planning, implementation, monitoring and oversight of the budgeting process.

Instead of allocating budgetary funding to output indicators to promote gender equality, implementation could focus on measuring gender outcomes. By setting objectives which can be measured effectively, better targeting can be achieved by using evidence-based policy making. By better aligning the objectives set forth in its Gender Strategy with the country's medium and long-term state strategies (i.e. Kazakhstan 2020 and Kazakhstan 2050), a number of outcomes could be improved which have visible results on the medium to long-run. The integration of gender indicators in ministerial planning is foreseen in the Gender Strategy. This, together with the strategic effort of Kazakhstan to link the budget with strategic priorities and objectives by the introduction of results-based budgeting sets the right conditions for introducing and implementing gender budgeting as well, as it is observed in a number of OECD countries introducing gender budgeting in the framework of performance budgeting. Information from the 2016 OECD Performance Budgeting Survey indicates that gender-sensitive measures are part of the performance information provided for the budget submission in nine OECD countries (Austria, Belgium, Estonia, Israel, Korea, Mexico, Slovenia, Sweden, Switzerland). To address the challenges and support the implementation of gender budgeting, OECD countries set priorities of capacity-building and training sessions for government officials, as well as launching pilot projects of gender budgeting to involve relevant stakeholders. By integrating the discussion on gender equal allocations into budgeting on local level has the potential to increase the inclusiveness of budgeting and public policy-making.

Action Plan and potential OECD support

Recommendations

In Kazakhstan, for the time being, budget transparency is stronger on the national level, whereas public participation is more prominent on the local level. Important laws have been passed recently; however, the outcomes of the implementation are mostly not yet visible. Regarding e.g. the Law on Informatisation, line ministries make significant effort to publish data and to be part of the single IT system which has been developed for this reason.

- Citizens, civil society organisations and other stakeholders should be able to routinely access full budget reports in a timely manner where the consistent level of informational content of the publicly available budget documents is ensured.
- The impact of budget measures should be presented in a standard and user-friendly format which can be achieved by using a budget summary or a Citizen's Budget.
- Citizens' versions of all budget documents could be prepared in various formats such as simplified version of the budget document, versions referring to the local

level and national level, and illustrated versions using infographics to facilitate understanding.

- Independent fiscal institutions or other structured, institutional processes can support the credibility of national budgeting, in particular, the professional objectivity of economic forecasting, adherence to fiscal rules, long-term sustainability and handling of fiscal risks.
- The EBP should contain information on the composition of total debt outstanding, on long-term (10+ years) future liabilities and the sustainability of finances.
- Ministries and agencies should be allowed some limited flexibility, within the scope of parliamentary authorisations, to reallocate funds throughout the year in the interests of effectiveness.
- As regions are widely dispersed in terms of the openness of their budgeting process, decreasing the differences among regions and improving the OLBI scores of the regions especially concerning the budget planning and formulation phase would be indispensable to ensure transparency of two-third of state budget expenditures which are spent through local budgets.
- Acknowledging and facilitating the role of independent internal audit is an essential safeguard for the quality and integrity of budget processes.
- Internal and external systems of audit and control should focus on cost-effectiveness of individual programmes, as well as assessing the quality of performance accountability and governance frameworks more generally.
- In order to promote and strengthen social accounting and audit by CSOs, Kazakhstan is recommended to facilitate their work by legal provisions.
- In relation to sovereign wealth funds, Kazakhstan could consider improving the transparency of the management of the Kazakhstan National Fund, by providing data and information on a website among others regarding the portfolio market value, returns, management compensation and the identification of external managers, guidelines of ethical standards and their enforcement, investment policies, strategies and objectives, and contact information for inquiries.
- Adequate resourcing of the various actors; and use of tools that support participation in budgeting, such as Citizens' Guides are contributing to and fostering a realistic dialogue between stakeholders throughout the budget process.
- Increasing the diversity and providing for broad representation of the civil society in public councils would enhance the capabilities of public councils to efficiently support law-drafting and possibly other activities of the government.

Action Plan

Reform Areas	Potential OECD Support
Transparency of the national level budgeting process	Budget review
Transparency of the sub-national budgeting process	Budget review of sub-national levels
Participation in budgeting	Workshop on thematic approaches and enablers of participative budgeting
Social accounting and audit	Workshop on social accounting and audit
Promoting integrity and accountability in infrastructure development and extractive industries	Workshop on infrastructure development and extractive industries
Performance budgeting	Workshop on performance budgeting

Notes

1. National Budget Network of Kazakhstan with support from Soros Foundation Kazakhstan

2. For more information, please see www.geology.kz

References

Asian Development Bank (2013), Kazakhstan Country Gender Assessment, www.adb.org/sites/default/files/institutional-document/34051/files/kazakhstan-country-gender-assessment.pdf.

Bozrikova, T. and Kadyrova A. (2015), The Status of Domestic Workers in Kazakhstan, UN Women (2015), http://eca.unwomen.org/en/digital-library/publications/2016/03/the-status-of-domestic-workers-in-kazakhstan

Economic Intelligence Unit (2015), Country Report Kazakhstan, 20 November 2015.

Global Initiative for Fiscal Transparency (GIFT, 2015), Public Participation in Fiscal Policy: Principles and Good Practices (draft proposal).

International Budget Partnership (2015), Open Budget Survey 2015 Kazakhstan, www.internationalbudget.org/wp-content/uploads/OBS2015-CS-Kazakhstan-English.pdf.

Issatayeva, K.B. and A.A. Adambekova, "The Republic of Kazakhstan Budget System Development and the Increase of its Transparency", *American Journal of Applied Sciences*, 2016 13/4, p. 364-371, http://thescipub.com/abstract/10.3844/ajassp.2016.364.371.

Kapysheva, A. (2014), The Analysis of Women's Marital Rights in Kazakhstan: Challenges of Gender Equality, Nazarbayev University (2014), www.nottingham.ac.uk/hrlc/documents/student-conference-2014/aizhan-kapyshevawomen27s-rights-full-paper-(1).pdf.

OECD (2016), OECD Development Pathways, *Multi-dimensional Review of Kazakhstan*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264246768-en.

OECD (2015), OECD questionnaire on Public Financial Management, Paris.

OECD (2014), OECD Public Governance Reviews, Kazakhstan: Review of the Central Administration, www.oecd-ilibrary.org/governance/kazakhstan-review-of-the-central-administration_9789264224605-en.

OECD (2009), *Focus on Citizens - Public Engagement for Better Policy and Services*, OECD Studies on Public Engagement, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264048874-en

OECD (2005), *Evaluating Public Participation in Policy Making*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264008960-en

OECD (2001), *Citizens as Partners – Information, Consultation and Public Participation in Policy-Making*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264195561-en

Petrie, M. and Shields, J. (2010), "Producing a Citizens' Guide to the Budget: Why, What and How?", *OECD Journal on Budgeting*, Vol. 2010/2, OECD Publishing, Paris. http://dx.doi.org/10.1787/budget-10-5km7gkwg2pjh

The 10th National Report – On implementation of the Extractive Industry Transparency Initiative in the Republic of Kazakhstan for 2014, https://eiti.org/files/kazakhstan_eiti_report_2014_eng.pdf.

The 100 concrete steps set out by President Nursultan Nazarbayev to implement the five institutional reforms, May 2015, www.kazembassythailand.org/president/100-concrete-steps-modern-state-all/.

The OECD Development Centre (2014), Social Institutions and Gender Index (SIGI, www.genderindex.org/country/kazakhstan.

Soros Foundation Kazakhstan (SKH, 2015), Open Local Budget Index.

State Programme of Health of the Republic of Kazakhstan, http://adilet.zan.kz/rus/docs/U1000001113#z709.

Ubaldi, B. (2013), Open Government Data: Towards Empirical Analysis of Open Government Data Initiatives, OECD Working Papers on Public Governance, No. 22, OECD Publishing, Paris. http://dx.doi.org/10.1787/5k46bj4f03s7-en.

World Bank (2015), Kazakhstan Economic Update, Fall 2015, "Adjusting to lower oil price; challenging times ahead", www.worldbank.org/en/country/kazakhstan/publication/economic-update-fall-2015.

Chapter 4.

Development co-operation in Kazakhstan

Development co-operation is related to a country's public integrity system in two ways. First, it can be used to combat corruption. Second, funds received and provided need to be safeguarded against corruption, to ensure they are ultimately used for their intended purposes. This chapter assesses the role of development co-operation in promoting integrity and combating corruption in the Republic of Kazakhstan. An assessment of Official Development Assistance (ODA) support for integrity measures in the country is followed by an analysis of Kazakhstan's role as an emerging provider of development assistance. Transparency of development assistance, in regards to both receipts and contributions, is also evaluated.

Role of development co-operation in promoting integrity and combating corruption

Kazakhstan has received relatively small amounts of Official Development Assistance (ODA) in recent years. Yet, Kazakhstan is an emerging provider of development co-operation that is in the process of developing its systems for managing its development co-operation programme. Therefore, this Integrity Scan explores the issue of development co-operation as far as it pertains to integrity.

Development co-operation in its most basic sense is related to the developmental progress of a country and co-operation between countries. This introduction first examines the linkages between corruption and development in general, secondly, defines development co-operation, and third, explains the linkages between development co-operation and corruption, including recent measures to address corruption in the context of development co-operation.

Generally, corruption undermines the development of a country in several ways, having ripple effects throughout the economy and society. Corruption hinders the success of businesses and economic prospects. Corruption also increases inequality: rich people are able to pay higher or more bribes than poor people and are often in a more powerful position that they can exploit for private gain. This is a vicious cycle: those who have better means can realise even more gain, gather more wealth, have better access to power or a more powerful position overall. A poor person does not have the means to compete and is left even worse off in comparison. Another vicious cycle is related to trust: widespread corruption undermines legitimate institutions and reduces trust in those institutions; in turn, citizens feel they have to employ corrupt means to navigate a system which does not seem trustworthy (DFID, 2015).

Development co-operation can be understood in varying ways. The understanding ranges from the concept of ODA, which includes concessional flows provided by official agencies to developing countries and multilateral organisations with the development of developing countries as the principal objective, to the proposed framework of Total Official Support for Sustainable Development (TOSSD), which may include ODA and other resource flows (with broader objectives, instruments and providers).1 The United Nations Economic and Social Council (ECOSOC) identifies three main types of development co-operation: (1) financial and in-kind transfer; (2) capacity support; and (3) policy change (ECOSOC, 2016).

Specifically, development co-operation is related to a country's integrity in two ways. First, it can be used to combat corruption. Second, funds provided need to be safeguarded against corruption, so that funds are used for their intended purpose.

The first aspect of how development co-operation relates to a country's integrity pertains to building capacity in support of integrity efforts or efforts to combat corruption. External partners can provide resources that are used to actively combat corruption. For example, the German development agency Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) has supported the Indonesian Corruption Eradication Commission (KPK) for several years.2 External partners also support awareness raising campaigns or civil society organisations in their diverse activities to provide a counterbalance to the government and successfully perform their role as watchdogs of the public interest (OECD, 2014 – IFF report).

The second aspect of integrity in the context of development assistance has to do with money involved and with the question of whether the money has been spent as intended.

There are two forms in which diversion of development funds may happen. The first form is characterised by the extraction of actual money or other high-value assets from the development funds. This extraction is usually conducted through rent seeking or the solicitation of bribes in connection with development projects. Given that financial administrations are often weak in the contexts where development assistance is implemented, it is easy to extract rents. In these cases, there is a risk that those with privileged access to development assistance use this access to solicit bribes, or seek a cut of the increased resources when projects are implemented. Sometimes, but not necessarily, extracted money leaves the country; sometimes, funds or valuables remain in the country (OECD, 2012).

The second form of diversion is related to the decisions on how the money is being spent – and who should benefit from the investment into development. Development assistance brings a lot of money into a context of weak governance. There is a danger of money being spent based on the local patronage systems rather than on considerations of development, as they should be spent. As a consequence, already privileged groups who can influence decision makers in their favour will benefit even more from development assistance (OECD, 2012). An example for this form of corruption would be a hospital that is built to serve a politician's clientele group as opposed to the public interest.

Regardless of how the diversion of development assistance happens, the money is intended to finance the development of a country, whether it is coming from abroad in the form of ODA, or whether it is money mobilised as part of the government's budget to be invested into a country's progress. These funds could be used to finance development at home – in the case that funds are diverted, the funds are enjoyed by those who are not the legitimate beneficiaries. Therefore, it is important to employ safeguards in the provision of development co-operation.

Central mechanisms to increase the integrity of aid include more general efforts to increase the effectiveness of aid, as well as more specific anti-corruption standards. Corruption and transparency have risen to prominence in the development co-operation community through a succession of several international, high-level meetings on aid-effectiveness. The 2011 Busan Partnership for Effective Development Co-operation for example included transparency and accountability as part of its shared principles (OECD, 2011).

Most recently, the Sustainable Development Goals as part of the Agenda 2030 for Sustainable Development have featured integrity among the aims that inspire not only development, but also guide development co-operation and donors. Donors, as part of the OECD Development Assistance Committee's work, have been striving to create more concrete guidelines related to integrity and development co-operation (see Box 4.1).

Box 4.1. OECD Guidance on Integrity for Development Assistance Providers

Providers of development assistance increasingly recognise their exposure to particular corruption risks. In times of shrinking public budgets, tax payers pay closer attention to how public funds are spent. While there are strict policy guidelines and recommendations on corruption for the domestic or commercial realms, no guidelines exist to shape how development co-operation providers safeguard their funds against corruption. In 1996, the DAC issued a Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement. This recommendation is now being revisited to explore what adequate guidance in today's environment should look like. One proposal that is currently being discussed is to develop common guidance for development actors on managing the risks of corruption and issue this as an OECD Council Recommendation.

To start the process of revising the 1996 Recommendation, the DAC's Anti-Corruption Task Team undertook a stock-taking exercise of anti-corruption measures in development co-operation agencies (OECD, 2015). Based on this report, the DAC agreed to revise the 1996 DAC Recommendation. This decision was made on the basis that the 1996 Recommendation's focus is too narrow on procurement and does not cover the full range of aid disbursement modalities currently used by countries in delivering ODA, which includes for example disbursements directly to partner governments and non-governmental organisations (NGOs) through grants or concessional loans. The more comprehensive new recommendation is expected to be finalised by the end of 2016. Once adopted, it will be open for adherence both to Members and non-members of the OECD.

Source: Information provided by the OECD Anti-Corruption Task Team.

This chapter is about the development co-operation provided both to and by Kazakhstan, and what role integrity considerations play in this area. Specifically, the first part covers ODA support to integrity in Kazakhstan, whereas the second part assesses Kazakhstan role as an emerging provider of development assistance. Transparency of development assistance, in regards to both receipts and contributions, is covered in the third part.

Current status and critical analysis

ODA support to integrity projects in Kazakhstan

Official development assistance (ODA) is an important source of financing for integrity projects. Depending on the development priorities in a given country, ODA should contribute to efforts to increasing a country's integrity. ODA can boost integrity directly, by funding specific integrity-related projects, and indirectly, by generally improving the quality of public service delivery. This section focuses primarily on the former, due to available information.

Kazakhstan received around USD 90 million in net ODA in both 2013 and in 2014, down from USD 128.7 million in net ODA in 2012. These sums are very small relative to Kazakhstan's economy. Considered as a portion of Kazakhstan's GNI, ODA is negligible (a ratio of close to 0). As a consequence, ODA support to corruption-relevant areas is also very low – both in absolute terms and as a share of total ODA. This can be seen as an indication of external partners' limited engagement on integrity issues with Kazakhstan, and as an indication that Kazakhstan is not prioritising this area.

External support to corruption measures in Kazakhstan is on a downward trend. Anti-corruption related projects financed by ODA are categorised under the code "Anti-

corruption organisations and institutions". According to OECD DAC statistics, there were only three projects for Kazakhstan under this heading in the past ten years – in 2014, 2012, and 2011:

- In 2014, Norway supported a project to improve data collection related to social projects financed by extractive industries with USD 24 000 (0.02% of all ODA to Kazakhstan)[3]. The project focused on local budgets in several regions, and included awareness raising campaigns and a regional implementation plan for the Extractive Industries Transparency Initiative (EITI).
- In 2012, Norway gave just under USD 20 000 to local/regional NGOs to increase transparency in social investments.
- In 2011, Finland gave almost USD 70 000 to the Independent Anti-Corruption Council.

Other projects mentioning corruption-reduction as secondary aims included:

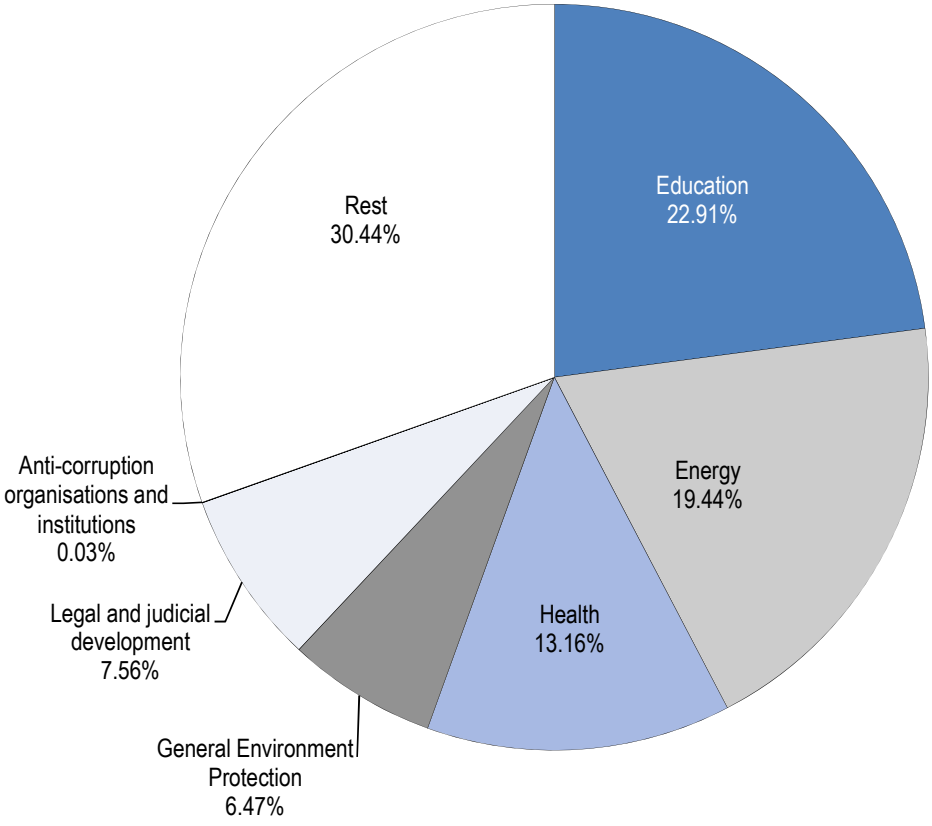
- a project to develop mediation processes
- support to NGOs for citizen participation
- legal support
- and support to the supreme audit institution.

The sums provided to each of these projects average around USD 16,000 per project. Often, the indirect impact consists in creating an environment in which integrity can grow. For example, USAID focuses on supporting civil society and helped mediating exchange between the government and civil society around issues such as the access to information law.[4]

Figures 4.1 and 4.2 provide an overview of the relative distribution of ODA towards governance.

According to OECD DAC Creditor Reporting System statistics, Kazakhstan received about USD 92 million (in 2013 prices) in total ODA in 2014. Very little of this sum, USD 20,000 (0.02 % of total ODA received by Kazakhstan), was used to support the category "anti-corruption organisations and institutions" (see Figure 4.1)

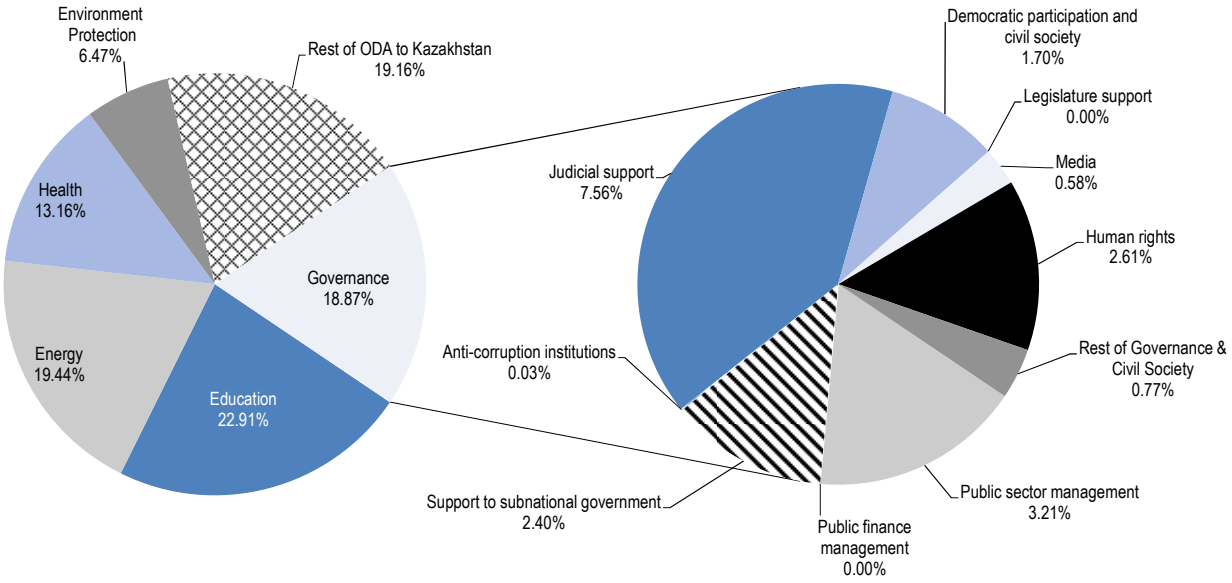
Figure 4.1. ODA support to different sectors in Kazakhstan, 2014 (USD million, 2013 prices)



Source: OECD DAC statistics, https://stats.oecd.org/qwids/.

Figure 4.2 provides a more detailed analysis of ODA to Kazakhstan. Total support to the category "governance and civil society", which includes support to public institutions, was USD 17.3 million (18.9 % of total ODA received by Kazakhstan). It is encouraging to see that the purpose code "legal / judicial development" received the largest share of this sum, almost USD 7 million – which is about 8 percent of total ODA to Kazakhstan in 2014. Figure 4.2 shows how the remainder of the support to the category "governance and civil society" was allocated. No data was reported in the category 'Support to NGOs' for the past ten years.

Figure 4.2. ODA to different sectors in Kazakhstan: highlighting support to governance issues



Source: OECD DAC Statistics, https://stats.oecd.org/qwids/.

Kazakhstan's economic strength means that the country is not dependent on foreign support to finance its development, which is a positive sign. However, financial resources are only one facet of international development co-operation. Further information would be required to assess the nature and extent of Kazakhstan's exchange with international partners to develop Kazakhstan's integrity systems. It would be important to analyse what kind of exchanges are conducted, which institutions maintain international links for what purpose.

Cursory inquiries with donors in Kazakhstan revealed that country systems are rarely used, mostly due to the project structures in Kazakhstan. As part of general aims to improve the effectiveness of aid, using country systems can contribute to improving a country's public institutions: instead of building parallel structures, donors committed to channelling their funds through the country's public financial management structures and alike to ensure sustainability of any given project.

Recommendation for reform

Kazakhstan could consider harnessing all available avenues to learn about good practices in fighting corruption. Technical co-operation and exchange between countries can be a valuable source of progress. Public officials of relevant bodies – for example supreme audit institutions, anti-corruption institutions and the judiciary – could benefit greatly from exchanges with counterparts in other countries. Other emerging economies, such as Indonesia, Brazil, and Georgia, have tackled similar issues and might be able to share insights from their journey towards a less corrupt system.

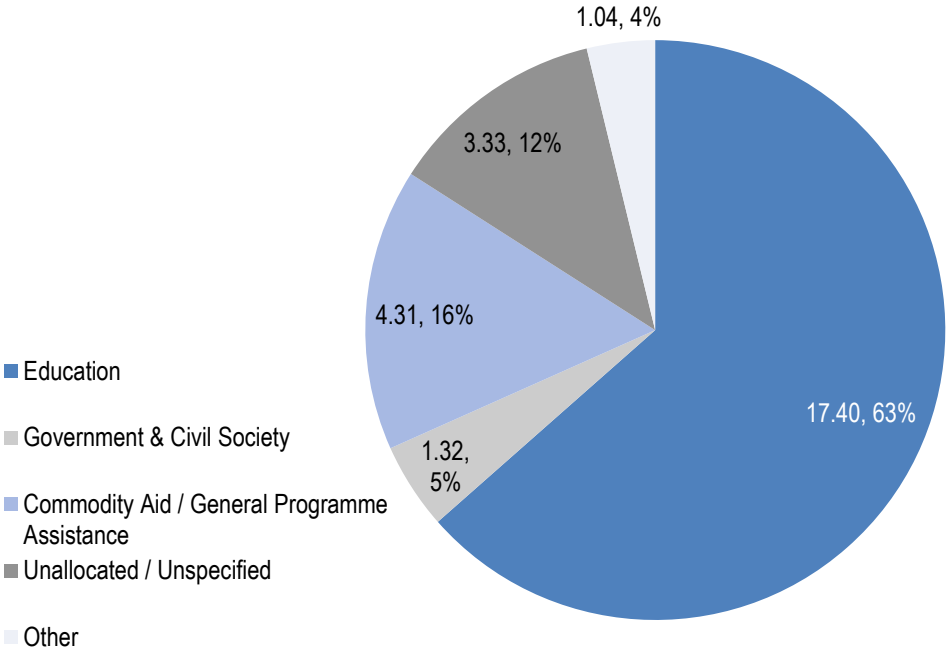
Kazakhstan as an emerging provider of development assistance

Similar to the official development assistance (ODA) received by Kazakhstan, Kazakhstan's own contributions to development efforts abroad could be a valuable source to finance integrity projects. This section serves to analyse whether and to what extent Kazakhstan's ODA supports projects that foster integrity.

Kazakhstan began providing development co-operation to other countries in 2003. This was largely given in the form of ad hoc humanitarian assistance. In 2013, Kazakhstan laid out plans to provide development co-operation more systematically. This new direction of Kazakhstan's foreign policy is based on the Strategy 2050 and further elaborated in the Foreign Policy Concept related to it (Ministry of Foreign Affairs, 2014). The Foreign Policy Concept touches upon integrity and international co-operation in its section about security policy (section five). This section envisages countering corruption and similar issues "in co-operation with other countries on a bilateral and multilateral basis" (Foreign Policy Concept Section 5, step 7.).

In recent years, Kazakhstan has increased its engagement with OECD's Development Assistance Committee (OECD-DAC), which monitors development assistance flows and sets policy standards for development co-operation. Kazakhstan has reported ODA for the years 2013 and 2014. Kazakhstan's reported development assistance was approximately USD 8 million in 2013 and USD 33 million in 2014. In 2014, this sum represented 0.02% of Kazakhstan's GNI. For comparison, on average, non-DAC countries[5] contribute 0.2 % of their GNI. Kazakhstan provides almost two thirds of its ODA to the education sector (see Figure 4.3). At time of publication, 2015 data for Kazakhstan was not yet available.

Figure 4.3 Kazakhstan's ODA support to different sectors 2014 (disbursements, USD millions, 2013 prices)



Source: OECD DAC Statistics, https://stats.oecd.org/qwids/.

Kazakhstan's Law on Official Development Assistance (2014) lists good governance and "Improvement of business climate" as sectoral priorities for official development assistance. At the time of publication, Kazakhstan had yet to establish a dedicated development co-operation agency. According to representatives from the Ministry of Foreign Affairs, the regulation about a future Kazakh Agency for International

Development Assistance (provisionally known as "KazAid") has been submitted for the President's review. The results of this review were expected for April 2016; further information about the current status of this process was unavailable at the time of publication.

Kazakhstan provides a small share of its budget to other countries as bilateral development assistance. More than 80 percent of Kazakhstan's ODA contributes to the general budgets of multilateral organisations (mostly to the United Nations). Aside from contributions to multilateral organisations, contributions are mostly made in-kind and for humanitarian purposes. From an integrity perspective, these channels of delivery carry only modest risks. The risk is modest because contributions take a specific, tangible form and are not available in cash. Therefore, misappropriation is more difficult than in ODA-financed projects that involve large sums of money (such as infrastructure projects.) The remainder of the funds that is not spent as in-kind contributions, humanitarian assistance, or to multilateral organisations is spent as budget support to Bosnia and Herzegovina, Central African Republic (CAR), Saint Lucia, Saint Vincent and Grenada, Sri Lanka, Philippines – representing USD 550,000 in 2014. Budget support is considered one of the areas of development assistance that provide higher risks for corruption, given that they involve the least amount of donor-control. The risk is considerably higher in countries of weak governance, such as CAR which is one of the recipients of Kazakhstan's budget support. Additional information would be required to assess whether Kazakhstan takes adequate measures to mitigate this risk. Kazakhstan has not reported the provision of any financial or technical assistance in the area of integrity. These projects are usually comprised under the category "Government and Civil Society", which is one of Kazakhstan's smallest sectors of contribution (see figure 4.3 above.)

In creating its development agency, Kazakhstan has been consulting and exchanging with international donors and organisations. This represents a good basis for structuring a state-of-the-art development agency. For example, the development agencies of Japan and the US have provided advice to Kazakhstan with regards to the development of a development agency.

Recommendations for reform

Kazakhstan is still in the early stages of developing its development co-operation portfolio. At the same time, tackling corruption and raising integrity in co-operation with other countries is among the strategic priorities of the country. Many newcomers to the development co-operation realm have built on their own reform narratives. Similarly, Kazakhstan could share its experiences in building its governance systems and administration. Box 4.2 provides an example of Slovenia, a provider of development assistance that has relatively recently joined the DAC and created a development co-operation program. Once created, activities of the development co-operation agency should follow a code of conduct, and general anti-corruption laws should be applicable for development activities as well.

Box 4.2. **Slovenia: Recent accession to the Development Assistance Committee**

Slovenia joined the Development Assistance Committee (DAC) in December 2013. Prior to its accession, Slovenia had reported ODA figures since 2004. The country is one of the smaller providers of ODA. In 2014, Slovenia reported USD 61.5 million in ODA. This represents a share of 0.12 of Slovenia's GNI. Slovenia spends most of its ODA in its surrounding region.

Development co-operation in Slovenia is regulated by the International Development Co-operation of the Republic of Slovenia Act. The act also includes specifications on control and performance assessments. For example, ministries and other institutions providing funding for Slovenia's development projects are entitled to conduct control measures aiming to ensure the "legality and correctness" of the international development co-operation. The ministries, public institutions or other organisations that provide funding to the Slovenian development co-operation are required to provide information about the use of funds to the Ministry of Foreign Affairs. The development co-operation programme is coordinated by the Ministry of Foreign Affairs. An Inter-ministerial working body enables co-operation with other ministries in Slovenia.

Slovenia provides information about its development co-operation activities on its website, and is peer reviewed by the Development Assistance Committee.

Sources: OECD-DAC (2016); OECD. (2013); Republic of Slovenia, Ministry of Foreign Affairs, International Development Cooperation and Humanitarian Assistance, The International Development Co-operation of the Republic of Slovenia Act (No. 630-02/05-21/1; 23 June 2006).

Transparency of development assistance (receipts and contributions)

Transparency of public spending is crucial to ensure integrity. This is especially true for development assistance: transparency about where development assistance is spent ensures scrutiny by stakeholders. Often, beneficiaries of development assistance have a particularly high stake in receiving the money that was intended for them, and can therefore be a particularly powerful source of safeguards against corruption.

Limited information is available on the transparency of development funds received or spent by Kazakhstan. From an integrity perspective, this is a major area of concern since development funds can easily fall prey to corrupt practices. According to information provided by the government, foreign funds received are solicited by the Ministry of National Economy. The decision on how to use these funds is taken by the parliament, as part of the general budget decisions. Decisions about development assistance spent by Kazakhstan appear to follow the same proceeding. One way for Kazakhstan to solicit funding is that the Ministry of National Economy applies for funds with the individual donor organisations. These, in turn, take individual decisions on whether to grant the funding or not based on internal guidelines. Similarly, information on these funds can be accessed in accordance with Kazakhstan's existing general laws on access to information. Just like other government funds, information about ODA received and spent by Kazakhstan should be accessible in accordance with the access to information law.

International providers of development assistance active in Kazakhstan apply their standard transparency and integrity guidelines. Aside from manuals or documents, measures include open internal reporting structures, support by specialised units or officers, risk-conscious planning prior to implementation and flexibility in implementing contracts to respond to events.

Kazakhstan's own development finance seems to rely mostly on domestic sources. For example, Kazakhstan's Development Bank finances large domestic infrastructure projects. The bank works like any commercial bank. Therefore, selection criteria on which projects are conducted or receive loans are mostly subject to bank secrecy, as noted by representatives. Information about projects is published – to the extent possible – on the bank's website and in the bank's annual report.

With regards to the development funds provided by Kazakhstan, a good first step towards increased transparency has been made: Kazakhstan started reporting its development finance flows to the OECD in October 2015, reporting for the years 2013 and 2014 (KazInform, 2015). In addition, Kazakhstan observed meetings of the DAC Network on Development Evaluation and the DAC Working Party on Development Finance Statistics, indicating its willingness to develop its capacity in these two related areas.

However, there was no information provided to suggest that there is a real-time aid database or a similar information system to date about ODA received or spent by Kazakhstan. In addition, aside from general guidance by the DAC, there do not seem to be specific guidelines that would regulate transparency and integrity in development co-operation undertaken by Kazakhstan.

Recommendations for reform

Kazakhstan is still in the process of establishing the institutions for managing its development co-operation, and it is only to be expected that not all institutional features are in place yet. Kazakhstan could increase transparency of the ODA it receives and the ODA it spends. Several international initiatives provide guidelines and standards related to transparency of development assistance that build on the DAC reporting guidelines, or complement it. Examples include the standard of the International Aid Transparency Initiative (IATI Standard)[6] and transparency-related commitments made as part of the Busan Partnership for Effective Development Co-operation (OECD, 2011).[7] As concrete next steps, Kazakhstan could consider focusing on regulations, structures and guidelines that promote integrity and transparency in Kazakhstan's assistance as specified in international standards. For example, Kazakhstan could publish details on projects supported with ODA on its website in real-time.

Action Plan and potential OECD support

Recommendations

Kazakhstan could consider implementing the following reforms with regard to development co-operation and integrity:

- Solicit external support and development co-operation to support integrity reforms in Kazakhstan. Many countries can share expertise with regards to anti-corruption.
- Support the reduction of corruption and bribery worldwide, in line with the Sustainable Development Goals.
- Build a development co-operation agency that operates with integrity. Creating transparent, fair and non-corrupt structures from the start is easier than modifying corrupt structures later. Kazakhstan could consider developing structures and policies to ensure the integrity of its development co-operation systems (by

developing a code of conduct for the area of development co-operation for instance).

- Increase the transparency of ODA further – by and to Kazakhstan. Transparency of public funds helps to increase scrutiny and ultimately integrity. Development-related contributions should not be an exception. Kazakhstan could publish details on projects supported with ODA on its website in real-time.

Action Plan

Reform Areas	Potential OECD Support
Increase transparency of ODA – to and from Kazakhstan	Commenting on proposed rules for a future development agency
Use ODA more frequently to push anti-corruption reforms	Providing guidance and information on how to increase transparency of ODA
Develop a code of conduct for the area of development co-operation	Conducting workshops/knowledge-sharing activities between actors in the region and beyond

Notes

1. For more information on the definition of ODA see: www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm#Definition

2. For more information, see www.giz.de/en/worldwide/16714.html.

3. 2013 prices, net.

4. For more information, see: www.usaid.gov/kazakhstan/democracy-human-rights-and-governance

5. The following countries are DAC members: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, European Union, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Netherland, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States.

6. For additional information, please refer to IATI's website at www.aidtransparency.net/.

7. The commitments to implement more transparent reporting are currently being monitored. For additional information, refer to www.oecd.org/dac/aid-architecture/acommonstandard.htm.

References

Department for International Development (DFID) (2015), Why corruption matters: understanding causes, effects and how to address them, London, www.gov.uk/government/publications/why-corruption-matters-understanding-causes-effects-and-how-to-address-them.

KazInform (2015), Kazakhstan got official status in OECD-DAC, www.inform.kz/eng/article/2829990 (accessed 20 March 2016).

Ministry of Foreign Affairs, Republic of Kazakhstan, (2014), Foreign Policy Concept for 2014-2020, Republic of Kazakhstan, http://mfa.gov.kz/index.php/en/component/content/article/16-materials-english/1248-foreign-policy-concept-for-2014-2020-republic-of-kazakhstan, (accessed 30 March 2016).

OECD-DAC (2016), Aid at a Glance, www.oecd.org/dac/stats/aid-at-a-glance.htm (accessed 29 March 2016).

OECD (2015), Building Donors' Integrity Systems: Background Study on Development Practice, Paris, www.oecd.org/dac/governance-peace/publications/documentuploads/Building%20Donors%20Integrity%20Systems.pdf.

OECD (2014), Illicit Financial Flows from Developing Countries: Measuring OECD Responses, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264203501-en

OECD (2013), Slovenia - the Development Assistance Committee's 29th Member, www.oecd.org/dac/peer-reviews/peer-review-slovenia.htm (accessed 30 March 2016).

OECD (2012), International Drivers of Corruption: A Tool for Analysis, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264167513-en.

OECD (2011), Declaration of the Busan Partnership for Effective Development Co-operation, Fourth High-Level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November-1 December 2011, www.oecd.org/dac/effectiveness/49650173.pdf.

Republic of Slovenia, Ministry of Foreign Affairs, International Development Cooperation and Humanitarian Assistance, www.mzz.gov.si/en/foreign_policy_and_international_law/international_development_cooperation_and_humanitarian_assistance/ (accessed 30 March 2016).

The International Development Co-operation of the Republic of Slovenia Act (No. 630-02/05-21/1; 23 June 2006), Unofficial Translation, www.mzz.gov.si/fileadmin/pageuploads/Zunanja_politika/ZDH/Zakoni_in_dokumenti/Zakon_MRS_EN.pdf (accessed 30 May 2016).

United Nations Economic and Social Council (ECOSOC) (2016), What is Development Cooperation?, www.un.org/en/ecosoc/newfunct/pdf15/2016_dcf_policy_brief_no.1.pdf, (accessed 30 March 2016).

Chapter 5.

Strengthening public sector integrity in Kazakhstan

This chapter assesses the core elements of the public sector integrity system in the Republic of Kazakhstan, where a series of new laws and codes to combat corruption were passed in response to the objectives set out in the Anti-Corruption Strategy and the 100 Concrete Steps Plan. In light of these reforms, this chapter identifies challenges and opportunities to enhance public sector integrity through an analysis of the legislative and policy framework for public sector integrity, institutional arrangements, policies for Ethics and Codes of Conduct, and the management of conflict of interest, internal control and audit, as well as the disciplinary regime for integrity violations.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Role of strong public sector integrity systems in promoting integrity and combating corruption

Integrity is a core pillar of good public governance. It ensures government policies are responsive, fair and contribute to the public's best interests. It legitimises institutions, increasing compliance and building trust in government. Safeguarding integrity remains an ongoing challenge, however, as integrity risks multiply and change. Indeed, the growing interconnectedness between government, the private sector and civil society, large amounts of public spending, discretion of public officials over decisions all create opportunities for misconduct, fraud or corruption.

Efforts to strengthen public sector integrity systems, therefore, need to be comprehensive, coherent, and ever-adapting to new and changing risks. Specifically, the newly updated OECD Recommendation on Public Integrity underscores the need for a whole-of-government approach that includes national and subnational levels of government. This includes effective legislative and institutional frameworks, adequate resources and support that will enable public sector organisations to take on the responsibility for managing the integrity system.

Second, building a culture of integrity is fundamental. A culture of integrity in government is based, in part, on values. Over-elaborate formal regulations and procedures however may be counterproductive, with the potential to raise unnecessary administrative costs, institutionalise distrust, and reduce ethical reasoning to a culture of just following rules and procedures. Thus, promoting a culture of integrity requires efforts to define expected standards of conduct, provide guidance and incentives, as well as monitor them in daily practice to ensure compliance.

Third, an effective public sector integrity system is not only values-based, but also compliance-based. To that end, the recommendations implore member countries to ensure that the integrity system is underpinned by sound accountability and transparency mechanisms. Strong controls, such as audits, risk mapping and disciplinary measures are necessary elements to ensure compliance with the integrity system. Such a control environment should demonstrate commitment to integrity and public service values, and provide a reasonable level of assurance of an organisation's efficiency, performance and compliance with laws, regulations and standards. In particular, the control system should help to improve the performance – coherence, effectiveness and efficiency – of the integrity system.

This chapter assesses these three core elements of the public sector integrity system in Kazakhstan. Issues such as the legislative framework and institutional independence, ethics, conflict of interest, asset disclosure, internal control and disciplinary regime are discussed in relation to good international practices and OECD instruments.

Box 5.1. OECD Recommendation of the Council on Public Integrity

I. Build a Coherent and Comprehensive Public Integrity System

1. Demonstrate **commitment** at the highest political and management levels within the public sector to enhance public integrity and reduce corruption
2. Clarify institutional **responsibilities** across the public sector to strengthen the effectiveness of the public integrity system
3. Develop a **strategic** approach for the public sector that is based on evidence and aimed at mitigating public integrity risks
4. Set high **standards** of conduct for public officials

II. Cultivate a Culture of Public Integrity

1. Promote a **whole-of-society** culture of public integrity, partnering with the private sector, civil society, and individuals
2. Invest in integrity **leadership** to demonstrate a public sector organisation's commitment to integrity
3. Promote a merit-based, **professional**, public sector dedicated to public-service values and good governance
4. Provide sufficient information, training**, guidance** and timely advice for public officials to apply public integrity standards in the workplace
5. Support an **open** organisational culture within the public sector responsive to integrity concerns

III. Enable Effective Accountability

1. Apply a **control and risk** management framework to safeguard integrity in public sector organisations
2. Ensure that **enforcement** mechanisms provide appropriate responses to all suspected violations of public integrity standards by public officials and all others involved in the violations
3. Reinforce the role of external **oversight and control** within the public integrity system
4. Encourage **transparency and stakeholders' engagement** at all stages of the political process and policy cycle to promote accountability and the public interest

Source: OECD Recommendation of the Council on Public Integrity.

Current status and critical analysis

Institutional arrangements for integrity

An integrity system must be underpinned by clear laws and policies that delineate the entities and individuals with specific responsibilities for integrity, as well as underscores the responsibility that all public officials have to act with integrity in their everyday functions. These laws and policies should essentially create a comprehensive and coherent framework that considers both the horizontal and vertical integrity measures within a country, designating responsibility through legislation and policies to actors at both the national government as well at the subnational levels of government.

In addition to the legal framework, countries have institutional arrangements to ensure that integrity implemented across the whole-of-government. One type of institutional arrangement is a specialised anti-corruption institution. An adequate level of structural and operational autonomy for the anti-corruption institution should be secured through institutional and legal mechanisms aimed at preventing undue political interference. Such independence could, in part, be achieved through the de-politicisation of the anti-corruption institution. This could involve a transparent selection and dismissal process of the leadership of the anti-corruption agency, for example through a special commission or by representatives of different branches of government. Similarly, the appointment process should be regulated by a law, rather than through by-laws or governmental or presidential decrees. A sound legal basis governing the institution, which identifies financial, personnel, procedural and operational issues related to the agency can also ensure the independence of the anti-corruption institution (OECD 2013b).

In Kazakhstan, a series of new laws and codes were passed in response to the objectives set out in the Anti-Corruption Strategy and the 100 Concrete Steps Plan. These laws include the Law on Combating Corruption, the Law on Civil Service, the Code of Ethics, the Law on Access to Information and the Law on Public Councils.[1]

The Law on Combating Corruption was passed in November 2015. This law contains numerous integrity elements such as: anti-corruption monitoring (Article 7), analysis of corruption risks (Article 8), the formation of an anti-corruption culture (Article 9), financial control measures (i.e. asset and income declarations for public officials) (Article 11), conflict of interest management (Article 15) and the institutional arrangements for preventing corruption (Articles 18-24). The anti-corruption law covers individuals and legal entities registered in Kazakhstan.

Likewise, the Law on Civil Service was passed in January 2016 and covers a number of integrity elements, including asset declarations (Article 13) conflict of interest management (Article 51) and the expected anti-corruption behaviour of public officials (Article 52). The civil service law also contains the disciplinary offences and penalties (Article 44), the terms of application (Article 45), and outlines the appeal process for public officials (Article 46). In addition, the Code of Ethics was also passed in December 2015, replacing the previous Code of Honour.

The scope of the law applies to:

- All public officials except in cases when the Constitution, constitutional laws and other legislatives acts of the Republic of Kazakhstan define other legal status for them

- Administrative public officials appointed by local representative bodies or elected in accordance with the laws of the Republic of Kazakhstan
- Public officials performing law enforcement services

The law does not apply to the following:

- Persons performing technical services and those ensuring the functioning of state bodies
- Employees and technical employees of the National Bank of the Republic of Kazakhstan and its agencies
- Persons carrying out activities in state bodies under an employment contract in accordance with labour legislation, including expatriate employees of state bodies.

The Law on Access to Information was passed in November 2015 and regulates individual's rights to freely receive and disseminate government information by any means not prohibited by law. Private companies who receive public funds or perform public functions also fall under the law.

The legislative set-up is such that laws passed at the national level are also applicable at the regional and local levels. Territorially, Kazakhstan is divided into 14 regions (*oblasts*) and two cities with special status (the former capital, Almaty, and the current capital, Astana), led by an akim. These are direct representatives of the central government at the regional and local levels. In addition, ministries and central agencies have regional offices (known as territorial divisions). Thus, all of the newly passed laws are applicable to both the national and subnational levels of government.

In regards to the institution tasked with the prevention of corruption, Kazakhstan's anti-corruption agency recently underwent institutional reorganisation, in an effort to ensure greater linkages between public management and integrity. Previously, the authorised body on anti-corruption was the agency of the Republic of Kazakhstan for Fighting Economic and Corruption Crimes. In 2014, this agency and the Agency for Civil Service were abolished and transformed into the Agency for Civil Service Affairs and Anti-Corruption of the Republic of Kazakhstan. On 11 December 2015 the Ministry of Civil Service Affairs of the Republic of Kazakhstan was established as the authorised body in the sphere of public service, as well as corruption prevention by the Decree of the President of the Republic of Kazakhstan № 128. In addition, by the above-mentioned Decree, the National Bureau against Corruption of the Ministry of Civil Service Affairs was established within the Ministry, and given the main functions of prevention, detection, suppression and investigation of corruption offenses. In September 2016 however, another reorganisation took place: the Ministry was transformed back into the Agency for Civil Service Issues and Counteraction of Corruption (herein "the Agency") with the National Bureau of Corruption Counteraction (herein "the National Bureau") attached to it. The Agency was also directly subordinated to the President of Kazakhstan, instead of the Government. The key functions of the Agency and the National Bureau can be found in Box 5.2.

Box 5.2. **The start of a shift to more prevention**

The Agency for Civil Service Issues and Counteraction of Corruption performs the following functions:

- developing proposals to improve the legal framework in the field of combating corruption, as well as the adoption of the legislation of the Republic of Kazakhstan regulatory legal acts within its competence
- identifying the causes and conditions that facilitate the commission of corruption offenses in the activities of state bodies, organisations and entities of quasi-public sector and submitting to the Government of the Republic of Kazakhstan recommendations to minimise and eliminate the causes and conditions of corruption
- providing annually a submission to the President of the Republic of Kazakhstan's National Report on combating corruption in accordance with the legislation of the Republic of Kazakhstan
- monitoring the implementation by the state bodies, organisations, entities of quasi-public sector of the recommendations imposed on the results of an external analysis of corruption risks on elimination of the causes and conditions that facilitate the commission of corruption offences
- monitoring the implementation of property confiscated in criminal cases on corruption crimes and purchased with funds obtained by criminal means, as a rule, followed by the publication of information about his treatment to the state
- studying and disseminating the positive experience of combating corruption
- suggesting improvements to the educational programs in the sphere of formation of an anti-corruption culture
- promoting and providing guidance to stakeholders in implementing anti-corruption education programs for anti-corruption education and training, information and awareness-raising activities, with the aim of forming an anti-corruption culture
- interacting with other government agencies, individuals and legal entities on the basic directions of activity of the authorised body on anti-corruption
- participating in the drafting of international treaties on combating corruption, co-operation with relevant authorities of foreign countries on combating corruption, participation within its powers in international organisations
- other functions assigned by the laws of the Republic of Kazakhstan, as well as the President of the Republic of Kazakhstan.

In turn, the main functions of the National Bureau are:

- conducting pre-trial investigation, including the preliminary investigation, inquest and protocol form
- ensuring the safety of persons involved in criminal proceedings
- organising and implementing operational and investigative activities
- search operations

Box 5.2. **The start of a shift to more prevention** *(continued)*

- applying the use of special and other equipment during the covert investigation, the general and special
- identifying the location and establishment of detention of persons who are wanted, hiding from the investigation, inquiry or trial
- analysing the practice of operative-investigative, administrative, investigative and inquiry on corruption offenses and crimes
- monitoring the implementation of property sales, confiscated in criminal cases on corruption crimes and purchased with funds obtained by criminal means, followed by the publication of information about his treatment to the state
- analysing the crime situation in the socio-economic sphere in order to identify and prevent corruption offences
- ensuring the execution of applications and requests from other law enforcement and special agencies, including the competent authorities of foreign countries
- interacting within its competence with other state bodies, organisations and relevant bodies of foreign countries on prevention, detection, suppression, detection and investigation of corruption offences.

Source: Information provided by the Government of the Republic of Kazakhstan.

While the law stipulates the functions of the Bureau and provides a strong legal basis for institutional coordination, the law does not regulate the appointment and removal process of the director, its internal structure, jurisdiction, or human and financial resourcing methods. Furthermore, as identified in Chapter 15, the subordination of the National Bureau to the Agency makes it less autonomous and undermines its independence. The National Bureau is a law enforcement agency and as such is also regulated by the Law on Law Enforcement Service which provides as one of its principles independence of such agencies from political parties and other public associations. However, this is not sufficient to safeguard the National Bureau's autonomy, including from the public authorities.

In terms of the National Bureau's leadership, a December 2015 presidential decree2 stipulates that the Chairman of the National Bureau of Corruption Counteraction will be appointed and dismissed by the President of the Republic of Kazakhstan. This appointment process significantly increases the risk of undue political influence and interference in the matters of the National Bureau.

Recommendations for reform

To ensure the independence of the National Bureau of Corruption Counteraction, Kazakhstan could include in the Law on Combating Corruption the provisions to ensure that the National Bureau has the independence to carry out its functions effectively and is organisationally autonomous from any political body. This could include updating the Law on Combating Corruption to clearly identify the financial, personnel, procedural and operational issues of the National Bureau.

Additionally, Kazakhstan could consider reforming the appointment process of the Chair of the National Bureau. Instead of appointment by a single figure (e.g. the President), the Chair could be appointed after an open competition that has been publicly advertised.

While the Law on Combating Corruption provides for a strong legal basis for institutional coordination, further analysis is required to assess the implementation. This would include institutional mapping to ascertain how the National Bureau coordinates with other government institutions, the impact of this coordination on fostering a whole-of-government and whole-of-society approach to integrity, and the level of resources and capacity available to effectively promote integrity and prevent corruption in Kazakhstan.

Comprehensive prevention for integrity

Code of Ethics

Standards of conduct are recognised as essential for guiding the behaviour of public officials in line with the public purpose of the organisation for which they work. Citizens expect public officials to serve the public interest with impartiality, legality, integrity and transparency on a daily basis. Core values guide the judgement of public officials about on how to perform their tasks in daily operations. The OECD Recommendation of the Council on Public Integrity acknowledges the critical role of and provides guidance to decision makers and public officials on high standards of conduct for cleaner public administration. In particular, the Recommendation calls on governments to set integrity standards in the legal system and organisational policies that focus not only on minimum standards, but that also encourage high standards of conduct, good governance and adherence to public service values.

Thus, to put the values into effect, a vast majority of OECD countries have established written, formal codes of behavioural standards. These standards can set out in broad terms those values and principles that define the professional role of the civil service – integrity, transparency etc., or they can focus on the application of such principles in practice – for instance, in conflict-of-interest situations, such as the use of official information and public resources, receiving gifts or benefits, working outside the public service and post public employment. Ideally, codes combine aspirational values and more detailed standards on how to put them into practice.

In addition to the general standards applicable to all public officials, most OECD countries have developed supplementary codes for specific positions, in particular public office holders and senior public officials, as well as professions working in high risk areas, such as law enforcement, judiciary and procurement officials; the financially sensitive sectors (e.g. tax and custom administrations) and the professions with a tradition of self-regulation (doctors, medical personnel, lawyers).

On 29 December 2015, President Nazarbayev signed the Decree ‘On Measures for Further Improvement of Ethical Standards and Rules of Conduct for Public Servants of the Republic of Kazakhstan’. This Decree validates the Ethics Code for Public Servants of the Republic of Kazakhstan (AdilSoz 2016). Before it was adopted into law, members of the public service as well as members of the general public had the opportunity to provide comments on the draft Code of Ethics. Over 20 government departments provided comments, and the draft Code was placed on the Parliamentary website for citizen feedback. The results of the consultation were taken into consideration in the final

drafting of the Code, although no information was provided on the extent of feedback and the system for determining which feedback warranted consideration.

The aim of the Code is to prevent unethical behaviour in the public service, enhance public confidence in public authorities, and create a culture of integrity in the public service. While a Code of Honour for the public service existed prior to the introduction of the Code of Ethics, the new ethical code expands the standards of behaviour expected of public officials in their main activities, including service delivery and interactions with each other and the public. The Code also sets out the expected standards of behaviour of public officials in the event of a conflict of interest. The Code stipulates that a public official, within three days after entry into the civil service, must indicate in writing their familiarity with the Code of Ethics. The Code applies to all government ministries and all public officials within the public service, except for specific government agencies such as the military and prosecutor's office, which have their own codes. Previously, each Ministry adapted the Code of Honour to fit the specific responsibilities of the public officials within the Ministry. The same process is envisioned for the revised Code of Ethics. According to public officials, the adaptation of the Code of Ethics to each government ministry is a current work-in-progress.

In order to monitor the new Code of Ethics, Kazakhstan has an Ethics Commissioner position. The activities of the Ethics Commissioner are regulated by the Decree of the President of 29 December 2015 №153 "On measures for further improvement of ethical standards and rules of conduct for public officials of the Republic of Kazakhstan."The functions of the Ethics Commissioner are outlined in the Code of Ethics, which states that the Ethics Commissioner position is governed by the Law on Civil Service and the Law on Combating Corruption. According to the Code of Ethics, Ethics Commissioners are appointed based on a competitive process in line with the civil service recruitment procedure laid out in the Law on Civil Service. All the state bodies at the national level, except the special agencies and law enforcement agencies, as well as the oblasts, Almaty and Astana are required to have a Commissioner for Ethics. The Agency is responsible for the coordination of the work of Ethics Commissioners.

The Ethics Commissioner is also required to provide advice and facilitate compliance by public officials with the legislation on the civil service, corruption and the Code of Ethics. Furthermore, the Ethics Commissioner is tasked with facilitating the development of a culture of integrity within their respective public institution. To monitor compliance with professional ethics, as well as the state of the moral and psychological climate in their respective teams, Ethics Commissioners are required to conduct an anonymous survey every six months, and report the results to the Agency. Finally, they are responsible for analysing the causes and conditions that can perpetuate integrity violations, and making recommendations to their respective head of the institution on how to address these causes. As the first public institution to establish the position within its central institution and territorial branches, the Agency has taken the lead on the Ethics Commissioner.

Training on integrity to public officials is an important part of building up a strong culture of integrity within public institutions and ensuring that public officials have the capacity to effectively address ethical issues and prevent corruption. While all public officials should benefit from integrity training, it is important to customise capacity building to certain high-risk public officials. Customised training for high risk positions enables them to understand how integrity values apply to them in their particular day-to-day functions.

Prior to the reorganisation of the Agency and the introduction of a revised Code of Ethics, training and education for government employees on compliance with the Code of Honour and anti-corruption efforts was offered on a regular basis (OECD 2015b). Officials indicated that permanent, ongoing training is in place. The training was developed in co-operation with the Ministry of Education and Science, and the number of hours of training required depends on the category of the public official (Corps "A" or Corps "B") and the type of training (first time training or retraining). For more information on hours of training per position, see Table 5.1.

Table 5.1. Amount of hours for public official anti-corruption training

Corps "A"		**Corps "B"**	
Position	Hours of Training	**Position**	Hours of Training
First-time public officials	42	**First time training**	26
Retraining	16		
Retraining (senior positions)	22		

Source: Government of the Republic of Kazakhstan. (2014)

According to officials, the training aims to equip public officials with the skills necessary to prevent and eliminate conditions conducive to corruption offences and to provide public services without resorting to corrupt practices. The training also seeks to encourage public officials to have zero tolerance for corrupt practices, as well as reorient public officials towards a transparency-mentality, in the sense that it aims to assist in the realisation of the rights of citizens and organisations to access information about corruption, their coverage on a regular basis in the media.

As noted on the Agency's website, during the first 11 months of 2015, 16 868 public officials (17% of the workforce) participated in refresher and retraining courses, put on by the Public Administration Academy under the President of the Republic of Kazakhstan. The actual impact of the training on public officials' integrity skills is unclear. It is also not clear whether tailored training exists for high risk positions. Likewise, is not apparent whether the previous training curriculum will be updated to reflect the changes to the code of ethics, nor whether public officials would participate in additional training related to the changes.

Recommendations for reform

In order to implement the Code of Ethics, each government ministry is encouraged to adapt the Code of Ethics to fit the context of its specific work. Kazakhstan could consider adapting the Code of Ethics to high-risk positions (e.g. procurement and tax and customs officials).

It is not clear how the position of the Ethics Commissioner will be implemented in practice. In order to ensure that the Ethics Commissioner can fulfil their role and encourage public officials to bring forward ethical questions and/or concerns, Kazakhstan is encouraged to make the position of the Ethics Commissioner non-political, independent and staffed by a qualified public official. Furthermore, Kazakhstan could continue to

ensure that each public institution at the national and local level has an Ethics Commissioner in place.

Separating the role of advising on integrity issues from investigating integrity breaches is a good practice, as people are more likely to come forward for advice when they do not fear potential investigations or sanctions. Kazakhstan is encouraged to continue ensuring that the Ethics Commissioner does not have a sanctioning role.

Kazakhstan could consider updating the integrity training curriculum to reflect the new Code of Ethics and continue to provide training for all public officials, especially those in high corruption-risk positions. In order to ensure that the Code of Ethics is effective, Kazakhstan could consider developing indicators around its implementation, such as number of trainings conducted on the Code of Ethics provisions and share of government employees reporting awareness of the Code of Ethics in relation to the number of reported cases.

2.2.2 Preventing and managing conflict of interest

Ensuring that the integrity of government decision making is not compromised by conflicts of interest is key to responsive and effective public policies and maintaining trust in government. A conflict of interest arises when a public official's private interests could improperly influence the performance of official duties (OECD 2005). Specifically, the OECD differentiates between three types of conflict of interest situations: actual, apparent, and potential. An actual conflict of interest occurs when a public official has a private-capacity interest which could improperly influence the performance of their official duties or responsibilities. An apparent conflict of interest exists when it appears that an official's private interests could improperly influence the performance of their duties but this is not in fact the case. These should also be avoided or managed to minimise the risk to the public institution's reputation (and officials' reputation) for integrity. Finally, a potential conflict of interest exists when a public official holds a private interest which would constitute a conflict of interest if the relevant circumstances were to change in the future (OECD 2004).

Box 5.3. **Canada's Policy on Conflict of Interest and Post-Employment**

The Policy on Conflict of Interest and Post-Employment in the Government of Canada applies to the core public administration. Section 3.1 states that "Public servants contribute in a fundamental way to good government, democracy and Canadian society through the loyal, impartial, and non-partisan support they provide to the elected government and through the service they provide to Canadians. As dedicated professionals, they serve the public interest and uphold the public trust."

The Policy provides direction on measures to assist organisations and public servants in dealing with real, potential and apparent conflict of interest situations that could arise during and after employment in the public service. The Policy objectives are to:

- ensure that, in situations of real, apparent or potential conflict of interest and situations where there is a conflict of duties, decisions are made in a manner which upholds the public interest;
- facilitate ethical decision-making within organisations and by public servants to resolve conflicts between private and public interests; and
- establish measures to help public servants prevent, manage and resolve conflict of interest and post-employment situations that could impair either the integrity of the public service or the public's perception of its integrity.

With such a policy in place, the Government of Canada intends to ensure that organisations have the appropriate mechanisms to assist public servants in managing conflict of interest situations and that public servants are given the tools and guidance needed to serve the public interest.

Source: Treasury Board of Canada Secretariat (2012).

The public institution can be proactive in helping its employees identify and manage emergent conflict situations by enabling participants in official decision-making capacities to foresee potential conflicts, where feasible, for example, by providing meeting agendas in advance. Likewise, providing tailored training on the conflict of interest provisions and options for management can help employees identify and deal with potential conflict of interest situations at an early stage and can encourage them to come forward with conflicts of interest.

Once a conflict of interest has been identified, it is important for the public official to accept responsibility for managing it. An organisation's policy statement should make it clear that the registration of declaration of a private interest itself does not resolve the conflict. Instead, additional measures to resolve or manage the conflict positively must be considered. Box 5.4 identifies the key measures that can be taken to manage a conflict of interest.

Box 5.4. **Resolution and management options for conflict of interest situations**

Options for positive resolution or management of a conflict of interest can include one or more of the following strategies, as appropriate:

Removal (temporary or permanent): public officials should be required to remove the conflicting private interest if they wish to retain their public position. Options could include temporary removal for the duration of the public official's tenure, for example through the assignment of the conflicting interest to a genuinely "blind trust" arrangement. More permanent removal options could include the divestment or liquidation of the interest by the public official.

Recusal or restriction: where a particular conflict is not likely to recur frequently, it may be appropriate for the public official concerned to maintain their current position but not participate in decision-making on the affected matters, for example by having an affected decision made by an independent third party, or by abstaining from voting on decisions. Particular care must be taken to protect the integrity of the decision-making process where recusal is adopted. Likewise, an option to restrict access by the affected public official to particular information, by prohibiting them from receiving relevant documents and other information relating to their private interest, could be adopted.

Transfer or re-arrangement: the option of transferring a public official to a different assignment or re-assigning certain functions of the public official concerned should also be available, where a particular conflict is considered likely to continue, thereby making ad hoc recusal inappropriate.

Resignation: where a serious conflict of interest cannot be resolved in any other way, the public official should be required to resign from either their conflicting private-capacity function or their official position. In the event of resignation of the public official from their public office, the conflict of interest policy (together with the relevant employment law and/or employment contract provisions) should provide the possibility that the official can be terminated in accordance with a defined procedure in such circumstances.

Source: OECD (2003).

Additional areas of concern for public sector integrity are conflict of interest situations arising from employment pre and post their tenure as a public official. These situations can be referred to as the so-called "revolving door" phenomenon, which accounts for the mobility between the private and public sector. On the one hand, it is in the interest of the public and government to attract an experienced and skilled workforce to serve the public interest (OECD, 2015a). On the other hand, the revolving door can undermine the integrity of the decision-making process, with public officials at risk of making decisions that are in the interests of their pre-or-future private employers, instead of the public's (OECD, 2015a). The challenge then for governments is to strike an appropriate balance between fostering public integrity through adequate post-public employment freedom to attract experienced and skilful candidates for public office. In this regard, it is important for governments to design, implement and enforce adequate policies that are tailored to properly address the particular problems that their country will face (OECD, 2015a; OECD, 2010). In order to protect conflicts of interest arising from pre or post-public employment, many OECD countries have implemented provisions for pre-and-post public employment in primary legislation, such as public administration laws, anti-corruption laws or criminal codes; secondary legislation – in the form of directives, rules, regulations and decrees; codes of conduct or ethics; or other non-legal instruments, such as guidelines advice or memoranda. The OECD has developed a set of post-public employment principles to help guide countries in developing an effective post-public employment policy (see Box 5.5).

Box 5.5. OECD Post-Public Employment Principles

Problems arising primarily while officials are still working in government

1. Public officials should not enhance their future employment prospects in the private and non-profit sectors by giving preferential treatment to potential employers.
2. Public officials should, in a timely manner, disclose their seeking or negotiating of employment and offers of employment that could constitute a conflict of interest.
3. Public officials should, in a timely manner, disclose their intention to seek and negotiate employment and the acceptance of an offer of employment in the private and non-profit sectors that could constitute a conflict of interest.
4. Public officials, who have decided to take up employment in the private and non-profit sectors, should, where feasible, be excused from current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.
5. Before leaving the public sector, public officials who are in a position to become involved in a conflict of interest should have an exit interview with the appropriate authority to examine possible conflict-of-interest situations and, if necessary, determine appropriate measures for remedy.

Problems arising primarily after public officials have left government

1. Public officials should not use confidential or other "insider" information after they leave the public sector.
2. Public officials who leave the public sector should be restricted in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter limit, time limit or "cooling-off" period may be imposed.
3. The post-public employment system should take into consideration appropriate measures to prevent and manage conflict of interest when public officials accept appointments to entities with which the officials had significant official dealings before they left the public sector. An appropriate subject matter limit, time limit or cooling-off period may be required.
4. Public officials should be prohibited from "switching sides" and representing their new employer in an ongoing procedure on a contentious issue for which they had responsibility before they left the public sector.

Box 5.5. **OECD Post-Public Employment Principles** *(continued)*

Duties of current officials in dealing with former public officials

1. Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.

2. Current public officials who engage former public officials on a contractual basis to do essentially the same job as the former officials performed when they worked in a public organisation should ensure that the hiring process has been appropriately competitive and transparent.

3. The post-public employment system should give consideration on how to handle redundancy payments received by former public officials when they are re-employed.

Responsibilities of organisations that employ former public officials

1. Private firms and non-profit organisations should be restricted in using or encouraging officials who are seeking to leave or who have left government to engage in activities that are prohibited by law or regulation.

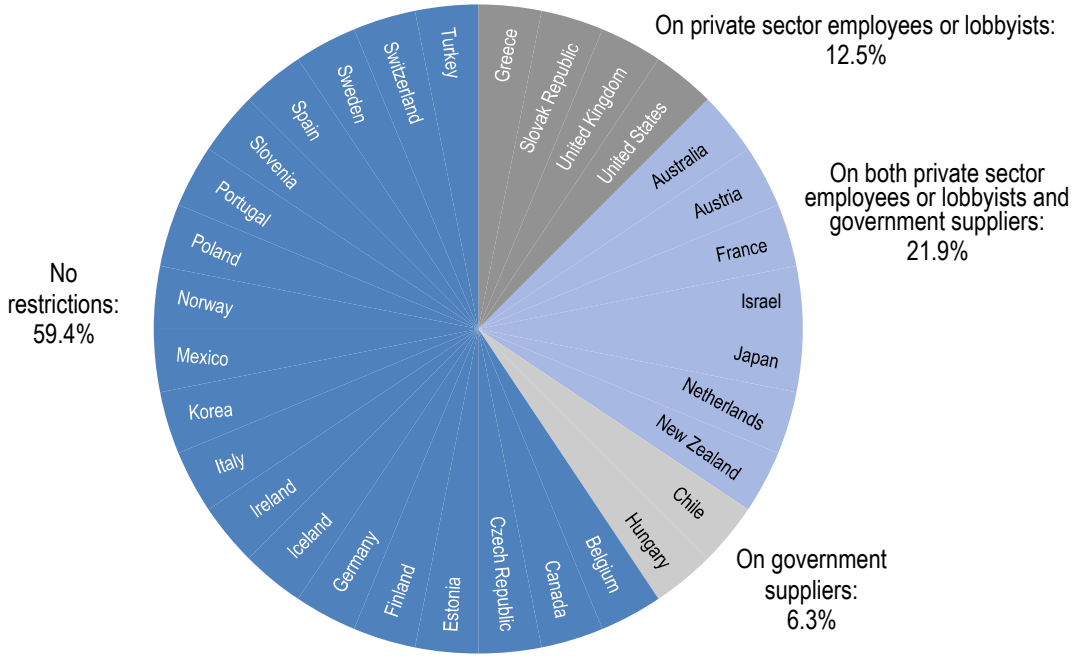
Source: OECD (2010).

One of the core tools to manage conflict of interests arising from post-public employment is the "cooling-off" period, or time limits. "Cooling-off" periods restrict public officials leaving the public sector from lobbying or engaging in official dealings or interacting with their former subordinates or colleagues in the public sector. Although the overall aim of the cooling-off period is to maintain confidence in government and public decision making, it can also provide a learning period for both former officials and those in the government to become used to their new relationship vis-à-vis one another, and ensure that decisions are not influenced by previous relationships. In terms of the cooling-off period, length is less important than whether the limits are effective in preventing and managing post-public employment conflicts of interest and whether the limits are fair, proportionate and reasonable in light of the seriousness of the potential offence and the previous role of the public official (e.g. in high risk areas such as procurement or licensing) or the level of the public official's exposure to decision-making. Time limits should be tailored to the level of public officials and specific groups or a particular risk area. For example, in Canada, a one-year time limit is imposed on public officials in executive positions, whereas for ministers, a two-year period is applied (OECD, 2010). During "cooling-off" periods, public officials could receive compensation. For instance, in Spain, public officials receive 80% of their basic salary as compensation (OECD, 2015a).

In addition to post-public employment regulations, restrictions can be placed on private sector employees; lobbyists; suppliers to the government; or those who negotiated public sector contracts on behalf of a company, to fill a post in the public sector. Most restrictions take place during the recruitment process where the applicants' previous employment is assessed for potential conflicts of interest. Once recruited, applicants could also be expected to manage their conflicts of interest through recusal from involvement in an affected decision-making process or restriction from certain

information (OECD, 2015a). Figure 5.1 provides an overview of countries that currently have pre-public employment restrictions in place.

Figure 5.1 Restrictions on pre-public employment, 2014



Source: OECD (2014), Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection, OECD, Paris.

Note: Data unavailable for Denmark and Luxembourg. Government suppliers here could refer to suppliers to the government or those who negotiate public sector contracts on behalf of a company.
The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

In Kazakhstan, conflict of interest disclosure is regulated by the Law on Combating Corruption and the Law on Civil Service. The Law on Combating Corruption defines a conflict of interest in Article 1(5), as a contradiction between the personal interests of a public official and his official duties, where such interests may lead to the improper performance of his official duties. Within the Law on Civil Service, Article 51 contains the conflict of interest policy. Both laws make the disclosure of a conflict of interest mandatory, and outline the administrative procedure as follows: when a public official becomes aware of a conflict of interest, the laws require them to notify their immediate supervisor or management in writing. The immediate supervisor or management of the state body responsible for handling conflicts of interest is required to take timely action to prevent or resolve the conflict of interest. In addition, both laws outline the mechanisms available to manage conflicts of interests as follows: giving the duties of the public official with the conflict of interest to another public official; changing the duties of the public official with the conflict of interest; or taking other measures to eliminate the conflict of interest. Furthermore, Article 13 also prohibits outside employment for public officials, such as employment in a private sector organisation, although pedagogical and research positions are allowed. Article 13 also requires that within one month of joining,

public officials transfer their assets into trust management for the period of performance of public duties. Assets that must be transferred include capital obtained through a private business and other income generating property, except for leased property and money. Public officials are not obliged to transfer trusts from bonds and investment funds that they possess. Members of the Government, the Chairman and members of the Constitutional Council, as well as the Chairman and members of the National Bank of Kazakhstan fall under stricter asset disclosure policies, and are required to transfer bonds, mutual investment funds and shares for the duration of their tenure in the public service. In the event of a false declaration, public officials are liable under the relevant administrative codes.

However, neither of the laws identifies the options of divestment or liquidation of the interest of the public official or resignation of the public official from their public office in the event that the conflict cannot be otherwise managed. Furthermore, neither of the laws makes the distinction between real, apparent and perceived conflict of interests.

Officials noted that there is ongoing work to broaden the role of risk management in identifying conflicts of interest, as well as providing more detailed guidance and examples for public officials on how to prevent and manage their conflicts of interest by the Agency and its territorial departments Moreover, throughout the first half of 2016, over 545 outreach events, such as seminars, round tables, lectures and meetings - including with international organisations such as the UNDP - were conducted by the Agency's territorial departments on the conflict of interest provisions for public officials.

In regards to post-public employment measures, officials noted that currently, there are restrictions in place for post-employment for public officials who have had access to secret information, however it is unclear which law identifies these restrictions. In principle, this means that public officials with such access make a commitment to not disclose such information after they leave public employment. While such a measure is important, it is not the same as post-public employment measures, leaving Kazakhstan's public service vulnerable to the risk of undue influence.

Recommendations for reform

To help public officials identify and manage their own conflict of interests effectively, Kazakhstan could continue awareness raising activities among public officials, in particular by conducting outreach events and widely disseminating respective guidelines, as well as implementing regular training on the conflict of interest provisions and solutions. Kazakhstan could also consider clearly defining different conflict of interest situations and broadening the options for management of those conflicts, such as divestment, liquidation or resignation.

Kazakhstan could also consider implementing legislation that adequately manage conflict of interests arising from pre- and post-public employment, including restrictions on pre-public employment and a cooling off period on public officials in high risk positions.

Asset disclosure

Disclosure of private interests of public officials is an effective tool for preventing illicit enrichment. Implementing rules for disclosing assets at the start of a public official's tenure, midway through the tenure and at the end of the tenure, can help the relevant authorities to ensure that public officials are not using their positions for personal gain.

Furthermore, although it remains primarily public officials' responsibility to manage their conflict of interest situations, disclosure of their private interests can greatly aid in preventing potential conflict of interest situations.

There is no uniform standard regarding what category of public officials should be obligated to submit declarations. Good practice however implies that highly visible public officials, such as politicians and senior management, as well as high-risk public officials, such as customs officers, procurement agents, and financial authorities, should be required to submit their asset declarations. Additionally, as corrupt officials can often use their spouses or other relatives to hide their assets, countries should consider imposing an asset declaration system that monitors the wealth not only of the public official, but also that of close relatives and household members.

Similarly, in terms of types of assets to disclose, different countries require different levels of disclosure. For instance, assets, liabilities, income sources, income amount, paid and non-paid outside position, gifts and previous employment all fall under the range of assets that could be disclosed (OECD 2015a).

In accordance with Article 11 of the Law on Combating Corruption declarations of assets and liabilities must be submitted by any potential candidate for the Presidency, members of Parliament and *maslikhats,* candidates for *akim* at city, oblast, village and rural level, as well as members of the elected bodies of local self-government and their spouses - to register as a candidate.

Additionally, along with their spouses, the following individuals who fall under the category of high-level public officials are required to submit a declaration of their income and property holdings to the tax authorities at their place of residence:

1) persons occupying a responsible public office

2) persons authorised to perform state functions

3) officials

4) persons equated to persons authorised to perform state functions.

Paragraph 4, article 11 of the Law on Combating Corruption, with regard to public officials, states that in the case of acquisitions during the reporting calendar year property as defined by the tax legislation of the Republic of Kazakhstan, they are in the declaration of income and assets reflect the information on the sources of the costs of the acquisition of such property. The law also requires this category of public officials to update their asset information to the tax authorities whenever new income or assets are required (Article 11(4)). Moreover, both the Law on Combating Corruption (Article 11) and the Law on Civil Service (Article 16(7)) require public officials who have been discharged from the public service on negative grounds to provide their asset declarations up to three years following their dismissal.

Kazakhstan is also in the process of implementing public disclosure of asset declarations for select high-level officials, including persons holding political public office; persons holding administrative Corps "A" position; Members of Parliament; Judges; and those holding a management position in a state-owned enterprise. Information regarding their assets will be posted on the respective institutional website within one year of submission, although it is at the discretion of the National Bureau to determine what information is published.

Recommendations for reform

To facilitate accountability of high-level officials to the public, Kazakhstan could consider moving the timeline up from January 2020 for public disclosure of the asset declaration scheme. The National Bureau of Corruption Counteraction of the Agency for Civil Service Issues and Counteraction of Corruption could also consider establishing set criteria for what information will be publically disclosed and apply these criteria consistently, so as not to unduly target specific entities or individuals.

Kazakhstan could consider verifying declarations on a risk-based approach and including a requirement to submit asset declarations when a public official leaves office, as well as extending the requirement to submit declarations post-employment to all public officials who submit annual declarations. This will enable the identification of possible illicit gain in order to further increase transparency and enable external scrutiny.

Strong detection and enforcement

Internal control and audit

Internal control systems constitute the checks and balances of government operations that are necessary for ensuring the effectiveness and efficiency of operations, the reliability of financial reporting and compliance with applicable laws, regulations and policies. One of the basic principles for establishing a sound and effective internal control system is the organisation's commitment to integrity and ethical values. The processes, the tools and the activities underpinning the ethical values of an entity must be constantly communicated and enforced throughout the organisation. The whole approach should be structured around the senior management's ethical commitment which will give the necessary tone at the top for the implementation and the operation of all other components of internal control. However, although the establishment of a comprehensive control environment is a management responsibility, the actual implementation and integration into daily business needs everyone in the entity to be aware and involved.

To that end, the internal control system is not something imposed and added on top of existing practices and processes. It should not be a paper tiger adding nothing than complexity to business processes. Instead, the components and activities of an internal controls system should be treated as an integral part of the daily operations at every entity level. According to the European Union's Public Internal Control (PIC) approach, internal control is constituted by Financial and Managerial Control (FMC) processes and an independent Internal Audit function. One of the core prerequisites for establishing a robust and effective Financial and Management Control system accompanied by a solid Internal Audit function is to clearly set the organisation's objectives across all levels of organisational structure. This will allow the responsible actors to identify the unique risks that may arise to the specific operational area and assess whether the different components of internal control are structured in such a way that are all articulated together and built in daily business, and would reduce risk to an acceptable level. It is also important to note that international good practice separates the role of internal audit from the other components of the internal control system (see for example, Institute of Internal Auditors, 2015). The role of internal audit function is to provide assurance to management that the internal control system is effective. The objectivity and reliability of the internal auditors can be compromised if they are responsible not only for assessing the internal control system, but also for implementing and managing it.

Indeed, a key component of a strong internal control system is a strategic approach to risk management. Risk management is designed to: (a) identify, understand, and assess potential risks (and their interdependence) that may affect the organisation and (b) design

the appropriate control mechanisms to effectively manage the identified risks to be within the organisation's risk appetite. An effective risk management exercise cannot be conducted through a silo-based approach – it must be integrated into the organisation's overall system of management. To that end, a strong and effective risk management process ensures the involvement of key stakeholders, both at the management level and at the operational level. Those at the operational level should be involved in the identification, assessment and management of the risks, as they are the ones most familiar with the risks that may undermine the achievement of the organisation's objectives. Ideally, these risk assessments should be updated as needed throughout the year in order to respond to changing risks. Finally, while the risk management process broadly encompasses all potential risks to an organisations' ability to achieve its mandate, an important element of risk management involves assessing risks to integrity (e.g. fraud and corruption risks).

Internal control and risk management should not be treated as additional bureaucratic burdens, owned by a specific group of people, aiming to identify loopholes that will lead to poor individual performance evaluations or even disciplinary sanctions. Everybody in the organisation should be able to identify the benefits of real and effective internal control and risk management functions and be motivated to participate in the exercise. Therefore, training that communicates the value of the internal control and risk management processes and ensures that public officials have the right skills and knowledge to participate is an important element of the broader internal control and risk management system. Such training will help public officials to own control and risk arrangements in order to close the gap between nominal and actual implementation.

In Kazakhstan, the Ministry of Finance sets the framework and the standards for the internal control and risk management system for the entire government. The internal control system is governed by the Law on State Audit and Financial Control, which was passed in November 2015. According to the government, the implementation of the new law will take into consideration the international standards outlined in the International Organisation of Supreme Audit Institutions (INTOSAI)'s *Guidelines for Internal Control Standards for the Public Sector (9100)*. The law applies to all internal audit and financial control units in public bodies and SOEs, with the exception of the National Bank of the Republic of Kazakhstan. The system is comprised of the Authorised Body for Public Internal Audit (which sits within the Ministry of Finance), the internal audit service of the central state bodies and local executive bodies at the regional and city level, and the internal audit departments within the central state bodies.

Article 57 of the audit and financial control law identifies the five components of Kazakhstan's internal control system:

- The control environment – the internal (corporate) culture, organisational structure and internal set of policies and procedures that underpin the quality of reporting and the effectiveness of the public body.
- Risk assessment – the process of identification, analysis and prevention of risks that affect the achievement of the public body's objectives. Risk assessment is the basis for the establishment of control procedures and planning of internal public audit.
- Control activities – a combination of procedures (technology) control exercised by officials (structural units) in carrying out their functions.

- Information and Communication – prompt and effective identification of data covering all areas of a public body's activities, their registration and exchange. The public body should take steps to protect against unauthorised access to information.
- Monitoring and evaluation of the effectiveness of the internal control system – determination of the probability of errors affecting the achievement of objectives and the accuracy of the reporting of the state body, identifying the significance of these errors and determining the internal control system's ability to achieve its goals and objectives.

Amongst other roles, the Committee on Internal State Audit is responsible for coordinating both the internal audit and the internal control functions of the Internal Audit Services. This includes developing and approving the model that should be followed for internal audit, providing methodological advice to the Internal Audit Services within each public institution, assessing the effectiveness of the internal audit functions, and setting out the risk management strategy for public audit and financial control.

Based on the guidelines set by the Committee on Internal State Audit, the Internal Audit Service within each ministry is responsible for assessing how well the internal control system of the public body functions. In addition, the Internal Audit Service participates in the financial audits and conducts performance and compliance audits of the public body and its territorial divisions.

The risk management component of the internal control system is managed by two different laws. The Law on State Audit and Financial Control also assigns the Authorised Body on Public Internal Audit with the responsibility to set the risk objectives and the risk management strategy for public audit and financial control. In addition, a separate system for corruption risk mapping exists. Kazakhstan's 2015-2025 Anti-Corruption Strategy identified the assessment of corruption risks as a key priority for Kazakhstan. To that end, a risk management system for the assessment of external and internal corruption risks was included in Article 8 of the revised Law on Combating Corruption.

The anti-corruption law stipulates that the President of Kazakhstan should identify the public bodies that should undertake an external corruption risk assessment. The assessment is conducted by the Agency and focuses on two areas: (1) risks that could arise from the regulatory and legal acts that concern the activities of public bodies and SOEs; and (2) risks that could arise in organisational and administrative activity of public bodies and SOEs. The law stipulates that public bodies and SOEs should take measures to minimise or eliminate the causes and conditions for such risks.

The Agency can involve experts in the external risk assessment process. The government of Kazakhstan noted that these experts include the Public Council for the Agency of Civil Service Affairs and Corruption Control and members of the National Chamber of Entrepreneurs. Depending on the level of analysis (i.e. national, territorial or local), the territorial divisions of the Agency may also be involved in the assessment of the corruption risks. As risk management is most effective when it involves the right stakeholders, the inclusion of the National Chamber of Entrepreneurs and members of the Ministry's Public Council is seen as beneficial as they can identify risks and complement the approach of the administration. However, these bodies should only be involved in identifying key risks, and not in the process of assigning and managing the controls. Safeguards for objectivity and capture must be in place.

In addition to an external corruption risk assessment, the law also specifies that public bodies and SOEs must conduct an internal review of corruption risks and take the appropriate steps to address the causes and conditions that may lead to the commission of corruption offences. In accordance with paragraph 8 of the Model regulations of conducting an internal review of corruption risks, the internal corruption risk analysis is carried out in the following areas: (1) identifying potential corruption risks in the regulatory legal acts and legal acts that concern the activities of units; and (2) identifying corruption risks in the organisational units of administrative activity. Each public body has the right to develop the model they will use to conduct the assessment, but it is not clear whether there is an overarching model developed at the Agency to guide public bodies. For instance, it is not clear whether the specifications set out in the Law on Audit and Financial Control for risk assessment apply to the corruption risk management process. In addition, the law does not specify who should be involved in the risk assessment process. Similarly, it is not clear whether public officials are made aware of their roles and responsibilities in regards to the risk mapping process, or whether they receive any training on risk management.

Once the risks are assessed, the public body under review is responsible for developing a plan to mitigate the risks. According to the government, after six months, the Agency carries out an assessment and monitoring review of the government body's progress to date in implementing the risk response plan. It is not clear how the results of this assessment are applied to improve the risk management process or ensure that the right internal controls are in place to respond to the risks.

In practice, the government noted that since 2015, corruption risk assessments have been carried out on planned inspections, joint orders and order of the Commission under the President of Kazakhstan in several public bodies (see Table 5.2.). Additionally, the territorial departments of the Agency also conducted an initial analysis of corruption risks in several local executive bodies. These risk assessment exercises revealed several corruption risks and a joint interdepartmental working group was established to develop recommendations for responding to the corruption risks. The focus of these responses appears to emphasise the elimination of corruption risks.

Table 5.2. Corruption Risk Mapping in Kazakhstan

Policy Method to initiate risk analysis	Ministry/Organisation
Joint orders	Ministry for Investment and Development Ministry for Health and Social Development Ministry of Finance
Scheduled inspections	Ministry of Agriculture Ministry of Culture and Sports Ministry of Education and Science
Order of the Commission under the President on the fight against corruption	In the sphere of land relations, the Committee on Regulation of Natural Monopolies

The Agency noted that according to the results of the various risk analyses, there were systemic corruption risks typical to all government agencies, particularly in the regulatory framework and organisational and managerial activities. The Agency also noted that the territorial departments of the ministries assessed conducted proactive analysis of the

causes and conditions that could facilitate corruption in the activities of local executive bodies. These assessments identified the provision of public services (e.g. licensing and other types of permissions) as the area most prone to corruption risks at the local level. In addition, the analysis revealed several cases of conflict of interest. While the corruption risk assessment process appears to be on the right track, it is not clear in practice the extent to which integrity and corruption risk mapping is integrated into the broader risk management process. Ideally these processes should be co-ordinated, as integrity and corruption risks have implications for the sound management of the organisation (e.g. achieving value for money in operations, etc.)

The external audit function falls under the responsibility of the Accounts Committee, the Supreme Audit Institution of Kazakhstan. The responsibilities of the Accounts Committee are also outlined in the Law on State Audit and Financial Control. According to the law, the Accounts Committee's external audits should target the effectiveness and legality of the use of national resources, which include the financial, natural, material, information and human resources. In addition, the law now for the first time gives competency to the Accounts Committee to provide measures to combat corruption. Previously, the Committee would report suspected cases to the respective ministries, whereas now they can officially do so with the prosecutor.

It should be noted, however, that the Accounts Committee is also directly dependent on the authority of the President of the Republic, who appoints its head and two of its members (three additional members are named by each of the chambers of the Parliament). In its 2014 report on Anti-Corruption Reforms in Kazakhstan, the OECD recommended to safeguard the Committee's functional and institutional independence through a specific law (OECD, 2014). Although such a draft law was elaborated it has not been adopted at the time of the drafting of this report.

The Law has also enhanced relations between the Committee and the Parliament by establishing concrete provisions for reporting. The powers of the Parliament in auditing and control remain limited, however, and constitute an important area for future improvement. According to the Law, the Accounts Committee is mandated to report to the Parliament once a year on the execution of the state budget. In addition, every three months the information about the work of the Accounts Committee is submitted to the Parliament as well as to the President.

Recommendations for reform

To ensure the independence of the internal audit function from the other risk management and internal control, Kazakhstan could consider clearly defining, both in law and in practice, the tasks of Internal Audit system.

Corruption risk mapping is an important element of the internal control system, but it is only one element of the wider risk management function. Kazakhstan could consider co-ordinating implementation of the risk mapping function under the Law on Combating Corruption with the broader risk management function under the Law on State Audit and Financial Control. Kazakhstan is further recommended to focus on ensuring that operational managers and core business areas are involved in the risk mapping process and that the results of the process are used to update and/or develop controls and integrity safeguards.

Although including external stakeholders, such as the National Chamber of Entrepreneurs and the Public Council for the Agency for Civil Service Issues and Counteraction of Corruption can be useful in identifying risks, it is not recommended to

include these external bodies in the subsequent process whereby organisations mitigate the identified risks by assigning and managing specific controls.

Kazakhstan could also consider translating the internal control and risk management principles defined in the laws into practical steps closely linked to day-to-day business and clearly communicate this information to the people who will be actively involved in the entities. One of the ways in which this could be achieved would be through an effective awareness-raising and training strategy that identifies the key stakeholders and provides the appropriate skills and expertise required to implement the internal control processes.

Kazakhstan could ensure the statutory and functional independence of the Accounts Committee. As well, Kazakhstan could consider enhancing the role of the Parliament in the auditing of executive bodies.

Disciplinary regime and sanctions

As mentioned previously, effectively curbing corruption in government requires a comprehensive approach, and the integrity system should therefore include not only measures for effective prevention and detection, but also for ensuring compliance and enforcement. The successful investigation and sanctioning of individuals and entities are therefore necessary deterrents and a means of making amends for economic and/or damages caused. Effective enforcement mechanisms are furthermore an important message to citizens, since perceived impunity for misconduct by public officials can be one signal for a weak rule of law or ineffective governance (OECD 2016b).

Across OECD countries, a variance in types of disciplinary regimes exists. Public officials can be held liable for misconduct under several different types of regimes, including administrative, criminal, civil and labour, with the applicable regime depending on the type of public official. For instance, some criminal and civil sanctions can be applied to public officials for misconduct while in the line of duty. The German Criminal Code, for example, contains provisions making corrupt action by public officials a punishable offence.

A well-functioning disciplinary regime can be said to consist of five key elements: independence and autonomy; accountability and transparency; efficiency and effectiveness; good capacity and institutional co-ordination; and procedural fairness (OECD 2016b). For example, independent and autonomous disciplinary regimes should be free from undue political influence to ensure its legitimacy, effectiveness and fairness. To that end, a clear legal basis that lays out the disciplinary institutions, the mandate and responsibilities is crucial.

Accountability and transparency of the disciplinary regime is the second important element. Indeed, institutions responsible for disciplinary proceedings must adhere to the same governance principles of transparency and the rule of law, and be subject to the same standards of evaluation that other public institutions are subject to. Regular performance reports on the effectiveness and timeliness of disciplinary proceedings are good practice in ensuring the accountability and transparency of the regime to the public. To that end, the effectiveness and efficiency of the disciplinary regime refers to the extent to which policy objectives are met (effectiveness) and the timeliness of the process as well as the use of resources (efficiency). This can include ensuring that the statute of limitations does not pass before a decision has been reached. Indicators that measure the performance can be made publicly available. This in turn demonstrates compliance with

the integrity system, deters misconduct and can help raise confidence in a government's commitment to curbing corruption. Types of data on the functioning of the disciplinary regime could include the share of instances reported that are taken forward for formal disciplinary proceedings, the appeals' incidences and rates, inadmissible or discharged cases, overturned decisions, and clearance rates (i.e. cases that are followed through from initiation to final decision). Box 5.6 highlights examples of key performance indicators for effectiveness and efficiency.

Box 5.6. Building accountability through the generation and transparency of key performance indicators (KPI) and metrics

KPIs on effectiveness:

- Share of instances reported taken forward for formal disciplinary proceedings: not all reported offences may be taken forward following a preliminary investigations of hearing; however, the share of cases not taken forward, especially when analysed by area of government or type of offence, may shed light on whether valid cases are successfully entering the disciplinary system in the first place.
- Appeals incidences and rates: A measure of the quality of sanctioning decisions and the predictability of the regime. Common metrics include the number of appeals per population (or public officials liable under the disciplinary law), and cases appealed before the second instance as a percentage of cases resolved in the first instance.
- Inadmissible or discharged cases: the share of cases declared inadmissible (as well as disaggregation for what grounds were provided for dismissal) can be considered an indication of the quality and effectiveness of procedures and compliance of the government with disciplinary procedures. This can also include cases that were dismissed due to an expired statute of limitations.
- Overturned decisions: a second common measure on the quality of sanctioning decisions is the share of appealed cases where initial decisions were overturned. This can signify, in addition to failure to follow proper disciplinary procedures, the sufficient proportionality of sanctions.
- Recovery: in the case of economic fines, the share of funds recovered or recuperated as per the original sanctioning decision can indicate the effectiveness of government in carrying out sanctions.
- Clearance rates: another common indicator of effectiveness, this refers to the sanctions issued over the cases initially reported. It serves as a proxy for identifying "leaky" systems, whereby cases reported are not brought forward and/or to conclusion.

KPIs on efficiency:

- Pending cases: the share of total cases which are unresolved at a given point in time can be a useful indicator of case management.
- Average/median length of proceedings (days): the average length of proceedings for cases is estimated with a formula commonly used in the literature: [(Pending t-1 + Pending t)/(Incoming t + Resolved t)]*365.

Sources: Council of Europe (2014); OECD (2013).

Without sufficient financial resources or human capacity (i.e. adequate staff with the right skill-sets), even the best integrity policies will suffer. Likewise, strong institutional co-operation, which encompasses adequate and timely exchange of information and expertise, is critical, as multiple agencies must cooperate to share information gleaned from detection, investigation and application of sanctions.

Last but not least, a good system of procedural fairness in the disciplinary regime will ensure that the rights of the accused are protected throughout the proceedings, and that the decisions taken regarding sanctions are lawful. Procedural fairness can include, but is not limited to, allowing the accused access to the information and documents concerning their own disciplinary proceedings and the right to hearings and appeals. Additionally, notifying individuals that disciplinary proceedings are being brought forward against them is another way to ensure procedural fairness.

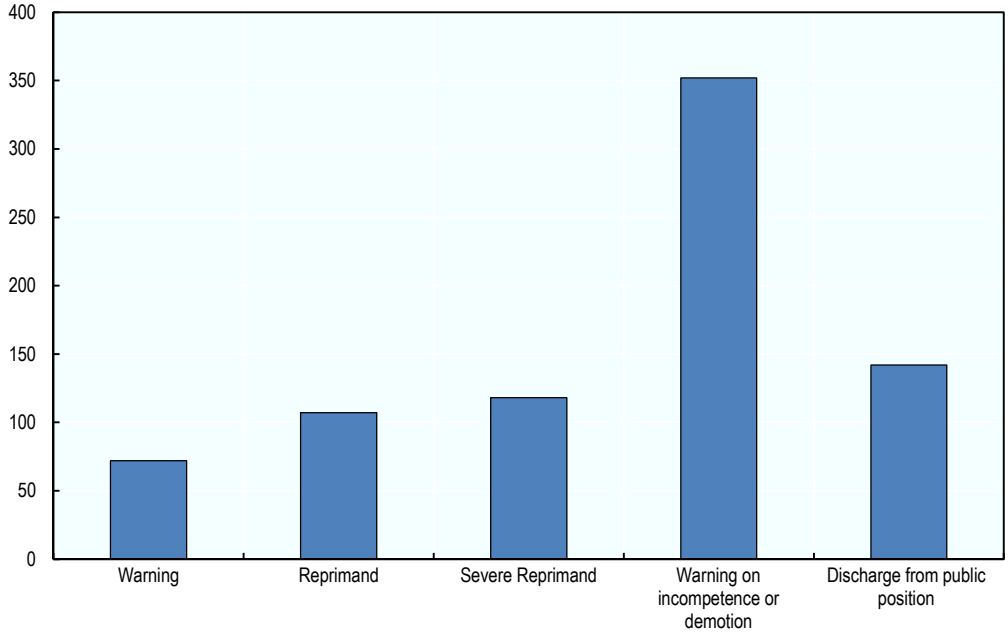
In Kazakhstan, administrative sanctions are separate from disciplinary ones. There is a separate Code of Administrative Offences which includes administrative offences, sanctions and procedures, while disciplinary sanctions are regulated by labour legislation and special laws (e.g. the Law on Civil Service). Administrative sanctions are imposed by external agencies (often with final decision by court), while disciplinary sanctions are imposed internally by the employing agency (or by the higher agency). As noted, the Law on Civil Service holds all public officials liable for disciplinary proceedings, including those at the territorial and city levels. To that end, central state bodies and their territorial divisions, local executive bodies financed by the regional body, and regional and city government bodies are required to establish their own disciplinary commissions. According to the Ministry of Civil Service Affairs Charter, the Ministry was responsible for coordinating the work of disciplinary commissions of state bodies on disciplinary issues of public officials. Officials noted that the Department of Control of the Public Service within the Ministry of Civil Service Affairs administered the disciplinary regime. The resulting body, the disciplinary commission, initiates the hearings and makes decisions based on the findings. According to discussions with civil society members however, the disciplinary commissions stopped functioning entirely in 2015. It is not clear how the reorganisation of the Ministry to the Agency has further affected the disciplinary commissions.

Moreover, it is not clear how the disciplinary commission or the Department of Control of the Public Service cooperates with other institutions to gather and share information on investigations and sanction decisions. For instance, Kazakhstan noted that its supreme audit institution, the Public Accounts Committee, passes on information to the Prosecutor General related to corruption cases that they have uncovered in the course of their audits that could have a disciplinary nature. It is not clear whether this information is shared with the disciplinary commission. It is also not clear the extent of the financial and human resource capacity of the disciplinary regime in Kazakhstan.

Disciplinary offences and sanctions for public officials are laid out in Article 44 of the Law on Civil Service. A disciplinary offence is defined as a public official's "unlawful, culpable failure or improper performance of his duties, misfeasance, breach of service discipline or ethics, as well as non-compliance with restrictions, stipulated by the laws of the Republic of Kazakhstan, associated with lodgement on the public service". Sanctions include admonition, reprimand, severe reprimand, warning on incompetence or demotion, or discharge from holding the public position. Article 46(1) of the Law on Civil Service provides that public officials should be familiarised with all materials related to their disciplinary liability and that they have the right to personally participate in the procedures of internal investigation. Under Article 46(2), public officials also have the right to appeal the decision to either the senior management or to the court. In addition, detailed procedures for imposing disciplinary sanctions are regulated in the bylaws adopted by the President (mentioned in Article 44.10 of the Civil Service Law).

In regards to accountability and transparency of the disciplinary regime, some information regarding the number of hearings, disciplinary actions taken per position and types of decisions rendered is available on the Agency's website. Figure 5.2 shows the total number of decisions taken per disciplinary offence, as outlined in Article 44(3) of the Law on Civil Service. According the website, 1317 cases were initiated in 2015, and disciplinary proceedings considered against 791 public officials (60%), of which 437 were for corruption-related offences. The last available information on these findings however is from 2015 and no recent information has been posted. The legal provisions for the disciplinary regime do not specify how often information must be made public. In addition, the Agency website further notes that 1639 recommendations and proposals were produced to further strengthen discipline and compliance with anti-corruption laws and professional ethics in the year 2015.

Figure 5.2. Disciplinary actions imposed, 2015



Source: Ministry of Civil Service Affairs websites, http://kyzmet.gov.kz/en/kategorii/o-deyatelnosti-ministerstva, (last accessed 26 September 2016).

Note: totals for column "warning on incompetence or demotion" were reported separately on the website, but have been combined by OECD in accordance with the disciplinary actions stated in the Law on Civil Service.

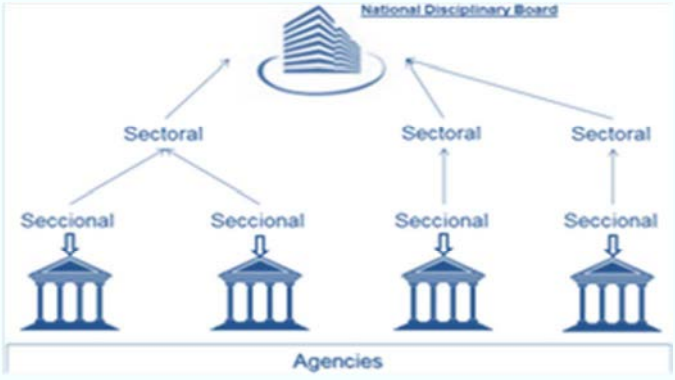
Ensuring that public officials are aware of their obligations regarding anti-corruption is an important element of the disciplinary regime. While a strong sanction system is a key element of the integrity system, prevention of breaches of integrity and corruption is generally the preferred method for governments. To that end, members of the disciplinary commission also conducted 80 outreach events in various cities and districts, and carried out 2738 training sessions on anti-corruption and respect of public officials' professional ethics. In addition, a series of media events (a total of 3785) were held to provide information on the results of the disciplinary decisions. Further indicators that evaluate the changes in awareness levels of compliance obligations before and after the trainings would be useful to evaluate the impact of the trainings.

Box 5.7. **Brazil's National Disciplinary Board and SisCor**

The disciplinary arrangements for public officials of Brazil fall under the remit of the Office of the Comptroller General of the Union (CGU), established in 2003 under the Single Judicial Regime of Federal Law 8.112/90. The CGU aims to enhance transparency and defend public assets through both preventative and punitive measures. With its jurisdiction limited to the federal executive branch, the CGU houses the Internal Control Secretariat, Transparency and Corruption Prevention Secretariat, the Ombudsman Office and the National Disciplinary Board.

The National Disciplinary Board was established with the responsibility of overseeing the implementation of the centralised federal executive branch's disciplinary system – the SisCor. Under the SisCor are activities related to investigation of irregularities by public officials and enforcement of applicable penalties. The SisCor is endowed with legal powers to supervise and correct any ongoing disciplinary procedures and to apply sanctions through its 150 employees across the central department, 20 sectoral units and 47 sectional units located within federal agencies (corregedorias seccionais).

Figure 5.3. The structure of Brazil's federal disciplinary system (SisCor)



The centralisation of disciplinary measures under SisCor has been deemed as one driver in improving the effectiveness of the disciplinary regime as well as consistency in the application of sanctions. Indeed, the SisCor has trained almost 12 000 public officials, which has been mirrored by a substantial increase in investigative capacity and the number of public officials currently under investigation, an increase in the number of expulsive sanctions applied and a reduction in the annulment and reinstatement rates. Furthermore, the automation of the Administrative Disciplinary Process (CGU-PAD) has reduced processing times by 20%. The success of the National Disciplinary Board has been, to a large extent, due to the existence of effective sectional units within agencies, which have helped to supervise, raise awareness around the role of the National Disciplinary Board, and balance entity-level responsibility with that of the National Disciplinary Board. Under the SisCor, Brazil has seen the creation of an Anti-Nepotism Act, a simplified procedure for minor offences and online disclosures for national policies on transparency and integrity that are upheld through the Right of Access to Information Act.

The National Disciplinary Board is currently supporting further reforms to Law 8.112/90, to address gaps in legislation around issues not included in the scope or insufficiently addressed originally, such as cybercrimes, moral hazard (bullying), sexual harassment, racial segregation and administrative transactions.

Source: National Disciplinary Board, Brazil.

Recommendations for reform

Kazakhstan could consider including detailed provisions on the disciplinary proceedings (including on internal investigations and hearings) directly in the Law on Civil Service. Furthermore, it is difficult to fully assess the effectiveness of the disciplinary commissions due to a lack of information on the procedures for sharing information amongst ministries and the objectivity and timeliness of investigations.

Publicly disclosing numerical information related to sanctions is important, but no numerical information is available on appeals, which is an indicator Kazakhstan could consider including. Kazakhstan could also consider providing details about the types of sanctions applied in response to each of the offences listed.

Action Plan and potential OECD support

Recommendations

- To ensure the independence of the National Bureau of Corruption Counteraction, Kazakhstan could include in the Law on Combating Corruption the provisions to ensure that the National Bureau has the independence to carry out its functions effectively and is organisationally autonomous from any political body. This could include updating the Law on Combating Corruption to clearly identify the financial, personnel, procedural and operational issues of the National Bureau.
- Kazakhstan could consider reforming the appointment process of the Chair of the National Bureau. Instead of appointment by a single figure (e.g. the President), the Chair could be appointed after an open competition that has been publicly advertised.
- In order to implement the Code of Ethics, each government ministry is encouraged to adapt the Code of Ethics to fit the context of its specific work. Kazakhstan could consider adapting the Code of Ethics to high-risk positions (e.g. procurement and tax and customs officials).
- In order to ensure that the Ethics Commissioner can fulfil their role and encourage public officials to bring forward ethical questions and/or concerns, Kazakhstan is encouraged to make the position of the Ethics Commissioner non-political, independent and staffed by a qualified public official. Furthermore, Kazakhstan could continue to ensure that each ministry at the national and local levels has an Ethics Commissioner in place.
- Separating the role of advising on integrity issues from investigating integrity breaches is a good practice, as people are more likely to come forward for advice when they do not fear potential investigations or sanctions. Kazakhstan is encouraged to continue ensuring that the Ethics Commissioner does not have a sanctioning role.
- Kazakhstan could consider updating the integrity training curriculum to reflect the new Code of Ethics and continue to provide training for all public officials, especially those in high corruption-risk positions. In order to ensure that the Code of Ethics is effective, Kazakhstan could consider developing indicators around its implementation, such as number of trainings conducted on the Code of Ethics provisions and share of government employees reporting awareness of the Code of Ethics in relation to the number of reported cases.

- To help public officials identify and manage their own conflict of interests effectively, Kazakhstan could continue awareness raising activities among public officials, in particular by conducting outreach events and widely disseminating respective guidelines, as well as implementing regular training on the conflict of interest provisions and solutions.
- Kazakhstan could consider clearly defining different conflict of interest situations and broadening the options for management of those conflicts, such as divestment, liquidation or resignation.
- Kazakhstan could consider implementing legislation that adequately manage conflict of interests arising from pre- and post-public employment, including restrictions on pre-public employment and a cooling off period on public officials in high risk positions.
- To facilitate accountability of high-level officials to the public, Kazakhstan could consider moving the timeline up from January 2020 for public disclosure of the asset declaration scheme.
- The National Bureau of Corruption Counteraction of the Agency for Civil Service Issues and Counteraction of Corruption could consider establishing set criteria for what information will be publically disclosed and apply these criteria consistently, so as not to unduly target specific entities or individuals.
- Kazakhstan could consider verifying declarations on a risk-based approach and including a requirement to submit asset declarations when a public official leaves office, as well as extending the requirement to submit declarations post-employment to all public officials who submit annual declarations. This will enable the identification of possible illicit gain in order to further increase transparency and enable external scrutiny.
- To ensure the independence of the internal audit function from the other risk management and internal control, Kazakhstan could consider clearly defining, both in law and in practice, the tasks of the Internal Audit system.
- Kazakhstan could consider co-ordinating implementation of the risk mapping function under the Law on Combating Corruption with the broader risk management function under the Law on State Audit and Financial Control.
- Kazakhstan could consider ensuring that operational managers and core business areas are involved in the risk mapping process and that the results of the process are used to update and/or develop controls and integrity safeguards.
- Although including external stakeholders, such as the National Chamber of Entrepreneurs and the Public Council for the Agency for Civil Service Issues and Counteraction of Corruption can be useful in identifying risks, it is not recommended to include these external bodies in the subsequent process whereby organisations mitigate the identified risks by assigning and managing specific controls.
- Kazakhstan could consider translating the internal control and risk management principles defined in the laws into practical steps closely linked to day-to-day business and clearly communicate this information to the people who will be actively involved in the entities. One of the ways in which this could be achieved would be through an effective awareness-raising and training strategy that

identifies the key stakeholders and provides the appropriate skills and expertise required to implement the internal control processes.

- Kazakhstan could consider including detailed provisions on the disciplinary proceedings (including on internal investigations and hearings) directly in the Law on Civil Service.
- Publically disclosing numerical information related to sanctions is important, but no numerical information is available on appeals, which is an indicator Kazakhstan could consider including. Kazakhstan could also consider providing details about the types of sanctions applied in response to each of the offences listed.
- Kazakhstan could ensure the statutory and functional independence of the Accounts Committee. As well, Kazakhstan could consider enhancing the role of the Parliament in the auditing of executive bodies.

Action Plan

The results of this Integrity Scan were based on a broad overview of the integrity system in Kazakhstan. While a system of laws establishing the various features of an integrity system were recently enacted, the extent to which these features work in practice and have the adequate financial and human capacity for implementation is unknown. To that end, Kazakhstan is advised to focus on the implementation and the Action Plan identifies key areas where the OECD could further support Kazakhstan in implementing a whole-of-government and whole-of-society approach to integrity.

Reform Areas	**Potential OECD Support**
Implementing integrity, including institutional arrangements for integrity, codes of conduct for high risk areas, conflict of interest, asset disclosure and pre/post-public employment, internal control, the disciplinary regime, internal audit and risk mapping	Integrity Review with institutional mapping Sectoral review of high risk sectors, such as high-risk sectors: infrastructure, public procurement, tax and customs, etc. Integrity workshops addressing each of the identified reforms areas

Further reading

OECD (2014), CleanGovBiz Toolkit, OECD, Paris.

OECD (2013), Ethics Training for Public Officials, OECD, Paris.

OECD (2012), OECD/SIGMA Compendium of the Public Internal Control Systems in the European Union Member States, OECD, Paris.

OECD (2011), Transparency in Strategic Decision-making: Ministerial Advisors, OECD, Paris.

OECD (2010), *Risk and Regulatory Policy: Improving the Governance of Risk*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264082939-en

OECD (2010), *The Right to Open Public Administrations in Europe: Emerging Legal Standards*, *SIGMA Papers*, No. 46, OECD Publishing, Paris. http://dx.doi.org/10.1787/5km4g0zfqt27-en

OECD (2005), Guiding Principles for Open and Inclusive Policy Making, OECD, Paris.

OECD (2005), *Managing Conflict of Interest in the Public Sector: A Toolkit*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264018242-en.

OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264104938-en.

Notes

1. See Chapter 11 on Civil Society Empowerment as well as Chapter 1 on Regulatory Policy for an analysis of the Law on Public Councils and Chapter 14 on Independent and Vibrant Media for an analysis of the Law on Access to Information.

2. Republic of Kazakhstan President's Decree of December 11, 2015 № 128 "On the formation of the Ministry of Civil Service Affairs of the Republic of Kazakhstan.

References

Adil Soz (2016), www.adilsoz.kz/politcor/show/id/177.

Council of Europe (2014), "Report on European judicial systems - Edition 2014 (2012 data): Efficiency and quality of justice", European Commission for the Efficiency of Justice, Strasbourg, France, www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.

Government of the Republic of Kazakhstan (2014), Standard programme: Training of public officials related to countering corruption, http://kyzmet.gov.kz/ru/pages/tipovaya-programma-obucheniya-gosudarstvennyh-sluzhashchih-po-voprosam-protivodeystviya&usg=ALkJrhjuOekx8vV-BdapEOFKTjIRDxFYNQ.

Institute of Internal Auditors (2015), "Leveraging COSO across the Three Lines of Defence", https://na.theiia.org/standards-guidance/Public%20Documents/2015-Leveraging-COSO-3LOD.pdf.

OECD Recommendation of the Council on Public Integrity, available at: www.oecd.org/gov/ethics/recommendation-public-integrity.htm

OECD (2016a), *Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges: 2013-2015,* OECD Publishing, Paris.

OECD (2016b), *Integrity Review of Mexico - Enforcing Integrity: Mexico's Administrative Disciplinary Regime for Federal Public Officials.* OECD Publishing, Paris.

OECD (2015a), *Government at a Glance 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2015-en.

OECD (2015b), *Istanbul Anti-Corruption Action Plan Third Round of Monitoring Kazakhstan Progress Updates,* www.oecd.org/corruption/acn/Kazakhstan-ACN-Progress-Update-Oct-2015-EN.pdf.

OECD (2015c), *Hungary: Towards a Strategic State Approach*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264213555-en.

OECD (2014), *Partners for Good Governance: Mapping the Role of Supreme Audit Institutions, Phase One Analytical Framework,* OECD Publishing, Paris.

OECD (2013a), *OECD Integrity Review of Italy: Reinforcing Public Sector Integrity, Restoring Trust for Sustainable Growth, OECD Public Governance Reviews*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264193819-en.

OECD (2013b), *Specialised Anti-Corruption Institutions: Review of Models. Second Edition,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264187207-en.

OECD (2012), *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264119321-en.

OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264095281-en

OECD (2010), *Post-Public Employment: Good Practices for Preventing Conflict of Interest*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264056701-en.

OECD (2005), *Managing Conflict of Interest in the Public Sector: A Toolkit*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264018242-en.

OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264104938-en.

Treasury Board of Canada Secretariat (2012), "Policy on Conflict of Interest and Post-Employment", www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178.

Chapter 6.

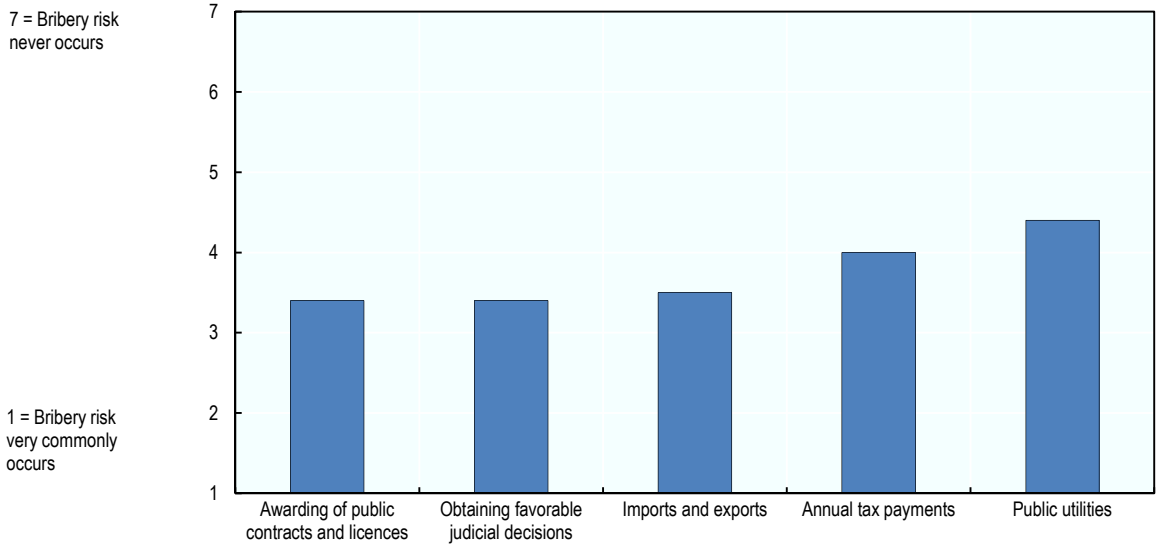
Ensuring integrity in public procurement in Kazakhstan

As a large share of total public spending and characterised by high levels of interaction between the public and private sectors, public procurement is a major risk area for corruption. This chapter describes public procurement practices in the Republic of Kazakhstan, covering issues such as efficient and clear structures in the public procurement system, transparency and participation of stakeholders, awareness-raising and capacity building to support a culture of integrity that prevents capture and undue influence, controls and risk management, and appeals mechanisms.

Promoting integrity and combating corruption in public procurement

Public procurement is a major risk area for corruption, for two reasons. Firstly, a large share of public resources – financed by tax revenues – is spent through public procurement. In OECD countries, an average of approximately 30 percent of government expenditures is allocated to public procurement, and on average, a share of 12.1 percent of GDP is spent on public procurement (OECD, 2015a). With 6.6 percent of GDP in public procurement expenses, Kazakhstan has a lower public procurement spending than the OECD average and a slightly higher one in comparison with benchmark countries from the region. Interestingly, as part of government expenditure, public procurement accounts for 43 percent, above OECD average (OECD, 2016a). The potential gains from bribery and other forms of corruption are therefore high. Secondly, public procurement is highly vulnerable to corruption, due to the close interaction between private sector and public officials (OECD, 2015a). For example, potential suppliers might seek to increase their chances for receiving a procurement award by bribing the official in charge of the project. Different bidders might collude to inflate prices. Bidders might also pre-arrange the outcome of the procurement process, for example by agreeing to which company would receive which award in a series of bidding processes. The companies that are not chosen would grant the chosen company the field by making sub-standard or too costly bids that are likely to be rejected. The potential gain of corrupt behaviour is high (a lucrative project), while detection is often difficult and costly. 57% of convictions for foreign bribery are related to public procurement, as reported in the OECD Foreign Bribery Report [1] (OECD, 2014b). In Kazakhstan, public procurement is one of the areas that are perceived to be most corrupt, as evidenced by survey studies. The perceived incidents of bribery in the different phases of the procurement cycle are illustrated in Figure 6.1.

Figure 6.1. Bribery risk in public procurement is high in all phases of the public procurement cycle



Source: World Economic Forum, Executive Opinion Survey, Global Competitiveness Report 2014-2015, as represented in OECD, 2016a.
Note: The data reflect answers to the following question: In your country, how common is it for companies to make undocumented extra payments or bribes in connection with the following: awarding of public contracts and licences,

obtaining favourable judicial decisions, imports and exports, annual tax payments and public utilities? [1 = very commonly occurs; 7 = never occurs]

Efforts to enhance good governance and integrity in public procurement are essential for efficient and effective management of public resources. Indeed, the integrity of the public procurement process is vital to the public interest as it ensures that governments can deliver public goods and services with high quality and at a fair cost. Corruption in public procurement means to waste resources that could be spent on other causes from which society would benefit. Corruption in public procurement also means that public funds are not spent according to fair rules and regulations, but according to the discretion of individuals and under the influence of those that can afford to bribe. Ultimately, this erodes public trust in the public procurement system and in the overall governance structures. Furthermore, public procurement can have a major contribution to the overall government strategy if the procurement process is managed in a smart way (OECD, 2015a). For example, public procurement processes can be structured in a way that favours outcomes that are coherent with an overall country strategy (e.g., increasing use of environmentally friendly goods.)

OECD countries first recognised the central importance of integrity in public procurement by endorsing the OECD *Recommendation on Enhancing Integrity in Public Procurement* in 2008. In 2015, the OECD Council recognised the strategic importance of public procurement by adopting the new *OECD Recommendation of the Council on Public Procurement* (hereinafter the OECD Recommendation), with 12 integrated principles that cover the entire procurement cycle. The 2015 recommendation replaces the 2008 instrument and provides a policy framework that reflects the critical role public procurement plays in achieving efficiency and advancing public policy objectives (see Box 6.1).

Box 6.1. The OECD Recommendation of the Council on Public Procurement

In 2015, the OECD Council issued a new recommendation on public procurement. This recommendation is based on the 2008 OECD Recommendation on Enhancing Integrity in Public Procurement and expands on the previous principles. A well-functioning public procurement system helps achieve policy objectives more efficiently, and therefore facilitates the creation of public trust, inclusiveness, prosperity and well-being.

The main goal of the recommendation is to establish public procurement as a strategic function that supports the proper allocation of public resources. The recommendation also includes items on risk mitigation, with a focus on inefficiency and corruption in large and complex procurement processes, such as infrastructure projects.

It comprises 12 recommendation elements and focuses on all aspects of public procurement, notably:

- **Transparency**, which aims at increasing available information for potential suppliers and the public to follow the procurement process and ensure it is conducted fairly.
- **Integrity**, which aims at ensuring that tools and mechanisms are in place to reduce issues related to corruption, conflict of interest, fraud, and alike.
- **Access**, which relates to ensuring that all relevant stakeholders can participate to the extent adequate;
- **Balanced decision making**, which highlights the importance of secondary policy objectives among the criteria for decision making.
- **Stakeholder** participation, which relates to opportunities for dialogue around the public procurement process.
- **Efficiency**, which relates to considerations of value for money and properly addressing citizen's needs.
- **E-procurement**, which aims at promoting the use of electronic information technology systems to facilitate all aspects of the public procurement process.
- **Capacity**, which relates to the standard of public procurement staff.
- **Evaluation**, which highlights the need to periodically assess and improve the public procurement system regularly.
- **Risk management**, which aims at handling threats to the public procurement systems.
- **Accountability**, which targets the control system in overseeing the public procurement system.
- **Integration** to budget cycles, which targets the harmonisation and planning of public procurement processes in relation to overall public financial management.

Source: OECD (2015b).

Current status and critical analysis

The following sections describe the practices of public procurement in Kazakhstan. Specifically, the sections cover: efficient and clear structures in the public procurement system; transparency and participation of stakeholders; awareness-raising and capacity building to support a culture of integrity that prevents capture and undue influence; controls and risk management; and appeals mechanisms. All of these aspects are important for maintaining a high level of integrity within public procurement systems which will be discussed in each of the sections.

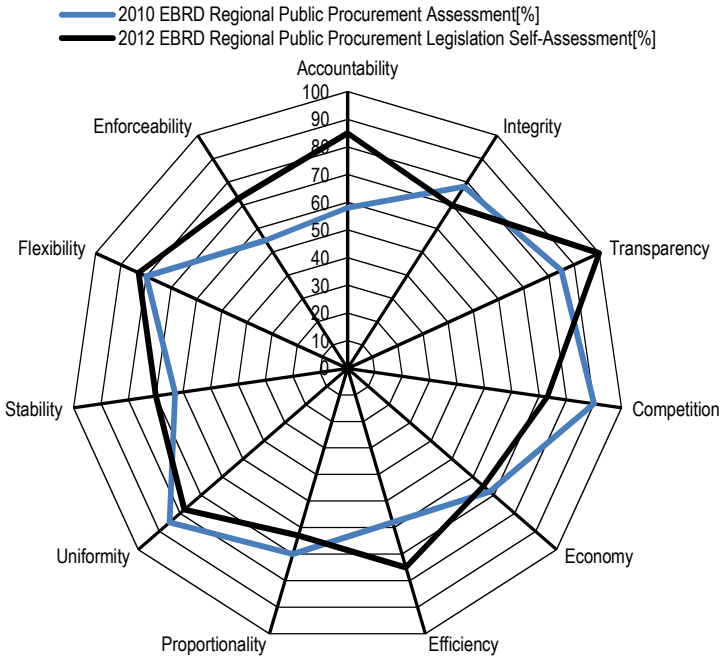
Efficient and clear structures in the public procurement system

A sound legal system is the basis for a public procurement system that works with integrity. Ideally, a legal framework is constructed in a way that corruption and wrongdoing are hindered; processes are conducted in a fair manner, and regulations include specific provisions addressing misconduct. In addition, a competitive, market-based system discourages corruption. E-procurement systems can facilitate efficient and effective public procurement processes.

According to Kazakhstan's public procurement law (Law of the Republic of Kazakhstan No. 434-V on state procurement), the Ministry of Finance is the competent authority in the field of public procurement – both with regards to policies on public procurement and with regards to organising procurement processes. Within the Ministry of Finance, the State Procurement Committee organises centralised procurement processes at the national level. The Committee on Public Procurement of the Ministry of Finance is responsible for procurements of central governmental bodies of goods, works and services.[2] In addition, this Committee handles procurement conducted by a sole organiser (either the committee itself or a local executive body) above a price threshold in the amount of 10 000 or 20 000 monthly calculation indices (equivalent to KZT 21,210,000 and KZT 42,420,000 or approximately USD 64,000 and USD 128,000, respectively.) Similar functions and bodies are replicated at lower levels and organise procurement processes for regions or cities. Public procurement operates under Kazakhstan's general budget code.

Kazakhstan has followed a reform path in recent years, and achieved improvements in many areas, as self-assessments organised by the European Bank for Reconstruction and Development (EBRD) highlight (see Figure 6.2). These assessments in 2010 and 2012 focused on the state of Kazakhstan's law only. Notably, despite improvements, one area where Kazakhstan saw a backwards trend with declining scores over the years was integrity (in addition to competition and uniformity.)

Figure 6.2. Kazakhstan's public procurement reform progress differs from area to area



Source: EBRD, 2010 Regional Public Procurement Assessment, EBRD, 2012 Regional Public Procurement Legislation Self-Assessment, as represented in OECD, 2016a. See also Niewiadomska et al., 2013.

Note: The chart presents the scores for the quality of the legal framework in subsequent assessments of the national public procurement legislation completed between 2009 and 2013. The scores have been calculated on the basis of a legislation questionnaire based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisors and/or national regulatory authorities. The scores are presented as a percentage with 100 per cent representing the optimal score for each Core Principles benchmark indicator.

Since the assessments conducted by EBRD, Kazakhstan adopted a new public procurement law, which entered into force in January 2016. The new law introduces several improvements to adapt the legislation closer to international standards and specifies that public procurement processes should be conducted through the electronic platform to increase the efficiency of the public procurement process. Once the system is fully implemented, it is envisioned that all participants can access the bidding documents provided by all bidders. Aside from the bid documentation, signatures will be provided online. The electronic platform is operated by the Centre of Economic Commerce, which is a state-owned enterprise closely linked to the Ministry of Finance.

There are different ways in which e-procurement is beneficial for a public procurement system. As this section is about efficient structures, efficiency-related aspects of e-procurement will be analysed here (transparency-related aspects of e-procurement will be discussed in the next section). E-procurement can be particularly appealing to automate processes, which reduces resource costs, as well as potential for mistakes. Data gathered in these automated processes can also be used for more accurate planning, which reduces the space for misappropriation. In addition, information gathered in an e-procurement system can not only inform future planning, but also more global improvements, such as structural reforms.

As envisaged by the 2016 update of the public procurement law mentioned above, Kazakhstan's e-procurement system was implemented to minimise interaction between

officials and potential bidders, thereby limiting the opportunities for attempts of unduly influencing public officials. It is intended to keep personal contact between public procurement staff and potential suppliers at a minimum, and therefore reduce staff vulnerability towards bribe solicitation. Ultimately, a more efficient procurement process with little opportunity to exploit weaknesses of the system contributes greatly to the integrity of the public procurement system overall.

The system is designed to constantly and automatically monitor information provided by bidders, and screen it against red-flags. Prospective suppliers are intended to be automatically screened vis-à-vis national debarment lists, as well as for tax liabilities, availability of the corresponding licenses and outstanding liabilities, etc. Other red-flags include diversions from a usual price range, diversion from usual technical specifications as agreed during consultations, and anti-dumping price levels. In case suspicious information is detected, the platform sends alerts to the procurement officials. Based on these notifications, internal control processes are triggered.

The Committee of Finance and Control holds the control function over public procurement processes. Violations related to corruption on the part of public officials are, according to the government, referred to the Anti-Corruption Bureau. The Economic Crimes Unit receives cases that are related to violations covered by the criminal code. Further information would be needed to assess the actual working mechanisms of these bodies.

All public procurement is intended to be managed by the aforementioned bodies, namely the State Procurement Committee within the Ministry of Finance and similar bodies on lower levels. However, exceptions to these specifications are possible. According to government representatives, all exceptions to publically open procurement procedures are regulated in bylaws or orders by the minister in accordance with provisions of the legal framework of the Eurasian Economic Union. One example, the 2010-2014 Programme for the Development of Local Content in the Republic of Kazakhstan, relates to support for local companies. In addition, State-owned Enterprises are not subject to the public procurement law and can organise purchases according to their own rules. Government representatives noted that the number of possible exceptions had been decreased in the new procurement law. However, it was outside of the scope of this analysis to assess the true extent to which exceptions were applied (de facto), given that this information was not publicly available.

With regards to efficiency and structure, Kazakhstan's public procurement system suffers mainly from an abundance of exceptions that minimise the reach of the well-meaning public procurement law, including applicability for its sovereign wealth fund or local content. Questions remain with regards to the impact that the new e-procurement system has in the procurement system overall.

Kazakhstan's new law is an improvement from the previous law as it introduces a range of features that are recommended for a state-of-the-art public procurement system. The OECD Recommendation XIII asks for an integration of public procurement into overall public finance management, budgeting and services delivery processes. It is encouraging to see that Kazakhstan bases public procurement decisions on funds available in the budget; where the budget is decided by the national parliament or by establishing bodies at the regional level that have similar functions as the bodies on national level. Sound decision making structures ensure that funds cannot be misappropriated, and therefore contribute to integrity.

However, there is no information on how Kazakhstan is using or will use the e-procurement system exactly and how efficient it is with regards to its stated purpose. OECD recommendation X recommends to monitor and evaluate procurement processes. Questions remained about the extent to which data from the e-procurement system is used to conduct monitoring or needs assessments of follow-up procurement processes.

Procurement officials stated that aside from the parliamentary budget decision to allocate funds for public procurement, no other assessments or considerations are conducted, including public consultations or needs assessments. One example where this has been conducted successfully is in Korea (Box 6.2).

Box. 6.2. **Korea's e-procurement system**

Korea has one of the most advanced public procurement systems in the world, with a particularly advanced electronic system. The Korean ON-line E-Procurement System (KONEPS) handles 70% of all public procurement transactions in Korea, and recently efforts have been made to increase coverage further to also cover sensitive procurement projects. Including other goals, the increased transparency of the public procurement system created by this tool makes an important contribution to increased integrity of the Korean public procurement system. The system facilitates for public scrutiny and creates very close accountability loops for every single public procurement process. In addition, the electronic monitoring allows to detect inconsistencies (for example in prices), that can be an indication of fraud.

One of KONEPS' noteworthy characteristics is its transparency. The public can access the entire transaction history throughout the procurement cycle. Information such as tender notices, bidding details, awards and contract-related information is available in real-time. The publication of this information makes it possible to compare specifications. Anybody who detects unnecessarily strict specifications can challenge a tender notice during a five- to seven-day period. The collected data serves a second purpose: potential suppliers can analyse developments of specifications and contracts, and tweak their offer accordingly. This creates a more competitive and therefore more efficient public procurement market.

Source: OECD (2016b).

It remains unclear what proportion of all government contracts are covered by the law, and of those covered by the law, how much is placed under an exception. In fact, for a large share of public procurement processes, the existing public procurement law is not applicable (i.e., the process can diverge from the specifications in the public procurement law), including one third of public procurement processes carried out by state-owned enterprises, which have a separate regulation and are not covered by the law on public procurement.

Exceptions to support local companies can be problematic when it limits competition or when it serves as a cover-up for undue procurement awards that are actually the result of bribery or collusion instead of a policy to boost local businesses. While it is legitimate to follow secondary policy objectives when conducting a public procurement process, Kazakhstan's specifications in this regard have been too far reaching in the past. Between 2010 and 2014, the above-mentioned programme to develop local content demanded that public procurements utilised as much as 90% local goods, services, labour and other factors. As these practices restrict access to public procurement processes and hinder competition, it is a positive development that the new public procurement law from 2016 does not include preferences for domestic bidders. However, as the law has been introduced recently, it has yet to be determined how it will work in practice. Furthermore, additional analysis of the implementation of the law has to be undertaken to determine

whether the law indeed increased access and competition in Kazakhstan's public procurement market. For example, existing bylaws or other implementation mechanisms would need to be analysed to verify if they were adjusted to the new legal framework and if they follow the intended objectives.

The Round 3 Monitoring Report of the Istanbul Anti-Corruption Action Plan[3] noted that for 2013, KZT 389.8 billion (USD 2.5 billion in historic exchange rates) were procured outside of the scope of the public procurement law (OECD, 2014a). For example, Kazakhstan's sovereign wealth fund Samruk Kazyna, and largest purchaser in Kazakhstan, which procures a considerable share of the infrastructure projects in the country, does not operate under the public procurement law (OECD, 2014a). In 2016, Samruk Kazyna's procurement plan will cover KZT 7.7 billion (about USD 22 million).[4] As a comparison, in 2013, general government expenditure accounted for 16.2% of Kazakhstan's GDP, which represents about USD 37.6 billion in absolute figures, assuming a GDP of USD 231.9 billion for 2013.[5] This means that at least two thirds of Kazakhstan's government spending did not fall under the public procurement law, assuming that the distribution of government spending was similar in 2013 and 2016. Further information would be needed to fully assess the practical independence of the procurement body and the capacity of all involved bodies.

Recommendations for reform

One of the main areas for reform should be to increase the share of procurement processes managed under the rules of the public procurement law. This involves two aspects: first, to increase the scope of procurement processes that are determined to be covered by the law; and second, to reduce the exceptions that limit the application of the law to the greatest extent possible. Even the most comprehensive law will have limited effect if the proportion of procurement cases affected by it is negligible. To this end, there should be specifications to verify the consistency of procurement rules for state-owned enterprises, in order for them to follow the same principles as government procurement (OECD, 2014a.)

There is a need to clarify the scope of Kazakhstan's e-procurement system and to ensure that all benefits of an e-procurement system are exploited. To create an efficient and effective public procurement system, Kazakhstan should use the system not just to streamline repetitive process, but also to collect statistics about its procurement processes for future analysis.

Kazakhstan may structure its procurement system in a way that ensures independent decision-making processes in the relevant bodies. This involves ensuring that the decisions taken by the procurement institutions are binding and cannot be influenced or disregarded. The procurement system can be improved by clarifying the responsibilities and obligations of all procurement functions in the system, including those related to internal reporting. A clearer distribution of authorities, responsibilities and obligations will also boost the independence of the public procurement committee. Additional measures to support the committee's independence should be related to staffing and budget. Both should be sufficient and under the control of the committee. At the same time, these freedoms should be met by carefully constructed, effective checks and balances for the committee. Decision-making processes related to public procurement throughout the procurement cycle may be further improved. In addition to linking the procurement process to budget considerations, needs assessments should be conducted and opened to public scrutiny.

Transparency and participation of stakeholders

Third parties monitoring procurement processes are crucial to ensuring that a public procurement system works with integrity: often, corruption and other transgressions can be avoided if external parties that do not have a stake in the corrupt practice can participate. Only if a system provides transparency and opportunities for participants, public procurements will result in solutions that are in line with the original intent. Participation of stakeholders from the private sector has to be carefully regulated and monitored to ensure consistency and integrity.

Kazakhstan's Law on Access to Information entered into force in September 2015 (see chapter 6 on public sector integrity). This law is following the provisions specified in the "100 Concrete Steps" and applies to public procurement as well. The aim of greater transparency is reflected in the new public procurement law, which introduced e-procurement, as mentioned in section A, for the entire public procurement process from January 2016 onwards. All information provided by bidders is accessible to the other bidders. Additional information would be required to assess whether the public procurement information in the platform is available to third parties, such as media or civil society organisations and watchdogs, as well.

The new public procurement law also focuses on tackling the challenges faced by entrepreneurs and the reduction of corruption risks. It establishes the following principles for public procurement:

1. optimal and efficient spending of funds
2. prospective suppliers will have equal opportunities to participate in public procurement procedures except in cases prohibited by the law, such as prohibiting purchases in cases where supplier and buyer are affiliated, or encouraging procurement from disabled persons
3. fair business practices among prospective suppliers
4. transparency of public procurement processes
5. public procurement participants' accountability
6. prevention of corrupt practices.

Involvement of the private sector in the bidding process as well as monitoring of the bidding process is channelled through the National Chamber of Entrepreneurs of Kazakhstan, which was created by Law No. 129 in 2013. This is a government-founded non-profit alliance of businesses which is intended to act as a group representing the special interests of Kazakhstani business. In addition, public procurement opportunities are published on the chamber's website[6].

The transparency of Kazakhstan's public procurement system can be improved with regards to access to information. Often, information is publicly available only in principle/de-jure; de-facto, information remains largely concealed. In addition, the participation of the private sector in public procurement processes presents areas for improvement.

The OECD Recommendation encourages adherents to involve stakeholders and make information public (recommendation numbers II, IV and VI). The two topics are closely connected: meaningful interaction with the public and their concrete involvement in public procurement decisions requires the availability of information. Furthermore, both involvement of stakeholders and public availability of information contribute to tackling corruption and lie at the heart of promoting integrity in public procurement. The public's possibility to oversee public procurement processes can lead to detection of wrongdoing, and the increased likelihood of detection, coupled with strict sanctions if caught, can also deter public officials from committing a corrupt act in the first place. With a broader pool of competing suppliers, procurement will be more efficient as purchasers can compare a greater number of offers.

Given its novelty in Kazakhstan, it is unclear how the e-procurement framework works in practice. Yet, the system has the potential to play a vital role in optimising transparency. Examples include the online publication of notices for low-value purchases.

The new law is an improvement compared to its predecessor as it is based on equality, free competition, non-discrimination and the independence of the supplier vis-à-vis the public buyer. However, implementation of the new law remains challenging. A broader timeframe is often required to implement major reforms; this type of reform is usually embedded into complex political processes that necessitate careful management. It is therefore important that the government signals that this is a priority, by supplying sufficient resources (both human and financial) to fully implement the new legislation, as recommended in the OECD Recommendation IX (capacity). The new law should ensure that information on procurement opportunities is disclosed as widely as possible in a consistent, timely and user-friendly manner, using the same channels and timeframe for all interested parties.

The National Chamber of Entrepreneurs is intended to help with the identification of qualified bidders and to set product standards for businesses. These functions are necessary to be developed as they help to implement a fair and inclusive public procurement system. It is generally valuable to have a special interest group defending the interests of businesses to ensure that laws, regulations and practices do not hinder companies in doing business and creating jobs. However, observers question the organisation's independence and objectivity, given its close political and business connections that might impact its capacity to act according to its mandate. The members of the organisation will provide its funding. It is mandatory for each business to join and pay two percent of its annual turnover. Reportedly, the Kazakh tax administration will be required to provide information about the companies' turnover to ensure proper payment of dues.

It remained unclear to what extent the public, media and CSOs are able to monitor public procurement transactions. Kazakhstan's legal framework de jure creates the possibility for civil society and media to actively monitor public procurement decisions. However, in practice, there still seem to be considerable hurdles to full transparency and to the democratic functions of the media. This is due to political control of the media (see Chapter 14: Investigative media), the design of the public governance system, contradictory bylaws, and other mechanisms. The infrastructure and general provisions for monitoring exist, for example in the form of an online public procurement portal.[7] Government representatives also explained that information about public procurement processes has to be published in the "mass media" (e.g., the Internet). However, not all transactions are conducted through these channels. Additional inquiries would be

necessary to determine what kind of information is required to be public at what point in the process.

While reforming the procurement system, the Kazakhstan government may involve civil society and the private sector, not just in the design of reforms, but also in control of the implementation of these reforms (OECD Recommendation VI). Although the Law on Public Councils (see Chapter 11: Civil Society Empowerment) allows for the involvement of civil society organisations during the initial design process of new laws and regulations, the analysis shows that the government is not required to implement these recommendations nor are there formal mechanisms in place to receive feedback from the private sector on their interactions with the government. Furthermore, it is not clear how the Public Councils, if at all, would allow for scrutiny over public procurement. Increased external monitoring by civil society would support further transparency in public procurement and ensure that suppliers are competing in a level playing field. Box 6.3 details how an online platform increased transparency and integrity of the planning around the 2015 Universal Exposition in Milano, Italy ("Expo 2015").

Box 6.3. **Italy's "Open Expo"**

From May to October 2015, Italy hosted the Universal Exposition in Milano ("Expo 2015"). This major international event attracted 140 participating countries and over 20 million visitors to an exhibition area that covered more than 1 million m2. Public procurement was crucial for realising this event.

To ensure that the public procurement proceedings associated with the Expo 2015 were delivered with transparency and therefore also with integrity, the Italian government established an online platform called "Open Expo". From July 2014 to the end of the Expo 2015 in October 2015, this website provided current data on public tenders and contracts. Aside from information on call for tenders, contractors, and contract value, the website followed the progress of the contracts with regular updates. Today, as the event has been finalised, the platform still provides complete lists of suppliers, contracted works and values, among others.[8]

Open Expo is an initiative by the Italian government; Expo 2015 S.p.A and Wikitalia, supported by Italy's Department for the Public Administration, partnered to realise the platform. The Italian government realised that trust of the public in public institutions was lacking. The goal of Open Expo was therefore to create trust by sharing as much information as possible with anybody who was interested – without requirements or requests to access the information.

Source: Expo 2015 website; Open Expo website.

Recommendations for reform

It is promising that the Kazakhstan Law on Access to Information entered into force in the beginning of 2016. Most importantly, Kazakhstan now faces a need to ensure that these legal novelties result in a de-facto increased access to information for citizens. Moving forward, the government could consider taking steps to ensure that this law is applied also with regards to the public procurement system, which represents a considerable share of public expenditure. Information provided by the government about public procurement processes without specific request for this information (i.e. information disclosed by default) should be maximal, granting exceptions only for sensitive information. For example, information gathered in the e-procurement system could be made publicly available by default, granting exceptions only for a minimal percentage of cases upon request. Requests for information not provided by default should be dealt with in a timely manner, which includes anticipating staffing and resource needs in public procurement bodies to respond to an increasing number of requests in the

future. The government should communicate the possibility of accessing information. With regards to all aspects, exceptions should be applied only rarely. All these elements would ensure that civil society can monitor public procurement processes, and contribute to establishing a level playing field for competitors.

Any interested person or party should be able to comment on public procurement processes. It needs to be ensured that a comprehensive needs assessment is conducted before the call for tenders. This includes active and in-depth consultations with involved groups.

Awareness-raising and capacity building to support a culture of integrity that prevents capture and undue influence

The law on the civil service regulates the behaviour of all public officials, including public procurement officials. It also addresses how to limit and respond to attempts of undue influence, as discussed in Chapter 5 on Public Sector Integrity. As is the case with other public officials, public procurement officials' conduct with regards to honesty and integrity are regulated by the Law on Combating Corruption, the Law on the Civil Service, and the Code of Ethics. There is no specific code of conduct for public procurement officials.

Box 6.4. **Code of conduct for procurement in Canada**

Canada introduced a specialised Code of Conduct for Procurement. The aim is to ensure greater transparency, accountability, and the highest standards of ethical conduct. Canada has several legal, regulatory and policy requirements that apply also to the public procurement process. To clarify and emphasise expectations, these requirements have been consolidated in the Code of Conduct for Procurement. This document provides a breakdown of what principles set out in the Financial Administration Act and the Federal Accountability Act mean for public procurement transactions. It also incorporates measures taken by the Canadian Federal Government to tackle conflicts of interest, post-employment regulations, and anti-corruption efforts, among others. The code of conduct summarises existing laws, but it does not establish additional rules. The code of conduct is applicable for both procurement officials and vendors alike and clarifies mutual expectations of behaviour in the public procurement process. With the specialised Code of Conduct for Procurement, involved parties have a single point of reference of responsibilities and obligations. It also realises awareness about vendors' capabilities to complain.

Source: Public Works and Government Services Canada (PWGSC) (n.d.).

Additional specifications are made to exclude persons that might have a conflict of interest, for example relatives or companies that provided consultation services when preparing the procurement process. However, there is no "cooling off" period for public procurement officials that limit them from taking up employment with companies that they have interacted with in their capacity as a public official. A considerable "break" between public and private employment is important to ensure that the former public official does not use insider knowledge or contacts from his time as a public official in the interest of the private business, for his personal gain or in ways that would damage the public interest.

The Ministry of Finance has the oversight over continued education and advanced training with regards to public procurement. The content and procedure of the training is developed by organisations of education. For example, the Centre of Electronic Commerce, which is a subsidiary organisation of the Ministry of Finance, regularly

conducts trainings on public procurement with participation of officials and suppliers. Officials who successfully completed training and improvement of qualifications receive a certificate of completion.[9] In the absence of experts, organisers of procurement processes are required to hire public servants that have the necessary expertise within the field of public procurement. According to Kazakhstan government officials, procurement officials are legally required to undergo training on a regular basis and to receive focused trainings for specialised areas, such as large-scale infrastructure projects. Only public procurers that have the necessary high understanding of their profession and the product to be purchased can take decisions based on objective criteria. Where expertise is lacking, public servants are more often vulnerable to the (undue) influence of better informed parties. Additional information on the scale and impact public procurement training in Kazakhstan would be needed, for example on the nature of the organisations of education, as well as information on how newcomers on the job are integrated into the workforce and motivated to follow the standards of the organisation. This would allow an assessment of whether the training systems related to public procurement in Kazakhstan are adequate.

The most important issues for Kazakhstan's with regards to capacity and a culture of integrity related to professionalisation. There is room to improve the human resources strategy for the public procurement work force. A specialised code of conduct for public procurement officials is missing.

Training is an essential element of establishing and maintaining a state-of-the-art public procurement system – both with regards to capacity building and professionalisation (recommendation number IX) as well as with regards to increasing integrity (recommendation number III). It is encouraging that Kazakhstan offers continued training for its public procurement officials. However, the extent of this training and professionalisation is unclear. No monetary incentives or advantages in career progression for officials undergoing trainings seem to be in place. Such measures may incentivise and motivate officials to enrol in capacity building.

With regards to specialised guidelines on integrity, it is positive that Kazakhstan's code of ethics and anti-corruption law are applicable throughout the system. However, public procurement is a high-risk undertaking that requires specialised guidelines.

The analysis also showed that procurement officials do not have clear guidelines on how to interact with the private sector, beyond the recommendation to simply minimise the interaction.

Recommendations for reform

Procurement officials need to receive training or practical guidance on procurement to help them to standardise operations and to ensure their effectiveness and integrity. A formalised training programme should be established, with a body in charge of certification and training. Elements on integrity and conflict of interest should be a prominent part of the training. Officials should be incentivised to maintain and develop their skills, and should also be provided with an attractive remuneration and career trajectory.

Other human resources tools should complement a sophisticated training strategy. For example, staff could rotate through different roles related to the management of the public procurement cycle. Applicants can be tested for their attitudes towards corruption and other risky behaviour. The hiring strategy can ensure that the overall balance of skills and profiles in the public procurement workforce fosters a culture of integrity.

Better regulation is needed to protect procurement officials from undue influence. A code of conduct for officials working on public procurement should be developed and implemented. Box 6.4 (above) provides an example of how different applicable laws can be consolidated in a code of conduct that provides easily accessible guidance to public officials. This may entail intensive information and training sessions, mandatory for all officials working on public procurement. Furthermore, the code of conduct could detail rules for the interaction with the private sector, as recommended in OECD Recommendation VI (participation). In addition, rules can be introduced to regulate the post-employment period of public procurement officials ("cooling off period"). Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. These include codes of conduct, integrity training programmes for employees, integrity pacts, etc. Generally, companies can refer to international standards of good corporate governance, as for example outlined in the G20/OECD Principles of Corporate Governance[10].

Controls and risk management

Corruption risks and wrongdoing jeopardise the integrity of the public procurement system. These issues can be addressed by a sound risk management strategy. Elements of risk management, such as risk assessments and risk mitigation measures can be applied prior to the launch of any given procurement process; ex-post control mechanisms complement these approaches. Constructed correctly, risk management can prevent corruption and fraud before they happen, or even help detect corruption and identify those responsible.

The control functions related to public procurement are fulfilled by the National Bureau on Combating Corruption in the Agency for Public Service and Anti-Corruption. It conducts functions on issues of prevention, revealing, detection and investigation of corruption offences.[11] This includes ensuring that public procurement officials comply with the rules on anti-corruption. In addition, the Law on State Audit and Financial Control from 2015 (No. 392-V) specifies that the following bodies constitute the audit and financial control system:

1. the Accounts Committee
2. the revision commissions of regions, cities and the capital
3. the Committee on Internal State Audit of the Ministry of Finance, which is the authorized body for internal state audit
4. the internal audit service within each body.

Each of these bodies acts within its own competence in conducting compliance audits with regard to public procurement. The Accounts Committee is the highest body in this hierarchical structure.

The e-procurement system described above has an important role in the control system because it triggers further investigations based on red-flags. The State Revenue Committee in the Ministry of Finance as well as the Committee on Internal State Audit[12] are tasked with addressing the violations that are identified from the risk profile notifications generated by the e-procurement system. Generally, article 18 of the Law "On Public Procurement" entrusts the Ministry of Finance to follow up on the compliance

with the public procurement legislation, for example following complaints, following resolutions of law enforcement bodies, or as a result of information received via the risk management system.

For illustration, from January to September 2013, the Financial Control Committee conducted 3,111 inspections and found 1,399 violations of procurement legislation, valued at KZT 186.76 billion (USD 543.54 million) (OECD, 2014a).

The e-procurement system also checks bidders against lists of debarred bidders. According to the government, these lists are internal to Kazakhstan. The type of suppliers that are placed on the debarred bidders list, following administrative and criminal infractions for up a period of up to 24 months are the following[13]:

- Suppliers who do not comply with qualification requirements and requirements of tender documentation, and with whom the procuring entity unilaterally terminated the contract or who supplied unreliable information, on the basis of which was awarded the contract
- Previously successful suppliers who avoided conclusion of the contract
- Suppliers who did not perform or improperly performed their obligations under the contract.

International debarment lists, for example the lists maintained by large development banks, are not consulted. In addition, officials stated that no further analysis beyond the automated checks is conducted.

The procurement regulations declare that fraud committed in the sphere of public procurement can lead to a fine of up to four thousand monthly calculation indices (equivalent to KZT 8,484,000 or approximately USD 26,000), corrective labour for the same amount, restriction of freedom for up to four years, or imprisonment for the same period, with confiscation of property, deprivation of the right to occupy certain positions or engage in certain activities for up to three years or without such restrictions.

All in all, Kazakhstan's control and risk management system would benefit from an overarching strategy with regards to public procurement. This should include a clear mechanism for reporting misconduct.

OECD Recommendation XI recommends integrating risk management strategies throughout the procurement cycle. The electronic risk management/control system with non-electronic follow-up employed by Kazakhstan is a good first step, as is the general anti-corruption risk management strategy introduced by the Kazakh government (see the chapter of Public Sector Integrity.) However, the procurement-specific safeguards lack robustness: there does not seem to be an overarching risk management strategy for the public procurement cycle that analyses risk patterns in the system and possible mitigation strategies, aside from ad-hoc responses. In addition, there is no preventative system to counter fraud and other wrongdoing in place that focuses specifically on the public procurement system.

Part of a strong risk management and control system is a clear reporting mechanism. Often, the indications of misconduct are observed by public officials when they handle concrete cases. To facilitate follow up to these first indications, information must be communicated timely and accurately to the entity in charge of the follow up. This requires clear communication channels and contact information; systems to ensure confidentiality for whistle blowers are important examples. Kazakhstan's system,

however, lacks clear procedures for reporting misconduct and for protecting whistle-blowers from reprisal. Two committees (the State Revenue Committee in the Ministry of Finance and the committee for Financial Control) compete about following up on potential violations.

As described in the preceding paragraphs, an internal control mechanism is in place. However, there is a lack of data on the effectiveness of this system. This is an issue that needs to be addressed as the effectiveness of the control mechanism cannot be evaluated without reliable data.

Recommendations for reform

Kazakhstan may expand on its existing control and risk management system. All control functions should be equipped with sufficient resources to fulfil their duties. Auditors should be able to report on suspicions of fraud or corruption promptly and directly to criminal investigators for follow-up investigation. Information from external audits on procurement should be publicised to reinforce public scrutiny.

Data on investigated and prosecuted case of fraud and other offenses related to the bid rigging process should be collected. This will allow for future improvements in the control progress.

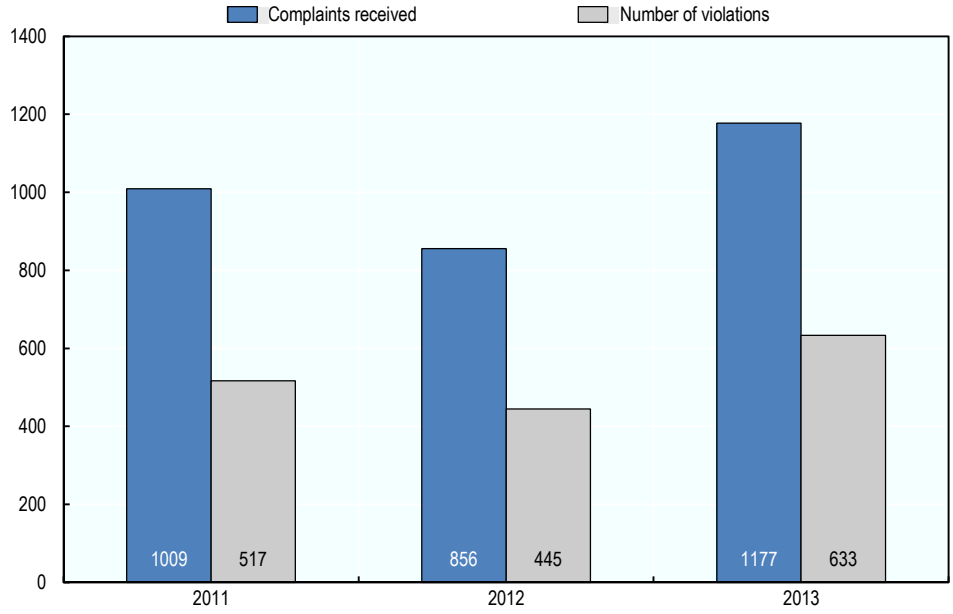
Kazakhstan may strengthen the preventative side of the control process. One concrete measure to reduce the risk of wrongdoing in the public procurement cycle would include strengthening the competition oversight function in charge of public procurement processes, either under the supervision of the general competition board, or as a standalone body (see also the chapter on competition policy). A risk management system specific to public procurement should be introduced, and due diligence/pre-deal screening implemented. All procurement officials should receive training in discovering the red flags associated with wrongdoing in the public procurement process and should be encouraged to report and trigger further investigations.

Appeals mechanisms

Sound appeals mechanisms in the area of public procurement contribute to greater integrity when wrongdoing can be addressed by parties to a bidding process through an enforceable appeal mechanism. Appeals mechanisms are important because they provide opportunities for correcting actions, and therefore maintain the fairness and correctness of the public procurement process.

According to Kazakhstani law, all decisions in national procurement processes can be appealed. Following an award decision, complaints can be registered within a five-day period. If a complaint is received, the procedure is put on hold for ten days to investigate the complaint. A recommendation is issued following the investigation. The appeals are handled by the Committee on Public Procurement in the Ministry of Finance as competent authority.[14] Figure 6.3 details the complaints received by the Financial Control Committee between 2011 and 2013 and gives an overview of the work load of this committee.

Figure 6.3. Number of complaints received and considered by the Financial Control Committee



Source: OECD, 2014a.

The appeal procedure is regulated in the law "On the Procedure of Consideration of Physical and Legal Entities", issued in 2007. Government representatives highlighted that the rules for appeals were updated in the newest edition of the public procurement law. The 2007 law is not a procurement-specific law, but rather a law applicable to appeals on all government decisions. The law specifies the following principles for consideration of appeals:

1. legality
2. the unity of the requirements for treatment
3. the guarantee of the rights, freedom and lawful interests of individuals and legal entities
4. inadmissibility of bureaucracy and red tape in considering appeals
5. equality of individuals and legal entities
6. transparency of entities and officials when considering appeals.

Government representatives emphasised that during all stages of the procurement process, in-house controls and constant automatic red-flag monitoring reduced the opportunity for appeal-worthy behaviour.

Kazakhstan's control and risk management system has two weaknesses with regards to public procurement: the structure is too focused on the phase after the contract. In addition, recourse mechanisms available for public procurement proceedings are not robust enough.

OECD Recommendation XII (accountability) recommends the creation of oversight mechanisms, including a complaints mechanism and sanctions regime. It is positive to see that Kazakhstan has already introduced an appeals mechanism for public procurement decisions. In addition, the new law includes an opportunity for suppliers to lodge complaints based on the tender documentation and procurement protocols of initial reviews. However, the law does not seem to provide the supplier with remedies for unfair treatment, i.e. late payments by the government etc. Additional inquiries should be undertaken to determine how this system works in practice, and further secondary regulation should be enacted to further provide clarity to the system.

As recommended by OECD Recommendation XII (accountability), potential suppliers should be able to refer to an appeal body - whether that is a court or a committee – early in the process. Furthermore, it is important to enable the timely resolution of complaints. For an example of an independent review body refer to Box 6.5.

There is a need for a better-defined platform for suppliers to send their complaint for monitoring and investigation. Potential suppliers should have effective and timely access to review systems of procurement decision. Establishing an independent and efficient recourse mechanism is a pre-condition for a transparent and fair procurement system.

Box 6.5. **The National Review Commission in Slovenia**

Slovenia has had a special body to deal with complaints since 1997. In its current version, the National Review Commission for Reviewing Public Procurement Award Procedures (National Review Commission, Državna revizijska komisija) exists since 2011. The aim of the commission is to protect tenderers at all procedural levels of the award of public contracts. The commission is authorised to annul procurement decisions in pre-award and award stages; it is also authorised to provide advice on the implementation of decisions.

The National Review Commission has the status of an independent institution of experts. The commission has five members which are appointed by the parliament. Two members act as president and deputy president. 15 consultants support the work of the members with their expertise.

The National Review Commission is required to decide within 15 working days from receipt of the complaint and all necessary documentation. This timeframe can be extended for a maximum of another 15 working days in justified cases.

Slovenian statistics indicate that 83% of lodged complaints appeal award decisions, with the remaining 17% relating to earlier stages of the procurement process, for example allegedly discriminatory requirements in tender documents.

Source: Website of the National Review Commission, www.dkom.si/eng/ (accessed 29 March 2016); information provided by Public Procurement Directorate, Ministry of Public Administration, Slovenia, for (OECD, 2016c).

Representatives from CSOs noted that the period for complaints was very short. In addition, the required procedure to lodge a complaint was perceived as very cumbersome.

Recommendations for reform

The complaint system can be enhanced with further regulation that can provide clarity and streamline its functioning. All procedures should be analysed to ensure that the complaints mechanisms remain practically accessible and do not introduce additional bureaucratic hurdles that need to be complied with before being able to lodge a complaint ("red tape").

Opportunities for arbitration should also be provided (refer also to OECD, 2014a). Arbitration differs from an appeal as it is conducted outside of the state's system: parties who seek to resolve a conflict refer their issue to a third party and agree that they will observe the third party's decision (UNCITRAL, 2012). Furthermore, establishing alternative dispute settlement mechanisms can avoid formal litigation and reduce the time for solving complaints at all stages of the procurement process.

The government should also collect data on the use of recourse mechanisms and identify opportunities for improving how the recourse mechanisms are managed.

Action Plan and potential OECD support

Recommendations

Kazakhstan should continue its promising path of reforms in the public procurement sphere.

- Public procurement processes may be made more transparent and data can be collected for future analysis. Kazakhstan can set up systems that allow collecting comprehensive statistics. Internal analysis of collected information and data guide future procurement decisions, risk management and reforms. In addition, availability of information enables public scrutiny (OECD Recommendation Principles on Transparency, Evaluation and E-Procurement).
- Kazakhstan should open its public procurement processes to interaction with relevant stakeholders and the general public. Public dialogue improves procurement outcomes by better gauging needs and opportunities. It also can make a system less corrupt by providing opportunities to correct digressions early on (OECD Recommendation Principle on Participation).
- It would be advantageous to further reduce exceptions to the regulations and to further increase the proportion of public procurement covered by law. Decision making structures can be clarified further: who takes which decision during the procurement cycle? Why was this decision taken? Needs assessments can produce further insight. This recommendation is linked to the recommendation for transparency: reasons for a decision should be traceable (OECD Recommendation Principles on Effectiveness and Efficiency).
- Kazakhstan may strengthen preventative processes related to its public procurement cycle. Part of this should be to improve the control systems, install more sophisticated risk management systems, and to allow scrutiny of the general public. Complaints should be possible at any stage of the procurement process. It is easier to correct minor irregularities during the procurement process, rather than reversing decisions (OECD Recommendation Principles on Risk Management and Accountability).
- Kazakhstan would benefit from developing its human resource strategy to ensure its public procurement work force is equipped for the tasks it faces. This includes training, but also other tools, such as staff rotation and adequate incentive structures. A code of conduct for procurement officials could support this undertaking. Whether or not a legal requirement becomes reality depends on implementation. Laws are ultimately implemented by individuals, whose ability, integrity and motivation are crucial (OECD Recommendation Principles on Capacity and Integrity).

Action Plan

Reform Areas	Potential OECD Support
Applicability also for SOEs	Conducting an in-depth review of the implementation status of the legal and regulatory framework, to analyse how the specifications work in practice and to then provide specific recommendations on how to strengthen international controls, professionalisation, and other areas
Reduce exceptions to a minimum	
Develop a preventive framework specific to public procurement to reduce fraud / a risk management system	
Develop a code of conduct for procurement officials	Conducting workshops on stakeholder participation or needs assessments
Develop guidelines on interactions with the private sector	
Develop a framework to conduct needs assessments	
Systematically open procurement procedures for public scrutiny	

Further reading

OECD (2015), Compendium of Good Practices for Integrity in Public Procurement, Paris, www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH(2014)2/REV1&docLanguage=En.

OECD (2010), Methodology for Assessing Procurement Systems (currently being revised), Paris, www.oecd.org/dac/effectiveness/45181522.pdf.

Notes

1. This number relates to all enforcement actions concluded between the entry into force of the OECD Anti-Bribery Convention in 1999 and 1 June 2014.

2. Resolution of the Government of the Republic of Kazakhstan of 21 December 2015 No. 669 titled "On Approval of the List of Goods, Works, Services, Organization and Conducting of which is Implemented by the Sole Organiser".

3. The Istanbul Anti-corruption Action Plan is a peer review programme for Eastern Europe and Central Asia, launched in 2003 by the OECD's Anti-Corruption Network for Eastern Europe and Central Asia. For more information see: www.oecd.org/corruption/acn/istanbulactionplan/.

4. http://sk.kz/section/8593&usg=ALkJrhj228YdrUDrlRidjEbi5XCUo9haYg

5. Note that 2013 was the latest available year for this indicator. Calculations based on data from the World Bank (GDP at market prices (current USD), see http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries/KZ?display=default; and the International Monetary Fund (Government Finance Statistics, general government expense as percentage of GDP), see database at: http://data.imf.org/?sk=89418059-d5c0-4330-8c41-dbc2d8f90f46&sid=1435762628665&ss=1437430552197.

6. See for example: http://palata.kz/price_offers/budget.

7. Procurement portal: http://goszakup.gov.kz/?setlang=ru.

8. See the Open Expo website for examples: http://dati.openexpo2015.it/catalog/en/dataset.

9. Rules of Retraining and Improvement of Qualifications of Employees Conducting Their Activity in the Sphere of Public Procurement, adopted by the Order of the Minister of Finance on 28 December 2015.

10. For more information refer to: www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf

11. Law of the Republic of Kazakhstan of 18 November 2015 No. 410-V "On Combating Corruption"; Order of the Ministry of Civil Service Affairs of the Republic of Kazakhstan of 5 January 2016 No.1.

12. Note that, in accordance with the Order of the Minister of Finance of the Republic of Kazakhstan of 8 June 2016 No. 294, the Committee of Financial Control was abolished, and its functions were transferred to the Committee on Internal State Audit of the Ministry of Finance of the Republic of Kazakhstan.

13. These infractions are specified in the Code "On Administrative Infractions" of 5 July 2014 No. 235-V and in the Criminal Code of 3 July 2014 No. 226-V, respectively.

14. Order of the Minister of Finance of the Republic of Kazakhstan of 23 April 2014 No. 182 titled "On Approval of the Provisions on Committee of Public Procurement of the Ministry of Finance of the Republic of Kazakhstan".

References

Expo 2015, www.expo2015.org/archive/en/learn-more.html

Niewiadomska, Eliza and Sarah Weiner (2013), *Measuring success in public procurement reform*, EBRD, London, www.ebrd.com/downloads/research/law/lit113b.pdf.

OECD (2016a), *Multi-dimensional Review of Kazakhstan: Volume 1. Initial Assessment*, OECD Development Pathways, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264246768-en.

OECD (2016b), *The Korean Public Procurement Service: Innovating for Effectiveness*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264249431-en.

OECD. (2016c), *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264252103-en.

OECD. (2015a), *Government at a Glance 2015*, OECD Publishing, Paris. http://dx.doi.org/10.1787/gov_glance-2015-en.

OECD (2015b), "Recommendation of the Council on Public Procurement", www.oecd.org/gov/ethics/Recommendation-on-Public-Procurement.pdf.

OECD (2014a), Anti-Corruption Reforms in Kazakhstan: Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan, Paris. http://www.oecd.org/corruption/acn/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf.

OECD (2014b), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264226616-en.

Open Expo, http://dati.openexpo2015.it/en.

Public Works and Government Services Canada (PWGSC) (n.d.), "The Code of Conduct for Procurement", www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html (accessed 29 March 2016).

Slovenian National Review Commission (2016), www.dkom.si/eng/ (accessed 9 March 2016).

United Nations Commission on International Trade Law (UNCITRAL) (2012), "Digest of Case Law on the Model Law on International Commercial Arbitration", United Nations Publications, New York. www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf.

Chapter 7.

Creating a level playing field in Kazakhstan through tax transparency

Tax transparency is crucial to countering tax avoidance, tax evasion, tax crimes and other financial crimes. Transparency in particular refers to the existence and availability of information on the ownership and accounting documents of companies and other entities, as well as the availability of banking information of individuals and legal entities. This chapter provides an overview of tax transparency in the Republic of Kazakhstan vis à vis the international standard on tax transparency and exchange of information on request. Specifically, the legal and regulatory framework concerning the availability and access to information by Kazakhstan's State Revenue Committee, and the exchange of information mechanisms in place are assessed.

The role of tax transparency in promoting integrity and combating corruption

Tax transparency requires tax administrations to have the information they need to enforce a country's tax laws. Transparency in particular refers to the existence and availability of information on the ownership and accounting documents of companies and other entities, as well as the availability of banking information of individuals and legal entities.

Ensuring the availability of ownership, accounting and banking information has an impact not only on the assessment and collection of taxes, but also on the fight against financial crimes such as corruption: transparency directly conflicts with the interests of lawbreakers and corrupt persons who need to hide their criminal behaviour behind corporate veils, falsified books of accounts and strict bank secrecy.

Tax transparency is therefore crucial to countering tax avoidance, tax evasion, and tax crimes and other financial crimes. As it allows the detection of suspicious payments, it can assist criminal tax investigators as well as other law enforcement authorities in investigating and prosecuting tax crimes and other financial crimes and recovering the proceeds of these illicit activities.

Since 2009, global tax transparency has become an almost universally-supported pillar of the international financial system. With over 130 members, including Kazakhstan since 2012, the Global Forum on Transparency and Exchange of Information for Tax Purposes[1] (the Global Forum) is the world's leading multilateral body within which work in the area of transparency and exchange of information for tax purposes is carried out.

The Global Forum's main achievements have been the development of the international standards of transparency and exchange of information for tax purposes: the 2009 standard on exchange-on-request (EOIR) and the new standard on automatic exchange of financial account information (the Common Reporting Standard). Box 7.1 below provides greater detail on these international standards on exchange of information. The Global Forum ensures that these high standards of transparency and exchange of information for tax purposes are in place around the world through its monitoring and peer review activities, technical assistance and skills support. So far a total of 123 jurisdictions have been assessed (with 101 jurisdictions assessed on both the legal framework and practical implementation, and another 22 jurisdictions assessed on their legal framework). This process has provided a step change in international tax transparency and the effective exchange of information to tackle tax evasion, with jurisdictions taking action to successfully address around 360 recommendations. Overall, a good level of compliance with the EOIR Standard has been found and where gaps are identified, jurisdictions have generally moved quickly to address them.

The Global Forum recently agreed upon new Terms of Reference for the second round of reviews of the EOIR Standard. The new Terms of Reference now require that all jurisdictions have access to information regarding the beneficial ownership of entities and legal arrangements operating in their jurisdictions (as defined by the FATF), and to allow for its international exchange for tax compliance purposes.

Box 7.1. The internationally Agreed Standards on Exchange of Information: The Standard on Exchange-on-Request (EOIR) and Standard on Automatic Exchange (Common Reporting Standard)

The Standard on EOIR

The standard on exchange on request imposes an obligation to provide all types of information foreseeably relevant to the administration and enforcement of the requesting country's domestic tax laws. This includes bank information on companies and trusts as well as their owners and beneficiaries. Moreover, a jurisdiction cannot decline to provide information in response to a request for exchange of information solely because it is held by a financial institution or person acting in an agency or fiduciary capacity, such as a trustee or because it does not need the information for its own domestic tax purposes.

The EOIR standard requires:

- Existence of mechanisms for exchange of information upon request
- Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request in a timely manner
- Respect for safeguards and limitations and strict confidentiality rules for information exchanged.

The Common Reporting Standard[2]

The Common Reporting Standard (CRS) developed by OECD and G20 countries calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. The Global Forum and the OECD working with G20 countries are assisting all committed jurisdictions in the implementation of the new standard. Over 100 jurisdictions around the world have committed to implement information sharing in accordance with the CRS starting in 2017 or 2018 as shown in the table[3]. Kazakhstan has not yet committed to the new international standard on automatic exchange.

The Global Forum has started measuring the revenue results of EOI in a more systematic way. The results published in the 2015 Global Forum Progress report show that international tax co-operation works; and the collective work as peers is contributing to meaningful change. Based on a survey of 32 jurisdictions, the taxes recovered as a result of EOIR were: in 2012: EUR 520 million, 2013: EUR 745 million and in 2014: EUR 667 million (OECD, 2015a).

The following section describes the situation in Kazakhstan vis à vis the international standard on transparency and exchange of information on request, in particular by examining the legal and regulatory framework concerning the availability and access to information by Kazakhstan's State Revenue Committee, and the exchange of information mechanisms in place.

Current status and critical analysis

Availability and access to information by the State Revenue Committee

Kazakhstan has been reviewed by the Global Forum. The legal and regulatory framework in Kazakhstan requires that ownership information regarding all relevant entities is available, with the exception of foreign companies and foreign partnerships.

According to the Law on State Registration of Legal Entities, Branches and Representations, domestic and foreign companies that have a branch or representative office in Kazakhstan are required to register in the Registry of Legal Entities and provide their statutory documents to the Registry of Legal Entities. Domestic companies are required to maintain a register of shareholders constituting shareholder rights. Persons providing nominee services are covered by Anti Money Laundering (AML) obligations and are required to identify their clients. The partners in a partnership established under Kazakhstan's law are required to be identified in the foundation agreement of the partnership.

In accordance with Kazakhstan's Law on accounting and financial reporting, all relevant entities and arrangements are required to keep accounting records that correctly explain the entity's transactions, make it possible to determine the entity's financial position with reasonable accuracy at any time, and allow financial statements to be prepared. Requirements under the accounting law are further supplemented by obligations imposed by the tax law. Accounting records and underlying documents including contracts and invoices must be kept by the accounting entity and made available in Kazakhstan for at least five years from the end of the relevant accounting period.

The legal and regulatory framework in Kazakhstan requires availability of banking information in line with the standard on EOIR. Identity information of all account-holders and transactional information is required to be available through AML, accounting and banking law obligations.

Kazakhstan's competent authority for exchange of information for tax purposes (the Chairman State Revenue Committee) has access powers to obtain and provide information held by persons within Kazakhstan. However, there are several deficiencies in Kazakhstan's regulatory framework which might have a negative impact on effective exchange of information:

It is unclear whether Kazakhstan's access powers can be legally applied for exchange of information purposes, especially in cases where Kazakhstan does not need the information for its own tax purposes.

There are restrictions on the scope of Kazakhstan's access to banking information for domestic tax purposes and a lack of clarity around whether the designated Kazakhstan's competent authority would be able to provide all the requested banking information for exchange of information purposes.

There are no effective sanctions applicable in cases where a taxpayer fails to provide information requested by the State Revenue Committee, when it does not have an interest in the information for Kazakh tax purposes.

The scope of attorney client privilege is too broad: Kazakhstan's law provides for the protection information held by lawyers and notaries without exceptions. Communications between lawyers or other legal representatives and their clients should only be confidential if such representatives act in their capacity as lawyers or other admitted legal representatives and not in a different capacity, such as nominee shareholders, trustees, settlors, company directors or under a power of attorney to represent a company in its business affairs.

Recommendations for reform

- Kazakhstan should clarify its law to ensure that the Kazakh competent authority has the power to obtain the relevant information pursuant to requests under all

exchange of information agreements and has the power to obtain all banking information requested by its exchange of information partners.

- Kazakhstan should ensure that the legislation in place provides for effective enforcement measures and sanctions applicable in cases where the requested information is not provided. Kazakhstan should also take measures to ensure that the confidentiality of information held by lawyers and notaries is consistent with the international standard on exchange of information.

- Kazakhstan should ensure that ownership information on foreign companies with sufficient links with Kazakhstan is available in all cases.

- Kazakhstan should ensure that information identifying the partners in a foreign partnership carrying out business in Kazakhstan or having income, deductions or credits for tax purposes in Kazakhstan, is available to its competent authority for exchange of information for tax purposes.

Box 7.2. **Example of a Jurisdiction Rated as Compliant with the Standard on Transparency and EOIR by the Global Forum**

(…) 3. Swedish accounting law requires all Swedish legal entities as well as branches and subsidiaries of foreign companies to keep adequate accounting records, including underlying documentation, for a minimum of seven years In respect of banks and other financial institutions, Swedish AML, banking and accounting legislation imposes appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transactional information are available.

4. Under commercial, tax and anti-money laundering legislation, companies created under Sweden's law are subject to comprehensive requirements to maintain and have available relevant ownership and bank information. Such information is available for EOI purposes. Where nominee ownership is allowed there are also requirements to have ownership information available (…) Swedish AML, banking and accounting legislation imposes appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transactional information are available. (…)

Source: OECD (2013).

Exchange of information mechanisms

Kazakhstan has an extensive tax treaty network but it has domestic restrictions on access to banking information that are not in line with the international standard. Kazakhstan is also a Party to the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) (see Box 7.3) which is the most powerful global instrument for international tax co-operation. Over 100 countries and jurisdictions, including all OECD and G20 countries, have already signed or are participating in this instrument[4].

According to Article 28.6 of the Convention, it came into effect in Kazakhstan for administrative assistance related to taxable periods beginning on tax years opened as of 1st January 2016. According to Article 28.7 of the Convention, the Convention came into effect as of the date of entry into force of the Convention: 1 August 2015 for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of Kazakhstan in relation to earlier taxable periods.

Moreover, Kazakhstan has an Anti-corruption strategy for 2015-2025 which includes the development of international co-operation concerning counteraction of corruption. As mentioned in the chapter on Tax Administration, the Convention may be a useful tool to assist in the fight against cross-border bribery and corruption as its Article 22.4 makes the sharing of information received for tax purposes with other law enforcement agencies and judicial authorities on certain high priority matters (e.g., to combat money laundering, corruption, or terrorism financing) possible if certain conditions are met The domestic law of the country supplying the information must allow such sharing of information, and the competent authority of that country must give its authorisation. As a consequence, if the Kazakh competent authority receives information under the Convention and suspects that this information may be useful to prosecute a corruption case, he may provide it to the prosecutor since the Kazakhstan's Law on Corruption requires public officials to report suspicions of corruption, but must ask for the consent of the competent authority of the country that provided the information.

Recommendations for reform

- Kazakhstan should clarify its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.

- Kazakhstan should ensure that all its EOI relationships provide for exchange of banking information to the international standard.

Box 7.3. **Convention on Mutual Administrative Assistance on Tax Matters: Key Points**

- The Convention on Mutual Administrative Assistance in Tax Matters ("the Convention") was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all countries.
- The Convention was amended to respond to the call of the G20 at its 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Convention was opened for signature on 1 June 2011.
- Since 2009, the G20 has consistently encouraged countries to sign the Convention including most recently at the meeting of the G20 Finance Ministers and Central Bank Governors Meeting in February 2016 where the communique stated "We reiterate our call for all countries to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters [...]"
- 104 jurisdictions currently participate in the Convention, including 15 jurisdictions covered by territorial extension. This represents a wide range of countries including all G20 countries, all BRIICS, all OECD countries, major financial centres and an increasing number of developing countries.
- The Convention facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.

Source: OECD Convention on Mutual Administrative Assistance in Tax Matters.

Action Plan and potential OECD support

Through the peer review process on Exchange of information on request, the Global Forum has made a number of recommendations to Kazakhstan to improve transparency and exchange of information.

Recommendations

- Kazakhstan should clarify its legislation to ensure that the Kazakh competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements and has the power to obtain all banking information requested by its exchange of information partners.
- Kazakhstan should ensure that the legislation in place provides for effective enforcement measures and sanctions applicable in cases where the requested information is not provided.
- Kazakhstan should take measures to ensure that the confidentiality of information held by lawyers and notaries is consistent with the international standard on exchange of information.
- Kazakhstan should ensure that ownership information on foreign companies with sufficient links with Kazakhstan is available in all cases.
- Kazakhstan should ensure that information identifying the partners in a foreign partnership carrying out business in Kazakhstan or having income, deductions or credits for tax purposes in Kazakhstan, is available to its competent authority for exchange of information for tax purposes.
- Kazakhstan should clarify its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.
- Kazakhstan should ensure that all its EOI relationships provide for exchange of banking information to the international standard.

Action Plan

Reform areas	Potential OECD Support
Ensure that ownership information on foreign companies with sufficient links with Kazakhstan is available to the Kazakh competent authority in all cases	Assistance in the drafting of legislation concerning the availability of information on foreign companies with sufficient links with Kazakhstan
Ensure that information identifying the partners in a foreign partnership carrying on business in Kazakhstan or having income, deductions or credits for tax purposes in Kazakhstan, is available to its competent authority for exchange of information for tax purposes	Assistance in the drafting of legislation concerning the availability of information identifying the partners in a foreign partnership for exchange of information for tax purposes

Reform areas	Potential OECD Support
Clarify legislation to ensure that the Kazakh competent authority has the power to obtain the Relevant information pursuant to requests under all exchange of information agreements and has the power to obtain all banking information requested by its exchange of information partners	Assistance in the drafting of legislation giving the competent authority the power to access all information requested under all its exchange of information partners' agreements
Ensure that Kazakh legislation provides for effective enforcement measures and sanctions applicable in cases where the requested information is not provided	Assistance in the drafting of legislation concerning sanctions for failure to provide requested information
Take measures to ensure that the confidentiality of information held by lawyers and notaries is consistent with the international standard on exchange of information	Assistance in the drafting of legislation to clarify the scope of attorney client privilege

Further reading

OECD (2016), *Anti-corruption Reforms in Eastern Europe and Central Asia Progress and Challenges, 2013-2015,* OECD Publishing, Paris, www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf.

OECD (2016), *OECD Secretary-General Report to G20 Finance Ministers: Update on Tax Transparency*, OECD Publishing, Paris, www.oecd.org/g20/topics/taxation/oecd-secretary-general-tax-report-g20-finance-ministers-april-2016.pdf.

OECD (2012), *International Co-operation against Tax Crimes and Other Financial Crimes: A Catalogue of the Main Instruments*, OECD Publishing, Paris, www.oecd.org/ctp/exchange-of-tax-information/internationalco-operationagainsttaxcrimesandotherfinancialcrimesacatalogueofthemaininstruments.htm.

Notes

1. See www.oecd.org/tax/transparency/abouttheglobalforum.htm

2. See www.oecd.org/tax/automatic-exchange/common-reporting-standard/.

3. See www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489.

4. Chart of participating jurisdictions, www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

References

OECD Convention on Mutual Administrative Assistance in Tax Matters, www.oecd.org/ctp/exchange-of-tax-information/ENG-Amended-Convention.pdf

OECD (2015a), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Tax Transparency 2015 Report on Progress,* OECD Publishing, Paris, www.oecd.org/tax/transparency/global-forum-annual-report-2015.pdf.

OECD (2015b), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Kazakhstan 2015: Phase 1: Legal and Regulatory Framework,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264233560-en.

OECD (2013), Peer Review Report: Combined Phase 1 and Phase 2 (Sweden), www.oecd.org/tax/transparency/globalforumontaxtransparencyshiftsfocustoeffectivenessofinformationexchange.htm.

Republic of Kazakhstan (2016), *Regulations on the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan,* http://kgd.gov.kz/en/content/information-about-committee.

Republic of Kazakhstan (2015), *Law on State Registration of Legal Entities, Branches and Representations,* http://invest.gov.kz/uploads/files/2015/12/03/law-of-the-republic-of-kazakhstan-on-state-registration-of-legal-entities-and-registration-of-branches-and-representative-offices.pdf.

Chapter 8.

Deterring and detecting bribery in export credits in Kazakhstan

This chapter examines the measures that the Republic of Kazakhstan has established to combat bribery when providing government-backed support to exporters. The chapter describes the key policies and procedures that Export Credit Agencies (ECA) from OECD countries have put in place to implement the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits and the related measures applied by Kazakhstan's two ECA: KazExportGarant Export Credit Insurance Corporation JSC and the Kazakhstan Development Bank. This chapter deals with the two ECAs' actions for deterring bribery, the information required from customers to help detect bribery, enhanced due diligence that might need to be undertaken in specific circumstances, and the appropriate actions to be taken when there is credible or proven evidence of bribery.

Role of Export Credits in promoting integrity and combating corruption

Many governments provide export credits services to help their domestic exporters secure contracts to sell goods and/or services overseas. An export credit is an insurance, guarantee or financing arrangement that allows a foreign buyer/borrower of exported goods and/or services to defer payment over a period of time. While many private-sector financial institutions provide export credits services to help exporters, governments sometimes need to step in with official support to complement the market, for example, when the size of the export transaction or the risks involved go beyond private-sector capacities.

Official export credits support is, therefore, often required for the construction and operation of large-scale projects, involving significant money flows to multiple parties, including agents, which could potentially be used to disguise illicit payments and other corrupt activities. In addition, such projects can be situated in countries where the relevant legal framework and enforcement structures are not consistent with best international practice.

Accordingly, governments providing official export credits support need to establish the necessary policies and procedures, in accordance with their country's legal system and anti-bribery legislation, in order to deter and detect bribery when providing such support to exporters.

Within the OECD, governments have negotiated a set of financial disciplines, known as the Arrangement on Officially Supported Export Credits (hereafter the "Arrangement"), for the provision of officially supported export credits (OECD, 2016). This Arrangement contains the most generous financial terms and conditions that governments may apply when providing official support and is compatible with the World Trade Organization (WTO) anti-subsidy rules to ensure that export credits are not being used to camouflage subsidies for national exporters. Moreover, the governments have agreed on certain good governance disciplines to ensure that the export transactions benefitting from officially supported export credits are compatible with their wider environmental, social and sustainability policy objectives.

Under these good governance disciplines and in line with provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the "OECD Anti-Bribery Convention"), the governments of OECD Members have agreed that they should not support export transactions tainted by bribery. As a result, they have adopted the OECD Council Recommendation on Bribery and Officially Supported Export Credits (hereafter the "2006 Recommendation"), which lists appropriate measures for deterring and detecting corruption in transactions supported by export credits. Further information on the measures contained in the 2006 Recommendation may be found in Box 8.1.

Box 8.1. The 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits [excerpt]

RECOMMENDS that Members take appropriate measures to deter bribery[1] in international business transactions benefiting from official export credit support, in accordance with the legal system of each member country and the character of the export credit[2] and not prejudicial to the rights of any parties not responsible for the illegal payments, including:

a) Informing exporters and, where appropriate, applicants, requesting support about the legal consequences of bribery in international business transactions under its national legal system including its national laws prohibiting such bribery and encouraging them to develop, apply and document appropriate management control systems that combat bribery.

b) Requiring exporters and, where appropriate, applicants, to provide an undertaking/declaration that neither they, nor anyone acting on their behalf, such as agents, have been engaged or will engage in bribery in the transaction.

c) Verifying and noting whether exporters and, where appropriate, applicants, are listed on the publicly available debarment lists of the following international financial institutions: World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank[3].

d) Requiring exporters and, where appropriate, applicants, to disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge in a national court or, within a five-year period preceding the application, have been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country.

e) Requiring that exporters and, where appropriate, applicants, disclose, upon demand: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid**,** or agreed to be paid**,** to such persons.

f) Undertaking enhanced due diligence if: (i) the exporters and, where appropriate, applicants, appear on the publicly available debarment lists of one of the international financial institutions referred to in c) above; or (ii) the Member becomes aware that exporters and, where appropriate, applicants or anyone acting on their behalf in connection with the transaction, are currently under charge in a national court, or, within a five-year period preceding the application, has been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country; or (iii) the Member has reason to believe that bribery may be involved in the transaction.

g) In case of a conviction in a national court or equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period, verifying whether appropriate internal corrective and preventive measures[4] have been taken, maintained and documented.

h) Developing and implementing procedures to disclose to their law enforcement authorities instances of credible evidence[5] of bribery in the case that such procedures do not already exist.

i) If there is credible evidence at any time that bribery was involved in the award or execution of the export contract, informing their law enforcement authorities promptly.

j) If, before credit, cover or other support has been approved, there is credible evidence that bribery was involved in the award or execution of the export contract, suspending approval of the application during the enhanced due diligence process. If the enhanced due diligence concludes that bribery was involved in the transaction, the Member shall refuse to approve credit, cover or other support.

Box 8.1. **The 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits [excerpt]** *(continued)*

k) If, after credit, cover or other support has been approved bribery has been proven, taking appropriate action, such as denial of payment, indemnification, or refund of sums provided.

[1] As defined in the Anti-Bribery Convention.
[2] It is recognised that not all export credit products are conducive to a uniform implementation of the Recommendation. For example, on short-term whole-turnover and multi-buyer export credit insurance policies, Members may, where appropriate, implement the Recommendation on an export credit policy basis rather than on a transaction basis.
[3] The implementation of paragraph 1 c) may take the form of a self-declaration from exporters and, where appropriate, applicants, as to whether they are listed on the publicly available IFI debarment lists.
[4] Such measures could include: replacing individuals that have been involved in bribery, adopting an appropriate anti-bribery management control systems, submitting to an audit and making the results of such periodic audits available.
[5] For the purpose of this Recommendation, credible evidence is evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted.

Source: OECD (2006).

These measures are addressed to governments; however, in practice, officially supported export credits are provided by Export Credit Agencies (ECAs) working on behalf of a government. These official ECAs may take different forms: for example, they may be ministerial departments, public institutions, or commercial institutions administering an account for, or on behalf of, their government, separate from the commercial business of the institution. ECAs offer a range of diverse products and services, including granting direct loans or credits to overseas buyers, providing insurance or guarantees against default on a credit granted to an overseas buyer, and supplying insurance on investments that companies make in projects overseas. In addition, many ECAs provide support to domestic manufacturers to help them secure export contracts, such as working capital facilities (both pre- and post-shipment) and insurance against unfair calling of performance bonds.

Regardless of the form of the ECA or of the products and services that it provides, governments need to ensure that it follows sound financial disciplines that are compatible with the WTO rules and good governance disciplines that are compatible with the government's wider commitments under relevant domestic legislation and international agreements and conventions, including those to combat corruption activities in international business transactions.

For the purpose of this integrity scan, the Republic of Kazakhstan (hereafter "Kazakhstan") has identified two institutions that provide government support to exporters: KazExportGarant Export Credit Insurance Corporation JSC (hereafter "KazExportGarant") and the Kazakhstan Development Bank (hereafter the "KDB") (see Box 8.2 for additional information).

Box 8.2. **Kazakhstan financial institutions providing government support to exporters**

KazExportGarant

KazExportGarant is the official ECA of Kazakhstan. It was established in 2003 in accordance with Resolution No. 442 of the Government of Kazakhstan and is regulated by the National Bank of Kazakhstan. KazExportGarant is fully owned by the Government of Kazakhstan through the National Management Holding Baiterek JSC.

The core business of KazExportGarant is to provide export manufacturing companies and second-tier banks with insurance protection against the risk of non-payment in their foreign trade deals. Its main products are: credit insurance, investment insurance, bank guarantee insurance, trade financing and re-insurance. Since 2004, it has provided insurance cover to more than 400 Kazakh exporters for deals in various countries of the Commonwealth of Independent States (CIS), as well as further afield, to countries including Afghanistan, China, Germany, India, Italy, Latvia, Lithuania, Mongolia, Poland, Switzerland, Turkey, the United Arab Emirates and the United States of America. In addition, KazExportGarant has insured investments to Iran, Turkey and Turkmenistan, and has supported 183 export shipments worth more than KZT 8.2 billion under its Export Trade Financing programme (launched in 2012) from non-oil sectors of the domestic economy such as machine building, food, chemical industries, and construction materials industry.

KazExportGarant is aware of the disciplines for officially supported export credits that are developed, negotiated and monitored at the OECD, in particular the financial disciplines contained in the Arrangement. In this context, KazExportGarant applies both the country classification system established by OECD ECAs for assessing country risk and the minimum interest rates (the Commercial Interest Reference Rate or "CIRR") established by the Participants to the Arrangement in its Export Trade Financing programme. In addition, KazExportGarant is a member of both the Berne Union Prague Club and the Aman Union, and participates in meetings of ECAs from the Eurasian Economic Union. KazExportGarant has also signed a number of co-operation agreements with foreign ECAs, such as EGFI of Iran, SACE of Italy and SINOSURE of China, with the aim of facilitating further collaboration, technical assistance, expert examinations, etc.

Kazakhstan Development Bank

The Kazakhstan Development Bank is a government-owned financial institution providing assistance to Kazakh companies, including those involved in exporting goods and services. It was established in 2003 in accordance with Decree No. 531 of the President of Kazakhstan. The KDB is fully owned by the Government of Kazakhstan through the National Management Holding Baiterek JSC. The KDB's activities are governed by various instruments, including a Credit Policy Memorandum, which inter alia, forbids it to finance projects relating to the production of arms, alcohol and drugs, as well as projects relating to geological exploration.

The KDB principally provides credit loans for investment projects, export operations and leasing activities, but also has programmes providing support for intermediate and mezzanine financing, guarantees provision, equity participation and interbank financing. The KDB's mission is "to promote sustainable development of the national economy through investments to non-energy sector of the country", including through participating in inward investment opportunities. As a result, its focus is on helping the domestic economy to develop rather than specifically on providing financial assistance for exporters. Consequently, KDB's involvement in supporting actual export transactions is limited and the financial and good governance disciplines of the OECD for export credits are less relevant for its activities.

The KDB has signed a number of memoranda of co-operation with various multilateral and developmental institutions such as: the China Development Bank; the European Bank of Reconstruction and Development; the European Investment Bank; the Islam Development Bank; the Korea Development Bank; the Turkish Development Bank; and the World Bank; as well as some ECAs, such as COFACE of France; the Export-Import Bank of Korea; the Export-Import Bank of Malaysia; the Japanese Bank of International Cooperation; Vnesheconombank of Russia; the Export-Import Bank of Turkey; and the Export-Import Bank of the United States. The aims of these agreements are both to learn and apply the practices of other successfully development institutions and to enhance opportunities for foreign investors in Kazakhstan.

Sources: KazExportGarant website; Berne Union website; Aman Union website; Development Bank of Kazakhstan website.

The aim of this integrity scan is to examine the measures that Kazakhstan has established to combat bribery when providing government-backed support to exporters.

Section II describes the key policies and procedures that ECAs from OECD countries have put in place to implement the 2006 Recommendation and the related measures applied by KazExportGarant and the KDB. The Section deals with: ECA actions for deterring bribery; the information required from customers to help detect bribery; enhanced due diligence that might need to be undertaken in specific circumstances; and the appropriate actions to be taken when there is credible or proven evidence of bribery.

Section III then outlines the measures that Kazakhstan should put in place to help deter and detect bribery in its provision of officially supported export credits and the related potential support that the OECD and ECAs from OECD countries might be able to offer.

Current status and critical analysis

Deterring bribery in international business transactions: ECA actions

Under the 2006 Recommendation, there are certain measures that ECAs should undertake when they receive applications for official export credits support:

- ECAs should inform exporters and/or applicants requesting official support about the legal consequences of bribery in international business transactions under their respective national legal systems, including the relevant national laws that prohibit such bribery.

- Exporters and/or applicants should be encouraged to develop, apply and document appropriate management control systems that combat bribery.

- ECAs should verify whether exporters and/or applicants are on the debarment lists of international financial institutions.

ECAs in OECD countries inform their customers about the legal consequences of bribery *via* their websites and customer publications, so that the information is publicly available, as well as in relevant transaction-specific documentation that customers read and sign every time they apply for official support.

Similarly, ECAs in OECD countries encourage their customers to develop, apply and document appropriate management control systems on their websites, in customer publications and/or at customer meetings, as well as in relevant transaction-specific documentation that customers read and sign every time they apply for official support. The United Kingdom's ECA, UKEF, goes further by requesting, if available, a copy of the applicant’s Code of Conduct and written procedures to discourage and prevent corrupt activity.

Many governments maintain debarment lists, which may be publicly available, either at the ECA level (i.e. firms and individuals specifically debarred from seeking officially supported export credits due to previous convictions or admissions of bribery) or at the national level (i.e. firms and individuals debarred in general from doing business with the government and public bodies or from receiving public advantages). In addition, many International Financial Institutions (IFIs) also maintain lists of firms and individuals that have been found to have violated the fraud and corruption provisions of these institutions

and are, therefore, ineligible for future support, either for a determined period of time or indefinitely. Further information on the Multilateral Development Banks' debarment list is available in Box 8.3.

ECAs should either verify whether exporters and/or applicants appear on any such debarment lists or require a self-declaration from the customer that it does not appear on any such list. Some OECD ECAs also extend the coverage of this verification to include any parties, such as agents, acting on behalf of the customer in connection with the export transaction.

The fact that a firm or individual involved in the export transaction appears on a debarment list may not necessarily result in an application for official support being refused automatically. Past behaviour can, however, provide an indication of future behaviour and, as a result, if a firm or individual involved in the export transaction appears on a debarment list, ECAs should undertake enhanced due diligence to ensure, for example, that appropriate internal corrective or preventative measures have been put in place and that no corrupt acts took place in the export transaction for which official support is requested.

Box 8.3. **Multilateral developments bank debarment lists**

On 9 April 2010, the Multilateral Developments Banks (MDBs) signed an Agreement for Mutual Enforcement of Debarment Decisions, which, as of 11 July 2012, has been implemented by the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the World Bank Group. Under the terms of this Agreement, the participating MDBs agree to cross-debar firms and individuals that have engaged in wrong-doing in MDB-financed projects by enforcing debarment decisions made by other participating MDBs. The participating MDBs maintain up-to-date, publicly-available lists of firms and individuals that are ineligible for future support, either for a determined period of time or indefinitely. The World Bank's listing of ineligible firms and individuals is available on its website.

Sources: Cross Debarment website; World Bank Listing of Ineligible Firms and Individuals.

KazExportGarant

KazExportGarant has confirmed that customers are informed of the legal consequences of criminal activity and that KazExportGarant, in accordance with the laws of Kazakhstan, will not cover any losses that result from illegal actions – such as bribery and money laundering – in connection with the transaction. This information is inserted in the contract that customers are required to sign every time they apply for official support.

On the other hand, KazExportGarant does not encourage its customers to develop, apply and document appropriate management control systems. KazExportGarant has indicated that this is because it cannot require another legal entity to put in place such measures. KazExportGarant has explained, however, that it considers all its customers to be "reputable", i.e. all the banks have the necessary licences to operate in Kazakhstan and most of the exporters are "national champions".

KazExportGarant does not have its own debarment list. KazExportGarant has, however, established a position of Compliance-controller, who is responsible for ensuring that it complies with both Kazakh legislation and internal rules and procedures, and who

has access to the government "black list" of actors involved in money laundering and terrorism financing and will verify this list during the application process. If a customer appears on this list, KazExportGarant will suspend the application and make further enquiries. This list does not, however, relate specifically to instances of bribery and, in addition, KazExportGarant does not cross-reference its customers with any of the international debarment lists. For information, the Compliance-controller is appointed by the Board of Directors and operates independently of the normal functions of KazExportGarant. Members of the public may contact the Compliance-controller if they become aware of any violations of Kazakh laws by KazExportGarant or an employee, of any corrupt activity by or any conflict of interest relating to an employee, or of any violation of KazExportGarant's ethical standards.

The KDB

The KDB has confirmed that its internal procedures do not provide for customers to be informed about the legal consequences of bribery, as the national anti-corruption laws of Kazakhstan are publicly available and should be well known to its customers. Its loan agreements, however, contain provisions stipulating that the support will be suspended (further drawdowns refused, early prepayment demanded, etc.) if the customer engages in corrupt activities. Similarly, the applicant must sign a statement that it is aware of and will abide by all relevant Kazakh legislation and that all information provided for the application (company information, purpose of the support, etc.) is true and complete. Under the terms of the KDB's support, should the applicant subsequently discover that corrupt activities have occurred, it should inform the KDB within five days. In addition, the KDB has confirmed that there would be nothing to prevent it amending its internal policies in order to inform clients about the legal consequences of bribery.

The KDB has confirmed that it does not encourage its customers to develop, apply and document appropriate management control systems.

In establishing business relations with its clients, the KDB checks individuals and organisations against terrorist black lists, sanction lists of Kazakhstan, the Russian Federation, the European Union and the Union Nations, as well as the World Bank Listing of Ineligible Firms and Individuals. In this context, the KDB has installed software that covers all relevant sanctions lists and includes an extensive list of politically exposed persons (PEPs). Under its "Know Your Customer" procedures, the KDB examines the company itself and any affiliated companies, as well as its founders, beneficial owners and other shareholders. When it has information about the overseas buyers from transaction documentation, the KDB will also check them against its databases.

The KDB has introduced a compliance system with a Compliance Controller responsible for ensuring the Bank's compliance with national legislation, internal and external rules, adopted procedures, corporate governance system, etc. This compliance system includes an on-line mailbox and telephone helpline for complaints and a commitment to keep confidential any information provided. Any complaint about an employee of the bank is considered by the compliance service, the legal department and management representatives. Any complaint about the management is reviewed by the compliance service and reported to the Board of Directors.

Recommendations for reform

Both KazExportGarant and the KDB rely on provisions in the transaction documentation to inform customers about the legal consequences of corrupt activities in the transactions that they are supporting. This is a good approach, as it ensures that customers read the provisions each time they apply for support. However, both institutions should clarify that corrupt activities includes bribery offences, as well as money laundering and terrorism financing, and should consider making information on the legal consequences of corrupt activities available elsewhere, such as on websites and in customer publications.

The existence of appropriate management control systems to prevent bribery from occurring shows that a company is taking the risk of bribery seriously and helps ensure that transactions are not tainted by bribery, especially for companies with previous experience of involvement with bribery. Although ECAs cannot require that their customers put such systems in place, both KazExportGarant and the KDB should encourage it. In this context, some ECAs also inform their customers of the OECD Guidelines for Multinational Enterprises, which are one of the components of the OECD Declaration on Investment and Multinational Enterprises. These Guidelines contain recommendations for responsible business conduct in a global context that are consistent with applicable laws and internationally recognised standards. In the context of deterring and detecting bribery, the Guidelines include a chapter on combating bribery, bribe solicitation and extortion, with recommendations on preventing the giving and receiving of bribes, developing adequate internal controls, discouraging the use of facilitation payments, documenting the use of agents and other intermediaries, etc.

The Kazakh government's "black list" does not appear to relate specifically to instances of bribery. As a result, KazExportGarant should take steps to ensure that it is not providing support, without having undertaken appropriate due diligence, to transactions involving parties that have been sanctioned due to previous incidences of bribery. This might involve, for example, working with the government to enlarge the scope of the "black list" or verifying applicants against the World Bank Listing of Ineligible Firms and Individuals. The KDB, on the other hand, appears to have comprehensive database of sanctioned firms and individuals, which it consults on a transaction-by-transaction basis. Therefore, no recommendations for additional measures are necessary.

Detecting bribery in international business transactions: Information from customers

Under the 2006 Recommendation, ECAs should require that exporters and/or applicants provide certain declarations or information when applying for official export credits support, which can help an ECA detect or deter bribery. In this context, exporters and/or applicants are required to:

- Provide an undertaking or declaration that neither they, nor anyone acting on their behalf in connection with the export transaction, have been engaged or will engage in bribery.

- Disclose if they, or anyone acting on their behalf in connection with the export transaction, are currently under charge in a national court, or have been convicted or subject to equivalent national administrative measures for violation of anti-bribery laws in the five-year period preceding the application.

- Disclose, upon demand, the identity of persons acting on their behalf in connection with the export transaction, and the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons.

ECAs should require exporters and/or applicants to provide an undertaking or declaration when they apply for official support that neither they, nor anyone acting on their behalf in connection with the export transaction, including agents, have been engaged or will engage in bribery. The actual undertaking or declaration is normally then included in transaction-specific documentation, such as the application form or stand-alone document, that exporters and/or applicants are required to sign and submit when applying for official support, *i.e.* at the earliest stage possible in the life of the potential officially supported export credit when any problem cases might be quickly identified. An example of such an undertaking or declaration is available in Box 8.4.

In addition, ECAs should require exporters and/or applicants to disclose if they, or anyone acting on their behalf in connection with the export transaction, are currently under charge in a national court, or have been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period preceding the application for official support. This disclosure requirement is usually fulfilled by the inclusion of a statement to this effect in the aforementioned undertaking or declaration. An example of such disclosure is available in Box 8.4.

The fact that a firm or individual is currently under charge or has previously been convicted of violating national anti-bribery legislation may not necessarily automatically result in official support being declined. Past behaviour can, however, provide an indication of future behaviour and ECAs should undertake enhanced due diligence to ensure, for example, that appropriate internal corrective or preventative measures have been taken, maintained and documented to make sure that, in general, bribery cannot occur again and, specifically, that no bribery was involved in the export transaction for which official support is requested.

ECAs should also be able to oblige exporters and/or applicants to disclose, either systematically for every application or upon demand, the details of any payments to intermediaries, agents or other parties acting on their behalf, including potentially those of joint venture or consortium partners, in connection with the export transaction. Such details should include: the identity of the persons acting on their behalf (*e.g.* name, company and address), the amount of commissions and fees paid or to be paid, and the purpose of these commissions and fees.

While intermediaries and agents can play a very important role in facilitating export transactions, where bribery and corruption are concerned, they can also be the means by which illegal payments are made. It is therefore important that ECAs are able to review the use of any intermediaries or agents and the amount and purpose of their commissions and fees, regardless of whether such payments, when included in the export contract, are eligible for official support, to help detect whether bribery has been involved in the export transaction. The aim of this due diligence process should be to highlight whether the use of intermediaries or agents might be a cause for concern and result in a more detailed assessment, *i.e.* an enhanced due diligence, of the export transaction being necessary. For example, ECAs may verify whether an agent appears on one of the IFI debarment lists and/or assess whether the level of the commission is consistent with standard business practice for the project country or industry sector concerned.

Box 8.4. **Customer undertaking and disclosure**

In Italy, SACE, the official ECA, requires that each exporter signs and provides an undertaking, as follows:

"The Exporter hereby declares and guarantees that:

Neither itself, nor any of its directors, executives or any other subject acting on its behalf, has violated, and shall violate international and/or national anti-bribery laws in relation to the award of the export contract, its participation in international tenders, and throughout the negotiation, signature and entry into force of the export contract and/or in respect of any other potential agreement, authorisation, license, consent, or obligation pursuant to or in connection with the export contract. On the date hereby, no legal proceedings are currently being brought against the Exporter any of the above-stated violations.

In the case whereby the Exporter is not in a position to make one or a number of the declarations at point (a) above, it shall make one the following declarations*:

- on [X], a charge in a national court or/administrative measure was issued against it for violation of international and/or national anti-bribery laws
- legal proceedings are currently being brought against it for violation of international and/or national anti-bribery laws
- legal proceedings are currently being brought against one or any of its agents for violation of international and/or national anti-bribery laws

*If one of such boxes is ticked, the Exporter shall be obliged to provide SACE with further information."

In addition, in the application form, the exporter and/or applicant is required to complete the following:

"To the best of its knowledge, the Exporter/Applicant represents, to all legal effects that:

- it has not been subject to any charge/administrative measure by national courts in the last 5 years for violation of international and/or national anti-bribery laws; or
- on [X], a charge in a national court or a national administrative measure was issued against it for violation of international and/ or national anti-bribery laws*; and
- no legal proceedings are currently being brought against it for violation of international and national anti-bribery laws; or
- legal proceedings are currently being brought against it for violation of international and/or national anti-bribery laws*; and
- no legal proceedings are currently being brought against any of its agents for violation of international or national anti-bribery laws; or
- legal proceedings against its agents and/or representatives are currently being brought for violation of international and national anti-bribery laws*; and
- it has never been included on any debarment lists of the World Bank or other International Organisations.

* If one of such boxes is ticked, the Exporter/Applicant shall be obliged to provide SACE with further information."

KazExportGarant

KazExportGarant does not require its customers to provide any undertaking or declaration that neither they, nor anyone acting on their behalf in connection with the export transaction, have been engaged or will engage in bribery. KazExportGarant considers that, by stating in its cover provisions that it will not cover any losses resulting from illegal actions in connection with the transaction, it does not need any such undertaking or declaration from its customers. In this context, KazExportGarant believes

that the Kazakh laws making bribery a criminal offence, including the new 2014 Criminal Code of Kazakhstan, are well known to its customers. At the same time, KazExportGarant has stated that there would be no obstacles to prevent it from requiring such an undertaking or declaration from customers as part of its application process.

KazExportGarant does not require its customers to disclose if they, or anyone acting on their behalf in connection with the export transaction, are currently under charge in a national court, or have been convicted or subject to equivalent national administrative measures for violation of anti-bribery laws in the five-year period preceding the application. At the same time, if KazExportGarant becomes aware of previous involvement in bribery, it might undertake additional due diligence before deciding whether to provide or refuse support.

With regard to the use of agents or intermediaries to facilitate an export contract, KazExportGarant has confirmed that any commissions or fees paid are not included in its official support to customers. KazExportGarant requires information on such a person's legal authority to work or to act on behalf of a customer (for example, a power of attorney), but would not require any additional information on the amount of commission or fees paid nor would undertake any due diligence on the agent or on the work an agent carries out. Any information provided on the agent or intermediary is submitted at the time of an application and KazExportGarant has confirmed that this information would be examined in more detail in the event of an insurable event.

The KDB

The KDB does not specifically require its customers to provide any undertaking or declaration that neither they, nor anyone acting on their behalf in connection with the export transaction, have been engaged or will engage in bribery. At the same time, however, and as noted above, both its loan agreement and guarantee statements contain provisions stipulating that support will be suspended if the customer engages in corrupt activities or does not comply with the relevant Kazakh legislation.

The KDB does not specifically require its customers to disclose if they, or anyone acting on their behalf in connection with the export transaction, are currently under charge in a national court, or have been convicted or subject to equivalent national administrative measures for violation of anti-bribery laws in the five-year period preceding the application. The KDB does, however, seek to uncover this information during its "Know Your Customer" due diligence. The Central Security Service of the Bank conducts an audit to consider, inter alia, whether there are:

- any criminal proceedings against the customer's management or owners;
- a significant number of journalistic investigations of corruption or fraud against the customer; and
- reasonable suspicions about the involvement of the customer in money laundering activities.

The Compliance Controller then takes a decision as to whether the Bank should enter into a business relationship with the customer. The KDB may refuse to provide support to a customer if it has concerns about possible reputational risk, even if the financial risk from the customer is low.

As noted in Box 8.2, the KDB's role is to help Kazakhstan’s economy develop by providing industry with investments for domestic projects, export production and leasing activities, rather than specifically providing financial assistance for exporters. As a result,

it primarily provides pre-export support and, therefore, only occasionally has access to any detailed information about an underlying export contract, including the identity of any agents, their commissions and the work undertaken. Even so, the KDB has confirmed that if, in the course of its due diligence, it has access to information concerning the underlying export contract, it may make relevant enquiries in order to avoid being involved in a transaction that might have reputational issues, which, in turn, might increase the financial risks of a transaction.

Recommendations for reform

The transaction documentation between KazExportGarant, the KDB, and their respective customers states that illegal activities, such as bribery and corruption, will result in support being invalidated or suspended. Customers are not, however, required to certify that such illegal activities have not taken place. Both KazExportGarant and the KDB are, therefore, strongly encouraged to introduce anti-bribery undertakings or declarations in their application procedures that have to be read and signed by authorised company representatives each time an application for support is made.

In addition, information on current charges or previous instances of bribery may be an indication that a customer does not have appropriate management control systems in place to combat bribery. As a result, enhanced due diligence by the ECAs might be required prior to providing any export credits support to ensure that the transaction does not involve any bribery. Both KazExportGarant and the KDB (to supplement its "Know Your Customer" due diligence) are therefore encouraged to develop comprehensive undertakings or declarations, such as those used by SACE [see Box 8.4], which include statements about current charges and previous experience of bribery and which should be read and signed each time an application for support is made.

As agents can be a means by which illegal payments are made, it is important that ECAs are able to review the use of any agents involved in an export transaction, the purpose of what they are paid to do, and the amount of the commissions or fees that they are paid. Even if these amounts are not included in the insurance cover or the financing provided, both KazExportGarant and the KDB should request information about the use of agents and undertake an appropriate level of due diligence. This due diligence should involve identifying any agents involved in the export transaction, checking whether they are on the government or IFI debarment lists, verifying the basis of the work that they undertake, and confirming that the amounts paid are consistent with standard market practice for the industry sector and project country concerned.

Detecting bribery in international business transactions: Enhanced due diligence

When ECAs receive applications for support, they typically undertake a due diligence, which, for bribery issues, might involve checking that the declaration has been signed and submitted, verifying the IFI debarment lists, etc. In certain circumstances, however, an enhanced due diligence may be required. The 2006 Recommendation expects ECAs to undertake enhanced due diligence if:

- Exporters and, where appropriate, applicants, appear on the publicly available debarment lists of the international financial institutions; or
- The ECA becomes aware that exporters and, where appropriate, applicants or anyone acting on their behalf in connection with the transaction, are currently under charge in a national court, or, within a five-year period preceding the

application, has been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country; or

- The ECA has reason to believe that bribery may be involved in the transaction.

In addition, an ECA may undertake an enhanced due diligence if, for example, an exporter and/or applicant refuses to sign a non-bribery undertaking, if an ECA has concerns about any of the parties involved in the export transactions (such as an agent), or if the transaction is to a country where bribery is generally considered to be a potential concern (such as post-conflict countries or countries with weak governance issues). Further information on undertaking enhanced due diligence is included in Box 8.5.

Box 8.5. **Undertaking enhanced due diligence**

Enhanced due diligence should be commensurate to the specific export transaction and to the concerns identified; however, typical measures that an ECA might undertake are:

- A verification of the reputation of the parties involved in the export transaction and of their approach to corporate social responsibility (CSR) issues, including information on any previous allegations of wrong-doing, on the dismissal or sanction of any staff for related misconduct, on previous involvement of law enforcement authorities, etc.
- An assessment of the parties' anti-bribery management control systems, the related policies and procedures, and the relevant implementation measures, including a review of parties' Codes of Conduct and staff training programmes.
- A review of the reasons why one of the parties (an individual or a firm) involved in the export transaction appears on an IFI debarment list.
- A review of the circumstances of any previous conviction or sanction for violation of laws against bribery of foreign public officials.
- An assessment of any internal corrective and preventative measures that have been developed in response to previous allegations or proven examples of wrong-doing.
- A verification that any individuals found to have been actively involved in bribery have been replaced.
- A detailed analysis of the role of any intermediaries, agents or other parties involved in the export transaction and of the amount and purpose of their commissions and fees, in cases where these are of concern.

Box 8.5. **Undertaking enhanced due diligence** *(continued)*

In order to undertake such enhanced due diligence, ECAs may need to:

- Seek additional project-specific or general information and documentation from the parties involved in the export transaction
- Require that the concerned party involved in the export transaction undergo an independent external audit of its management control systems and/or of any internal corrective / preventative measures developed
- Collect publicly-available information from, for example, the internet, media sources and civil society organisations
- Request input from other ECAs or IFIs on their experience(s) with any of the parties involved in the export transaction
- Request information from the project country from, for example, their overseas diplomatic mission or local
- legal authorities
- Seek input from other parts of government, including national law enforcement authorities.

It should, however, be noted that official ECAs are not investigative authorities: if a legal review is required concerning any specific export transaction, ECAs should be obliged to inform their law enforcement authorities.

Source: OECD (2006).

KazExportGarant

KazExportGarant has explained that if a customer appears on its government's "black list", the application process would be suspended. In other situations, such as a previous involvement in bribery or concerns about an application, KazExportGarant may undertake an enhanced due diligence, which would involve both its risk management and legal departments. Its legal department may consult both the national database of court decisions to see whether someone has a previous conviction and the e-government database to ensure that an entity is properly registered, is not guilty of tax evasion, etc. Any decision on whether to proceed with providing support for the application will then be taken by the Underwriting Council, which consists of representatives of the underwriting, risk management and legal departments, as well as the executive committee, and which is regulated by the National Bank of Kazakhstan.

KazExportGarant has also explained that, under anti-money laundering legislation, banks are required to report all money transfers exceeding 5 million KZT (approximate 13 000 EUR) to the Ministry of Finance. As a result, records of such transfers exist and may be examined by relevant authorities if concerns are raised about the legality of any payments.

KazExportGarant has confirmed that if it still has concerns about a transaction after undertaking enhanced due diligence, but has found no evidence to justify refusing support, it has the option of surcharging the rates to reflect any additional risk associated with the underlying export transaction.

The KDB

The KDB has explained that its due diligence process consists of three stages: a preliminary review of the application, an expert appraisal by the Bank, and the actual financing of support. The KDB will first verify the information provided by the customer, then, if suspicious information or concealed information is uncovered, a more detailed appraisal will take place before the financing is offered.

The KDB has confirmed that if a party involved in the transaction appears on its sanction lists software, there may be reason to refuse support. For example, support will be refused for an entity or individual appearing on the lists for terrorism, money laundering or corruption offenses (as defined in Kazakhstan's Civil Code). This is to ensure the Bank's compliance with domestic legislation, and any deviation would be verified by the Prosecutor's Office or financial police.

On the other hand, an entity or individual appearing on a list for a lesser offence (for example, a fine for late payment of taxes), may only be subject to further review, including, for example, of the ownership and management structure, of the source of its financial transactions, and of its ultimate beneficial owners. In any event, the Bank's management will take a final decision on whether to provide further support to the customer.

Recommendations for reform

Both KazExportGarant and the KDB have processes in place for undertaking due diligence and, where appropriate, enhanced due diligence at the time of both the application and the insurable event or default. At the same time, however, the enhanced due diligence appears to be triggered only by the presence of a customer on a debarment or black list.

As noted in Section II (b)(iv), both KazExportGarant and the KDB are encouraged to amend their application processes to require that customers provide an anti-bribery undertaking or declaration, including information on whether they, or anyone acting on their behalf in connection with the transaction, are currently under charge or have a previous conviction for bribery. The fact that a customer then refuses to sign such an undertaking or declaration or indicates that someone is under charge or has a previous experience with bribery should then be an additional trigger for undertaking enhanced due diligence before providing support. Enhanced due diligence should also be undertaken if either KazExportGarant or the KDB have other reasons to believe that bribery may be involved in the transaction or concerns about any elements of the transaction.

Credible or proven evidence of bribery: Appropriate actions to undertake

The 2006 Recommendation requires that ECAs:

- Inform their law enforcement authorities promptly if there is credible evidence at any time that bribery was involved in the award or execution of an export contract and, in this context, to develop and implement appropriate procedures to facilitate such disclosure.
- Suspend approval of the application during the enhanced due diligence process if there is credible evidence that bribery was involved in the award or execution of the export contract and refuse approval of credit, cover or other support, if it is found that bribery was involved in the export transaction.

- Take appropriate action, such as denial of payment, indemnification, or refund of sums provided, if bribery is proven or admitted after credit, cover or other support has been approved.

If there is "credible evidence" that bribery was involved in the award or execution of an export contract, ECAs should promptly inform their law enforcement authorities. ECAs should therefore have developed and implemented appropriate systems for instances of credible evidence to be reported to legal departments and/or senior management for disclosure to law enforcement authorities and ensure that ECA staff have the appropriate training to identify such instances. Further information on the definition of "credible evidence" is available in Box 8.6.

ECAs may find that there is credible evidence that bribery was involved either before official credit, cover, or other support has been approved (*i.e.* during the application process or the enhanced due diligence process) or after such credit, cover or other support has been provided (*i.e.* during the loan or insurance period, or when examining a claim or insurable event).

When credible evidence is found before official credit, cover or other support has been approved, ECAs should suspend approval of the related application for support until the outcomes of any subsequent investigation by law enforcement authorities are known. If it is subsequently found that bribery was involved in the export transaction, an ECA should refuse approval of support.

When credible evidence is found after official credit, cover or other support has been approved, ECAs should immediately inform law enforcement authorities so that an investigation might take place. If it is subsequently found that bribery was involved in the export transaction, in most cases, ECA cover for the transaction will be invalidated under the terms of the official support provided. As a result, where ECAs are providing official financial support, they may interrupt loan disbursements or seek repayment for any amounts already disbursed or, where ECAs are providing official export credit insurance or guarantees, they may deny payment of any claims and seek recourse for any claims that have already been paid.

In addition, parties involved in a specific transaction where it is proven that bribery took place should, under the provisions of the 2006 Recommendation and as already mentioned above, be subject to enhanced due diligence should they seek official support for future export transactions during a five-year period. In this context, some OECD ECAs will, where appropriate, deny access to official support to any party found to have violated anti-bribery legislation for a specified period of time and, to this end, maintain their own ECA and/or national debarment lists of excluded firms and individuals. Such denial of official support is in line with recommendations contained in the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

At the same time, when deciding what actions to take in instances when bribery is found to have been involved in an export transaction, ECAs need to consider the roles of the various parties involved. For example, it might not be appropriate, or indeed legal, for a customer to suffer a penalty (e.g. refusal of support, invalidation of cover, financial loss, etc.) if they are not responsible for the act of bribery.

Box 8.6. **Credible evidence and proven bribery**

For the purposes of the 2006 Recommendation, the term "credible evidence" is defined as:

"…evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted."

At the same time, each country will have its own definition of the term, taking into account its own national legal systems. For some ECAs from OECD countries, the existence of "credible evidence" of bribery is almost equivalent to "proven bribery". As a result, they will not provide any official support for an export transaction when there is credible evidence that bribery was involved in its award or execution. Other ECAs prefer to deny official support only when bribery has actually been proven and will, in the meantime, suspend approval of the application pending the outcome of the relevant legal investigation or court process.

For most ECAs, both an admission of bribery and a conviction of bribery in a national court would count as proof that bribery had been committed. In this context, the majority of ECAs apply a broad interpretation of the term "national court" to include any national court in any country, albeit that some ECAs emphasise that this should mean a national court of a country with a legal system that is generally and legally acceptable and/or that the court should have jurisdiction over the entire respective country and not be just a regional court that is not accepted by the government of that state.

KazExportGarant

KazExportGarant has confirmed that if it has reason to believe that bribery was involved in the export transaction, it would ensure that the appropriate law enforcement authorities are informed. In this context, KazExportGarant has developed an internal security policy, under which the Chairman of the Board would take the decision to inform the appropriate authorities and, at the same time, notify the Board of Directors. KazExportGarant has also implemented guidelines from the National Bank of Kazakhstan that employees of its legal department should be trained in deterring, identifying and preventing criminal activities. KazExportGarant employees have received presentations on the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025 and the "100 Concrete Steps" National Plan on reforming Kazakhstan (KazExportGarant, 2015).

KazExportGarant has also confirmed that it would suspend approval of the application during the enhanced due diligence process if there is credible evidence that bribery was involved in the award or execution of the export contract and refuse approval of credit, cover or other support, if it is found that bribery was involved in the export transaction.

Last, KazExportGarant has confirmed that it would refuse to pay a claim if the customer was found to have committed a criminal action in relation to the export contract. In this context, KazExportGarant would use the 30-day waiting period before paying a claim to examine in more detail whether the claim should be paid. KazExportGarant has noted, however, that if the customer was not responsible for the criminal action or if the criminal action was not in relation to the export contract, then it might still need to honour its obligations and pay a claim, as such circumstances were not covered in the exclusion provisions of the insurance contract.

The KDB

The KDB has internal policies and procedures relating to possible fraud or corruption of its own employees and management, and a Compliance Service responsible for

undertaking reviews. In addition, the KDB has internal policies reflecting the obligations of the Bank to inform law enforcement authorities of evidence of criminal activities, including bribery, and its employees are made aware of these policies and the relevant procedures to follow. The KDB has noted, however, that, in practice, when it has had experience of criminal activity, this information has, in fact, come to the Bank from the relevant law enforcement authority.

In accordance with its Credit Policy Memorandum, support is automatically refused if applicants are found to have been engaged with criminal activities. For lesser crimes, an expert appraisal will be undertaken by the Bank's Compliance Service before a decision is taken by management on whether to provide the requested support.

The KDB has also confirmed that its loan agreements with customers contain provisions allowing it to terminate the support (call an Event of Default) if criminal activity is found. In such a situation, the Bank may refuse further drawdowns and/or request early repayment of any financing already provided.

Recommendations for reform

Based on the information provided, both KazExportGarant and the KDB have established the necessary policies and procedures for taking appropriate actions when there is credible or proven evidence of bribery.

Action Plan and potential OECD support

Recommendations

Kazakhstan should put in place the following measures to help deter and detect bribery in its provision of officially supported export credits:

- KazExportGarant and the KDB should clarify in their transaction documentation that corrupt activities include bribery offences, as well as money laundering and terrorism financing, and should consider making information on the legal consequences of such corrupt activities more widely available to customers, for example, on websites and in customer publications.

- KazExportGarant and the KDB should encourage customers to develop, apply and document appropriate management control systems that help prevent bribery.

- KazExportGarant should take steps to ensure that it is not providing support to transactions involving parties that have been sanctioned due to previous incidences of bribery by, for example, cross-referencing applicants with the World Bank Listing of Ineligible Firms and Individuals.

- KazExportGarant and the KDB are strongly encouraged to introduce anti-bribery undertakings or declarations in their application procedures which have to be read and signed by authorised company representatives each time an application for support is made. Such statements should include information on current charges and previous experiences with bribery.

- KazExportGarant and the KDB should undertake an appropriate level of due diligence if a customer refuses to sign an anti-bribery undertaking or declaration, if a customer or anyone acting on their behalf in connection with the transaction,

are currently under charge or have a previous conviction for bribery or if they have other reasons to believe that bribery may be involved in the transaction.

- KazExportGarant and the KDB should require customers to disclose, either systematically or upon demand, the identity of persons acting on their behalf in connection with an export transaction, such as agents, the amount of commissions and/or fees paid to such persons and the purpose of the work they are undertaking on behalf of the customer.

- KazExportGarant and the KDB should undertake an appropriate level of due diligence on agents, including verifying whether they are on the government "black list" or IFI debarment lists, verifying the basis of the work that they undertake, and confirming that the amounts paid are consistent with standard market practice for the industry sector and project country concerned.

The OECD Working Party on Export Credits and Credit Guarantees (ECG) and its Secretariat are ready to assist KazExportGarant and the KDB in developing these additional measures. OECD ECAs may also be able to assist in staff training on, for example, undertaking due diligence and enhanced due diligence of export transactions. If Kazakhstan were to become a Party to the OECD Anti-Bribery Convention and, consequently, an Adherent to the 2006 Recommendation, representatives of both KazExportGarant and the KDB would be welcome to attend relevant ECG events where Members share their knowledge and experience of detecting and deterring bribery in officially supported export credits.

Action Plan

Reform Areas	Potential OECD Support
KazExportGarant and the KDB should clarify in their transaction documentation that corrupt activities include bribery offences, as well as money laundering and terrorism financing, and should consider making information on the legal consequences of such corrupt activities more widely available to customers, for example, on websites and in customer publications.	The OECD and ECAs from OECD countries are able to provide assistance in drafting appropriate wording for transaction documentation, websites and customer publications.
KazExportGarant and the KDB should encourage customers to develop, apply and document appropriate management control systems that help prevent bribery.	The OECD and ECAs from OECD countries are able to provide assistance in drafting appropriate wording for websites and customer publications.
KazExportGarant should ensure that it is not providing support, without having undertaken appropriate due diligence, to transactions involving parties that have been sanctioned due to previous incidences of bribery by, for example, cross-referencing applicants with the World Bank Listing of Ineligible Firms and Individuals.	The OECD and ECAs from OECD countries are able to provide assistance in developing appropriate policies and procedures for cross-referencing customers with the World Bank Listing of Ineligible Firms and Individuals and for undertaking related due diligence.
KazExportGarant and the KDB are strongly encouraged to introduce anti-bribery undertakings or declarations in their application procedures that have to be read and signed by authorised company representatives each time an application for support is made. Such statements should include information on current charges and previous experiences with bribery.	The OECD and ECAs from OECD countries are able to provide assistance in drafting appropriate wording for such anti-bribery undertakings or declarations [see also Box 8.4].
KazExportGarant and the KDB should undertake an appropriate level of due diligence if a customer refuses to sign an anti-bribery undertaking or declaration, if a customer or anyone acting on their behalf in connection with the transaction, are currently under charge or have a previous conviction for bribery, or if they have other reasons to believe that bribery may be involved in the transaction.	The OECD and ECAs from OECD countries are able to provide assistance in developing appropriate policies and procedures for undertaking this due diligence.

KazExportGarant and the KDB should require customers to disclose, either systematically or upon demand, the identity of persons acting on their behalf in connection with an export transaction, such as agents, the amount of commissions and/or fees paid to such persons and the purpose of the work they are undertaking on behalf of the customer.	The OECD and ECAs from OECD countries are able to provide assistance in developing appropriate policies and procedures for obtaining this information.
KazExportGarant and the KDB should undertake an appropriate level of due diligence on agents, including verifying whether they are on the government "black list" or IFI debarment lists, verifying the basis of the work that they undertake, and confirming that the amounts paid are consistent with standard market practice for the industry sector and project country concerned.	The OECD and ECAs from OECD countries are able to provide assistance in developing appropriate policies and procedures for undertaking this due diligence.

Further reading

The instruments listed below all contain provisions relating to officially supported export credits:

OECD (2011), *OECD Guidelines for Multinational Enterprises*, www.oecd.org/daf/inv/mne/48004323.pdf.

OECD (2009), *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, http://acts.oecd.org/Instruments/AdvancedSearch.aspx?ContentSearch=Recommendation+of+the+Council+for+Further+Combat&Match=false.

OECD (1999), *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,* http://acts.oecd.org/Instruments/ListBySubjectView.aspx.

OECD (1978), *Arrangement on Official Supported Export Credits,* www.oecd.org/tad/xcred/arrangement.htm.

The following provide reviews and case studies relating to anti-bribery measures:

- Annual reviews of Members' Responses to the Survey on Measures taken to Combat Bribery in Officially Supported Export Credits: Implementation of the OECD Council Recommendation on Bribery and Officially Supported Export Credits is monitored by way of a survey on the measures Adherents have taken to combat bribery in officially supported export credits and by an annual review by the OECD Secretariat of such measures (www.oecd.org/tad/xcred/anti-bribery-survey.htm)
- Country monitoring of the OECD Anti-Bribery Convention: The OECD Secretariat undertakes peer reviews of Parties' obligations under the OECD Anti-Bribery Convention, including with respect to officially supported export credits (www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm).

References

Aman Union (2014), www.amanunion.net/about/, (accessed 24 January 2017).

Berne Union (2015), www.berneunion.org/berne-union-prague-club/, (accessed 24 January 2017).

Cross Debarment (2011), http://lnadbg4.adb.org/oai001p.nsf/, (accessed 24 January 2017).

Development Bank of Kazakhstan (2013), www.dbk.kz/en/, (accessed 24 January 2017).

KazExportGarant (2017), www.kecic.kz/en/ (accessed 24 January 2017).

KazExportGarant (2015), *Employees of quasi-public sector support the Anti-corruption Strategy of the Republic of Kazakhstan for 2015-2025,* http://keg.kz/en/news/article/1001.

OECD (2016), The Export Credits Arrangement text, www.oecd.org/tad/xcred/theexportcreditsarrangementtext.htm.

OECD (2006), *OECD Council Recommendation on Bribery and Officially Supported Export Credits,* http://acts.oecd.org/Instruments/AdvancedSearch.aspx?ContentSearch=Recommendation+on+Bribery+and+Officially+Supported+Export+Credits&Match=false.

World Bank (2017), *World Bank Listing of Ineligible Firms and Individuals,* http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984, (accessed 24 January 2017).

Chapter 9.

Regulating lobbying in Kazakhstan to prevent policy capture

Lobbying can act as a positive force in that it has the potential to promote democratic participation and can provide decision-makers with valuable insights, as well as facilitate stakeholder access to public policy development and implementation. Yet, lobbying can also be an opaque activity perceived of dubious integrity. This chapter provides an overview of lobbying practices in the Republic of Kazakhstan and addresses the policies that apply to lobbying activities. The chapter underscores areas where more could be done to promote a culture of integrity at the intersection between the public and private sectors.

Role of lobbying legislation in promoting integrity and combating corruption

Lobbying is a fact of public life in the majority of modern democracies. On the one hand, lobbying can act as a positive force in that it has the potential to promote democratic participation and can provide decision-makers with valuable insights, as well as facilitate stakeholder access to public policy development and implementation. Yet, on the other hand, lobbying can also be an opaque activity perceived of dubious integrity. Indeed, there is a risk that lobbying may result in undue influence by special interests, and unfair competition and regulatory capture at the expense of fair, impartial and effective policy making. The interests of the broader community are at risk when important decisions and negotiations are carried out behind closed doors and access to decision-makers is unfairly limited.

To help address these concerns, OECD member countries have adopted the 2010 on Principles for Transparency and Integrity in Lobbying as guidance to decision-makers on how to promote good governance in lobbying. Public officials and lobbyists share responsibility to apply the principles of good governance, in particular transparency and integrity, in order to maintain confidence in public decisions.

An emerging concern of lobbying is the capture of advisory groups by private interests to exert undue influence. When, for example, corporate executives or lobbyists advise governments as members of an advisory group, they act not as external lobbyists, but as part of the policy making process with direct access to decision makers. There is often no obligation to ensure a balanced representation of interests in advisory groups, except in a handful of OECD member countries. In order to ensure transparency in policy making, countries can, as a minimum, make membership information publicly available for scrutiny by other stakeholders.

Another increasing concern relating to lobbying is the practice of "revolving doors" – the movement of staff between related public and lobbying sectors – as it may heighten exposure to conflicts of interest and impropriety such as the misuse of insider information, position and contacts. Concern over revolving doors has prompted countries to take measures to prevent and contain conflict of interest in pre- and post-public employment situations in order to ensure the integrity of present and former public officials.

The following sections look at the Kazakh legislation concerning lobbying activities and access of lobbyists to public officials. Additionally, this chapter analyses the current relationship between lobbyists and public officials, and underscores areas where more could be done to promote a culture of integrity.

Box 9.1. OECD Principles on Transparency and Integrity in Lobbying

To level the playing field among all stakeholders in the policy-making process, the OECD adopted in 2010 Principles for Transparency and Integrity in Lobbying – the sole international instrument aimed at mitigating lobbying-related risks of corruption and undue influence. The Principles provide guidance to decision makers in the executive and legislative branches at both national and sub-national level.

Principle 1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.

Principle 2. Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.

Principle 3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.

Principle 4. Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying.

Principle 5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.

Principle 6. Countries should enable stakeholders – including civil society organisations, business, the media and the general public – to scrutinise lobbying activities.

Principle 7. Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.

Principle 8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

Principle 9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.

Principle 10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.

Source: OECD Principles on Transparency and Integrity in Lobbying.

Current status and critical analysis

Current legal framework concerning lobbying activities in Kazakhstan

The government of Kazakhstan noted that lobbying, in the sense that it is understood as a specific activity undertaken by a professional corps who receive compensation for their activities, is a foreign concept in Kazakh political and business context.

Nevertheless, as this chapter shows, opportunities for influencing decision-making in government exist, creating the possibility of lobbying-type activities, and, rules and guidelines should address governance concerns related to lobbying. These rules should ensure that there is a level playing field, by granting all stakeholders fair and equitable access to the development and implementation of public policies. The experience across OECD countries on regulating lobbying varies, with countries applying a range of approaches that are aimed at defining the activity, increasing transparency and

inclusiveness in policy making, whilst also ensuring that stakeholders have equal access to the policy making arena.

As mentioned, Kazakhstan has taken steps towards including the private sector and members of civil society in the decision-making process through the implementation of the Rules of the Senate of Parliament, the Rules of the Mazhilis of Parliament and the Law on normative legal acts. These laws (summarised below) dictate the involvement of non-government actors in policy making. They create the space for advisory groups with memberships that have direct access to elected officials and senior government officials. Again, while potentially positive in the sense that they can help inform policies and improve them for the better, they also open doors for 'lobbying' government officials.

- Article 14, paragraph 1, of the Law "On Normative Legal Acts" sets out the requirement for representatives of the National Chamber of Entrepreneurs and accredited associations of private entrepreneurs to be involved in the development of regulatory legal acts that affect the interests of the private sector.

- Article 14, paragraph 2, of the same law allows for the involvement of specialists from the relevant spheres of knowledge, scientific institutions and scientists and representatives of public associations in the preparation of draft laws and normative legal decrees.

- Paragraph 29 of the Rules of the Mazhilis of Parliament states that "the House Committee is entitled to engage in the working groups' initiators of the bill draft, representatives of state bodies, advisory bodies, public associations, academic institutions, experts, specialists, and managers of economic entities."

- Paragraph 122 of the Rules of the Senate of Parliament states that "for the preparation of the issues and the organisation of parliamentary hearings, the Committee may establish working groups, which are approved by the Bureau of the Senate, with the involvement of the Senate deputies, representatives of ministries, state committees and departments, other government bodies and other organisations, research institutions as well as experts and scholars. The Committee is entitled to engage various specialists as experts in the work, as well as appoint an independent examination of the bill. The Committee is entitled to hold joint meetings. The Committee is entitled to use offers of citizens and public associations, received on a particular bill".

- In addition, with the Presidential Decree dd. August 24, 2009, No. 858, the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020 was adopted. This Concept provides the basis for the development of programs in the sphere of legal policy, perspective and annual plans of law-making activities of the Government of the Republic of Kazakhstan. The Concept also removed the constitutional ban and restrictions on active engagement between civil society organisations and businesses vis-à-vis the government.

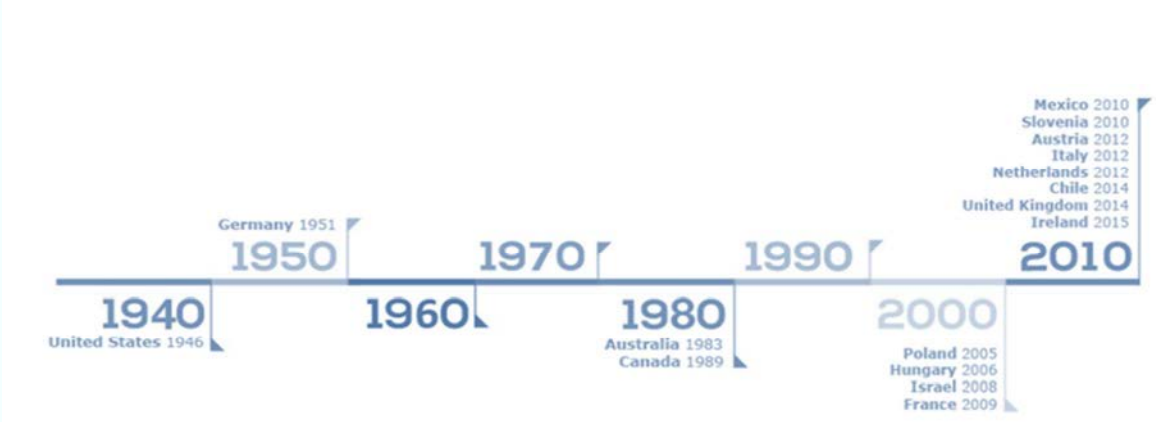
However, despite the importance of a legal framework, there is currently no specific law regulating lobbying activities in Kazakhstan. In 2008, a draft law was developed by the Ministry of Justice, with the aim to formalise the activities of private sector entities in presenting and promoting their interests throughout the lifespan of a legislative initiative. It was the intention of the bill to make lobbying activities "free of charge", meaning that

lobbyists would not receive any monetary compensation for their activities. The draft law was submitted to the Mazhilis of the Parliament in December 2009. However, in 2012, the Ministry of Justice initiated a letter to the Prime Minister's Office requesting the withdrawal of the draft law. The rationale was that the draft law did not contain any new features, but instead reproduced already existing ways of engaging representatives of certain groups of individuals in the legislative process. To that end, the draft law was withdrawn from Parliament in June 2012. Stakeholder discussions in Kazakhstan noted that the concept of regulating lobbying is still under consideration in Kazakhstan, with the potential to reopen the discussion in 2016.

Clear Rules and guidelines for conduct between public officials and third parties

A fundamental aspect of integrity in any government system is clear rules and guidance of conduct between public officials and third parties. In a growing number of OECD countries, there has been a trend towards regulating lobbying. From the 1940s to the early 2000s, only four countries had regulated lobbying, but since 2005, an additional eleven have followed suit. Although more and more countries have introduced regulations on lobbying, doing so has not been without its challenges. Some have amended statutory or regulatory provisions that were already in place, while others have enacted new ones only to see them repealed, before legislating or regulating once more at a later date (OECD, 2014). Box 9.2 shows the timeline of lobbying in OECD member countries.

Box 9.2. **Lobbying Regulation Timeline**



- *Australia*: Lobbying was first regulated in Australia through the Lobbyist Registration Scheme of 1983, but the scheme was abolished in 1996. The current Lobbying Code of Conduct that also established a lobbyist register was introduced in 2008.
- *Canada*: The Lobbyists Registration Act of 1989 has been amended several times and was in 2008 renamed the Lobbying Act.
- *Chile*: Chile enacted a law regulating lobbying in January 2014.

Box 9.2. **Lobbying Regulation Timeline** *(continued)*

- *France*: On 27 February and 26 June 2013, the Bureau of the French Assemblée Nationale – on the proposal of Mr Christophe Sirugue, President of the Delegation responsible for interest representatives – adopted a new regulation to review the relationship between Members of the National Assembly and interest representatives.
- *Germany*: Lobbying was first regulated through Article 73 of the Rules of Procedure of the German Bundestag in 1951.
- *Hungary*: Hungary introduced the Act XLIX of 2006 on Lobbying Activities; it however repealed it in 2011, introducing the Government regulation of the integrity management system of state administration bodies and lobbyists (Magyar Közlöny 30. Szám [2013. február 25]) in February 2013.
- *Italy*: With Ministerial decree No. 2284 of 6 February 2012, the Italian Ministry of Agricultural, Food and Forestry Policies regulated stakeholders' participation in the decision-making process of bills and draft regulations under that Ministry's authority. In addition to the Ministry's regulation of lobbying, there are three Italian regions that have introduced rules for transparency of political and administrative activities, namely Toscana (2002), Molise (2004) and Abruzzo (2010).
- *Ireland*: The Regulation of Lobbying Act was passed in March 2015.
- *Poland*: The Act on Legislative and Regulatory Lobbying was passed by the Sejm (Lower House of Parliament) in July 2005. The Act was amended in 2011.
- *United Kingdom*: The United Kingdom enacted the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 in January 2014.
- *United States*: The Federal Regulation of Lobbying Act of 1946 was replaced in 1995 by the Lobbying Disclosure Act.

Source: OECD (2014).

Box 9.3 provides an overview of recent literature concerning the value of connections to the government. To avoid the risk of policy capture demonstrated by the examples in Box 9.3, regulations related to lobbying should give clear directions on how political and public officials are permitted to engage with lobbyists. For example, political and public officials should conduct their communication with lobbyists in line with relevant rules, standards and guidelines in a way that bears the closest public scrutiny. In particular, they should cast no doubt on their impartiality to promote the public interest; they should share only authorised information and not misuse confidential information; they should disclose their relevant private interests; and they should avoid any conflict of interest.

Box 9.3. **The value of connections to the government – An overview on recent research**

Anecdotic evidence and common sense indicate that for a private company being close to the government may yield benefits. But just how much do such connections matter? Fisman (2001) uses data from Jakarta's stock exchange composite index and rumours concerning Suharto's health to estimate the value of political connections of companies in Indonesia. The author was able to show that companies that were well-connected with Suharto suffered a significantly stronger loss of their value as less-connected companies, suggesting that an important percentage of the well-connected companies' values can be explained from their political connection.

Box 9.3. **The value of connections to the government – An overview on recent research** *(continued)*

Faccio (2006) later examined 20.202 publicly traded companies in 47 countries to see whether they have political connections. The author choses a narrow definition of political connections, counting a company only as connected if "…at least one of its large shareholders (…) or one of its top officers (…) is a member of parliament, a minister, or is closely related to a top politician or party." Political contributions, for instance, are not taken into account. Faccio (2006) is able to show that political connections are quite common (they exist in 35 of the 47 countries in the sample), that such connections are less common in the presence of more stringent regulation of political conflicts of interest, and that they are particularly common in countries with higher levels of perceived corruption. Also, the announcement of a new political connection significantly increases the value of the company, which again suggests that the markets give a positive value to political connections.

Other studies along the same lines were able to show that:

- Companies supporting the Nazi movement in 1933 were significantly outperforming unconnected companies by 5 to 8 % (Ferguson and Voth, 2008).
- Politically well-connected firms in Pakistan are able to borrow 45 % more from government banks and have 50 % higher default rates; these political rents increase with the strength of the politician the company is linked with and whether he or his party is currently in power, and decreases with the degree of political participation in his constituency (Ijaz and Mian, 2005).
- Companies with boards connected to the winning party in the 1994 House and Senate election in the United States experienced a significant and large increase in procurement contracts after the election (Goldman et al, 2013).
- Politically connected companies (450 companies from 35 countries during 1997-2002) are significantly more likely to be bailed out by governments than similar non-connected companies (Faccio et al, 2006).
- Spending on lobbying by the financial industry and network connection between lobbyists and legislators were positively associated with the probability of a legislator changing positions in favour of deregulation in the United States between 1996 and 2006 (Deniz and Mishra, 2014).
- The profitability of a company in Denmark can be increased significantly if it is related by family to a local politician, showing that even in low-corruption environments corporate rent-seeking at local governmental levels matters (Amore and Bennedsen, 2013).
- Factor misallocation in Spain is significantly worse in sectors where the influence of the public sector is larger, e.g. through licensing or regulations, while skill intensity, innovative content or financial dependence are unrelated with such misallocation of production factors; a potential explanation of this empirical findings is that in areas with an important public sector, political connections are more important than being productive (García-Santana et al, 2015). Interestingly, the authors also find that young companies are facing higher market distortions than established companies, again suggesting that having good connections to the government can become more of an asset than being productive.

Sources: Fisman, R (2001); Faccio, M. (2006); Amore, Mario D., and Morten Bennedsen (2013); Faccio, M., R. Masulis and J. McConnell (2006); Ferguson, T. and H.-J. Voth (2008); García-Santana, M., E. Moral-Benito and J. Pijoan-Mas (2015); Asim Ijaz Khwaja and Atif Mian (2005); Goldman E., J. Rocholl, and Jongil So (2013); Igan, D. and P. Mishra (2014).

Furthermore, lobbying regulations should clearly define the terms "lobbying" and "lobbyist". The OECD Principles for Transparency and Integrity in Lobbying state that definitions of "lobbying" and "lobbyist" need to be robust, comprehensive, and sufficiently explicit to prevent loopholes and avoid misinterpretation (OECD 2014). Although these rules should primarily target those who are paid to lobby – for example,

consultants and in-house lobbyists – definitions of lobbying should be inclusive so as to level the playing field for interest groups, be they business-oriented or not-for-profit, which seek to influence public decisions.

It is also important to point out that receiving compensation for attempting to influence public policy is not necessarily a defining feature of lobbying (OECD 2014). Interest groups, business associations and/or civil society organisations could aim to influence public decisions without the aim of receiving compensation.

Box 9.4 provides examples from Austria and Slovenia on how to define lobbying and lobbyist within the national legislation.

Box 9.4. **Defining lobbying in national legislation: The cases of Austria and Slovenia**

Paragraph 4 of Austria's Lobbying and Interest Representation Transparency Act of 2013 defines lobbying activities as every organised and structured contact whose purpose is to influence decision making on behalf of a third person.

Article 4(11) of Slovenia's Integrity and Prevention of Corruption Act defines lobbying as the activities carried out by lobbyists who, on behalf of interest groups, exercise non-public influence on decisions made by state and local community bodies and holders of public authority with regard to matters other than those subject to judicial and administrative proceedings, to proceedings carried out in accordance with public procurement regulations, and to proceedings in which the rights and obligations of individuals are decided upon. Lobbying means any non-public contact between a lobbyist and a lobbied party for the purpose of influencing the content or the procedure for adopting the aforementioned decisions.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

In line with the Principles for Transparency and Integrity in Lobbying, the OECD encourages countries to develop lobbying regulations that clearly detail rules for engagement between public officials and those intending to influence them, as well as clearly define the terms "lobbying" and "lobbyist" (OECD 2013). The OECD recognises however that lobbying is an unrecognised activity in Kazakhstan and has tailored the recommendations in light of this current political context.

That being said, while there is neither explicit recognition of lobbying as a practice or as a profession in Kazakhstan, there are nevertheless forums whereby lobbying-type behaviour can occur and where policies can be influenced unduly or unfairly (i.e. without providing equal or impartial "access" to non-government actors). Kazakhstan should therefore continue to strive towards robust regulation of lobbying in the future.

As a starting point towards more transparency in lobbying, the OECD recommends that Kazakhstan clearly establish the required conduct for public officials, including both the Deputies of the Parliament and public officials, in the Regulations of the Parliament of the Republic of Kazakhstan and the Code of Ethics for Public Servants.

To that end, the revised Code of Ethics for public officials in Kazakhstan is a positive step towards enhanced transparency in the intersection between the private and public sectors. Specifically, the Code of Ethics requires public officials to act with impartiality and to ensure the transparency of decision-making affecting the rights and legitimate interests of individuals and legal entities. However, while there are rules outlining the conduct of parliamentarians in Kazakhstan – the Regulations of the Republic of

Kazakhstan – the applicable regulation does not regulate the behaviour between parliamentarians and third parties. Kazakhstan could therefore consider clearly identifying the required behaviour for parliamentarians when meeting with third parties, both private sector entities and non-governmental organisations in the Regulations. Additionally, as there are no requirements for a "cooling off" period for public officials that are leaving the public sector to take up a position in the private sector, Kazakhstan could consider designing and implementing legislation that adequately manages the revolving-door phenomenon (as discussed in Chapter 5 on public sector integrity).

Public registry on lobbying activities

There is a growing trend amongst OECD member countries to implement regulations requiring lobbyists to disclose information about their practices through a register. The fundamental purpose of such a registry is to ensure transparency of lobbying activities, and in turn, provide the public with the assurance that legislation is made in the public interest and not captured by a select few.

Currently, Canada, France, Germany, Mexico, Poland, Slovenia, the United Kingdom, the United States and Ireland, as well as the European Union, have lobbyist registers in place (see Box 9.5 for the example of the UK). Disclosure should provide enough pertinent information on key aspects of lobbying activities to enable proper scrutiny. Countries with publicly accessible registers commonly require lobbyists to file in the registers their names, contact details, their employer's name, and the names of their clients (i.e. those that they lobby).

Box 9.5. **Greater transparency in lobbying in the context of the UK's open government policy**

Prompted by concerns that a lack of transparency in the lobbying of British government was enabling some from the corporate world to "wield privileged access and disproportionate influence", the Public Administration Select Committee conducted an inquiry in 2009. The Committee concluded that the existing self-regulatory regime governing the lobbying industry was inadequate and suggested that, unless the industry could swiftly and credibly reform that system, the government should introduce a statutory register of lobbyists. The Committee further recommended that the Government should publish details of all ministerial and high-level official meetings with outside interest groups. To that end, on 30 January 2014 the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act received Royal Assent.

The core provision is a prohibition on undertaking consultant lobbying without being entered in the register of consultant lobbyists. The Act defines the main characteristics of consultant lobbying as:

- communicating with ministers or permanent secretaries about government policy, legislation, or the awarding of contracts and grants, etc.
- on behalf of another person
- in return for payment (of any kind, be it direct or indirect)
- in the course of a business.

Exclusions will apply to:

- those who are not registered for value-added tax (VAT) purposes
- those for whom lobbying is incidental to their normal professional activity
- the normal parliamentary activities of parliamentarians

Box 9.5. **Greater transparency in lobbying in the context of the UK's open government policy** *(continued)*

- the normal activities of most charities, trade unions, and think tanks
- foreign governments and international organisations

The Act also establishes the role of the Register of the Consultant Lobbyists and the Registrar. The Register of the Consultant Lobbyists is publicly available online and is administered and enforced by the independent Office of the Registrar of Consultant Lobbyists. Consultant lobbyists are required to provide information regarding their organisation, their clients, whether or not they subscribe to a publicly available relevant code of conduct, and to update their entry on a quarterly basis.

The Office of the Registrar is also responsible for monitoring compliance with the registration requirements, and has the power to issue civil penalties in the form of fixed penalty notices (not exceeding GBP.7 500) for instances of non-compliance (administrative oversight, for example). For more serious contraventions of the requirement to register (e.g. deliberate noncompliance), criminal prosecutions may be undertaken (with penalties taking the form of unlimited fines).

The Office of the Registrar offers guidance regarding who is and who is not required to register. The register will be funded by the lobbying industry via a subscription charge.

Source: OECD (2014).

However, the application of international practices must first take into account the particular political context of countries before adoption. Given the past history of persecution of opposing views[1] there could be concerns that such registries become utilised as a tool for repressing entities or individuals that are unsupportive of the government. There is a risk therefore that a registry would only serve to deter healthy advocacy work and the sharing of views, which is contrary to the spirit of an inclusive and evidence based policy cycle. Indeed, as discussed in Chapter 11 on Civil Society Empowerment, the registry of civil society organisations is receiving similar criticisms.

Action Plan and potential OECD support

Recommendations

- Kazakhstan could consider establishing rules on interaction between public and private and not-for-profit sector through the Code of Conduct and Regulations of the Republic of Kazakhstan.

- Kazakhstan could consider designing and implementing legislation that adequately manages the revolving-door phenomenon.

Action Plan

Reform Areas	Potential OECD Support
Establish rules on interaction between public and private and not-for-profit sector through	Host a series of workshops on lobbying, which will cover topics such as: • international best practices in regulating lobbying • policy tools and guidance on defining lobbyist and lobbying • policy tools and guidance on codes of conduct related to lobbying • policy tools and guidance on pre- and post-employment guidelines.
Implement pre- and post-employment guidelines	

Further reading

OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264249455-en.

OECD (2012), *Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084940-en.

OECD (2009), *Lobbyists, Government and Public Trust, Volume 1: Increasing Transparency through Legislation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264073371-en.

Note

1. See for example Freedom House's analysis of press freedom in Kazakhstan: https://freedomhouse.org/report/freedom-press/2015/kazakhstan.

References

Amore, Mario D., and Morten Bennedsen (2013), The value of local political connections in a low-corruption environment, Journal of Financial Economics 110 (2): 387–402.

Asim Ijaz Khwaja and Atif Mian (2005), Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market, The Quarterly Journal of Economics 120 (4): 1371-1411.

Faccio, M. (2006), Politically connected Örms. American Economic Review 96, 369-386.

Faccio, M., R. Masulis and J. McConnell (2006), Political connections and government bailouts. Journal of Finance 61, 2597-2635.

Ferguson, T. and H.-J. Voth (2008), Betting on Hitler, the value of political connections in Nazi Germany. Quarterly Journal of Economics 123, 101-137.

Fisman, R (2001), "Estimating the value of political connections", American Economic Review 91(4), 1095-1102.

Freedom House (2016), *Kazakhstan,* https://freedomhouse.org/report/freedom-press/2015/kazakhstan.

García-Santana, M., E. Moral-Benito and J. Pijoan-Mas (2015), Growing like Spain: 1995-2007, Working Paper.

Goldman E., J. Rocholl, and Jongil So (2013), Politically Connected Boards of Directors and The Allocation of Procurement Contracts, Review of Finance 17 (5): 1617-1648.

Igan, D. and P. Mishra (2014), Wall Street, Capitol Hill, and K Street: Political Influence and Financial Regulation, Journal of Law and Economics: Vol. 57: No. 5, Article 7.

OECD (2013), *OECD Principles for Transparency and Integrity in Lobbying,* www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm.

OECD (2014), *Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264214224-en.

Chapter 10.

Corporate governance and business integrity in Kazakhstan

Corrupt corporate activities can be prevented, exposed and effectively addressed with well-functioning corporate governance practices that underpin a framework of responsibility, transparency and accountability. Good corporate governance is therefore an important tool for fighting misconduct from within the firm. This chapter describes the practices of corporate governance and business integrity in the Republic of Kazakhstan's private sector. This chapter addresses business integrity and anti-corruption frameworks in corporations, the practices of corporate social responsibility in Kazakhstan, and risk management systems in the private sector. In addition, it provides examples of good practices at a company level as well as of external incentives for business integrity, collected during a recent stocktaking exercise carried out by the OECD.

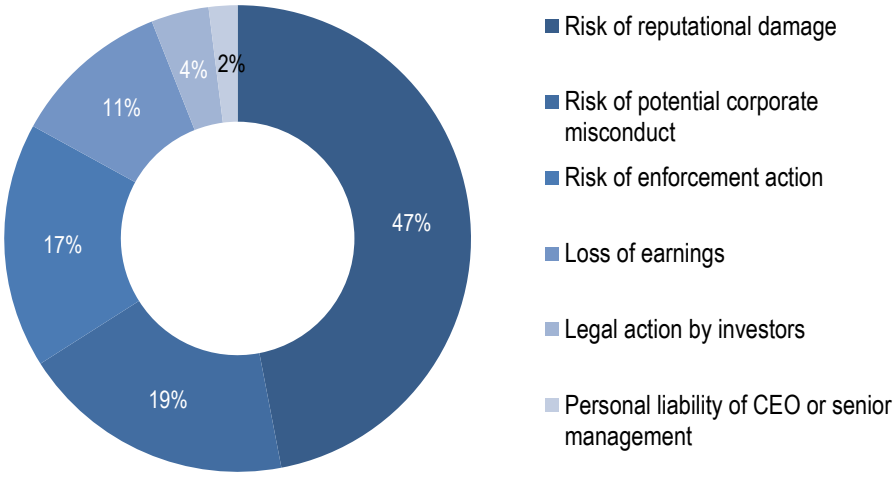
Role of effective corporate governance practices for promoting business integrity and combating corruption

Companies can play a key role in the global fight against corruption and business misconduct, which undermine growth and hamper competitiveness. An important tool in these efforts is to establish corporate governance structures and procedures that promote integrity, transparency and accountability.

Corporate misconduct can be costly for companies, ultimately affecting their own domestic and international competiveness. When detected, it results in reputational damage, loss of customers and investors, and can lead to sanctions, which have become heftier over time (OECD, 2014a). Moreover, undetected corporate misconduct hampers research and development, and decreases competitiveness and productivity. A company survey carried out by the OECD in 2015 shows that the risk of reputational damage is indeed one of main reasons for companies to set up measures to prevent and address misconduct (Figure 10.1). Companies are increasingly taking business integrity into consideration in their corporate practices and strategies, and investing more resources in this area.

Corrupt corporate activities can be prevented, exposed and effectively addressed with well-functioning corporate governance practices that underpin a framework of responsibility, transparency and accountability. Good corporate governance is therefore an important tool for fighting misconduct from within the firm (OECD, 2015a). To facilitate this work, the OECD provides a number of recognised instruments and standards that can be used to foster business integrity (Box 10.1).

Figure 10.1. Main reasons for seeking to detect, prevent and address misconduct



Source: OECD (2015a), *Corporate Governance and Business Integrity: A Stocktaking of Corporate Practices*, www.oecd.org/daf/ca/Corporate-Governance-Business-Integrity-2015.pdf.

Box 10.1. Selected OECD Business Integrity Standards

The G20/OECD Principles of Corporate Governance (the Principles) emphasise the responsibility of the board and executive management in setting ethical standards of the company and overseeing its business integrity framework. In order to promote the application of the Principles in state-owned enterprises, the OECD has developed the Guidelines on Corporate Governance of State-Owned Enterprises, which call for similar standards of transparency and accountability in companies controlled by the state as in the private sector.

Specific business integrity related guidance for multinational enterprises is provided by the OECD Guidelines for Multinational Enterprises, which encompass a wide range of areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition and taxation. The Guidelines call for multinational enterprises to carry out business according to the policies of the countries in which they operate and to encourage their business partners and suppliers to conduct business with high standards of integrity. They also emphasise the government's role in developing a policy framework that takes into consideration the areas covered by the Guidelines and to provide companies with incentives for compliance.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011) provides concrete recommendations for companies operating in the extractives sector. It aims at supporting companies to respect human rights, prevent environmental abuse and to avoid contributing to conflicts through their operations in conflict-affected and high-risk areas.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is the only legally binding instrument addressing bribery of foreign public officials in international business transactions. Parties to the Convention recognise companies' significance in the fight against corruption and have adopted the 2010 Good Practice Guidance on Internal Controls, Ethics and Compliance, highlighting the fundamental elements of an effective anti-bribery compliance programme and the importance of senior management's support and commitment to the company's measures for preventing and detecting foreign bribery. Jurisdictions adhering to the Convention have passed legislation criminalising foreign bribery, and most have set up a corporate liability regime, which enables prosecution of companies in the case of an involvement of third parties, i.e. the foreign official's family member, business partner or an organisation favoured by the official (OECD, 2015a).

Section 2 of this chapter describes the practices of corporate governance and business integrity in Kazakhstan's private sector. First, the section addresses business integrity and anti-corruption frameworks in corporations, the practices of corporate social responsibility in Kazakhstan and risk management systems in the private sector. A short list of recommendations is included in each area. Due to the limited information made available for this report from official Kazakhstani sources, existing OECD material and external public information have been used as sources, which may result in a less complete description of local frameworks or the reality on the ground. In addition, section 2 provides examples of good practices at a company level as well as of external incentives for business integrity, collected during a recent stocktaking exercise carried out by the OECD. Section 3 offers an action plan and suggests potential OECD support.

Current status and critical analysis

Corporate governance in the private sector

The Law on Joint Stock Company is the principal legal source for corporate governance in Kazakhstan. According to the Law, the board of a company is obliged to act according to the principles of transparency and openness, and in the best interests of

the company and its shareholders. All public companies should adopt a corporate governance code, and disclose it on their website. The Law gives a definition of a public company to which this requirement applies; however, it is unclear how many companies in Kazakhstan fit under the definition. The Law also describes the company's code as follows: "the company's corporate management code - the document approved by the general shareholders meeting of the company which regulates relations arising in the process of management of the company, in particular relations between shareholders and bodies of the company, between bodies of the company, the company and concerned persons" (EBRD, 2011).

In addition to the Joint Stock Company Law, the Law on Accounting and Financial Reports also sets out certain requirements for corporate reporting, and requires companies to prepare annual financial statements in compliance with International Financial Reporting Standards. Issues related to environment and society are disclosed only on a voluntary basis. In the 2012 Kazakhstan Investment Policy Review, the OECD pointed out that the differences between reporting methodologies and the use of various indicators makes it challenging to compare information provided by the companies (OECD, 2012).

Kazakhstan adopted a Code of Corporate Governance (the Code) in 2005, which was revised in 2007. Compliance with the Code is voluntary (Financial Institutions' Association of Kazakhstan, 2007), but companies listed at the Kazakhstan Stock Exchange are obliged to follow the Code or another similar instrument, approved at the general shareholder meeting or by the legislation of the jurisdiction of registration of the issuer. Under the listing rules, companies are also required to provide the Exchange with an annual report containing information about compliance with the code the company follows and/or actions taken to comply with it (Kazakhstan Stock Exchange, 2009). According to the EBRD, the practical implementation of these rules remains weak (EBRD, 2016).

In some areas, the Code offers less guidance for companies than what is recommended by the OECD standards of corporate governance. The G20/OECD Principles of Corporate Governance highlight the necessity for a company to take into account the rights and interests of all stakeholders. In contrast, Kazakhstan's Code puts emphasis on the board's responsibilities with regards to the shareholders only. It calls for the board to act in the best interests of its shareholders and to aim at increasing the market value of the company.

Moreover, the Code does not sufficiently highlight the board's responsibility in creating and overseeing an environment of business integrity. In comparison, the G20/OECD Principles of Corporate Governance emphasise that the company's board should be in charge of guiding the company's strategic direction, including setting clear standards for integrity and accountability throughout the whole company. The board should be responsible for continuous review of the company's internal operations and monitor its accountability, that is, implement and oversee the internal control and compliance frameworks so as to detect and address misconduct (G20/OECD, 2015a).

Business integrity-related legislation in Kazakhstan is in certain cases still insufficient, particularly in terms of the guidance it offers for corporate compliance with standards (either voluntary or mandatory). The 2014 OECD report *Responsible Business Conduct in Kazakhstan* points out that one of the main challenges for the country's private sector regarding business integrity is in the practical implementation of standards (both national and international). The gap between business integrity standards and their practical implementation can partly be explained by the lack of knowledge of such

standards and tools, as well as by insufficient guidance on how to use them (OECD, 2014d; Artemyev et al. 2012).

Recommendations for reform

- Kazakhstan could consider updating the Code of Corporate Governance. The G20/OECD Principles of Corporate Governance could be used as reference and particular focus could be drawn on the board's responsibilities related to business integrity.

- An assessment could be carried out on the effectiveness of Kazakhstan's legal framework relative to, in particular, the responsibilities and power of the board. Kazakhstan could consider providing them with a stronger mandate for supervision of the company, including monitoring of its accountability and for setting clear standards of integrity.

- In line with OECD standards, Kazakhstan should consider strengthening the guidance offered to companies and making compliance with the Code of Corporate Governance mandatory, under a comply-or-explain mechanism.

- In addition, Kazakhstan should promote convergence of reporting methodologies and indicators in order to facilitate comparison and discourage non-transparent practices which can increase the risk of corporate misconduct.

Corporate governance in state-owned enterprises

The number of state-owned enterprises (SOEs) is growing in the global economy and States yield dominant or significant influence in at least 22 of the world's 100 largest corporations (Christiansen et al. 2014). SOEs represent a large part of the economy also in Kazakhstan (OECD 2014b), with the SOE sector dominated by a few national holding companies aggregating SOEs included in different sectors (banking, agriculture, industry). National Welfare Fund Samruk-Kazyna, which holds most of the country's industrial assets, is one of the largest investors in the economy. It manages shares of over 400 companies in the oil, gas, energy, mining, transportation and information sectors (OECD, 2012; Samruk-Kazyna, 2016a). In co-operation with the OECD, the fund carried out extensive work to improve its corporate governance framework in recent years (Box 10.2).

Box 10.2. **Samruk-Kazyna's work on corporate governance**

With the support of the OECD, Kazakhstan's sovereign wealth fund and the country's largest investor Samruk-Kazyna has been taking various measures to develop an effective corporate governance policy and implement it in practice. In the context of a joint project, the OECD consulted various stakeholders so as to provide the fund with recommendations and policy options to develop a Code of Corporate Governance for the fund and its subsidiaries. One of the key issues identified was the need for evaluation and clarification of the fund's role vis-à-vis its organisations. The fund's corporate reforms are also based on the 2012 Law on National Welfare Fund, which outlines the principles of the fund's functioning, including transparency, openness, adequate disclosure and accountability.

Within the project, the fund drafted a Code of Corporate Governance, which was adopted in 2014. The Code applies to the fund as well as to the organisations in which the fund directly or indirectly owns more than fifty percent of voting shares. These organisations are required to adopt the Code. Organisations that have other shareholders are encouraged to approve the Code at their general shareholder meeting. The Code calls for transparency and accountability of internal audit systems, observance of human rights, prevention of environmental abuse, intolerance of corruption and other integrity related aspects. Disclosure of these issues in the annual reports of the fund and its organisations is also required.

Representatives of the fund presented the Code to the OECD Working Party on State Ownership and Privatisation at its meeting in March 2015 and announced the fund's initiative was to become a member of the Working Party.

Sources: Samruk-Kazyna (2016a), OECD (2014b), OECD (2012).

The direction of SOEs in Kazakhstan is often appointed at the political level and these companies have extensive links to the public sector, including access to public funding from state-owned banks as well as credit facilities. State-owned enterprises also have an advantageous position in terms of licencing. This entails various risks, such as undue political interference in decision-making which may be in conflict with the best interests of the enterprise and the general public (OECD, 2015b). Consequently, the OECD called for sufficient accountability and transparency in these companies and emphasised the importance of external monitoring of their operations (OECD 2014b).

A Code of Corporate Governance for state-owned enterprises is reportedly under development, and would include considerations of the guidance provided in the OECD Guidelines on Corporate Governance of State-Owned Enterprises, the G20/OECD Principles of Corporate Governance and the provisions of the Code of Corporate Governance.

Recommendations for reform

- Following the example of Samruk-Kazyna, other SOEs in Kazakhstan should also be encouraged to update their governance practices and to strengthen the rules and procedures of transparency and accountability.

- The authorities should be vigilant to promote a level-playing field in the cases of competition between SOEs and private enterprises.

- The government should consider publishing an annual aggregate report covering the activities of all SOEs, as recommended by the OECD Guidelines on Corporate Governance of State-Owned Enterprises (OECD, 2015b).

Anti-corruption in corporations

Anti-corruption represents one of the main priorities in Kazakhstan's public policy and has a fundamental role in the country's strategies to enhance economic growth (Box 10.3). The government has taken legislative measures and developed initiatives to prevent corruption, including in the corporate sector, where it has been a major issue. A company survey carried out by the World Bank in 2013 showed, for instance, that private sector stakeholders perceived corruption as the main obstacle for conducting business in Kazakhstan (World Bank, 2016). Similarly, corruption was ranked as the most problematic factor for doing business in Kazakhstan in the Global Competitiveness Report 2015-2016 of the World Economic Forum (World Economic Forum, 2015).

Box 10.3. **Kazakhstan's national strategies and business integrity**

The government of Kazakhstan aims at achieving growth and improving the country's economic performance by 2050, aiming to become one of the world's top 50 most competitive countries. For this purpose, several national strategies and initiatives have been developed to enhance growth, attract investment and improve the functioning of the public and private sectors. The Kazakhstan 2050 Strategy represents one of the initiatives, whose goal is to improve the country's business climate and increase attractiveness for foreign investment. The National Plan "100 concrete steps towards realisation of the five institutional reforms" is another example of the initiatives established in Kazakhstan to promote extensive reform. The National Plan provides a list of reforms which encompass a wide range of areas, such as public governance and administration, rule of law, industrialisation and social well-being. The National Plan also calls for intensification of Kazakhstan's measures in preventing corruption and introduction of new legislation in the area.

Sources: Kazakhstan 2050 Strategy (2016), Kazakhstan Institute for Strategic Studies (2016).

Kazakhstan adhered to the legally-binding United Nations Convention against Corruption in 2008 (UNODC, 2016) and participates to the OECD Istanbul Anti-corruption Action Plan since 2004. The main legislative document on anti-corruption in Kazakhstan is the Law on Combating Corruption (Anti-corruption Bureau of the Republic of Kazakhstan, 2016). Kazakhstan also adopted Criminal, Criminal Procedure and Administrative Offences Codes which encompass anti-corruption issues (OECD, 2014b).

Until September 2016, the main state body in charge of detection, prevention and investigation of corruption cases was the Anti-corruption Bureau within the Ministry of Civil Service Affairs and Anti-corruption. The role of the Bureau was being strengthened in the context of the National Plan "100 concrete steps towards realisation of the five institutional reforms". The Bureau's chair and deputies were appointed by the President and it was in charge of implementing the state's programmes for prevention of corruption and raising awareness of anti-corruption issues. It also organised training for public and private sectors (Anti-corruption Bureau of the Republic of Kazakhstan, 2016; OECD, 2012). Following the Decree of the President of the Republic of Kazakhstan of 13 September 2016 "On Reorganisation of the Ministry of Civil Service Affairs of the Republic of Kazakhstan", the National Bureau of Corruption Counteraction of the Agency of the Republic of Kazakhstan for Civil Service Issues and Counteraction of Corruption became the main state body in charge of detection, prevention and investigation of corruption cases (President of the Republic of Kazakhstan, 2016).

One of the initiatives overseen by the Bureau was the Sectoral Programme for Anti-corruption in the Republic of Kazakhstan 2011-2015, which was developed to enhance the efficiency of corruption prevention in the country, including in the business sector (Ministry of Justice of the Republic of Kazakhstan, 2016). In its report, the OECD Anti-Corruption Network for Eastern Europe and Central Asia noted that regular monitoring of the implementation of the 2011-2015 Programme was carried out by the public authorities (OECD, 2014b). However, no information regarding the impact assessment of the programme is available.

A new Anti-corruption Strategy of the Republic of Kazakhstan has been developed for 2015-2025. The Strategy outlines measures to prevent corrupt behaviour in public as well as private sectors. It emphasises the importance of increasing transparency, and enhancing the implementation of international integrity and ethics standards in the business sector. As a part of the Strategy, the National Chamber of Entrepreneurs, an organisation promoting entrepreneurship in Kazakhstan, adopted a Charter of Kazakhstan Entrepreneurs on fighting corruption in June 2016. The Charter, reviewed in its draft format by the OECD monitoring team of the Istanbul Anti-corruption Action Plan (OECD, 2014b), is voluntary and lists principles for businesses to prevent corruption. It is open for signature by all companies, business organisations and professional associations (Prime Minister of Kazakhstan, 2016).

Recommendations for reform

- Kazakhstan could envisage making complete information regarding the measures taken and results achieved under their first anti-corruption programme publicly available, which would enable effective evaluation of the impact of the programmes and facilitate their improvement in order to address remaining challenges in their most recent programme.

- Kazakhstan could also consider making publicly available the information regarding the impact assessment of the Sectoral Programme for Anti-corruption in the Republic of Kazakhstan 2011-2015.

Responsible business conduct

The government of Kazakhstan actively raises awareness of corporate social responsibility among private sector participants and encourages local businesses and investors to implement and take part in corporate social responsibility projects, often related to development of regional social well-being or environmental protection. Annual awards are also granted by the President for companies' achievements in corporate social responsibility. In practice, many of the corporate social responsibility and business integrity initiatives take the form of a financial contribution by the company to a regional environmental or charity project (OECD, 2012).

The Law on Private Entrepreneurship in Kazakhstan defines corporate social responsibility as a voluntary contribution of private business entities in development of the society in social, economic and ecological spheres. Some companies in the oil and gas industry have reported on regional authorities' requirements to allocate funding to specific projects, shifting the nature of the contribution from voluntary to mandatory. Such requests, which are said to be sporadic, lead to ad-hoc decision making at a company level and creates difficulties to fit the project into the company's risk management and strategic planning (Artemyev et al., 2012). Furthermore, these initiatives

are also reported to be advanced and executed with insufficient transparency (OECD, 2012). Paradoxically, initiatives destined to promote corporate responsibility may, in some cases, contain a high risk of corruption due to the lack of accountability.

The practice of corporate social responsibility in Kazakhstan is furthermore not fully aligned with the concept of responsible business conduct as recommended by the OECD instruments, such as the Guidelines for Multinational Enterprises. These OECD instruments also emphasise the importance of a company's contribution to local capacity building and economic, social and environmental progress. However, the definition of responsible business conduct under OECD instruments is significantly wider and takes into consideration the company's internal measures, functions and processes destined to promote carrying out business with integrity. It also includes measures to prevent serious corporate misconduct deriving from either the company's own activities or that of its business partners or suppliers. Serious corporate misconduct can include violations of national or international laws, bribery, environmental damage, human rights violations, fraud and several other forms of misconduct.

In contrast, the practice in Kazakhstan relative to corporate social responsibility focuses mostly on the promotion of social welfare and tends to overlook the aspect of a company's internal responsible business conduct and integration of integrity issues into the company's governance. For this reason, some Kazakh initiatives may not necessarily achieve impact on enhancing company's business integrity. Kazakh companies' part-taking in initiatives related to social, environmental or cultural development entails a risk of excessively focusing on charity, without investing in internal progress to build a framework of doing business with responsibility and integrity. In some cases, required financial contributions to government sponsored corporate social responsibility initiatives can also strain the strategic planning and internal control of companies.

Work has been reportedly undertaken in Kazakhstan to join the OECD Guidelines for Multinational Enterprises and to establish a national contact point.

Recommendations for reform

- Kazakhstan is encouraged to continue the work on aligning their approach towards corporate social responsibility with the OECD concept of responsible business conduct, as presented in instruments such as the OECD Guidelines for Multinational Enterprises.

- Corporate social responsibility initiatives should be carried out with sufficient transparency and accountability so as to mitigate the risks of corruption.

Risk management

Risk management failures in companies can lead to grave financial and environmental consequences. Appropriate and effective risk management strategies are essential in ensuring long-term stability and growth of a company. Furthermore, disclosing information on risk management and internal control not only serves the purpose of informing all relevant stakeholders about the potential risks and the company's coping strategies, but also demonstrates the board's commitment in transparent addressing of the issues (OECD, 2014c).

The G20/OECD Principles of Corporate Governance note the board's responsibility in establishing and monitoring the company's risk management and internal control

framework, including accountability. In addition, the Principles emphasise that the board should determine the type and degree of risks that the company is willing to accept to reach its objectives (G20/OECD, 2015). As recommended by the OECD tools, companies should set up effective risk management frameworks and apply due diligence in supply chains so as to identify, prevent and mitigate actual and potential adverse impacts.

Risk management is essential for the extractives sector, which is especially vulnerable to risks of social or environmental damage deriving from a company's own activities or its relationships with third parties. This sector is particularly important in Kazakhstan, which is not yet a signatory of the OECD Guidelines for Multinational Enterprises. However, in October 2013 the country was declared compliant with the Extractive Industries Transparency Initiative (EITI), which brings Kazakhstan closer to the OECD standards for multinational enterprises as the Initiative aims at promoting revenue transparency in the oil and gas industry (Extractive Industries Transparency Initiative, 2016).

The Ministry of National Economy of Kazakhstan reported in 2014 that an assessment of corporate governance and risk management systems of six joint stock companies with state shares was carried out. The companies included JSC "KazAgroInnovation", JSC "National Agency for Export and Investment Kaznex Invest", JSC "National Company Kazakhstan Garysh Sapary", JSC "Kazakhstan Centre for Public-Private Partnership", JSC "Social Entrepreneurship Corporation Tobol" and JSC "National Scientific Technological Holding Parasat". According to the Ministry, the main problems identified during the assessment were related to insufficient disclosure on risk management. Furthermore, an assessment of transparency of state-owned enterprises was reported to have taken place (OECD, 2014b), but no information is available regarding neither one of the assessments, nor their results.

Recommendations for reform

- Companies in Kazakhstan should be encouraged to set up effective risk management systems and disclose information about them.

- Kazakhstan should promote the application of due diligence in supply chains, especially in the extractives sector, so as to identify, prevent and mitigate actual and potential adverse impacts deriving from the company's own activities or from its relationships with third parties.

- In addition, Kazakhstan's adherence to the OECD Guidelines for Multinational Enterprises would complement the country's compliance with the Extractive Industries Transparency Initiative and contribute to the development of business integrity in the country.

Examples of good practices in promoting business integrity through corporate governance

Concrete measures can be taken by companies to enhance business integrity through their corporate governance. In many jurisdictions, companies' internal efforts are also supported by government actions to incentivise carrying out business with integrity. Moreover, investors' initiatives can further contribute to encouraging businesses to prevent misconduct. The OECD report *Corporate Governance and Business Integrity: A Stocktaking of Corporate Practices* (OECD, 2015a) provides an analysis of the practices

across companies identified during the 2015 Trust and Business stocktaking exercise (Box 10.4) and presents relevant external incentives for businesses to implement integrity measures. Building on the results of the stocktaking, this section provides examples of both, company measures and external factors which contribute to enhancing business integrity and which can be adapted in the national context of Kazakhstan.

Box 10.4. **OECD Trust and Business Project**

The OECD Trust and Business Project (TNB Project) aims at bridging the gap between business integrity standards and their implementation at company level. The goal of the project is to analyse ways in which corporate governance frameworks can contribute to strengthening companies' ability to carry out business with integrity and prevent corporate misconduct.

Anchored in the G20/OECD Principles of Corporate Governance, the project focuses on supporting the practical implementation of the various OECD standards and instruments of business integrity. The project focuses on the possible measures a company's board and senior management can take so as to effectively set the "tone from the top" for carrying out business with integrity.

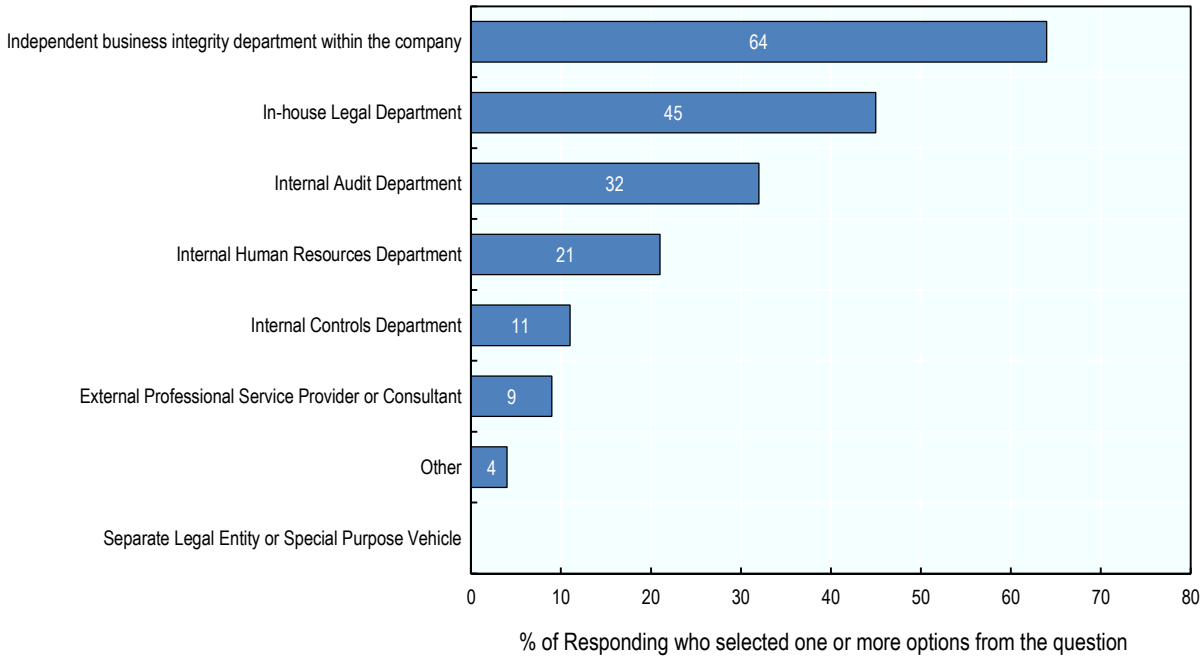
The findings of the study show that business integrity related issues are taken more seriously in the corporate world and that companies are increasingly investing in promoting culture of integrity. Taking business integrity considerations as part of the corporate practices helps companies to mitigate risks deriving from corrupt behaviour, such as reputational damage, loss of investors' trust and sanctions. The study analyses various ways in which companies and jurisdictions can promote integrity, such as provision of training, establishing business integrity function, whistleblower protection, personal director liability and governmental enforcement actions.

Source: OECD (2016)

Measures at a company level

Creation of a business integrity function. Many companies found it useful to create a business integrity function that can support the boards' efforts in setting the integrity tone of the firm. A majority of the respondents of the OECD survey established an independent business integrity department within the company, but some also introduced other solutions for structuring the integrity function (Figure 10.2).

Figure 10.2. Organisation of the integrity function



Source: OECD (2015a)

Strengthening the role of the board. The board should be in charge of monitoring and overseeing the company's integrity policy and its implementation.

Integrity training. Provision of integrity related training to company board members and management is an effective way to spread knowledge about the key business integrity principles as well as their practical implementation.

Whistleblower protection. Developing internal reporting mechanisms and providing protection to whistleblowers play an essential role in enhancing companies' integrity framework.

Incentivising integrity within companies. Certain companies are linking the promotion and implementation of the company's integrity policy to performance-related bonuses and remuneration.

Collective action. Alliances between corporations to promote business integrity are an effective tool in increasing the impact of responsible business conduct related work in individual companies (OECD, 2015a; 2014e).

External factors

Investors' influence. Investors have the potential to influence the company's efforts in strengthening business integrity, for example, through the development of stewardship considerations and shareholder activism. The UN-supported Principles for Responsible Investment (PRI) is an example of an investor initiative, which considers investment decisions according to the companies' integrity frameworks (Box 10.5).

Box 10.5. The Principles for Responsible Investment Initiative

The United Nations-supported Principles for Responsible Investment Initiative (PRI) is a network of international investors working together to put the six Principles for Responsible Investment into practice. The six Principles provide a voluntary framework by which investors can incorporate environmental, social and corporate governance (ESG) issues into their decision-making and ownership practices.

In 2010, PRI worked with investor signatories and launched a two-phased investor engagement programme looking specifically at the issue of anti-corruption as an element of PRI's overall ESG investment framework. The first phase (2010-2013) was undertaken by a coalition of 21 PRI signatories representing USD 1.7 trillion in assets under management, who engaged with 21 companies in 14 countries to encourage them to demonstrate publicly that they had appropriate anti-corruption controls.

A second, two-year phase of the engagement programme concluded in July 2015 and involved 34 PRI signatories representing USD 2.7 trillion assets under management engaging with 32 companies. The objectives of this second phase included:

- Pushing companies to achieve enhanced disclosure of anti-corruption strategies, policies and management systems, encouraging reporting in line with international reporting frameworks
- Verifying that implementation and effectiveness of companies' processes are adequately aligned to protect against legal/regulatory concerns faced by the company
- Enabling investors to better assess and manage their exposure to the financial, operational and reputational impacts of corruption risks in their portfolios.

Companies are measured according to 18 specific scoring indicators, stemming mainly from the Transparency International TRAC 2 methodology. These are complemented by qualitative assessment criteria, such as:

- How the board keeps up-to-date with anti-corruption issues and whether all board members receive regular briefings and compliance training.
- Whether the company provided the investor group with access to senior management for dialogue.
- How anti-corruption initiatives are embedded into culture at all levels.
- If performance appraisals and remuneration include elements based on business ethics and anti-corruption criteria.
- If the company reports on actions taken as a result of their anti-bribery and corruption monitoring.

PRI's recent Report on Progress 2015 (September 2015) is available at www.unpri.org/publications/ which provides an analysis of the responsible investment activity of 936 investors from 48 countries across six continents.

Source: OECD (2015a)

The government of Kazakhstan maintains a dialogue with foreign investors through the Foreign Investors' Council, chaired by the President, with the aim of increasing foreign investment and improvement of the country's investment climate (U.S. Department of State, 2014). The main focus of the Council's work is the development of investment policies and improvement of legal environment for investment (Foreign Investors' Council of Kazakhstan, 2016). The Council could also consider business

integrity related aspects into its work stream; for example, by creating a dialogue and spreading knowledge among corporations about prevention of misconduct.

Enforcement actions by the government. In addition to the risk of reputational damage, companies are seeking to prevent and address misconduct so as to mitigate the risks of administrative, civil and criminal enforcement actions against the company, such as criminal investigations, sanctions or listing restrictions. Enforcement actions by the government represent, thus, an effective way of incentivising integrity.

Governmental compliance incentives. Governments can also introduce compliance incentives which aim at recognising a company's efforts to establish a business integrity programme. The existence of the programmes can be taken into account as a mitigating factor in sentencing or as a defence to an offence of misconduct.

Personal director liability. In some jurisdictions, board members and management may be held personally liable for corporate misconduct.

Sustainability reporting initiatives. Some companies are adhering to reporting initiatives to disclose integrity, ethics and governance related information.

Corporate governance codes. Regulators can complement and strengthen the legal framework regarding business integrity by requiring companies to comply with a corporate governance code under the "comply-or-explain" principle.

Action Plan and potential OECD support

Recommendations

- Kazakhstan could consider updating the Code of Corporate Governance. The G20/OECD Principles of Corporate Governance could be used as reference and particular focus could be drawn on the board's responsibilities related to business integrity.

- An assessment could be carried out on the effectiveness of Kazakhstan's legal framework relative to, in particular, the responsibilities and power of the board. Kazakhstan could consider providing them with a stronger mandate for supervision of the company, including monitoring of its accountability and for setting clear standards of integrity.

- In line with OECD standards, Kazakhstan should consider strengthening the guidance offered to companies and making compliance with the Code of Corporate Governance mandatory, under a comply-or-explain mechanism.

- In addition, Kazakhstan should promote convergence of reporting methodologies and indicators in order to facilitate comparison and discourage non-transparent practices which can increase the risk of corporate misconduct.

- Following the example of Samruk-Kazyna, other SOEs in Kazakhstan should also be encouraged to update their governance practices and to strengthen the rules and procedures of transparency and accountability.

- The authorities should be vigilant to promote a level playing field in the cases of competition between SOEs and private enterprises.

- The government should consider publishing an annual aggregate report covering the activities of all SOEs, as recommended by the OECD Guidelines on Corporate Governance of State-Owned Enterprises (OECD, 2015b).

- Kazakhstan could envisage making complete information regarding the measures taken and results achieved under their first anti-corruption programme publicly available, which would enable effective evaluation of the impact of the programmes and facilitate their improvement in order to address remaining challenges in their most recent programme.

- Kazakhstan could also consider making publicly available the information regarding the impact assessment of the Sectoral Programme for Anti-corruption in the Republic of Kazakhstan 2011-2015.

- Kazakhstan is encouraged to continue the work on aligning their approach towards corporate social responsibility with the OECD concept of responsible business conduct, as presented in instruments such as the OECD Guidelines for Multinational Enterprises.

- Corporate social responsibility initiatives should be carried out with sufficient transparency and accountability so as to mitigate the risks of corruption.

- Companies in Kazakhstan should be encouraged to set up effective risk management systems and disclose information about them.

- Kazakhstan should promote the application of due diligence in supply chains, especially in the extractives sector, so as to identify, prevent and mitigate actual and potential adverse impacts deriving from the company's own activities or from its relationships with third parties.

- Kazakhstan's adherence to the OECD Guidelines for Multinational Enterprises would complement the country's compliance with the Extractive Industries Transparency Initiative and contribute to the development of business integrity in the country.

The OECD has a wealth of expertise in the fields of corporate governance and business integrity. The Organisation has already carried out work in co-operation with Kazakhstan related to responsible business conduct and anti-bribery, and provided targeted support, such as the assistance to Samruk-Kazyna in its project to develop a Code of Corporate Governance. The OECD's expertise and support in this field could be made available to Kazakhstan's public and private sector.

Reform Areas	**Potential OECD Support**
Enhancing business integrity in the private sector	In-depth assessment of the corporate sector in Kazakhstan could be carried out so as to identify key areas for improvement in governance practices and to develop concrete recommendations. A network of companies could be created, members of which would receive tailored training organised by the OECD and have access to the Organisation's expertise on topics such as anti-corruption, whistleblower protection, risk management, due diligence in supply chains and other key areas of business integrity. Workshops and seminars could be organised destined for public officials and private sector stakeholders with the purpose of diffusing information about OECD instruments of corporate governance and business integrity and supporting their practical implementation in Kazakhstan.
Development of investors' initiatives to enhance business integrity through corporate governance	Projects and initiatives for enhancing business integrity could be developed with institutional investors on the basis of existing programmes such as the Principles for Responsible Investment Initiative supported by the United Nations.

Further reading

OECD (2013), *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264185050-en

OECD (2009), *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Annex II, Good Practice Guidance on Internal Controls, Ethics and Compliance*, OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/44176910.pdf.

OECD (1997), *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

References

Anti-corruption Bureau of the Republic of Kazakhstan (2016), Национальное бюро по противодействию коррупции Министерства по делам государственной службы Республики Казахстан, (National Anti-corruption Bureau of the Ministry of Civil Service Affairs of the Republic of Kazakhstan) (in Russian), http://anticorruption.gov.kz/rus/pravoprimenenie/zakony_rk/, (accessed 1 March 2016).

Artemyev A. et al. (2012), Corporate Social Responsibility in Kazakhstan: from liability to strategic Investment, SIGLA Brief.

Christiansen, H. and Y. Kim (2014), "State-Invested Enterprises in the Global Marketplace: Implications for a Level Playing Field", OECD Corporate Governance Working Papers, No. 14, OECD Publishing, Paris, http://dx.doi.org/10.1787/5jz0xvfvl6nw-en.

EBRD (2016), *Legal Reform in Kazakhstan*, www.ebrd.com/legal-reform/where-we-work/kazakhstan.html, (accessed 8 March 2016).

EBRD (2011), Kazakhstan Law on Joint Stock Companies (unofficial translation in English), www.ebrd.com/downloads/legal/securities/kazakhjs.pdf, (accessed 28 February 2016); Russian version of the Kazakhstan Law on Joint Stock Companies, http://online.zakon.kz/Document/?doc_id=1039594#sub_id=360000, (accessed 9 March 2016).

Extractive Industries Transparency Initiative (2016), Kazakhstan, https://eiti.org/Kazakhstan, (accessed 9 March 2016).

Financial Institutions' Association of Kazakhstan (2007), Code on Corporate Governance, http://www.ecgi.org/codes/documents/cg_code_kazakhstan_21feb2005_en.pdf, (accessed 1 March 2016); Russian version, Foreign Investors' Council Chaired by the President of the Republic of Kazakhstan (2016), http://www.fic.kz/eng/, (accessed 9 March 2016).

G20/OECD (2015), Principles of Corporate Governance, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264236882-en

Goodley, Simon et al. (2013), ENRC: Serious Fraud Office launches criminal investigation, *The Guardian*, www.theguardian.com/business/2013/apr/25/serious-fraud-office-enrc-documents, (accessed 9 March 2016).

Kazakhstan 2050 Strategy (2016), https://strategy2050.kz/en/, (accessed on 28 February 2016).

Kazakhstan Institute for Strategic Studies (2016), the National Plan "100 precise steps towards realization of the five institutional reforms", http://kisi.kz/en/pages/national-plan-%E2%80%9C100-precise-steps%E2%80%9D, (accessed on 28 February 2016).

Kazakhstan Stock Exchange (2009), Listing Rules, www.kase.kz/files/normative_base/listing_rules_izm_13_eng.pdf, (accessed on 1 March 2016).

Ministry for Investments and Development of the Republic of Kazakhstan, Anti-corruption Strategy of the Republic of Kazakhstan for 2015-2025 years, http://www.mid.gov.kz/en/pages/anticorruption-strategy-republic-kazakhstan-2015-2025-years, (accessed 28 February 2016).

Ministry of Justice of the Republic of Kazakhstan (2016), Sectoral Programme of Anti-Corruption in the Republic of Kazakhstan for 2011-2015 years, www.adilet.gov.kz/en/node/47917, (accessed 28 February 2016).

OECD (2016), Trust and Business Project, www.oecd.org/daf/ca/trust-business.htm.

OECD (2015a), *Corporate Governance and Business Integrity: A Stocktaking of Corporate Practices,* Paris, www.oecd.org/daf/ca/Corporate-Governance-Business-Integrity-2015.pdf.

OECD (2015b), *Guidelines on Corporate Governance of State-Owned Enterprises*, Paris, www.oecd.org/corporate/guidelines-corporate-governance-soes.htm.

OECD (2014a), An Analysis of the Crime of Bribery of Foreign Public Officials, OECD Foreign Bribery Report, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264226616-en.

OECD (2014b), *Monitoring of the Istanbul Anti-Corruption Action Plan, Anti-corruption Reforms in Kazakhstan, Round 3*, Paris, www.oecd.org/daf/anti-bribery/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf.

OECD (2014c), *Risk Management and Corporate Governance*, Paris, http://www.oecd.org/daf/ca/risk-management-corporate-governance.pdf.

OECD (2014d), Responsible Business Conduct in Kazakhstan, OECD Publishing, Paris, www.oecd.org/countries/kazakhstan/RBC_in_Kazakhstan-2014.pdf.

OECD (2014e), *Revisiting Whistleblower Protection in OECD Countries: From Commitments to Effective Protection*, OECD (GOV/PGC/ETH(2014)4), www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH(2014)4&docLanguage=En.

OECD (2012), *OECD Investment Policy Reviews: Kazakhstan*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264121812-en

OECD (2011), *OECD Guidelines for Multinational Enterprises, 2011 Edition*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264115415-en

President of the Republic of Kazakhstan (2016): On reorganisation of the Ministry for Civil Service Affairs of the Republic of Kazakhstan, www.akorda.kz/en/legal_acts/decrees/on-reorganization-of-the-ministry-for-civil-service-affairs-of-the-republic-of-kazakhstan, (accessed 24 October 2016).

Prime Minister of Kazakhstan (2016), Anti-corruption Charter adopted in Kazakhstan, https://primeminister.kz/en/news/sotsialnaya_politika/hartija-predprinimatelej-po-protivodejstviju-korruptsii-prinjata-v-kazahstane, (accessed 15 September 2015).

Samruk-Kazyna (2016a), http://sk.kz/, (accessed 9 March 2016).

Samruk Kazyna (2016b), Анализ корпоративного управления АО «Самрук-Қазына», (Corporate Governance Analysis of JSC Samruk-Kazyna) (in Russian), http://sk.kz/page/analiz-korporativnogo-upravlenija-ao-samruk-azyna?lang=ru, (accessed 9 March 2016).

UNODC (2016), United Nations Convention against Corruption, Signature and Ratification Status as of 1 December 2015, www.unodc.org/unodc/en/treaties/CAC/signatories.html, (accessed 28 February 2016).

U.S. Department of State (2014), 2014 Investment Climate Statement, Kazakhstan, www.state.gov/e/eb/rls/othr/ics/2014/228884.htm, (accessed 9 March 2016).

World Bank (2016), Kazakhstan (2013), www.enterprisesurveys.org/data/exploreeconomies/2013/kazakhstan, (accessed on 29 February 2016).

World Economic Forum (2015), The Global Competitiveness Report 2015-2016, World Economic Forum,www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf, (accessed 29 February 2016).

Chapter 11.

Empowering civil society in Kazakhstan

Uniquely positioned to independently monitor public services, raise awareness, and denounce bribery perpetrated by different economic and political actors, this chapter will assess the key role that civil society can play in fighting corruption and holding public officials accountable in the Republic of Kazakhstan. The chapter covers the legal environment governing CSOs in Kazakhstan and assesses whether there is an enabling environment for the effective role of civil society organisations. Second, it looks at the role of civil society organisations in combating corruption and promoting integrity in Kazakhstan. Finally, the chapter assesses CSOs' commitment to integrity within their own organisations.

Role of civil society in promoting integrity and combating corruption

Accountability is a cornerstone of good governance. Public officials and institutions must be subject to oversight and held accountable for decisions, the effectiveness and performance of policies, and the efficient and fair use of public funds. Accountability actors can include autonomous oversight institutions (i.e. Electoral bodies, Supreme Audit Institutions, Ombudsman, etc.), but also the media (see Chapter 14: Independent and Vibrant Media) and civil society. Civil society organisations are particularly important for accountability and legitimacy as they represent the various interests of the public (World Bank, n.d).

Civil society plays a key role in influencing and monitoring government and particularly in fighting corruption. Capable, independent and vocal civil society organisations can study and advocate for improved integrity and anti-corruption policies, monitor their implementation and inform citizens of strengths and weaknesses. Second, civil society play an essential "watch-dog" role, exposing and denouncing corruption and applying pressure for formal investigations and the application of sanctions.

The effective participation of civil society in the fight against corruption depends on four key factors. First, the existence of a legal framework that enables civil society organisations to participate in the all aspects of society without political and legal (including funding) restrictions is crucial. The constraints and hurdles that the state can impose on the civil society can have multiple origins ranging from excessive bureaucracy to unfair and unjustified laws that translate into penal and pecuniary sanctions.

Second, the willingness of the state to engage constructively with CSOs matters. Strengthening the relationship between state and its citizens in the fight against corruption will improve the quality of policies by integrating different points of views, and enhancing public trust in the government and its actions. A healthy relationship between the government and CSOs can also enable the government to respond better to changing public trends.

Not surprisingly, the extent to which CSOs actively engage in the fight against corruption is the third key factor. CSOs play a key role in raising awareness about cases of corruption and providing tools through which citizens can mobilise efforts to hold their governments to account. CSOs also play an important monitoring role, measuring the progress of the government's efforts to implement anti-corruption reforms and bringing to light potential cases of fraud and corruption. Fourth and finally, CSOs must also demonstrate a strong commitment to integrity within their own organisations.

This chapter will assess civil society in relation to the above four elements: first, it sets the context within which to assess the role of civil society in Kazakhstan. Second, it will analyse whether there is an enabling environment in Kazakhstan for the effective role of civil society organisations. Third, it will look at the role of civil society organisations in combating corruption and promoting integrity in Kazakhstan, whereas fourth it will assess CSOs commitment to integrity within their own organisations.

Box 11.1. OECD Guiding Principles for Public Participation in Policy Making

Civic engagement enhances a government's policy performance by working with citizens, civil society organisations, businesses and other stakeholders to deliver improvements in policy and the quality of public services (OECD 2009). The experience of OECD member countries indicates open and inclusive policy making can help governments better understand and respond to the changing needs of society, use ideas and resources from civil society and business to confront complex policy challenges, lower costs and improve policy outcomes, and reduce administrative burdens on policy implementation and service delivery.

As such, the OECD has created a set of Guiding Principles, which are designed to help governments strengthen open and inclusive policy making as a means to improve their policy performance and service delivery. A summary of the principles is provided here:

1. **Commitment:** Leadership and strong commitment to open and inclusive policy making is needed at all levels – politicians, senior managers and public officials.

2. **Rights:** Citizens' rights to information, consultation and participation in policy must be grounded in law. Government obligations to respond to citizens must be clearly stated. Independent oversight arrangements are essential to enforcing these rights.

3. **Clarity:** Objectives for and limits to information, consultation and participation should be well clarified. The roles and responsibilities of all parties must be clear. Government information should be complete, objective, reliable, relevant, easy to find and understand.

4. **Time:** Public engagement should be undertaken as early in the policy process as possible and adequate time must be available for consultation and participation to be effective.

5. **Inclusion:** Citizens should have equal opportunities and channels to access information, be consulted and participate. Every reasonable effort should be made to engage with as wide a variety of people as possible.

6. **Resources:** Adequate financial, human and technical resources for effective public information, consultation and participation. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports both traditional and online tools.

7. **Co-ordination:** Initiatives to inform, consult and engage civil society should be coordinated within and across levels of government to ensure policy coherence, avoid duplication and reduce the risk of "consultation fatigue."

8. **Accountability:** Governments have an obligation to inform participants of how they use inputs received through public consultation and participation.

9. **Evaluation:** Governments need to evaluate their own performance. To do so effectively will require efforts to build the demand, capacity, culture and tools for evaluating public participation.

10. **Active citizenship:** Societies benefit from dynamic civil society, and governments can facilitate access to information, encourage participation, raise awareness, strengthen citizens' civic education and skills, as well as to support capacity-building among civil society organisations. Governments need to explore new roles to effectively support autonomous problem-solving by citizens, CSOs and businesses.

Box 11.1. **OECD Guiding Principles for Public Participation in Policy Making**
(continued)

In increasing citizen engagement in policy making, public officials must be careful to ensure that engagement processes are fit for purpose and protect against potential conflicts of interests and policy capture (OECD 2014). The type and level of engagement used for a particular matter should reflect the intended purpose of that engagement. The nature of the legislative scheme and the regulatory style adopted will affect the nature of any engagement. For example, advisory bodies can be effective in providing insights from industry or the community as to how to most effectively change behaviour or anticipate developments which may warrant a change (OECD 2009). Whatever style of engagement is chosen, opportunities to increase dialogue and exchange information in order to ensure informed decision-making and confidence in the system should be maximised.

Engagement must not be used as a tool to favour certain particular interests, as this would compromise the regulators ability to achieve broader outcomes (OECD 2014). Instead, engagement must be inclusive (unless this would compromise the intended outcome) and transparent. Inclusive consultation allows any interested stakeholder to contribute or comment on proposals, rather than just representative groups, building confidence that all interests are heard. Similarly, transparent engagement involves publicly documenting who has been consulted and what their input has been and the release of the policy maker's responses to the main issues. This can protect the regulator from suggestions of capture or failure to listen to the range of views, and also builds confidence in the regulatory process.

Sources: OECD (2009); OECD (2014a).

Current status and critical analysis

Civil society in Kazakhstan

The landscape of civil society in Kazakhstan

A flourishing civil society depends on the freedom and commitment of individuals pursuing their own chosen ends. The law defines and influences the role of those individuals as well as CSOs. It is thus implicit that an enabling legal environment enhances civil society while a restrictive one will endanger it. Alongside fundamental individual rights such as freedom of speech and the right to petition the government, it is necessary to examine whether individuals can organise themselves around common grounds, obtain a legal identity for informal groups and become a CSO.

Box 11.2. An enabling environment for civil society organisations – a United Nations Perspective

The United Nations "A Practical Guide for Civil Society" provides an overview of the conditions and environment needed for a free and independent civil society. It identifies five key conditions that should be in place to ensure that civil society organisations can function in line with the relevant international human rights standards for freedoms of expression, association and peaceful assembly, and the right to participate in public affairs. These conditions include a conducive political and public environment; a supportive regulatory framework; free flow of information; long-term support and resources; and shared spaces for dialogue and collaboration.

- A conducive political and public environment is one which values and encourages civic contribution. It constitutes institutions and public officials who are responsive to civil society actors in their regular interaction.
- A supportive regulatory framework ensures that the legislation, administrative rules and practices are in line with international standards and safeguard civil society activities. This condition goes beyond sound laws and policies, which although vital, remain ineffectual if not properly implemented. To that end, access to justice for civil society actors, independent and effective national human rights institutions, and access to international human rights mechanisms are also integral to this framework.
- Free flow of information ensures free access to ideas, data, reports, initiatives, and decisions to enable civil society organisations to become aware and informed about issues, articulate concerns, engage constructively, and contribute to solutions.
- Building capacity for marginalised voices, and ensuring access to resources, meeting places, and technology to all civil society organisations are ensured through measures for long-term support and resources.
- Finally, shared spaces for dialogue and collaboration entail ensuring that there is a place for civil society in the decision-making process.

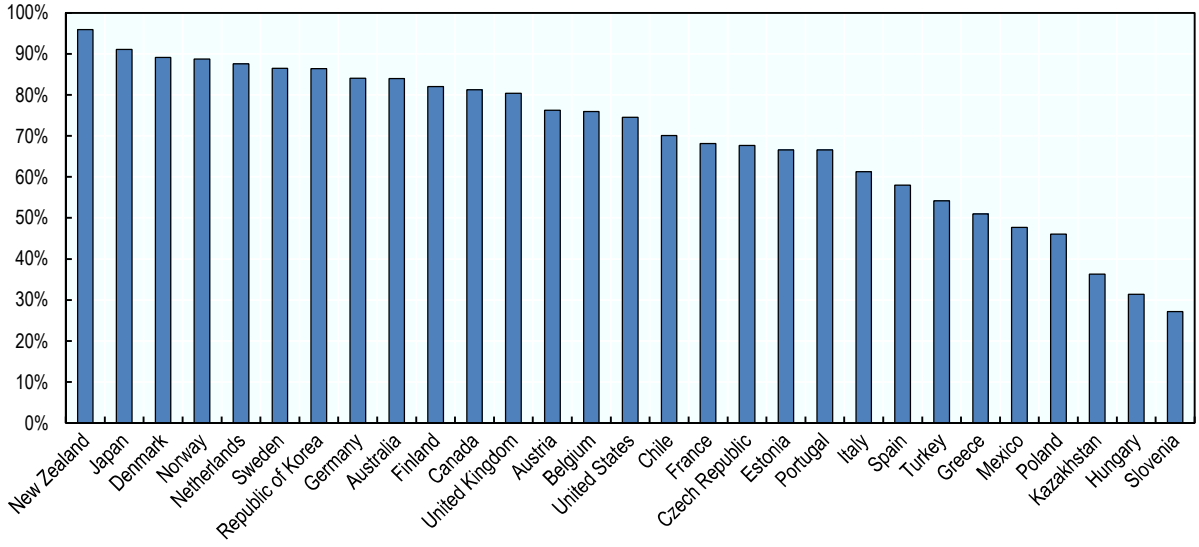
Source: United Nations Human Rights Office of the High Commissioner (n.d.).

Clearly defining the role of civil society in Kazakhstan is not easy and rarely fits within the traditional definition. When assessing the role of civil society in Kazakhstan, the context needs to be taken into account. A former republic of the Soviet Union, Kazakhstan is a young democracy under a centralised state, with limited experience in active citizenship. It has thus proven difficult for civil society in Kazakhstan to encourage volunteerism and persuade people to take a more active role in society (Knox and Yessimova, 2015). Indeed, modern day civil society in Kazakhstan refrains from contesting the State and instead strives to be more cooperative: "Kazakhstan's civil society is less willing to confront the state… and wary of the potential for civic activism to degenerate into instability. Few civic organizations have the resources to sustain their activities without state backing, so civil society has evolved into a mix of grass-roots organisations and groups sponsored and supported by the state" (Knox and Yessimova, 2015).

Likewise, in his work on Kazakh civil society, Ziegler (2010) found that an "in between" form of civil society exists, which neither fits the traditional roles of fostering civic responsibility in a democratic polity or provides a protected sphere within which to resist tyrannical rule. Ziegler also argued that the state has "accommodated civil society by co-opting, regulating and pressuring civil society organisations into a cooperative rather than a confrontational relationship with the state" (Ziegler 2010).

It is not simply a lack of civic participation that undermines the growth of a flourishing civil society in Kazakhstan, however. The constraints and hurdles that the state can impose on the civil society range from excessive bureaucracy to unfair and unjustified laws that translate into penal and pecuniary sanctions, all of which have important consequences on the activities and role of civil society in Kazakhstan. For example, as shown in Figure 11.1, only a third of the people interviewed in Kazakhstan believe that civil society organisations can freely express opinions against government policies and actions (World Justice Project, 2015).

Figure 11.1. Percentage of CSOs who can freely express opinions against government policies and actions without fear of retaliation



Source: World Justice Project (2015).
Note: This graph places Kazakhstan amongst OECD member countries in terms of the percentage of CSOs who strongly agree or agree (%) that CSOs can freely express their opinions against the government.

- The Constitution of Kazakhstan outlines the role of public associations in Articles 5 and 23. Article 5 states that public associations must be equal before the law and that unlawful interference in the affairs of public associations is prohibited, whereas article 23 allows citizens of Kazakhstan the right to form associations.

- The Civil Code of the Republic of Kazakhstan provides for the legal basis of functioning of non-profit organisations and contains a list of unclassified non-profit organisations (Art. 34, 35 and Chapter 7).

- The Law on Public Association (1996) regulates the status of non-governmental associations and organisations, such as political parties, trade unions, professional associations, cultural societies, and other associations formed by citizens in the exercise of their right to freedom of association with others. It also establishes the rules governing the creation, operation and dissolution of non-governmental associations and organisations, as well as their rights and responsibilities.

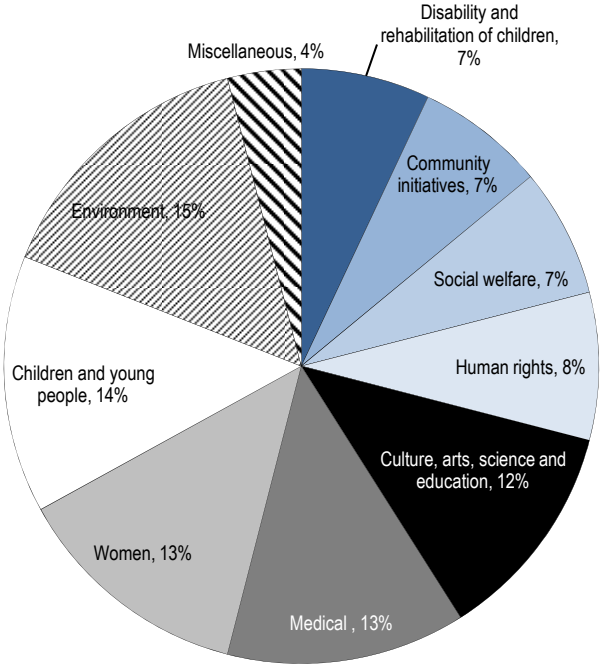
- The Law on Non-commercial Organisations (2001) sets the concept of a non-profit organisation, their activity goals, rights and duties, and sets out organisational-legal forms of non-profit organisations, such as the establishment, restructuring, and liquidation of a non-profit organisation and activities of non-profit organisations.

- Law on State Social Order, Grants and Awards for Non-Governmental Organisations (2015), which was recently approved, has raised some concerns that will be detailed below.

Civil society in Kazakhstan has progressively become more diverse, visible, and robust since the breakup of the Soviet Union. As noted in the forthcoming OECD Functional Review on Open Government in Kazakhstan, during the early 1990s more than 400 CSOs were established, with a primary focus on human rights issues and the "democracy agenda". In the late 1990s the number of CSOs grew by 300% and reached 1,600 CSOs. Between 2002 and 2011, the government directed two programs towards the development of civil society representation – the Concept of State Support for Non-Commercial Organisations (2002-2006), and the Concept of Civil Society Development (2006-2011). These two concepts included formal rules regarding relations between the government and CSOs, as well as various forms of support, including contractual relations (OECD, 2016). Throughout the 2000s, the growth of the civil society sector increased, reaching over 30,000 non-profit organisations (including around 18,000 NGOs) by 2013.

These CSOs and NGOs cover a wide range of activities, from mutual benefit organisations such as homeowners' associations, to organisations promoting human rights, protecting the interests of vulnerable groups, engaging in the delivery of social services, and supporting environmental causes (ICNL, 2016) (see Figure 11.2).

Figure 11.2. Functional activities undertaken by NGOs (2014)



Source: OECD (forthcoming), *OECD Functional Review on Open Government in Kazakhstan*, based on data from Knox and Yessimova (2015).

A striking feature of the civil society landscape in Kazakhstan is the dominance of the state CSOs, or 'GONGO', which refers to Government Organised Non-Governmental Organisation. In 2010, CIVICUS estimated that 21 363 of these GONGOs existed. The most popular of these forms are public associations and foundations, although it is necessary to take into account the fact that several organisations can be established by the same people, and only a small fraction of the registered CSOs are active, while the rest only exist on paper (Makhmutova et al., 2011). Many, as Ziegler pointed out, are 'dormant' or quasi-NGOs, some of which have been created by and others politically controlled by the government (Ziegler 2008 in Civicus, 2011). Moreover, in the 2011 Civil Society Index in Kazakhstan, it was noted that the president, presidential family, the Nur-Otan ruling party, state executive authorities and financial-industrial groups were the most important and influential actors in society (Makhmutova et al., 2011).

Funding civil society organisations

In addition to the legislative environment discussed above, two recent changes to the legislative environment have taken place over the past several years. In 2015, the Law on State Social Order, Grants and Awards for Non-Governmental Organisations was passed.

As registration for CSOs has been compulsory since 1995, the new law requires NGOs to provide the government with extensive details about their activities, assets, funding sources, personnel and past and present projects. CSOs are required to submit

yearly reports to the Ministry of Culture and Sport either in writing or electronically, although the electronic submission platform has not yet been established.

The Law also establishes a Grant Operator, which has the responsibility of posting tenders for funding grants online and distributing funds to the CSOs who win the tender. Applicants can submit their proposals, detailing the purpose of their programme, the intended outputs and outcomes. An Expert Committee, which is composed of 1/3 of participants appointed by the Grant Operator and 2/3 appointed from civil society, evaluates the applications based on a set of criteria outlined in the rules. Once the evaluation is completed, a decision regarding the reward is made, although it is not clear if evaluation is made public or if committee is required to give a justification to the unsuccessful applicants.

According to the government, the new NGO law was developed in response to the President's instructions on the need to improve the interaction between government and NGOs. The Deputy Minister of Culture and Sports Marat Azilkhanov stated that "the main purpose of the bill is to support non-governmental organisations, improve and develop these organisations. It is offered to introduce the prize system for NGOs in addition to grants. Grants will be distributed competitively by the new rules specifically adapted to the NGOs which do not fall under the requirements of the Law on Public Procurement" (Government of Kazakhstan, 2015).

Reports from civil society have expressed concern that this new law allows the government to close down CSOs at will. CSOs also noted that the submission criteria were very unclear and expressed concern over the inability to submit their information electronically, citing the risk of official manipulation. It is also unclear what the information will be used for. Government officials have indicated that the information will be contained within a database, and the latest reports by CSOs is that they anticipate that the database will be public. Civil society has expressed concern over the administrative punishments that could be applied in the event that information was omitted. The sanctions are seen as very severe and the lack of clarity over reporting requirements means there is a high risk that a CSO could make a minor mistake and then be sanctioned under the new law.

This new law has been highly criticised at the domestic and international level. Domestic CSOs have criticised the law as a way for the government to favour pro-government CSOs and undermine those which are more critical of the State. Furthermore, over 60 NGOs signed a petition calling on Nazarbayev to reject the law, charging that it would "seriously restrict human rights," including the rights to freedom of speech, conscience and association (Eurasianet, 2015).

The UN rapporteur on the right to freedom of assembly and association Maina Kiai urged the authorities not to pass the bill into law. He argued that the law "may compromise the independence of associations and also challenge their existence" (UN News Centre, 2015). Freedom House has also spoken out against the law, noting that the function of the Grant Operators gives the state the monopoly on deciding which NGOs receive funding and for what types of activities (Freedom House 2015). In addition, Dunja Mijatović, OSCE Representative on Freedom of the Media "call[ed] on the members of the Senate to carefully review the provisions of the bill, in close co-operation with civil society, in order to avoid its arbitrary application and ensure an enabling legal, regulatory and policy environment for NGO activities, including those working on free media matters" (OSCE, 2015).

The new law centralises the distribution of funds for CSOs within the government. While governments do contribute funds to civil society organisations, any funds should be delivered transparently under strict and clear guidelines to avoid government influence over the activities of CSOs. Despite the approval of the new law, it remains unclear what steps have been taken or will be taken in the near future to increase transparency of distribution of the funds. Moreover, the provisions in the Law and associated implementing regulations do not establish an internal governance or oversight structure in the operator, nor do they contain conflict of interest provisions for employees and managers who are managing the distribution. Such integrity measures would be useful in preventing the abuse of state funds by ensuing that funds are distributed transparently and competitively, and used for their intended outcome.

Furthermore, it is worth noting that in July 2016, the government passed the Law on Payments and Payment Systems, which introduced requirements for organisations and individuals, including CSOs, to report on funding received from foreign sources. Such a law aims to ensure transparency of funding to prevent money laundering or illegal financing and as Kazakhstan moves forward with the implementation of the various provisions in this law, it should ensure that the law is not arbitrarily used to limit the functions of legitimate CSOs who receive legal foreign funds.

Recommendations for reform

Kazakhstan could consider re-examining the current Law on State Social Order, Grants and Awards for Non-Governmental Organisations and implementation regulations in open and broad consultation with domestic and international CSOs to determine its potentially adverse effects on the independence of these organisations. More specifically, it should examine current legislation and practices with regards to the distribution of grants through the Grant Operator (i.e. criteria, transparency of the process and funding, etc.). Kazakhstan could also consider implementing conflict of interest provisions and oversight measures to ensure that funds are distributed competitively and transparently and are not diverted to private interests. Measures could also be established to ensure that the composition of the Expert Committee is balanced to avoid favouritism. For instance, Kazakhstan could apply term limits to NGO membership on the Expert Committee, to ensure fairness in funding decisions.

As Kazakhstan moves forward with implementing the provisions in the newly established Law on Payments and Payment Systems, it is encouraged to ensure that the measures in the law are not arbitrarily used to restrict the activities or unduly limit foreign donors to legitimate CSOs which may be critical of government activities.

Civil society involvement in government policy making

The second recent legislative change in Kazakhstan concerning civil society organisations was the passing of the Law on Public Councils in December 2015. As noted in the forthcoming OECD Functional Review on Open Government in Kazakhstan, public councils have been largely used by transition or developing countries, including amongst the Former Soviet Union, sub-Saharan Africa, South Asia and Latin America, as a mechanism for government – citizen co-operation. Generally, public councils gather different sectors of civil society, such as academia, civil or community-based organisations and the private sector and local political authorities into a single body. They contribute to the development and implementation of public policies or programmes at the local level. All stakeholders share a common goal of strengthening democracy and the quality and responsiveness of public policies at the local level.

Within the historical, political and social context of Kazakhstan, the existence of a legal framework mandating the creation of public councils is fundamental for developing and strengthening government-citizen co-operation. In this sense, Kazakhstan has achieved an important step with the passage of the Law. The concept of the public council was a priority for the government, as indicated in the 99th Step of the 100 Concrete Steps: "strengthening the role of public councils under state agencies and Akims. They will discuss the implementation of strategic plans and regional development programs, as well as budgets, reports, achieving stated objectives, draft legal acts concerning rights and freedoms of citizens and draft program documents. Legally establishing these public councils will enhance transparency of state decision-making."

According to the new law, public councils are "advisory and supervisory entities established by ministries, central executive bodies not part of the Government of the Republic of Kazakhstan, bodies immediately subordinate and accountable to the President of the Republic of Kazakhstan, as well as local governance bodies."[1] Each public body has a public council, with 2/3 of its membership coming from civil society. As discussed in Chapter 1 of this publication, the participation of civil society representatives on the public councils is broadly defined, and could include business associations as well as political parties. The remaining 1/3 of the representatives on the public councils are government officials. The aim of all public councils is to provide a voice to civil society and represent its interests on all legislative matters that could affect the population. Under the law, bodies are obliged to take into consideration the recommendations made by public councils. The law also states that public councils are supposed to:

- discuss draft budget programs, draft strategic plans or regional development programs, draft state and governmental programs
- discuss budget program performance, strategic plans or regional development programs, state and governmental programs
- discuss executive bodies' reports on progress against target indicators
- discuss reports of the budget program administrator in regard to the implementation of budget programs, implementation of revenue and expenditure plans in connection with the selling of goods (works, services), on the revenue and expenditure in connection with charity
- participate in the development and discussion of draft regulatory legal acts regarding the rights, liberties and duties of citizens
- consider appeals lodged by natural and legal persons regarding the improvement of public administration and ensuring transparency of the state machinery operations, including the observance of the regulations of service ethics
- develop and lodge with state bodies proposals on the improvement of the legislation of the Republic of Kazakhstan
- arrange public control in other forms as prescribed by this Law
- discuss draft Public Council provision on its first meeting and its submission to the state body for approval

- establish commissions for individual fields of activities.

However, under Article 13, it is up to the respective public council within each public body to determine the terms and procedures for the arrangement of public council meetings and the decision-making process, the selection of the civil society members to the public council and the timeframe for selection, and the list of documents, powers and other issues related to the activities of the working group. The composition of the public councils as well as their ability to influence policies remains unclear and a risk of undue influence over the selection of civil society organisations arises, limiting the legitimacy of the role of civil society. Furthermore, the lack of clarity regarding the selection criteria for members of the Public Council, as well as the fact that the membership remains the same regardless of the nature of the draft legislation under review, limits the potential value-added of the consultation process. While it is important to ensure that the consultative process is structured to ensure concrete, practical opportunities for dialogue (OECD 2014a), legislation is diverse in terms of content, and requires different expertise depending on the legislation at hand. A single council, composed of the same members, may not always be the best fit to provide advice.

In addition, Articles 16-19 lay out the procedures for public councils in the form of public control. The law defines public control as follows: "the activities…performed in the form of public monitoring, public hearings, public expert reviews and consideration of state bodies' progress reports, with the purpose of protecting public interests." Specifically, the objectives of the public control function are as follows:

- to enhance the efficiency, openness and transparency of the activities of state bodies and local governance bodies
- to implement civil initiatives toward the protection of public interests
- to strengthen public confidence in the activities of the state and its entities and local governance bodies, ensure feedback between the society and the state, prevent and resolve social conflicts
- to involve the public in the process of combating corruption.

As also noted in the forthcoming OECD Functional Review on Open Government in Kazakhstan, in practice, including public officials on the public council does not pose problems if the role of the public council is strictly consultative and participative in the identification of needs and design of public policies and programmes. However, under this law, a hybrid system is proposed, which provides that public councils also play a control role of the public administration. The inclusion of public officials significantly weakens the real capacity of the public council to play an oversight role, since effective control bodies or institutions are in principle aimed to be independent from the entity that they are meant to oversee/audit. Indeed, currently the public councils are not perceived as independent, given that "1/3 of its members are public officials and that the composition of the working group that select the civil society representatives shall be approved by the decision of the head of the state body" (Article 8) and that "complete composition of a Public Council shall be approved by the decision of the state body or the decision of a local executive body and shall be published in mass media outlets and/or on the web resource of the corresponding state body" (Article 9) undermines the independence of the council.

Recommendations for reform

While the public councils are a step forward involving the public in consultation on laws and regulation, Kazakhstan could consider adopting a more pro-active approach to public consultation. As discussed in Chapter 1, this could be achieved by developing a government-wide policy on stakeholder engagement, aiming to consult with all stakeholders in a pro-active manner.

Furthermore, Kazakhstan could develop specific guidelines that will cover all the public councils to reduce the level of discretion of each entity on the institutional set up of the public councils.

Finally, as discussed in Chapter 1, it is unclear what the criteria are for selecting public council members. This may allow either for policy capture, if some interests are not sufficiently represented, or for selecting members that are in favour of solutions or policies selected by the Government leading to just 'rubber-stamping of government decisions). Likewise this affects the value-added of civil society inputs into draft legislation given that it limits the expertise and diversity of views and information that feed into the process.

Kazakhstan could consider removing the control function of the public councils. Civil society organisations play an important role in holding the government to account, but the regulation of such a function undermines both the role of internal control and would not be legitimate/effective given that the independence of the public councils are under question.

Ensuring integrity and preventing corruption

CSOs have a key role in raising awareness and educating citizens about the ill-effects of corruption. Educating citizens about the nature and the negative impact of corruption will allow them to recognise and denounce corruption when it occurs. CSOs can then offer citizens the opportunity to convey their messages to a larger audience. CSOs can also conduct regular surveys on corruption, service delivery and diagnostic delivery in order to inform citizens about trends in public services and highlight specific cases of misconduct or corruption.

There is also a growing recognition for the role played by CSOs in monitoring government decisions and implementing anti-corruption programs. CSOs can monitor and measure progress towards the implementation of commitment of the governments in policy areas including: privatisation plans, procurement reforms, allocation of housing, public expenditure tracking, election monitoring and legal reforms. They have the mandate to hold government accountable and demand access to information held by government institutions. CSOs have also proved to be instrumental in exposing cases of corruption, fraud or maladministration, at the national as well as international levels.

Several domestic and international CSOs are involved in raising awareness on corruption-related issues in Kazakhstan. For example, the Sange Research Centre, Transparency Kazakhstan, and other organisations have been conducting studies on corruption since 1998 (OECD, 2014b). Likewise, in 1998 and again in 2002 and 2003, the Sange Research Centre completed studies on corruption in Kazakhstan, as well as studies on corruption in the judiciary, banks and the public perception of corruption. In 2006, Sange published a study which assessed the market for corruption in Kazakhstan and ranked government authorities in 38 ministries in terms of levels of perceived

corruption (OECD, 2014b). Transparency Kazakhstan also conducts surveys on citizens' perceptions of corruption, develops and delivers training materials on fighting corruption.

Furthermore, reports from CSOs demonstrated that such organisations are active in monitoring government decisions related to integrity and anti-corruption reforms, and participating in discussions on laws, such as the access to information law, the combating corruption law, and the law on public councils. As well, CSOs such as Soros Kazakhstan are active in working with the government to enhance transparency in budgeting whereas CSOs like the Extractive Industries Transparency Initiative (EITI) are working with Kazakh authorities to prevent corruption in the extractive industry (see Chapter 3: Open budgeting, for more information).

In terms of exposing corruption however, civil society organisations, like the media, face constraints in bringing forward cases for potential corruption due to the risk of charges under the slander and insult clauses in the Criminal Code (see Chapter 13 – Independent and Vibrant Media for further analysis on the impact of this). Additionally, Article 174 of the Criminal Code toughens criminal liability for inciting social, national, tribal, racial, class or religious hatred. CSOs in Kazakhstan have noted that this article has been used to suppress civil society's criticism by the authorities. The UN rapporteur on the right to freedom of assembly and association Maina Kiai has raised concerns with the implication of this article on freedom for association, noting that the Code does not strictly define what is meant by "incitement of discord", which may leave the term open for arbitrary interpretation beyond the scope of articles 19 (3) and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, as noted in Mr. Kiai's report following his visit to Kazakhstan, the Criminal Code contains a separate category of offences with aggravated penalties for leaders of CSOs. However, the definition of "leader" is so vaguely worded that civil society representatives fear that any member of a public association may be deemed a leader (UNHCR, 2015). In addition to these concerns, there have been reports of intimidation and jailing for individuals and organisations that speak out about potential incidences of corruption.

Recommendations for reform

While there has been some domestic CSO activity in reporting on corruption, the majority of studies have been undertaken by internationally funded CSOs. The threat of criminal liability for libel and insult (articles 130 and 131), as well as inciting hatred (article 174) of the Criminal Code have a potential damaging effect on the willingness of domestic CSOs to report on corruption. Therefore, as recommended in Chapter 13, Kazakhstan should consider repealing criminal liability for libel and insult in the Criminal Code as the threat of criminal liability has been used to intimidate individuals and organisations from speaking out against corruption. Kazakhstan should reconsider the conditions by which civil society activities can be considered as inciting discord under the Criminal code, and ensure that there is no room for arbitrary interpretation which could limit rights to freedom of peaceful assembly and of association.

CSOs as responsible role models for transparency, reporting and accountability

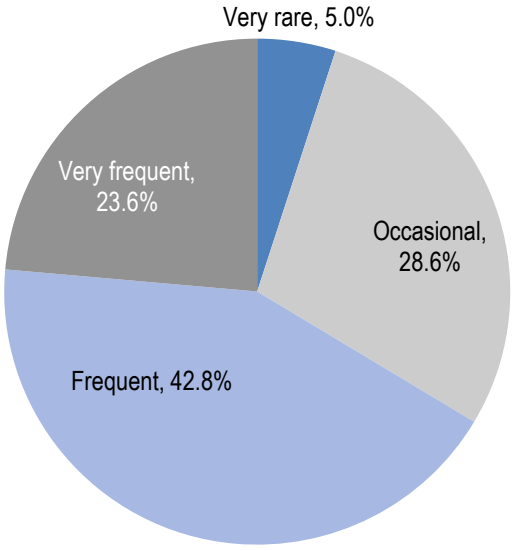
To build credibility for their cause and to effectively hold the government to account, civil society organisations must adhere to high standards of integrity. They must have an active role in fighting corruption inside their own organisation and be beyond reproach. They should be transparent in their operations and open to external scrutiny. Such transparency can be achieved voluntarily by CSOs through regular reporting and

communication with various stakeholders including the authorities, media and the general public.

CSOs' failure as role models of integrity and good governance can have negative impacts as it can: (i) endanger its role as a watchdog and discredit its actions not only towards the authorities but most importantly towards the general public, (ii) deteriorate the voice and to reduce the audience of corruption fighting organisations and citizens, (iii) endanger whistle blowing mechanisms, and (iv) jeopardise the sustainability of their activities and dry up funding supply and technical assistance from international donors.

Different perception surveys on the levels of corruption in Kazakh CSOs have been conducted in Kazakhstan. For example, in the 2011 CIVICUS report, only 5% of the CSOs representatives surveyed believed that corruption in CSOs was very rare, whereas 42.8% felt that corruption in CSOs was frequent (see Figure 11.3).

Figure 11.3. Perceptions of corruption in civil society in Kazakhstan



Source: Makhmutova M. and A. Akhmetova., 2011. www.civicus.org/images/stories/csi/csi_phase2/kazakhstan%20acr%20final.pdf

The 2013 Transparency International Global Corruption Barometer, which surveys public opinion, found that 23% of respondents in Kazakhstan felt that NGOs were corrupt and/or extremely corrupt. It is therefore recommended that CSOs continue to further efforts to improve transparency and accountability within their organisations. For instance, CSOs in Kazakhstan could consider implementing a self-regulation initiative that can promote a set of values for civil society which have been designed by civil society. Box 11.3 provides an overview of types of self-regulation initiatives that could be considered.

Recommendations for reform

CSOs in Kazakhstan could consider implementing a self-regulation initiative that can promote a set of values for civil society which have been designed by civil society.

Box 11.3. **CSO Self-Regulation Initiatives**

CIVICUS and One World Trust have identified five different types of self-regulation initiatives that CSOs can implement to enhance their integrity, accountability and transparency.

1. **Working Groups** refer to a collective of CSOs which organise themselves to discuss their own transparency and accountability, share best practices and discuss new initiatives.

2. **Information services** are initiatives which require the participating organisations to publish a specific set of required data that is relevant to accountability and transparency. It may also serve as a directory of CSOs.

3. **Awards**, which are given in recognition of achievement in transparency and accountability practices through a competitive process. They often aim at rewarding excellence, innovation or good practice.

4. **Codes of conduct or ethics** are a set of standards which is defined and agreed on by a group of CSOs as a guide to their behaviour and practices. A code usually attempts to regulate various aspects of CSOs' operations including governance, accountability, fundraising, etc.

5. **Certification or accreditation initiatives**, which will evaluate an organisation's governance, programmes and practices against a set of standards and norms defined and established by a group of organisations. After providing adherence to these standards, the organisation receives a seal of certification or accreditation.

For all five categories, the question of compliance with the principals and standards of participation organisations is critical. Such compliance measures can include a complaints mechanism, submission of annual reports, or sanction mechanisms.

Before joining or establishing a self-regulation initiative it is necessary to consider the context in which an initiative will be developed or exists. In this sense, context refers to the setting and circumstances that comprise the environment in which a self-regulation initiative operates. This includes all the economic, social, cultural and political conditions that can affect how an initiative functions and how it is understood by stakeholders. Understanding the context helps to predict potential challenges while also raising awareness of opportunities for collaboration.

Source: CIVICUS (2014).

Action Plan and potential OECD support

Recommendations

- Kazakhstan could consider re-examining the current Law on State Social Order, Grants and Awards for Non-Governmental Organisations and implementation regulations in open and broad consultation with domestic and international CSOs to determine its potentially adverse effects on the independence of these organisations. More specifically, it should examine current legislation and practices with regards to the distribution of grants through the Grant Operator (i.e. criteria, transparency of the process and funding, etc.) Kazakhstan could also consider implementing conflict of interest provisions and oversight measures to ensure that funds are distributed competitively and transparently and are not diverted to private interests. Measures could also be established to ensure that the composition of the Expert Committee is balanced to avoid favouritism. For

instance, Kazakhstan could apply term limits to NGO membership on the Expert Committee, to ensure fairness in funding decisions.

- As Kazakhstan moves forward with implementing the provisions in the newly established Law on Payments and Payment Systems, it is encouraged to ensure that the measures in the law are not arbitrarily used to restrict the activities or unduly limit foreign donors to legitimate CSOs which may be critical of government activities.

- While the public councils are a step forward involving the public in consultation on laws and regulation, Kazakhstan could consider adopting a more pro-active approach to public consultation. As discussed in Chapter 1, this could be achieved by developing a government-wide policy on stakeholder engagement, aiming to consult with all stakeholders in a pro-active manner.

- Kazakhstan could develop specific guidelines that will cover all the public councils to reduce the level of discretion of each entity on the institutional set up of the public councils.

- As discussed in Chapter 1, it is unclear what the criteria are for selecting public council members. This may allow either for policy capture, if some interests are not sufficiently represented, or for selecting members that are in favour of solutions or policies selected by the Government leading to just 'rubber-stamping' of government decisions. Likewise this affects the value-added of civil society inputs into draft legislation, given that it limits the expertise and diversity of views and information that feed into the process.

- Kazakhstan could consider removing the control function of the public councils. Civil society organisations play an important role in holding the government to account, but the regulation of such a function undermines both the role of internal control and would not be legitimate/effective given that the independence of the public councils are under question.

- While there has been some domestic CSO activity in reporting on corruption, the majority of studies have been undertaken by internationally funded CSOs. The threat of criminal liability for libel and insult (articles 130 and 131), as well as inciting hatred (article 174) of the Criminal Code have a potential damaging effect on the willingness of domestic CSOs to report on corruption. Therefore, as recommended in Chapter 13, Kazakhstan should consider repealing criminal liability for libel and insult in the Criminal Code as the threat of criminal liability has been used to intimidate individuals and organisations from speaking out against corruption. Kazakhstan should reconsider the conditions by which civil society activities can be considered as inciting discord under the Criminal code, and ensure that there is no room for arbitrary interpretation which could limit rights to freedom of peaceful assembly and of association.

- CSOs in Kazakhstan could consider implementing a self-regulation initiative that can promote a set of values for civil society which have been designed by civil society.

Action Plan

Reform Areas	Potential OECD Support
Ensure fairness and transparency in funding for civil society organisations	Sharing best practices from OECD member countries on enhancing stakeholder engagement in policy making and adherence to Guiding Principles on Open and Inclusive Policy Making
Enhance inclusive and transparent stakeholder engagement in policy making	
Repeal criminal liability for libel and insult	Support through sharing of good practices on ethics and integrity in the CSO sector
CSOs enhance self-regulation	

Note

1. The analysis of the law is based on an unofficial English translation.

References

CIVICUS (2014), *Accountability for Civil Society by Civil Society: A Guide to Self-Regulation Initiatives*, http://civicus.org/images/stories/CIVICUS%20Self-regulation%20Guide%20Eng%202014.pdf, (last accessed 18 August 2016).

EurasiaNet (2015), *Kazakhstan: NGO Law Approved Amid Civil Society Resistance,* www.eurasianet.org/node/76366, (last accessed 18 August 2016).

Freedom House (2015), *Nations in Transit Report*, https://freedomhouse.org/report/nations-transit/2015/kazakhstan, (last accessed 18 August 2016).

Government of the Republic of Kazakhstan (2015), *Kazakhstan plans to introduce grant funding of NGOs,* www.government.kz/en/gosupravlenie/28637-kazakhstan-plans-to-introduce-grant-funding-of-ngos-m-azilkhanov.html, (last accessed 18 August 2016).

International Centre for Not-for-Profit Law (2016), *NGO Law Monitor: Kazakhstan*, www.icnl.org/research/monitor/kazakhstan.html, (last accessed 18 August 2016).

Knox, C. & Yessimova, S. (2015), *State-Society Relations: NGOs in Kazakhstan,* Journal of Civil Society, 11:3, pp. 300-316.

Makhmutova, M. and A. Akhmetova (2011), *Civil Society Index in Kazakhstan: Strengthening Civil Society*, CIVICUS Civil Society Index 2008-2010, www.civicus.org/images/stories/csi/csi_phase2/kazakhstan%20acr%20final.pdf, (last accessed 18 August 2016).

OECD (forthcoming), *OECD Functional Review on Open Government in Kazakhstan.*

OECD (2016) *Multi-dimensional Review of Kazakhstan: Volume 1, Initial Assessment*, OECD Development Pathways, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264246768-en

OECD (2014a), *The Governance of Regulators*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209015-en.

OECD (2014b), *Anti-Corruption Reforms in Kazakhstan, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* OECD, Paris, www.oecd.org/daf/anti-bribery/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf.

OECD (2009), *Focus on Citizens: Public Engagement for Better Policy and Services*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264048874-en.

OSCE (2015), *Draft law in Kazakhstan could seriously restrict NGO activities to promote freedom of the media, OSCE Representative says,* www.osce.org/fom/192946. Last accessed 18 August 2016.

United Nations Human Rights Office of the High Commissioner (n.d), *A Practical Guide for Civil Society: Civil Society Space and the United Nations Human Rights System,*

www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSystem_Guide.pdf, (last accessed 11 October 2016).

World Bank (n.d.), *Accountability in Governance,* http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf, (last accessed 18 August 2016).

World Justice Project (2015), World Justice Project (WJP) Open Government Index, http://data.worldjusticeproject.org/opengov/, (last accessed 18 August 2016).

Ziegler, C. (2010), Civil society, political stability, and state power in Central Asia: Cooperation and contestation, Democratization, 17(5), 795–825.

Chapter 12.

Enabling the tax administration in Kazakhstan to better detect corruption

Tax administrations have an important role to play in combating financial crimes such as bribery and corruption. Firstly, they are essential in ensuring compliance. Second, in the course of their activities, tax examiners and auditors are in a strong position to identify indicators of possible bribery or corruption; the tax administration also has a responsibility to exercise its duties and powers to assist other government agencies in fighting these crimes. This chapter provides an examination of the present treatment of bribes in the Tax Code of Kazakhstan and provides recommendations on what changes could be introduced to comply with the United Nations Convention against Corruption (UNCAC). To support Kazakhstan in updating its Tax Code, this chapter also provides examples of legislation adopted by some Parties to the OECD Bribery Convention to deny the tax deductibility of bribes.

Role of the tax administration in promoting integrity and combating corruption

The sums lost to illicit financial flows, including tax evasion, money laundering, bribery and corruption are vast. In 2011, the UN Office on Drugs and Crime estimated that criminal proceeds from all illicit activities represent around 3.6% of global GDP, or USD 2.1 trillion. Tax evasion represents two thirds of illicit flows (UNODC, 2011). With the globalisation in trade and finance, we have also seen globalisation in the world of financial crime creating further challenges for those charged with investigating and prosecuting such crimes including tax crimes.

Tax administrations have an important role to play in combating financial crimes such as bribery and corruption. In the course of their activities, tax examiners and auditors are in a strong position to identify indicators of possible bribery or corruption, and the tax administration has a responsibility to exercise its duties and powers to assist other government agencies in fighting these crimes.

Indeed, the detrimental costs of illicit financial flows make the role of a country's tax administration of paramount importance and to that end a country's tax administration may assist the fight against bribery and corruption in two main ways.

First, the tax administration is responsible for ensuring compliance with domestic tax law. In most countries, bribes and other payments associated with corruption are not tax deductible. Tax examiners and auditors should take steps to identify these payments and ensure that deductions are not allowed for tax purposes and, where applicable, apply the appropriate penalties in accordance with domestic tax law. Bribes received and other proceeds of corruption may also be taxed under domestic tax legislation, and this should be enforced. In spite of denying a deduction for bribes paid or taxing the income or gains of bribes received and applying penalties accordingly, tax administrations may never completely put an end to corrupt behaviour but should do what is in their power to limit it. By enforcing these laws strictly, tax administrations will reduce the benefits of corruption, thus sending a clear message that bribery and corruption are not acceptable business practices.

Second, when a tax examiner uncovers information that leads him/her to suspect that bribery or corruption may have occurred, the tax administration in most countries has an obligation to refer these suspicions to the appropriate law enforcement authority or public prosecutor. This can increase the likelihood of a successful prosecution significantly. It also means that, alongside a prosecution, steps can be taken by the appropriate authority to recover the proceeds of the corruption from the persons or companies involved. This ensures that, to the extent possible, nobody obtains a financial benefit from the corrupt activity. In addition, tax crimes and bribery and corruption are predicate offences for money laundering purposes, and so where a tax examiner identifies suspicious payments, the tax examiner should also consider whether any indicators of possible money laundering are present. If this is the case, the tax examiner or auditor may also be under an obligation to report the suspicious payments to the national Financial Intelligence Unit (FIU). This means that information uncovered by a tax examiner or auditor may also result in a money laundering investigation.

Box 12.1. OECD Anti-Bribery Convention and United Nations Convention Against Corruption (UNCAC) Address the Non Tax Deductibility of Bribes

All Parties to the OECD Anti-Bribery Convention have adopted legislation denying the tax deductibility of bribes. Such legislation is a strong deterrent to bribing domestic and foreign public officials and tax officials can play a key role in detecting suspicious payments. In 1996, the OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials in International Business Transactions sought to put an end to claiming bribes to foreign public officials as tax deductible expenses. The implementation of this recommendation sent a clear message that bribery would no longer be treated as an ordinary or necessary business expense and that bribery of foreign public officials is a criminal offence subject to serious penalties. In 2009, the OECD Council recommended to the Parties to the OECD Anti-Bribery Convention to explicitly disallow the tax deductibility of bribes to foreign public officials for all tax purposes in an effective manner. Such disallowance should be established by law or by any other binding means which carry the same effect, such as:

- prohibiting tax deductibility of bribes to foreign public officials
- prohibiting tax deductibility of all bribes or expenditures incurred in furtherance of corrupt conduct in contravention of the criminal law or any other laws of the Party to the Anti-Bribery Convention.

Furthermore, Article 12.4 of the UNCAC to which Kazakhstan is a Party requires the non- tax deductibility of bribes as one of the preventive measures of corruption. Article 12.4 stipulates that "each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with Articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct." This concerns bribes paid to national public officials (Article 15) as well as to foreign public officials and officials of public international organisations (Article 16).

Sources: OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials; OECD Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

The following Section will examine the present treatment of bribes in the Tax Code of Kazakhstan, what changes ought to be introduced to comply with the UNCAC and provide examples of legislation adopted by some Parties to the OECD Bribery Convention to deny the tax deductibility of bribes.

Current status and critical analysis

Tax Code of Kazakhstan

According to Article 366 of the Kazakh Criminal Code, receiving a bribe from persons performing state functions in Kazakhstan, as well as bribes from officials of a foreign state or international organisation, are criminal offenses. Similarly, according to Article 367 of the Kazakh Criminal Code, giving a bribe to persons performing state functions in Kazakhstan as well as bribes from and to officials of a foreign state or international organisation are criminal offences.

Bribes can be disguised as legitimate expenses (consulting fees, commissions, fictitious salaries, representation expenses, etc.) and can be paid through "slush funds" held through offshore companies. Article 115 of the Kazakh Tax Code includes a detailed list of Non-Deductible Expenses but does not explicitly disallow the deduction of bribes paid to public officials. Explicit legislation disallowing the deductibility of bribes would increase the overall awareness within the business community of the illegality of bribery

of domestic and foreign public officials and within the tax administration of the need to detect and disallow deductions for payments of bribes.

Furthermore, suspicious payments could be reported to the newly established Agency for Civil Service Issues and Counteraction of Corruption, which is assigned to prevent, identify, disrupt, detect and investigate corruption crimes and offences.

Recommendation for reform

Kazakhstan should introduce in the Tax Code a provision that expressly disallows tax deductions for bribes paid to national and foreign public officials and to officials of public international organisations. This would not only contribute to raise the awareness on the criminal nature of bribes, but also ensure that Kazakhstan respects its obligations under Article 12.4 of the UNCAC. The UNCAC was ratified by the Law of the Republic of Kazakhstan of 4 May 2008 No. 31-IV and became effective on 18 July 2008. An express provision denying the tax deductibility of bribes would send a strong message and reinforce awareness in the business world of the illegal nature of bribery and have a deterrent effect. It would also send a clear message to the tax administration of the importance of detecting and disallowing tax deductions for bribes. Lastly, it would make it easier to detect suspicious payments and report them to law enforcement authorities.

Box 12.2. **Examples of Tax Legislation and Tax Provisions Denying the Tax Deductibility of Bribes**

In Japan, Paragraph 5 of Article 55 of the Corporation Tax Law states that "the amount of bribes (as specified in the Criminal Law and Unfair Competition Prevention Law) paid by a company to a domestic or foreign public official shall not be treated as deductible expenses when calculating that company's taxable income". Furthermore, Paragraph 2 of Article 45 of the Income Tax Law stipulates that "the amount of bribes (as specified in the Criminal Law and Unfair Competition Prevention Law) paid by an individual to a domestic or foreign public official shall not be treated as deductible expenses when calculating that individual's taxable income".

In Russia, the Letter of the Ministry of Finance of the Russian Federation of 3 September 2012 on Tax Accounting of Bribes to Foreign Public Officials[1] establishes that in accordance with paragraph 1 of Article 3 of the Tax Code of the Russian Federation (hereinafter the TC of Russia), each person shall pay legally established taxes and fees. Therefore, tax control in the Russian Federation is based on the recognition of the fact that taxpayers perform activities and incur expenses in accordance with the Law. Item 4 of Article 15 of the RF Constitution states that generally recognised principles and norms of international law and international agreements of the Russian Federation constitute an integral part of its legal system. If an international agreement of the Russian Federation states the rules other than those covered by the Law, then the rules of the international agreement shall be applied. Moreover, Federal Law No. 3-FZ of 1 February 2012 "On the Accession of the Russian Federation to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" entered into force on 13 February 2012, and the corresponding Convention entered into force for Russia on 17 April 2012.

In accordance with paragraph 1 of Article 252 of the TC of Russia expenses are reasonable and documented costs (and in cases under Article 265 of the TC of Russia — losses), incurred by the taxpayer. Reasonable expenses are economically justified costs, which are measurable in monetary terms. Documented expenses are costs proved by documents, executed in accordance with the Law of the Russian Federation. Therefore, if expenses meet the criteria stated in Article 252, namely justified and documented, they can be considered as expenses for corporation tax purposes.

Prohibitions (restrictions) to perform certain actions, established by the Law, are mandatory, including for taxation purposes. Costs incurred as a result of commission of offences (including bribery, commercial bribery) are not considered for taxation purposes.

Box 12.2. **Examples of Tax Legislation and Tax Provisions Denying the Tax Deductibility of Bribes** *(continued)*

In the United States, Section 162 1 C) of the Internal Revenue Code contains the following two subsections:

1) Illegal payments to government officials or employees

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454n (concerning the burden of proof when the issue relates to fraud).

2) Other illegal payments

No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

Sources: OECD (2011a); OECD (2000); OECD (2013a).

Sharing information received under the Convention on Mutual Administrative Assistance Tax Matters

Kazakhstan is Party to the Convention on Mutual Administrative Assistance Tax Matters (OECD, 2011). There are over 100 jurisdictions participating to this multilateral convention, which is the most powerful instrument to counteract offshore tax evasion and avoidance. Under certain conditions, Article 22.4 makes sharing of the information received for tax purposes by the Kazakh competent authority possible with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, or terrorism financing).

Recommendations for reform

The Kazakh State Tax Committee should raise the awareness of the Exchange of Information Unit and tax examiners on the potential of the Convention to counteract financial crimes such as bribery and corruption and money laundering.

Raising the awareness of tax examiners on their reporting obligations to law enforcement authorities

In accordance with the Law on Combating Corruption, public officials are under the obligation to report all corruption practices to their direct line manager or law enforcement authority. Consequently, once Kazakhstan adopts legislation denying the tax deductibility of bribes, tax examiners will be more likely to detect corruption by

businesses and report them to the newly established Ministry of Civil Service Affairs and Anti-corruption Bureau tasked to prevent, identify, disrupt, detect and investigate corruption crimes and offences.

The role of tax examiners or auditors in checking taxpayers' books and records for tax assessments puts them in a unique position to identify not only tax crimes, but also bribery and corruption, money laundering and other financial crimes. Auditors can help combat financial crimes by identifying and then reporting unusual or suspicious transactions in accordance with domestic law and practice.

Box 12.3. Raising the Awareness of the Tax Administration on the Non-Deductibility of Bribes to Domestic and Foreign Public Officials – OECD Council Recommendations and the Bribery Awareness Handbook for Tax Examiners

Strengthening the legal framework to counter corruption is important, but ensuring effective and vigorous application of those laws is essential to detect, deter and prosecute corrupt practices. The OECD therefore developed a Bribery Awareness Handbook for Tax Examiners. The first version of the Handbook was launched in 2001 and updated in 2009 to support the implementation by countries of the 1996 OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials in International Business Transactions and the 2009 OECD Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

In 2010, the OECD issued a Recommendation to Facilitate Co-operation between Tax and Other Law Enforcement Authorities to Combat Serious Crimes. The OECD recommended OECD countries to implement effective legal and administrative frameworks and provide guidance to facilitate reporting by tax authorities of suspicions of all serious crimes arising out of performance of their duties. This covers all forms of corruption, including those arising in a domestic or international context. To support the implementation of the 2010 Recommendation, the latest version of the Awareness Handbook for Tax Examiners and Tax Auditors provides guidance on how to recognise indicators of possible bribery or corruption that they may come across in the course of regular tax examinations and tax audits. The key actions for tax examiners and auditors to deter taxpayers from participating in bribery and corruption are:

(i) the ability to reduce the benefits of bribery and corruption by denying a tax deduction for bribes and other payments associated with these crimes, and taxing any proceeds from the crime, in accordance with domestic tax legislation

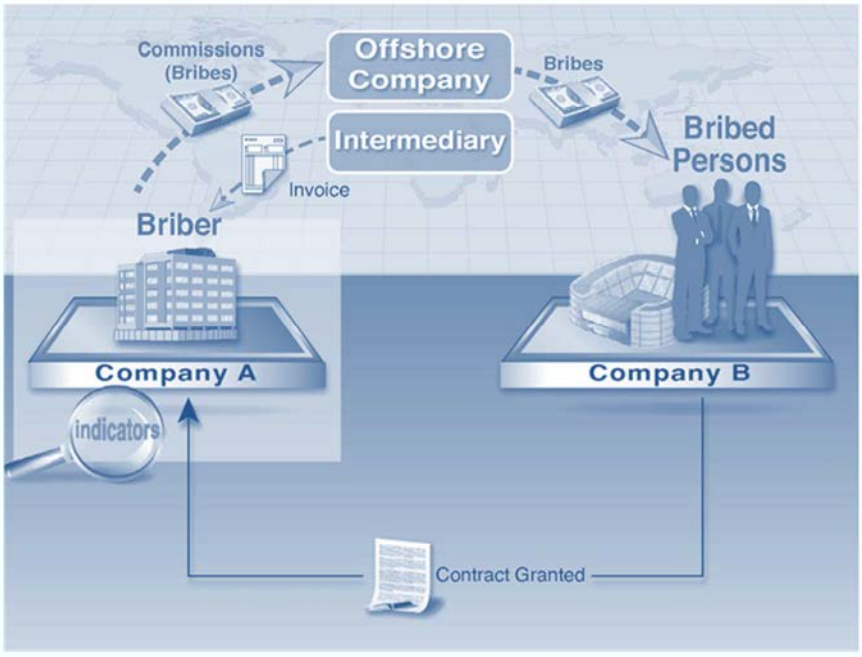
(ii) referring suspicions of possible bribery and corruption to the appropriate law enforcement authority or public prosecutor for investigation and possible prosecution. While this Handbook does not detail criminal investigation methods, it does describe the nature and context of bribery and corruption so that tax examiners and auditors can better understand how their contribution can assist criminal investigators as well as other law enforcement authorities in countering these crimes.

Recommendations for reform

Kazakhstan should make the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors available in Kazakh on the intranet of the Kazakh State Tax Committee and organise trainings for new staff and for international tax examiners on a regular basis in order to raise their awareness on issues regarding bribery and other forms of corruption.

Box 12.4 contains an example from the *OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors*, and illustrates the detection of a bribe disguised as a commission by a tax auditor.

Box 12.4. **Payments Sent via Offshore Companies**



Company B, a State-owned Company in Country X, had authority to grant a contract to build a new sports stadium. To help it win this contract Company A (Briber), a construction business, entered into an agreement with an Intermediary. Under this agreement, Intermediary would broke contracts, assist in conducting site inspections and provide other support related to the completion of contracts. In return, Company A paid Intermediary a commission of USD 17.5 million, which was 5% of the total contract value.

During a routine audit, the tax auditor discovered that the invoice from Intermediary required Company A to pay its commission to an Offshore Company which was located in a country which did not exchange bank information. Further enquiries revealed that Intermediary and Offshore Company were owned by the same individuals (Bribed Persons). These individuals were also government employees in country X, employed by Company B which was responsible for granting the contract to Company A. In Substance, the 5% "commission" was in fact a bribe paid by Company A to the foreign public officials in order to secure a profitable contract.

Source: OECD (2013b).

Furthermore, clearer processes between the tax authorities and law enforcement authorities to facilitate detection and reporting by tax officials of suspicions of domestic and foreign bribery arising out of the performance of their duties to the appropriate law enforcement agencies would be needed.

Bribery and corruption as criteria for risk assessment for tax audit purposes

Tax administrations cannot audit all taxpayers and the two key elements to build an effective audit selection process are the timely availability of accurate and comprehensive data and the availability of skills to analyse and prioritise the data: See the OECD Information Note compliance Risk Management Audit Selection Systems, 2004[2].

As part of the 100 concrete steps to implement the five institutional reforms set out by President Nursultan Nazarbayev, Step 43 provides for the establishment of centres for processing tax declarations which will have access to the archive of electronic documents of tax payers. This could allow the introduction of a risk management system as is common practice in many countries and suspicious payments can be built in as a criterion for risk assessment for tax audit purposes.

Recommendations for reform

Kazakhstan should implement step 43 of the 100 concrete steps as having a reliable data base of taxpayer information will enable the State Tax Committee to build up a risk based tax audit system which is likely to raise higher revenue and possibly have a deterrence effect for non-compliance. In addition, Kazakhstan should use suspicious payments as criteria for risk assessment for tax audit purposes as it might assist in the fight against corruption and bribery.

Promoting a whole of government approach to fighting tax crime and other financial crimes

Tax crimes, corruption, money laundering and other illicit flows threaten the strategic, political and economic interests of countries. Where possible, an inter-administration approach in combating tax offences, corruption and related offences is an effective option. The combined effect of tax policy and administrative measures enhances the deterrence, detection, reporting and prosecution of corruption offences.

The Oslo Dialogue, launched by the OECD in 2011, is a holistic initiative that seeks to bring together all relevant stakeholders, including Tax Administrations, Finance and Justice Ministries, Financial Intelligence Units, Central Banks, FATF, International Organisations, as well as business and NGOs, to find more effective ways to counter financial crimes, tax evasion and other illicit flows through better interagency and international co-operation. Under this initiative, the OECD supports countries in combating tax crimes, corruption, money laundering and other illicit flows through better policy design, greater transparency, more effective intelligence gathering, and improvements in domestic and international co-operation and information sharing to prevent, detect and investigate offences, prosecute criminals and recover the proceeds of their illicit activities. The initiative is built on three pillars:

1. Effective domestic co-operation between tax, regulatory and law enforcement agencies
2. Addressing financial crime in a globalised world requires a global response, including co-operation and sharing of information between countries
3. Countering financial crimes requires knowledge of strategic and practical investigation techniques.

Legal, practical and political barriers operate to impede or prevent each of these pillars from being fully effective in combating financial crime. The Oslo Dialogue is supported by the OECD Task Force on Tax Crimes and Other Crimes, which develops strategies to remove these barriers. The overall objective of the Oslo Dialogue is to identify ways in which agencies combating financial crime can deliver better results, in shorter timeframes and with lower costs.

Recommendations for reform

Kazakhstan should take advantage of the training for tax and financial crime investigators offered at the OECD International Academy for Tax Crime Investigation[3] to improve the ability of Kazakhstan to detect and investigate financial crimes, and recover the proceeds of those crimes, by developing the skills of tax and financial crime investigators through intensive training courses.

Action Plan and potential OECD support

Recommendations

- The Kazakh State Tax Committee should raise the awareness of the Exchange of Information Unit and tax examiners on the potential of the Convention to counteract financial crimes such as bribery and corruption and money laundering.

- Kazakhstan should adopt legislation that expressly disallows tax deductions for bribes paid to national and foreign public officials and to officials of public international organisations. Suspicious payments could be reported to the newly established Agency for Civil Service Issues and Counteraction of Corruption, which is assigned to prevent, identify, disrupt, detect and investigate corruption crimes and offences.

- Kazakhstan should make the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors available in Kazakh on the intranet of the Kazakh State Tax Committee and organise trainings for new staff and for international tax examiners on a regular basis in order to raise their awareness on issues regarding bribery and other forms of corruption.

- Kazakhstan should implement step 43 of the 100 concrete steps as having a reliable data base of taxpayer information will enable the State Tax Committee to build up a risk based tax audit system which is likely to raise higher revenue and possibly have a deterrence effect for non-compliance. In addition, Kazakhstan should use suspicious payments as criteria for risk assessment for tax audit purposes as it might assist in the fight against corruption and bribery.

- Kazakhstan should take advantage of the training for tax and financial crime investigators offered at the OECD International Academy for Tax Crime Investigation4 to improve the ability of Kazakhstan to detect and investigate financial crimes, and recover the proceeds of those crimes, by developing the skills of tax and financial crime investigators through intensive training courses.

Action Plan

Reform Areas	Potential OECD Support
Adopt specific legislation disallowing the tax deductibility of bribes	Assist in the drafting of legislation disallowing the deductibility of bribes in conformity with UNCAC's Article 12.4. This would also make Kazakhstan compliant with the 2009 OECD Recommendation on the non-tax deductibility of bribes
Raise the awareness among officials of the State Tax Committee on the detection of suspicious payments	Provide training to tax officials to raise awareness on the non-tax deductibility of bribes and their role in detecting bribery and corruption using the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors Invite Kazakh officials to the trainings on criminal investigations organised by the OECD Academy on Criminal Tax Investigations[5] Organise in-country training concerning the types of payments that might constitute suspicious payments, and the measures to take when such payments are suspected.
Use the Convention on Mutual Administrative Assistance in Tax Matters to assist in counteracting bribery and Corruption	Provide training to raise the awareness of the Kazakh competent authority and tax officials on the potential of the OECD Convention on Mutual Administrative Assistance to assist in counteracting bribery and corruption.
Improve the skills of Kazakh tax and financial crime investigators to detect and investigate financial crimes, and recover the proceeds of those crimes	Invite tax and financial crime investigators of the training for tax and financial crime investigators offered at the OECD International Academy for Tax Crime Investigation

Further reading

OECD (2015), *Improving Co-operation between Tax and Anti-Money Laundering Authorities: Access by tax administrations to information held by financial intelligence units for criminal and civil purposes*, OECD Publishing, Paris, www.oecd.org/ctp/crime/report-improving-cooperation-between-tax-anti-money-laundering-authorities.pdf.

OECD (2013), *Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264205376-en.

OECD (2012), *Effective Inter Agency Co-operation in fighting tax crimes and other financial crimes, 2nd Edition*, OECD Publishing, Paris, www.oecd.org/tax/crime/effective-inter-%20agency-cooperation-report.pdf.

The Oslo Dialogue, www.oecd.org/tax/crime/Oslo-Dialogue-flyer.pdf.

The Forum on Tax and Crime, www.oecd.org/tax/forumontaxandcrime.htm.

Notes

1. The Ministry of Finance has issued this letter clarifying the non-tax deductibility of bribes in Russia, pursuant to Article 34.2.1 of the Tax Code. This letter is binding for the tax authorities.

2. www.oecd.org/tax/administration/33818568.pdf.

3. OECD Information Note compliance Risk management Audit Selection systems, 2004, www.oecd.org/ctp/crime/tax-crime-academy.htm.

4. OECD Information Note compliance Risk management Audit Selection systems, 2004, www.oecd.org/ctp/crime/tax-crime-academy.htm.

5. www.oecd.org/ctp/crime/tax-crime-academy.htm.

References

OECD (2013a), *Phase 2 Report On Implementing The OECD Anti-Bribery Convention In The Russian Federation,* www.oecd.org/daf/anti-bribery/RussianFederationPhase2ReportEN.pdf.

OECD (2013b), *Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264205376-en.

OECD (2011a), *Update on Tax Legislation on the Tax Treatment of Bribes to Foreign Public Officials In Countries Parties to the OECD Anti-Bribery Convention*, www.oecd.org/tax/crime/41353070.pdf;

OECD (2011b), *Convention on Mutual Administrative Assistance in Tax Matters,* www.oecd.org/ctp/exchange-of-tax-information/ENG-Amended-Convention.pdf, (last accessed 10 October 2016).

OECD (2009), *Awareness Handbook for Tax Examiners and Tax Auditors,* www.oecd.org/tax/crime/37131825.pdf

OECD (2000), *United States Phase I Review Of Implementation Of The Convention and 1997 Recommendation*, www.oecd.org/daf/anti-bribery/anti-briberyconvention/2390377.pdf;

OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials, www.oecd.org/tax/crime/oecdrecommendationonthetaxdeductibilityofbribestoforeignpublicofficials.htm;

OECD Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, www.oecd.org/tax/crime/2009-recommendation.pdf.

Republic of Kazakhstan (2015), *On Taxes and Other Obligatory Payments to the Budget (the Tax Code)* http://kgd.gov.kz/sites/default/files/npa/Kodeks/the_tax_code_of_the_rk_2015.pdf, (last accessed 10 October 2016).

UNODC (2011), *Estimating illicit financial flows resulting from drug trafficking and other transnational organised crimes,* www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf, (last accessed 10 October 2016).

Chapter 13.

Encouraging reporting of corruption in Kazakhstan through stronger whistleblower protection

This chapter assesses existing whistleblower protection provisions in the Republic of Kazakhstan for both public officials and citizens, including the coverage of the laws and protections from retaliation and reprisals. The chapter discusses the value of implementing measures to encouraging good faith reporting whilst simultaneously preventing reporting in bad faith. The need for clear reporting channels to facilitate disclosures, the positive elements of implementing an incentive structure for whistleblowers, as well as the importance of a strong communication regime are also explored.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Role of whistleblower protection in promoting integrity and combating corruption

The protection of employees who disclose wrongdoing in the context of their workplace ("whistleblowers") is at the core of an organisation's integrity framework. Indeed, employees who report wrongdoing may be subject to intimidation, harassment, dismissal and violence by their colleagues or superiors. In many countries, whistleblowing is even associated with treachery or spying (Banisar, 2011; Transparency International, 2009). This may be due to the influence of cultural connotations and such connotations may also have an impact on individual careers and on the internal organisational cultures (Latimer and Brown, 2008). Provisions must be in place, therefore, to incentivise whistleblowers including: legal protection from retaliation, clear guidance on reporting procedures, and visible support and positive reinforcement from the organisational hierarchy. Such protections are recognised as an essential element for safeguarding the public interest, promoting a culture of public accountability, and in many countries is proving crucial in the reporting of misconduct, fraud and corruption.

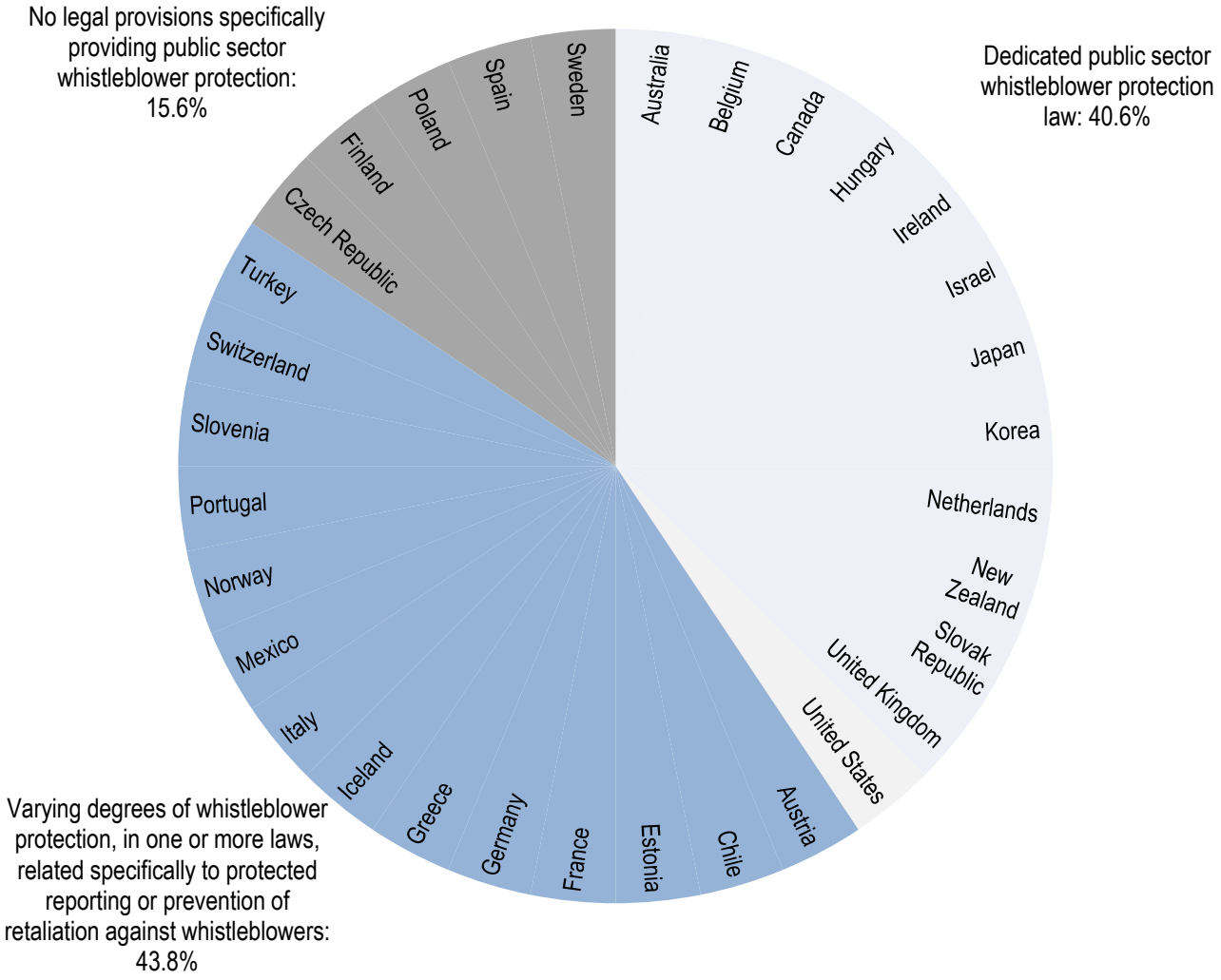
Whistleblower protection can originate from a single dedicated law, or through a piecemeal approach, stemming from provisions in various laws. The majority of the OECD member countries have adopted the latter approach, offering legal protection to whistleblowers through provisions found in anti-corruption laws, competition laws, corporate laws, public servants laws, labour laws and criminal codes. For instance, in most countries, there is a legal obligation in relevant public service laws for public officials to report corruption and other criminal offences. In others, there are also criminal sanctions for those who fail to report. The degree of protection afforded within the provisions of these laws, however, can be less comprehensive than the protection provided for within dedicated legislation, which can facilitate clarity and streamline the processes and mechanisms involved in disclosing a wrongdoing.

Whichever legislative method applied, it is important that the legal framework protecting whistleblowers differentiates between a "witness" and a "whistleblower". While the United Nations Convention against Corruption (UNCAC) does not define the term "witness", Article 32 limits the scope of witness to those who give testimony concerning offences established in accordance with the Convention (UNODC 2009). The definition of a "reporting person" (i.e. whistleblowers), on the other hand, is intended to "cover those individuals who may possess information which is not of such detail to constitute evidence in the legal sense of the word" (UNODC 2015; UNODC 2009). Although the differences among the terms are clear, there can be overlap between whistleblowers and witnesses, as some whistleblowers may possess solid evidence and eventually become witnesses in legal proceedings (Transparency International, 2013). When whistleblowers testify during court proceedings, they can be covered under witness protection laws. However, if the subject matter of a whistleblower report does not result in criminal proceedings, or the whistleblower is never called as a witness, then witness protection will not be provided. Therefore, as noted by Transparency International, witness protection laws are not sufficient to protect whistleblowers and additional protection is necessary to ensure robust coverage for those who come forward as whistleblowers (Transparency International, 2009).

The following section describes whistleblower protection legislation in Kazakhstan for both public servants and citizens. It addresses the coverage of the laws for whistleblower protection and discusses the importance of strong systems to protect

whistleblowers from retaliation, including reprisal mechanisms, as well as the value of implementing measures to encouraging good faith reporting whilst simultaneously preventing reporting in bad faith. The need for clear reporting channels to facilitate disclosures; the positive elements of implementing an incentive structure for whistleblowers; as well as the importance of a strong communication regime are also explored.

Figure 13.1. Provision of legal protection to whistleblowers in the public sector



Source: OECD 2016a.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Box 13.1. **OECD Tools on whistleblower protection**

The OECD has several instruments in place to support Governments in establishing effective whistleblower protection mechanisms. These include the following:

- OECD (2016), Committing to Effective Whistleblower Protection
- OECD (2012), Study on G20 Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation
- OECD (2011), G20 Compendium of Best Practices for Legislation on the Protection of Whistle-blowers
- OECD (2011), G20 Guiding Principles for Legislation on the Protection of Whistle-blowers

Box 13.2. **The G20 Guiding Principles Legislation on the Protection of Whistle-blowers**

The following guiding principles and examples of best practices provide a reference for countries intending to establish, modify or complement whistleblower protection frameworks. In this sense, they are prospective and offer guidance for future legislation. They do not constitute a benchmark against which current legislation should be tested.

The guiding principles are broadly framed and can apply to both public and private sector whistleblower protection. To supplement these principles, a non-exhaustive menu of examples of best practices sets out more specific and technical guidance that countries may choose to follow. Taking into account the diversity of legal systems among G20 countries, the guiding principles offer flexibility to enable countries to effectively apply them in accordance with their respective legal systems:

1. Clear legislation and an effective institutional framework are in place to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.

2. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.

3. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.

4. The legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.

5. The legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation, and by providing for a full range of remedies.

6. Implementation of whistleblower protection legislation is supported by awareness-raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.

Source: OECD (2011).

Current status and critical analysis

Coverage of whistleblower provisions and protection from retaliation

A broad interpretation of the term whistleblower is important, as this ensures a large number of individuals can be afforded protection. It is therefore vital to ensure that the coverage afforded to whistleblowers follows a "no loophole" approach, meaning that in addition to public officials and permanent employees in the private sector, specific categories of employees - often in "grey areas" - are explicitly outlined as qualifying for protection. Such employees, for instance, should include those outside the traditional employee-employer relationship (e.g. consultants, contractors, trainees/interns, temporary employees, former employees and volunteers). In cases of public sector whistleblower protection provisions, a "no loophole" approach would signify that employees of state-owned or controlled enterprises and statutory agencies also qualify for protection. Table 13.1.shows the varying degrees of whistleblower protection in the public sector across 26 OECD member countries.

Table 13.1. Varying degrees of whistleblower protection in the public sector

	Employees	Consultants	Suppliers	Temporary employees	Former employees
Australia	●	●	●	●	●
Austria	●	❍	❍	●	●
Belgium	●	❍	❍	●	❍
Canada	●	●	●	●	●
Chile	●	❍	❍	❍	❍
Estonia	●	●	●	●	●
France	●	●	●	●	●
Germany	●	●	●	●	●
Hungary	●	●	●	●	●
Iceland	●	❍	❍	●	❍
Ireland	●	●	●	●	●
Israel	●	●	❍	●	●
Italy	●	●	❍	●	●
Japan	●	❍	❍	●	❍

Korea	●	●	●	●	●
Mexico	●	●	●	●	●
Netherlands	●	❍	❍	●	●
New Zealand	●	●	●	●	●
Norway	●	❍	❍	❍	❍
Portugal	●	●	●	●	●
Slovak Republic	●	❍	❍	❍	❍
Slovenia	●	●	●	●	●
Switzerland	●	❍	❍	●	❍
Turkey	●	●	❍	●	❍
United Kingdom	●	●	●	●	❍
United States	●	●	❍	●	●
Total OECD 26					
Yes: ●	26	17	13	23	17
No: ❍	0	9	13	3	9

Source: 2014 OECD Survey on Public Sector Whistleblower Protection.

Note: On the 2014 OECD Survey on Public Sector Whistleblower Protection: In Greece, according to Law 4254/2014, sub paragraph IE.13, the relevant prosecutor decides who will be given whistleblower status. In the US, the term "suppliers" may or may not be inclusive of certain contractors who could be covered under certain US laws that protect public and private sector employees. The particular laws that would apply will depend on whether the "supplier," like a "consultant," is a contractor for purposes of the law. There is also a distinction between disclosures by contractors that concern wrongdoing in government and those that concern wrongdoing by a private company, including their employer, or both.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Providing effective protection for whistleblowers also requires an open organisational culture where employees are aware of how to report wrongdoing and have confidence in the reporting, protection and follow-up procedures in place. However, it is important to ensure that laws are not put in place as "cardboard shields" that provide token protection for disclosing limited misconduct to specific group of people, while failing to adequately protect whistleblowers who may have risked their livelihoods by coming forward for the benefit of the public interest. Whistleblowers may be retaliated against and lose their positions due to an inability to return to their workplace for personal and professional reasons. They can find themselves unemployed for a long period of time as a result of being ostracised from their professional community and network and potentially blacklisted from future employment within their field of work. They may also find themselves transferred or reassigned within the workplace, or experience a change of duties. Likewise, they could lose out on pay, benefits, awards or training that they would otherwise be eligible for, or in some cases, find themselves subject to surprise medical testing (OECD, 2016a). All of these factors can act as disincentives for coming forward or reporting corruption or misconduct. Whistleblower laws should thus be viewed as "metal shields" behind which a whistleblower who reports in good faith is safe from reprisal (Devine and Walden, 2013).

To protect whistleblowers from reprisals, some countries have specified in their whistleblower protection laws the types of reprisals that are prohibited, such as in the case of Korea (see Box 13.4 which gives a comprehensive overview of the types of retaliation against whistleblowers that is considered unlawful in Korea). Other countries, such as Germany, include broad statement in the legislation making up their whistleblower protection framework prohibiting any sort of negative consequences or disadvantageous treatment.

The length of time during which a whistleblower is protected from potential reprisal is also an important aspect to consider, as reprisals can take place months and even years following a disclosure of wrongdoing. To that end, some countries such as Chile apply protections from the time the authority receives the report (in writing) and until it is either declared not admissible or until 90 days after the administrative investigation is complete (OECD, 2016a).

Whatever avenue chosen and timeline assigned, protecting whistleblowers from prospective professional marginalisation through confidentiality measures at the beginning of the disclosure process, along with the inclusion of remedies specific to the category of individual in the event of reprisal, can be essential for a whistleblower's livelihood and wellbeing (OECD, 2016).

Box 13.3. **Comprehensive protection in Korea**

The term "disadvantageous measures" means an action that falls under any of the following items:

- Removal from office, release from office, dismissal or any other unfavourable personnel action equivalent to the loss of status at work
- Disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions
- Work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower's will
- Discrimination in the performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc.
- The cancellation of education, training or other self-development opportunities; the restriction or removal of budget, workforce or other available resources, the suspension of access to security information or classified information; the cancellation of authorisation to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower
- Putting the whistleblower's name on a blacklist as well as the release such a blacklist, bullying, the use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower;
- Unfair audit or inspection of the whistleblower's work as well as the disclosure of the results of such an audit or inspection;
- The cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower

Source: Korea's Act on the Protection of Public Interest Whistleblowers, Act No. 10472, Mar. 29, 2011. Article 2 (6).

According to Article 24 of the Law on Combating Corruption, a person with knowledge of a corruption offense must inform the leadership of the state body or organisation where they are employed or the National Bureau on Anti-Corruption. The law further stipulates that the person who reported a corruption offence or is otherwise assisting in the fight against corruption is under state protection and promoted in accordance with the procedure established by the Government of the Republic of Kazakhstan.

In addition, in the Law on Civil Service, Article 9 establishes the right for protection of a public official who brings forward information on a corruption offence. The Law is specific to public officials at all levels, including law enforcement. As noted in Chapter 5 on Public Integrity, the Law does not apply to persons performing technical services and those ensuring the functioning of state bodies, employees and technical employees of the National Bank of the Republic of Kazakhstan and its agencies, or persons carrying out activities in state bodies under an employment contract in accordance with labour legislation, including expatriate employees of state bodies.

Due to these exceptions under the Law on Civil Service, it is therefore important that both the Law on Combating Corruption and the Law on Civil Service contain mechanisms for whistleblower protection.

In regards to the protection of whistleblowers in Kazakhstan, in accordance with Article 24, paragraph 4 of the Law on Combating Corruption, the identity of the individual who brings forward information on a corruption offence is a state secret. Disclosure of such information shall entail criminal liability under the law.

For those public officials who bring forward information on a potential corruption case, the Law on Civil Service obliges the management of the applicable government body to take measures to protect the public official who made the report about a corruption offence under Article 52. While the Law on State Protection of Persons Involved in Criminal Proceedings, which defines the protection of persons, their family members and close relatives involved in criminal proceedings from the threat of violence to their life, health and property is in place, it must be emphasised that this law is a witness protection law, and not a whistleblower protection law. In Kazakhstan, only individuals involved in criminal proceedings are protected under the law, whereas those whose whistleblower reports never result in criminal proceedings are not. Neither the Law on Combating Corruption nor the Law on Civil Service however outline the procedure to protect whistleblowers from retaliation, nor the timeline through which protection is applied.

Recommendations for reform

Kazakhstan could clearly specify in the Law on Combating Corruption and the Law on Civil Service the measures management must take to protect whistleblowers, the structure in place to ensure protection, and how long whistleblowers are protected for.

Prohibiting reprisals

It is not enough to establish legislative mechanisms to protect whistleblowers from potential reprisals. In order to be effective, a whistleblower protection framework should also include penalties for those who retaliate against a whistleblower as well as measures that whistleblowers can access when they feel that they have been unfairly treated because of their disclosure.

In terms of penalties, the approach to applying penalties varies, even among OECD countries where the whistleblower protection systems are established by a dedicated whistleblower protection law (OECD, 2016a). For instance, Australia's whistleblower protection system invokes imprisonment for two years – or 120 penalty units[1], or both – in case of reprisal against whistleblowers[2]; while in the United States, criminal sanctions are imposed against employers who retaliate against whistleblowers[3]. Regardless of the approach chosen, specifying a disciplinary course of action for those who take reprisals against whistleblowers can strengthen the robustness of the whistleblower framework and encourage those with information about potential wrongdoing to come forward.

Establishing an agency with the capacity to receive, investigate and provide remedies for complaints related to retaliation can also be an effective method to protect whistleblowers from reprisal. Best practice when setting up an oversight and enforcement agency is to ensure that it has sufficient budgetary resources to enable it to operate effectively and that it meets the objectives of the law. It is also essential to ensure that a strong and independent judiciary has the resources, capacity and independence to prosecute whistleblowing related offences. Canada's Public Sector Integrity Commissioner (see Box 13.4) is one such example of an independent body tasked with determining remedies and sanctions when violations of whistleblowers rights occur.

Box 13.4. **Protecting Whistleblowers from Reprisal in Canada**

Canada's Public Servants Disclosure Protection Act (PSDPA) was introduced to provide federal public sector employees and others, such as contractors, with a legislated, secure and confidential process for disclosing serious wrongdoing in the workplace. The PSDPA also protects public servants from reprisal measures taken against their employment as a result of having filed a protected disclosure in accordance with the legislation, or of having co-operated in a related investigation.

The PSDPA outlines the roles and responsibilities of the Treasury Board, the Public Sector Integrity Commissioner, the Chief Human Resources Officer, chief executives, and senior officers regarding disclosure within federal public sector departments and organisations. It also outlines the roles and responsibilities of the Public Servants Disclosure Protection Tribunal regarding disclosures of possible wrongdoing in the public sector. Each of these key players have a critical and distinct role in implementing the act, and in doing so, work collaboratively, while respecting each other's independence and authority.

The Office of the Public Sector Integrity Commissioner (PSIC) is an independent federal organisation. PSIC reports directly to Parliament and is a neutral third party that deals at arm's length with the public sector. Appointed by Parliament, the Commissioner administers the external disclosure system and has exclusive jurisdiction over complaints of reprisal made by public servants who have disclosed wrongdoing or who have co-operated in related investigations. These cases are examined on a priority basis and if an investigation leads the Commissioner to reasonably believe that reprisal actions have occurred, an application is made to the Public Servants Disclosure Protection Tribunal to have the case heard.

The Public Servants Disclosure Protection Tribunal is an independent quasi-judicial body comprised of judges of the Federal Court, or a superior court of a province, and presided over by a chair. The tribunal's mandate is to hear reprisal complaints referred by the PSIC after investigation, in order to determine if the reprisal occurred. The tribunal has the authority to grant remedies in favour of complainants and order disciplinary action against those who take reprisals, when requested by the Commissioner. The tribunal's power to order disciplinary sanctions is broad and can include fines of up to CAD 10 000 or imprisonment of up to two years. The existence of an independent tribunal with quasi-judicial powers to adjudicate reprisals is reflective of Parliament's intention of emphasising and addressing the gravity of retaliation against individuals who come forward to report suspected wrongdoing.

Source: OECD (2016a).

When considered in the context of Kazakhstan, neither the Law on Combating Corruption nor the Law on Civil Service prohibits retaliation against whistleblowers. Similarly, neither of the laws specifies any sanctions that could be imposed in the event that a whistleblower is targeted.

According to officials, the protection of whistleblowers is the responsibility of the Anti-Corruption Officers within the National Bureau of Corruption Counteraction in the Agency for Civil Service Issues and Counteraction of Corruption. In the event that a whistleblower faces retaliation, they can bring the complaint forward to the Anti-Corruption Officer or through the online reporting system (see below for more details). The steps an Anti-Corruption Officer must take to provide protection for the whistleblower were not provided, nor were examples of such cases in reality.

The lack of information, along with no detailed article within any of the laws outlining the procedure to prohibit reprisals against whistleblowers, makes it difficult to assess the robustness of a protection-from-retaliation regime.

Recommendation for reform

Kazakhstan could consider specifying in the appropriate legislation the sanctions and reprisals against those who retaliate and remedies for those who were retaliated against.

Furthermore, Kazakhstan could establish mechanisms (not only criminal but also administrative) whereby whistleblowers may file a complaint about unfair reprisal as a result of their actions, in order for the Government to be able to further investigate and determine whether indeed their rights as whistleblowers were violated. Such mechanisms should be transparent and open to scrutiny to ensure its objectivity and effectiveness.

Scope of subject matter

A strong legislative framework for whistleblower protection should also define the scope of wrongdoings that could constitute coverage under whistleblower protection laws. As noted in the OECD's *Committing to Effective Whistleblower Protection* report, "the legal framework should provide a clear definition of the protected disclosures and specify the acts that constitute violations to any codes of conduct, regulations or laws, gross waste or mismanagement, abuse of authority, dangers to the public health or safety, or corrupt acts" (OECD, 2016a). The Report goes on to note however that there is a need to strike a balance between being overly prescriptive and being overly vague. The ideal balance should encourage reporting on a variety of different wrongdoings without being so detailed that potential whistleblowers are unsure about whether they would be afforded protection for disclosure of a particular wrongdoing. Box 13.5 below contains an example of a balanced definition of offences falling under protected disclosure.

Furthermore, when using whistleblower protection mechanisms to combat corruption, the disclosure of corruption risks or offences may explicitly be referred to in legislation, or the reporting of crime more generally, for clarity and legal certainty. It is important to establish protection measures for whistleblowers when the report acts of corruption that may not be recognised as crimes but could be subject to administrative investigations (OECD, 2016a).

Box 13.5. **A detailed definition of protected disclosures in Australia**

The Australian Public Interest Disclosure Act 2013 defines disclosable conduct as: conduct (in Australia or in a foreign country) that contravenes the law, that constitutes maladministration, that is an abuse of public trust, that results in wastage of public money, public property, money of a prescribed authority, property of a prescribed authority, or conduct that results in danger (or a risk of danger) to the health or safety of one or more persons or the environment. In addition, disclosable conduct also includes when a public official abuses his or her position as a public official and conduct engaged in by a public official that could, if proved, given reasonable grounds for disciplinary action against the public official.

Source: Australia's Public Interest Disclosure Act (2013) Part 2 Division 2 Section 29.

In Kazakhstan, both the Law on Combating Corruption and the Law on Civil Service stipulate that whistleblower protection is afforded only to those who disclose information about acts of corruption. The Law on Combating Corruption defines corruption in Article 1(6) as "an illegal use by persons who hold responsible state positions, persons who are authorised to perform functions of the state, persons who are equated to persons authorised to perform functions of the state, officials of their official (service) powers and related opportunities in order to receive or extract personally or through intermediaries

property (non-property) benefits and advantages for themselves or for third parties, as well as bribery of such persons by providing benefits and advantages."

The provision of protection for whistleblowers who disclose acts of corruption is a key element of an effective whistleblower framework. However, disclosures of other types of wrongdoings should be included. In doing so, individuals who witness or are aware of other types of wrongdoing, such as violations to the code of conduct or conflict of interest policies, gross waste or mismanagement, etc., could feel free to come forward to the relevant authorities to disclose the wrongdoing. Taken together, this would encourage the prevention of wrongdoing in general, not just corruption, in the public service.

Both the laws also specify that protection is applied to those who disclose information on corruption offences. It is not clear whether a whistleblower will receive protection in the event that they provide information about a corruption offence that leads to administrative sanctions. Likewise, it is not clear what protection is afforded to an individual who comes forward with information in good faith that does not result in an administrative sanction or a criminal conviction. This lack of clarity risks undermining the confidence potential whistleblowers may have in bringing forward information that about potential corruption offences.

Recommendations for reform

Kazakhstan could consider broadening the definition of wrongdoings of which disclosure would qualify for whistleblower protection in both the Law on Combating Corruption and the Law on Civil Service to cover any violation of the anti-corruption legislation or reporting a disciplinary violation. This includes specifying the levels of protection afforded for individuals who bring information about a potential corruption case that does not lead to a criminal conviction or administrative sanction.

Measures to establish reasonable grounds and preclude reporting in bad faith

A strong whistleblower protection framework should not only protect whistleblowers but also ensure that the framework itself strikes a balance between encouraging whistleblowers to report in good faith while also ensuring that the framework cannot be exploited to wrongfully accuse persons of corruption. Indeed, according to the UNODC Technical Guide to the UNCAC, "good faith should be presumed in favour of the person claiming protection, but where it is proved that the report was false and not in good faith, there should be appropriate remedies" (UNODC, 2009; UNODC, 2015).

To encourage reporting in good faith, countries like New Zealand have taken measures to encourage potential whistleblowers to disclose information by including in their Public Interest Disclosure (PID) Act that the employee must believe on reasonable grounds that the information about suspected serious wrongdoing is true, or likely to be true, in order for the disclosure to come within the act and its protections. Similarly in the United States, motive is not a relevant factor, but the whistleblower must reasonably believe that the information is evidence of wrongdoing. This is not to say that the whistleblower must prove the intent of their actions. Rather, specifying the importance of "reasonable belief" is a way for countries to encourage whistleblowers to come forward without fear of reprisal in the event that the information they disclosed in good faith was false.

Therefore, while the onus should not be on the whistleblower to prove the intent of their actions, the possibility of being held criminally liable for reporting in bad faith has

an effect on whistleblowers and it is important to strike the right balance between discouraging abuse of whistleblower protection systems and encouraging disclosers to come forward.

However, it is also important for the whistleblower protection framework to discourage individuals from exploiting it for their own personal agendas. Therefore, in many countries, whistleblower protection frameworks also include measures to discourage bad faith reporting. Such measures include the removal or forfeiture of protections, such as confidentiality, and in some cases libel and defamation suits, fines or imprisonment. The key element of the offence of slanderous reporting lies not in the falsity of the allegation itself, but in the knowledge, on the day the allegation was made, that it was false. Box 13.6 contains examples from OECD member countries on how to preclude disclosures made in bad faith.

Box 13.6. **Measures in place to preclude reporting in bad faith – examples from OECD member countries**

A number of OECD countries have forfeit protection of whistleblowers who disclose in bad faith:

- Korea's Act on the Protection of Public Interest Whistleblowers states that in the event that the public interest, whistleblowing was performed, even though the whistleblower had known or could know that the information was false, it shall not be deemed a case of public interest whistleblowing4.
- In Australia, the protections in the Public Interest Disclosure (PID) Act do not apply to those knowingly making a statement that is false or misleading5.
- The Anti-Corruption Act in Estonia also removes protections from those that disclose in bad faith, specifically, it maintains that confidentiality shall not be ensured.
- In Hungary, similarly, confidentiality is not ensured in such circumstances, and furthermore, if this bad faith disclosure caused unlawful damage or harm to the rights of others, the personal data of the individual who disclosed in bad faith, may be disclosed upon request of the person or body entitled to initiate proceedings6.
- In Israel, in addition to revoking the protection from individuals who report in bad faith and rendering it a disciplinary matter7, an approach comparable to that of Hungary is applied, with regards to the individual who may have been harmed due to a disclosure that as made in bad faith. Specifically, the Court can render compensation in favour of an employer or another employee if a complaint was filled without good faith.

Source: OECD (2016a).

In Kazakhstan, neither the Law on Combating Corruption nor the Law on Civil Service establishes the concept of "reasonable belief" for individuals who bring information forward in good faith. In regards to measures to prevent reporting in bad faith, Article 24, paragraph 3 of the Law on Combating Corruption states that "the provisions of this paragraph shall not apply to persons who reported false information about the facts of a corruption offence, which are subject to liability in accordance with the law". The Law on Civil Service does not include any reference to reports made in bad faith.

The liability for reporting false information about corruption laws are laid out in the Criminal and Administrative Codes of Kazakhstan. These articles, as discussed in the

chapter on media freedom, are as follows: (i) Article 439 of the Code of Administrative Offences establishes administrative liability for knowingly submitting a false disclosure of a corruption offence; and (ii) Article 274 of the Criminal Code, while not specific to corruption, covers knowingly disseminating (meaning to an unlimited number of persons, a broader public, contrary to targeted reporting to an agency) false information which constitutes a danger to public order or can inflict serious harm to persons or organisations, although "serious harm" is not defined.

In the OECD's *Third Round of Monitoring of the Istanbul Anti-Corruption Action Plan*, the OECD recommended that Kazakhstan "amend the provisions of the Code of Administrative Offences that establish administrative liability for inaccurate allegations about corruption, because corruption facts are hard to provide, and relevant information can be deliberately presented as intentional disinformation" (OECD 2014). The Report noted that Kazakhstan's new Code of Administrative Offences, adopted in July 2014 and effective 1 January 2015, retained the same offence under Article 439, and set a fine of two hundred monthly calculation rates.

Recommendations for reform

In order to encourage whistleblowers to come forward, Kazakhstan could consider specifying in the Law on Combating Corruption and the Law on Civil Service the concept of "reasonable belief".

Kazakhstan could consider abolishing the provisions of the Code of Administrative Offences that establish administrative liability for inaccurate allegations about corruption or, at the minimum, revising them to exclude liability for *bona fide* reporting of corruption that was based on a reasonable belief that violation did occur.

Clear reporting channels

Whistleblower protection systems often establish one or more channels through which protected disclosures can be made. These generally include internal disclosures, external disclosure to a designated body, and external disclosures to the public or to the media. Employees who witness wrongdoing should be able to disclose information internally first, without fear of reprisal. An unimpeded path, free from reprimand and retribution, can pave the way for an open organisational culture between the discloser and management. This open culture should be set by management and permeate the entire organisation. Organisations should operate on the premise that employees will come forward to management with disclosures of wrongdoing, and that management will support the individual's justification to disclose and follow the measures in place to protect them and investigate the allegations accordingly. By being receptive to disclosures, and encouraging this as a method of detection, management can mitigate the reputational damage that may ensue if an employee discloses externally.

The individual circumstances of each case should determine the most appropriate channel of disclosure (Council of Europe, 2014). As such, a variety of channels need to be available to match the circumstances and allow whistleblowers to choose which channel they trust most to use. Indeed, whistleblowers may be more willing to come forward if the channel is not directly in their organisation. As outlined in the UNODC Resource Guide on Good Practices in the Protection of Reporting Persons and the UNODC Technical Guide to the UNCAC, channels of reporting should not be limited to a choice of either reporting internally within the organisation, which can encompass different levels (i.e. supervisor, management, ethics officer, hotline, etc.) or directly to

external authorities (UNODC, 2015; UNODC, 2009). Instead, both internal (with the various levels) and external units should operate concurrently so that potential whistleblowers have a choice in where they would like to submit their disclosures.

Individuals who decide to report should have the option of submitting their disclosure to an external body, if upon disclosing internally they were not provided with an adequate response within a certain timeframe, or if appropriate action was not taken. In addition, potential whistleblowers should have direct access to external review agencies, allowing them to skip the internal element of the disclosure process, if they fear and have reason to believe that they would be reprimanded by their organisation's internal mechanism, that their anonymity and confidentiality cannot be guaranteed, or that the misconduct would be covered up. Direct access to external channels may also be necessary in the case of a disclosure relating to an imminent threat or emergency, in which case internal channels may be overly cumbersome. Regardless of the assigned paths of disclosure, providing whistleblowers with the chance to decide to whom to disclosure, or within which parameters, enables them to disclose with greater ease.

Several OECD member countries, such as the UK and Australia, have a tier system in place, which clearly outlines what types of disclosures should be made to the relevant authorities. The purpose of such systems is to provide clarity to potential whistleblowers on who they can disclose information to, and what surrounding circumstances should be considered when making their disclosures. Table 13.2. provides an overview of the Australian example.

Table 13.2. Australia Tier Systems for Disclosure

Type of disclosure	Recipient	Further requirements
Internal disclosure	An authorised internal recipient, or a supervisor of the disclosure	The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.
External disclosure	Any person other than foreign public official	The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct. On a previous occasion, the disclosure made an internal disclosure of information that consisted of, or included, the information now disclosed. Any of the following apply: A disclosure investigation relating to the internal disclosure was conducted under Part 3, and the discloser believes on reasonable grounds that the investigation was inadequate. A disclosure investigation relating to the internal disclosure was conducted (whether or not under Part 3) and the discloser believes on reasonable grounds that the investigation was inadequate. This Act requires an investigation relating to the internal disclosure to be conducted under Part 3 and that investigation has not been completed within the time limit under Section 52. The disclosure is not, on balance, contrary to the public interest. No more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct. The information does not consist of, or include, intelligence information. None of the conduct with which the disclosure is concerned relates to an intelligence agency.
Emergency disclosure	Any person other than a foreign public official	The discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment. The extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger. If the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure. If the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying this disclosure being made before a disclosure investigation of the internal disclosure is completed. The information does not consist of, or include, intelligence information.
Legal practitioner disclosure	An Australian legal practitioner	The disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a public interest disclosure. If the discloser knew, or ought reasonably to have known, that any of the information has a national security or other protective security classification, the recipient holds the appropriate level of security clearance. The information does not consist of, or include, intelligence information.

Source: Public Interest Disclosure Act (2013), Division 2: Public Interest disclosures.

In Kazakhstan, Article 10, paragraph 13 of the Law on Civil Service states that public officials are required to immediately inform the management of the state body where they are employed and (or) law enforcement agencies about corruption offences that become known to them. Under Article 52, paragraph 3 of the same law, a public official who has information about a corruption offence is obliged to immediately inform his superiors in writing, thereby removing any opportunity for anonymity.

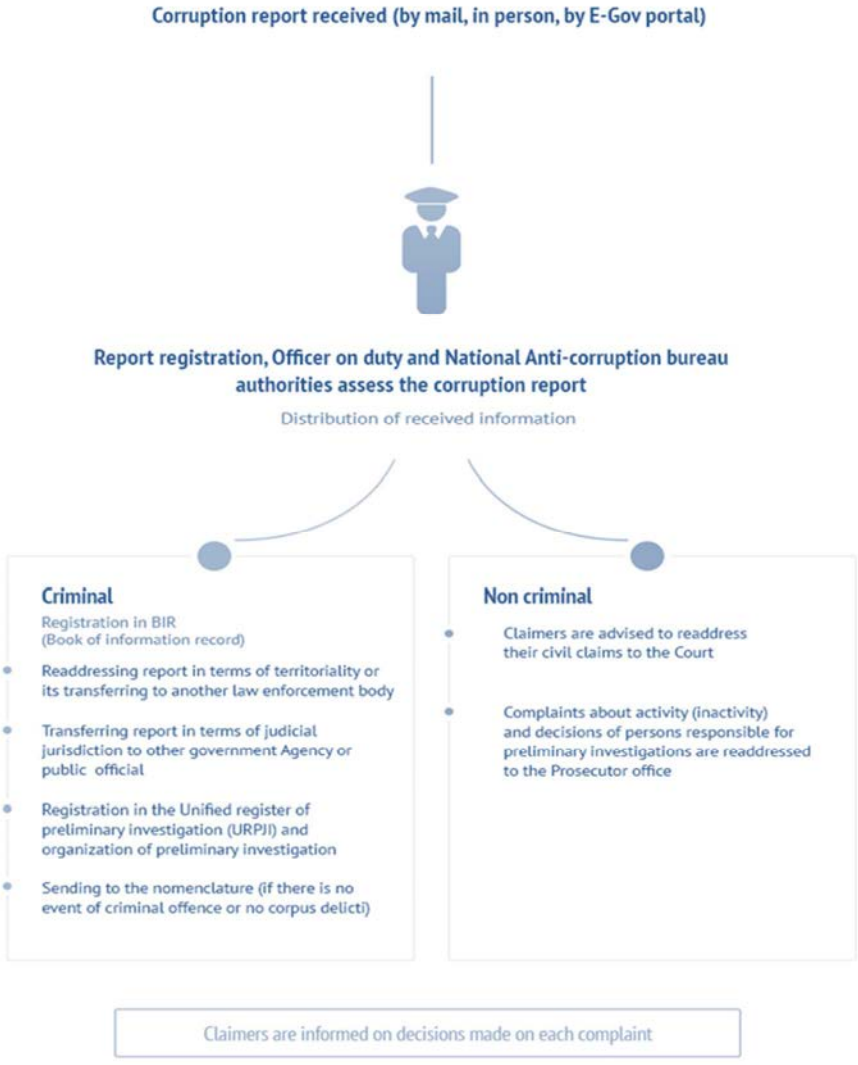
Under Article 24 paragraph 1 of the Law on Combating Corruption a person with knowledge of a corruption offence must inform the leadership of the state body or organisation, or the authorised anti-corruption body (e.g. the National Bureau of Corruption Counteraction of the Agency for Civil Service Issues and Counteraction of Corruption). The law has no provisions on channels; however the website of the National Bureau provides guidance on where to report, how to report, and how the reports will be handled.

Three reporting channels are available in practice:

1. in writing to a pre-specified address
2. through the e-government portal, egov.kz
3. through the Anti-Corruption Call Service number 1494

In order to qualify for remuneration (see section 2.6 below), those wishing to submit a corruption complaint must state their name, address, reference number and date of application. The option to report anonymously is also available. Figure 13.2 outlines the complaint consideration procedure for Kazakhstan:

Figure 13.2. Kazakhstan's Complaint Consideration Procedure



Source: National Corruption Bureau (2016), Consideration Scheme of Applications/Reports, http://anticorruption.gov.kz/eng/soobshit_o_korrupcii/sxema_rassmotreniya, (last accessed 26 September 2016).

While these channels are promising, the lack of legal clarity surrounding options for internal and external reporting, as well as a lack of clarity on how to report, is concerning. It appears that in practice, there are options for both internal and external reporting, but these channels are not clearly indicated in the articles governing whistleblowing.

Recommendations for reform

In order to ensure that there are clear and robust reporting channels, Kazakhstan could consider clearly identifying in the Law on Combating Corruption and the Law on Civil Service both the internal and external reporting options for whistleblowers.

Incentives

Disclosing wrongdoing can be a daunting undertaking that can lead to a loss of livelihood and professional marginalisation. In addition to the stigma that can be attached to reporting possible misconduct, employees may also fear financial and reputational degradation. In order to curtail these potential losses and encourage individuals to come forward in the detection of wrongdoing, countries have introduced various incentives, ranging from tokens of recognition to financial rewards. While these are often considered as incentives, financial payments to whistleblowers can also provide financial support, for example, living and legal expenses, following retaliation. Countries, such as the United States, which have incentive systems in place, publish such information publicly (see Box 13.7). This is a useful tool that can help country's identify the effectiveness of their whistleblower systems.

Box 13.7. **Amounts collected and awards paid to whistleblowers by the United States' Internal Revenue Service (IRS)**

To encourage whistleblowing, a number of OECD countries have adopted rewards systems, including monetary rewards. In the US, for example, the Dodd-Frank Act authorises the Securities and Exchange Commission (SEC) to pay rewards to individuals who provide the Commission with original information that leads to successful SEC enforcement actions (and certain related actions). Rewards may range from 10 percent to 30 percent of the funds recovered. SEC Commissioner Luis Aguilar has said that the agency's staff have seen a noticeable difference in the quality of information they receive since the monetary rewards to whistleblowers who provide original information leading to a successful enforcement case were introduced (Orol, 2012). Internal Revenue Service (IRS) data shows that from 2009 – 2013, 554 awards were paid to whistleblowers. In 2013 alone, the total award amount to whistleblowers was $53 519 630, representing 14.6% of total amounts collected.

	2009	2010	2011	2012	2013
Awards paid	110	97	97	128	122
Collections over USD 2 000 000	5	9	4	12	6
Total Amounts of Award Paid (in USD)	5 851 608	18 745 327	8 008 430	125 355 799	53 054 302
Amounts collected (in USD)	206 032 872	464 695 459	48 047 500	592 498 295	367 042 420
Awards paid as a percentage of amounts collected	2.80%	4.00%	16.70%	21.20%	14.60%

Source: OECD (2016a); Internal Revenue Service Fiscal Year 2013 Report to the Congress on the Use of Section 7623.

To stimulate whistleblowing among citizens, in 2012 the Government of Kazakhstan adopted "Rules on rewarding those who disclose facts of corruption offences or otherwise assist in the fight against corruption". These rules were incorporated into the revised Law on Combating Corruption. Under the Rules, individuals who report on corruption is offered a one-time lump sum payment, the amount of which is decided based on the gravity of the offence they reported (see Table 13.2.). Individuals are remunerated if they provide information related to a corruption offence; related to the whereabouts of the

person who committed the corruption offence; or provide other assistance, which enables authorities to detect and investigate a corruption offence[8]. The reward is provided only after the reported facts are confirmed and a court has imposed a sentence on the offender (OECD, 2016b). In 2013, 172 persons helped to initiate 216 criminal prosecutions leading to trial, and they were awarded a total of KZT 19 million under this procedure (OECD, 2016b).

Table 13.3. Remuneration Amounts,

Calculated in Monthly Calculation Indices

Type of Offence	Monthly Calculation Indices
Administrative cases of corruption offences	30
Criminal cases on corruption crimes of small gravity	40
Criminal cases of corruption crimes of average weight	50
Criminal cases of serious corruption offences	70
Criminal cases of particularly serious corruption crimes	100

Source: Republic of Kazakhstan (2016), Rules to encourage persons reporting corruption facts offences or otherwise assisting in combating corruption, http://adilet.zan.kz/rus/docs/P1500001131 (in Russian).

Recommendation for reform

Remuneration for whistleblowers is a positive feature in Kazakhstan. Continuation of the policy should be a key consideration for the government, as well as making information public about how many individuals have received remuneration and for what type of offence.

Awareness-raising and training

Whistleblower protection laws and provisions gain impact through effective awareness-raising, communication, training and evaluation efforts. An open organisational culture and whistleblower protection legislation should be supported by effective awareness raising, communication, training and evaluation efforts. Communicating to employees their rights and obligations when exposing wrongdoing is essential, as employees need to know what protection will be available to them in cases of exposing wrongdoing. Awareness-raising activities could include the publication of an annual report by the relevant oversight body or authority that includes information on the outcome of cases received, the compensation for whistleblowers and recoveries that resulted from information from whistleblowers during the year, and the average time it took to process a case.

Awareness raising activities could also include training for managers responsible for handling internal disclosures as well as employees, and some OECD member countries have adopted provisions within their laws to ensure that awareness measures are in place. For instance, Canada's whistleblowing protection system requires the Minister and public bodies to "promote ethical practices in the public sector and a positive environment for disclosing wrongdoings by disseminating knowledge of [the Public Servants Disclosure

Protection Act] and information about its purposes and processes and by any other means that he or she considers appropriate" (PSDPA, 2005).

Increasing the awareness of whistleblowing and whistleblower protection enhances the understanding of these mechanisms and is an important way of improving the often negative cultural connotations linked to the term "whistleblower". The cultural perception of whistleblowers may constitute a significant barrier to implementing legislation on whistleblowing and as such, awareness raising activities need to tackle deeply engrained cultural attitudes. These attitudes may date back to social and political circumstances, such as foreign domination, when distrust towards "informers" of despised authorities was the norm (Council of Europe Parliamentary Assembly, 2009). The importance of generating a culture of trust therefore includes raising awareness about the important role effective whistleblower systems have on the integrity of a national integrity system.

Although there is broad coverage for whistleblower protection in Kazakhstan, the applicability of both the laws in practice remains unknown. Without available information on how many whistleblowers have come forward with allegations of potential cases of corruption and/or the results of these cases, it is not clear how effective the whistleblower protection framework is in Kazakhstan. The proactive disclosure of such information would be an effective awareness raising tool for the government about the whistleblower protection framework.

In terms of awareness-raising for whistleblower protection, Kazakhstan noted that in order to create a culture of intolerance towards corruption, information campaigns and other types of awareness raising activities are carried out by the Agency for Civil Service Issues and Counteraction of Corruption. In principle, the concept of whistleblower protection is included in these activities, although no information was provided on specific campaigns or efforts to raise awareness about whistleblower protection for purposes of this report.

Officials also noted that training sessions for public officials included information on how public officials were to behave in regards to a conflict of interest, with whistleblower protection being considered under the conflict of interest provisions. It is not clear whether managers receive special training on their requirements to handle potential internal disclosures. No further information was provided on the content of these training sessions in terms of whistleblower protection.

Recommendation for reform

The release of statistical information on the number of individuals coming forward, the share of those reports investigated and the results of the investigations would demonstrate the effectiveness of the law in practice.

Kazakhstan could consider incorporating awareness-raising and training requirements on whistleblower provisions into the Law on Combating Corruption.

The Agency for Civil Service Issues and Counteraction of Corruption could consider developing and incorporating awareness raising campaigns whistleblower protection, including information on who is covered under the law, what types of disclosures warrant protection, which bodies disclosures can be made to and the incentive regime for successful disclosures.

The Agency for Civil Service Issues and Counteraction of Corruption could consider developing and incorporating training on whistleblower protection for managers, including information on how to handle internal disclosures, who is covered under the

law, what types of disclosures warrant protection, which bodies disclosures can be made to and the incentive regime for successful disclosures.

The Agency for Civil Service Issues and Counteraction of Corruption could consider developing and incorporating training on whistleblower protection for employees, including information on how to make an internal disclosure, who is covered under the law, what types of disclosures warrant protection, which bodies disclosures can be made to and the incentive regime for successful disclosures.

Action Plan and potential OECD support

Recommendations

- Kazakhstan could clearly specify in the Law on Combating Corruption and the Law on Civil Service the measures management must take to protect whistleblowers, the structure in place to ensure protection, and how long whistleblowers are protected for.

- Kazakhstan could consider specifying in the appropriate legislation the sanctions and reprisals against those who retaliate and remedies for those who were retaliated against.

- Kazakhstan could establish mechanisms (not only criminal but also administrative) whereby whistleblowers may file a complaint about unfair reprisal as a result of their actions, in order for the Government to be able to further investigate and determine whether indeed their rights as whistleblowers were violated. Such mechanisms should be transparent and open to scrutiny to ensure its objectivity and effectiveness.

- Kazakhstan could consider broadening the definition of wrongdoings of which disclosure would qualify for whistleblower protection in both the Law on Combating Corruption and the Law on Civil Service to cover any violation of the anti-corruption legislation or reporting a disciplinary violation. This includes specifying the levels of protection afforded for individuals who bring information about a potential corruption case that does not lead to a criminal conviction or administrative sanction.

- To encourage whistleblowers to come forward, Kazakhstan could consider specifying in the Law on Combating Corruption and the Law on Civil Service the concept of "reasonable belief".

- Kazakhstan could consider abolishing the provisions of the Code of Administrative Offences that establish administrative liability for inaccurate allegations about corruption or, at the minimum, revising them to exclude liability for bona fide reporting of corruption that was based on a reasonable belief that violation did occur.

- To ensure that there are clear and robust reporting channels, Kazakhstan could consider clearly identifying in the Law on Combating Corruption and the Law on Civil Service both the internal and external reporting options for whistleblowers.

- Remuneration for whistleblowers is a positive feature in Kazakhstan. Continuation of the policy should be a key consideration for the government, as well as making information public about how many individuals have received remuneration and for what type of offence.

- The release of statistical information on the number of individuals coming forward, the share of those reports investigated and the results of the investigations would demonstrate the effectiveness of the law in practice.

- Kazakhstan could consider incorporating awareness-raising and training requirements on whistleblower provisions into the Law on Combating Corruption.

- The Agency for Civil Service Issues and Counteraction of Corruption could consider developing and incorporating awareness raising campaigns whistleblower protection, including information on who is covered under the law, what types of disclosures warrant protection, which bodies disclosures can be made to and the incentive regime for successful disclosures.

- The Agency for Civil Service Issues and Counteraction of Corruption could consider developing and incorporating training on whistleblower protection for managers, including information on how to handle internal disclosures, who is covered under the law, what types of disclosures warrant protection, which bodies disclosures can be made to and the incentive regime for successful disclosures.

- The Agency for Civil Service Issues and Counteraction of Corruption could consider developing and incorporating training on whistleblower protection for employees, including information on how to make an internal disclosure, who is covered under the law, what types of disclosures warrant protection, which bodies disclosures can be made to and the incentive regime for successful disclosures.

Action Plan

Reform Areas	Potential OECD Support
Implementation: • Disclose information on how many whistleblowers come forward per sector (whilst respecting confidentiality and anonymity) • Disclose information regarding remuneration for whistleblowers • Develop whistleblower training and awareness campaigns that specifically target the protection afforded to those who come forward with information on corruption and other related offences.	OECD Integrity Review/ workshops
Clarification of laws: • Clearly stipulate the process for protection from retaliation, either in the Law on Civil Service or the Law on Combating Corruption • Clearly differentiate in the law between whistleblower protection and witness protection • Clearly identify the reporting process for both internal and external disclosures • Amend the provisions of the Code of Administrative Offences that establish administrative liability for inaccurate allegations about corruption • Broaden the definition of offences of which disclosure would qualify for whistleblower protection.	OECD Integrity Review/ workshops

Further reading

OECD (2016), "Revisiting Whistleblower Protection in OECD Countries: From Commitments to Effective Protection", OECD, Paris.

OECD (2012), "Study on G20 Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation", OECD, Paris.

OECD (2011), "G20 Compendium of Best Practices for Legislation on the Protection of Whistleblowers", OECD, Paris.

OECD (2011), "G20 Guiding Principles for Legislation on the Protection of Whistleblowers", OECD, Paris.

Notes

1. In Australia, penalty units are used to describe the payable for fines under commonwealth laws. By multiplying AUS Dollar equivalent of one penalty unit, the fine for an offence is set.

2. Australia's Public Interest Disclosure Act, Subdivision B, Part 2 – Section 19.

3. The US Federal Criminal Code 18 U.S.C. §1513 (e) states that "whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offence, shall be fined under this title or imprisoned not more than 10 years, or both."

4. Korea's Act on the Protection of Public Interest Whistleblowers, Article 2. 2.a.

5. PID Act, Part 7, 37 1) (a).

6. Act CLXV of 2013 on Complaints and Public Interest Disclosures (Art. 3. paragraph 4).

7. Both the Protection of Employees (Exposure of Offenses of Unethical Conduct or Improper Administration) Law, 1997 and Sections 45(a)-45(e) of the State Comptroller Law, 1958 do not award protection to complaints that were not filled in good faith.

8. Republic of Kazakhstan (2016), Rules to encourage persons reporting corruption facts offences or otherwise assisting in combating corruption, http://adilet.zan.kz/rus/docs/P1500001131, (in Russian).

References

Act CLXV. of 2013 on Complaints and Public Interest Disclosures. (2013), Hungary, http://corruptionprevention.gov.hu/download/7/a2/90000/KIM%20555_2013-4.pdf.

Act on the Protection of Public Interest Whistleblowers (2011), Korea, www.unodc.org/res/cld/document/kor/act-on-the-protection-of-public-interest-whistleblowers_html/Republic_of_Korea_Act_on_the_Protection_of_Public_Interest_Whistleblowers.pdf.

Anti-Corruption Act (2012), Estonia, www.riigiteataja.ee/akt/129062012001, (in Estonian).

Banisar, D. (2011) "Whistleblowing: International Standards and Developments" in Sandoval, I. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, World Bank Institute for Social Research, UNAM, Washington, DC., http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753180.

Council of Europe (2014), *Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers*, Adopted by the Committee of Ministers on 30 April 2014, at the 1198th meeting of the Ministers' Deputies, www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2014)7E.pdf.

Devine, T. and S. Walden (2013), *International Best Practices for Whistleblower Policies*, Government Accountability Project, Washington DC.

Internal Revenue Service Fiscal Year 2013, Report to the Congress on the Use of Section 7623, www.irs.gov/pub/whistleblower/Whistleblower_Annual_report_FY_13_3_7_14_52549.pdf

Latimer, P. and A.J. Brown (2008), *Whistleblower Laws: International Best Practice*, Monash U. Department of Business Law & Taxation Research Paper No. 1326766, http://ssrn.com/abstract=1326766 or http://dx.doi.org/10.2139/ssrn.1326766.

National Corruption Bureau (2016), Consideration Scheme of Applications/Reports, http://anticorruption.gov.kz/eng/soobshit_o_korrupcii/sxema_rassmotreniya/, (last accessed 26 September 2016).

OECD (2016a), *Committing to Effective Whistleblower Protection*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264252639-en.

OECD (2016b), *Anti-corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2013-2015,* OECD Publishing, Paris, www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf.

OECD (2014), "*Anti-Corruption Reforms in Kazakhstan, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan",* OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf.

OECD (2011), "G20 Guiding Principles for Legislation on the Protection of Whistleblowers", OECD, Paris.

Public Interest Disclosure Act (2013), Australia, www.comlaw.gov.au/Details/C2013A00133.

Public Servants Disclosure Protection Act (2005), Canada, http://laws-lois.justice.gc.ca/eng/acts/P-31.9/.

State Comptroller Law (1958), Israel.

Republic of Kazakhstan (2016), Rules to encourage persons reporting corruption facts offences or otherwise assisting in combating corruption, http://adilet.zan.kz/rus/docs/P1500001131 (in Russian).

Transparency International (2013), *Whistleblower Protection and the UN Convention Against Corruption*, Transparency International, Berlin, www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/ti_report_/ti_report_en.pdf.

Transparency International (2009), *Alternative to Silence: Whistleblower Protection in 10 European Countries*, Transparency International, Berlin, www.transparency.org/whatwedo/pub/alternative_to_silence_whistleblower_protection_in_10_european_countries.

UNODC (2015), *Resource Guide on Good Practices in the Protection of Reporting Persons*, United Nations Office on Drugs and Crime, Vienna, www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf.

UNODC (2009), *Technical Guide to the United Nations Convention Against Corruption*, United Nations Office on Drugs and Crime, Vienna, www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf.

Dodd–Frank Wall Street Reform and Consumer Protection Act (2014), United States of America, www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

U.S. Securities and Exchange Commission, www.sec.gov/whistleblower.gov.

2014 OECD Survey on Public Sector Whistleblower Protection.

Chapter 14.

Supporting an independent, vibrant media in Kazakhstan

The media - whether in print, online, or on television and radio - play an important role in ensuring social accountability, and can support integrity and curb corruption by informing the public and holding government actors and institutions to account. The media can also inform public opinion on corruption matters more generally by raising public awareness about corruption. This chapter discusses the role of the media in the Republic of Kazakhstan in combating corruption. First, it provides an assessment of the recently passed access to information legislation in the country as it relates to media's access to government information. Second, it analyses the extent to which freedom of press is guaranteed and protected, before looking at the level of professionalism and ethics in the media sector. Lastly, this chapter analyses the plurality of Kazakhstan's media sector.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Role of independent and vibrant media in promoting integrity and combating corruption

The media - whether in print, online, or on television and radio - plays an important role in ensuring social accountability, and can support integrity and curb corruption by informing the public and holding government actors and institutions to account. Firstly, journalists are amongst the most important "whistle-blowers", as they can investigate, detect and report on specific incidences of corruption, bringing these cases to light and instigating judicial involvement. Indeed, a DFID 2015 review of the evidence around corruption argued that, while there was only a "small body of evidence relying primarily on observational studies making use of statistical analyses", evidence "consistently indicates freedom of the press can reduce corruption and that the media plays a role in the effectiveness of other social accountability mechanisms" (DFID 2015).

Second, beyond specific cases, media can inform public opinion on corruption matters more generally by raising public awareness about corruption as a phenomenon, and educating the public on its causes, consequences and possible remedies. This in turn can improve the policy dialogue around anti-corruption efforts. For better or for worse, media play an important role in influencing public opinion. By deciding what is "newsworthy", they can influence the political agenda, and they may fact-check the statements and activities of government institutions and leaders, as well as monitor the implementation and impact of anti-corruption policies.

Several elements must be in place therefore to ensure media are a positive, and not negative, force in the democratic process. The effectiveness of the media, in turn, depends on access to information. Freedom of expression, backed by journalists' right to protect sources and to be free of retaliation, is also key to avoiding censorship and encouraging journalists and media outlets to pursue stories. Furthermore, the plurality of media options, as well as a professional and ethical cadre of investigative journalists is important to ensure that one single actor – be it an entrepreneur or the government – does not dominate public opinion. Governments, media owners and journalists have a shared responsibility to ensure that media effectively contributes to strengthening accountability and curbing corruption.

The following sections touch on three key areas of integrity as related to the media: access to information, freedom of expression, media ethics and professionalism, and plurality and transparency of media.

Box 14.1. OECD Handbook on governance development focus on media

What is the role of media?

According to "A Governance Practitioner's Notebook: Alternative Ideas and Approaches" chapter on Media and Communication in Governance: It's Time for a Rethink (OECD, 2015), there are four major reasons why development actors currently invest in media support or believe support for media is important:

1. To build an independent media sector as an intrinsic good in and of itself, essential to the functioning of a democratic society and a key platform for freedom of expression (democratic and human rights objectives).
2. To enhance the accountability of governments to citizens, often in order to improve service delivery and state responsiveness, improve state-citizen relations, support more informed democratic/electoral decision-making, or shift social norms to decrease public tolerance of corruption or poor governance (accountability objectives).
3. To improve debate, dialogue and tolerance especially in fragile or conflicted societies, increase the availability of balanced, reliable and trustworthy information, reduce the likelihood of hate speech or inflammatory media likely to exacerbate conflict, enhance social cohesion or build the legitimacy of weak governments in fragile contexts (conflict and stability objectives).
4. To create demand for services (such as health or agricultural services) and use the media as an instrument to achieve development objectives including working to shift behaviours (e.g. improving uptake of immunisation) or changing the social norms that prevent such uptake, such as distrust of vaccinations (communication for development objectives).

What does the OECD consider good practices in strengthening the media?

- **Leverage new technologies in the media:** There needs to be a combined effort in analysing the role of media and new technologies to understand how people are informed and the effects of information flows
- **Bring forward neglected components of governance, such as the issue of an informed society:** The issue of an informed society is often a neglected component of governance thinking. There should thus be a focus on introducing a new mechanism or forum to develop a clear governance framework, research agenda, and guidance for development actors to consult with key stakeholders, such as journalists, civil society and academia.
- **Allow mechanisms to challenge power structures:** Issues of freedom of media, freedom of expression and access to information are principle-based. Increased accountability needs mechanisms and people who can work against the grain of power and they can do so when these principles are upheld. For example, the politically and economically marginalised people in developing countries often use access to independent media and new communication technologies to assert their rights and voice their demands.
- **Support the media:** Government actions that distort competition can undermine media independence and threaten the ability of journalists to report on key issues and hold the government to account. Therefore, a focus on facilitating competition amongst media actors is paramount.

Source: Whaites et al. (2015).

Current status and critical analysis

Access to information

As an important accountability and oversight actor on government activities, the media can only fulfil its function as a government watchdog if information from and about public authorities is made accessible. Unless freedom of information legislation is properly implemented, public oversight, which is at least partly ensured through the media and participation in decision-making, cannot function properly. It is therefore imperative to make as much information as possible accessible to the public.

Freedom of information laws give the public the right to access information held by public authorities and private entities that receive public funds or perform public functions. These laws define the scope of the access rights, i.e. which public bodies fall under the law and which types of documents are accessible, possible exceptions, and who decides whether a specific case may be classified as an exception. Such laws should be as comprehensive as possible, with exceptions being subject to a three-part test: (i) the information in question must relate to a legitimate aim listed in the law; (ii) disclosure must threaten to cause substantial harm to that aim; and (iii) the harm to the aim must be greater than the public interest in having the information (OECD 2014a).

Although Access to Information (ATI) laws establish the presumption that citizens can request access to public information from all public institutions, the actual scope of application can differ. For example, some laws do not apply to all levels of government, nor to the legislative body or to state-owned-enterprises (SOEs). As shown in Table 1, OECD member countries ATI laws differ in coverage of the various levels of government. While nearly all governments ensure access to information generated by the central government and the Executive body, an additional 25 countries ensure access to information at the subnational level, whereas only half provide access to information from the legislative or judicial branches of government (OECD, forthcoming)[1].

Table 14.1. Breadth of freedom of information laws (2010)

		Total OECD countries
Level of government		
Central	32	Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.
Sub-national	27	Austria, Belgium, Canada (provincial/territorial legislation), Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Korea, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Turkey and United Kingdom.
Branches of power at the central level		
Executive	33	Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States.
Legislative	18	Belgium, Chile, Estonia, Finland, Hungary, Ireland, Israel, Italy, Korea, Mexico, Poland, Russian Federation, Slovak Republic, Slovenia, Sweden, Turkey, Ukraine and United Kingdom.
Judicial	18	Australia, Belgium, Chile, Estonia, Finland, France, Hungary, Israel, Italy, Korea, Mexico, Norway, Poland, Russian Federation, Slovak Republic, Slovenia, Sweden and Ukraine.
Other bodies		
Private entities managing public funds	19	Australia, Belgium, Czech Republic, Estonia, Finland, France, Hungary, Iceland, Italy, Korea, Netherlands, Poland, Portugal, Slovak Republic, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.

Source: OECD, 2011

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Access to information laws should also state the procedures for accessing information. Access should be granted in a straightforward manner, either via inspection of records or by producing copies. Clear timelines should be set, requiring the public authority to comply with requests. Narrow eligibility conditions to file a request, long response times or unjustifiable and incoherent high fees among institutions are factors that can limit or undermine access to information.

Box 14.2. **The Right to Information Rating**

The Right to Information (RTI) Legislation Rating is a tool created by Access Info Europe and the Centre for Law and Democracy (CLD) to rate the overall legal framework for the right to information in a given country. The RTI score provides an overall numerical assessment of how well a country scores in terms of giving legal effect to the right of information. It is important to note that the RTI does not measure the quality of implementation.

The RTI database has scores for 103 countries, including all OECD member countries with the exception of Luxembourg. Kazakhstan is one of the countries that has passed RTI laws, and according to the RTI website, the RTI score for Kazakhstan is in the process of being evaluated.

The RTI score is derived from 61 indicators each with a possible score range (in most cases 0-2) depending on how well the legal framework delivers the indicator. The indicators are grouped under seven different elements of the right to information system: right to access, scope, requesting procedures, exceptions and refusals, appeals, sanctions and protections, and promotional measures.

A country's right to information framework can receive maximum score of 150 points. The four key elements of the right to information system – scope, requesting procedures, exceptions, refusals and appeals – have each been given equal weighting of 30 points, while the other three elements have been given less weight. This is to ensure that appropriate weight has been given to the different parts of the system (see Figure 14.1).

The indicators have been developed from a range of international standards on the right to information, comparative study of RTI laws, and pilot testing of the RTI methodology on selected laws. Below are examples of key indicators for each of the seven elements:

1. **Right to access:** the legal framework recognises a fundamental right of access to information
2. **Scope:** the right of access applies to the executive branch with no bodies excluded
3. **Requesting Procedures:** requestors are not required to provide reasons for their requests
4. **Exceptions and refusals:** a harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused
5. **Appeals:** requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. information commission)
6. **Sanctions and Protections:** sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information
7. **Promotional Measures:** public authorities are required to appoint dedicated officials or units with a responsibility for ensuring that they comply with their information disclosure obligations.

The Methodology does not assess one key aspect of right to information, namely rules on proactive disclosure. The reason for this is that proactive disclosure rules are often spread among many different pieces of legislation, making a scientific assessment difficult without significant resources.

For the full set of indicators, see https://www.rti-rating.org/.

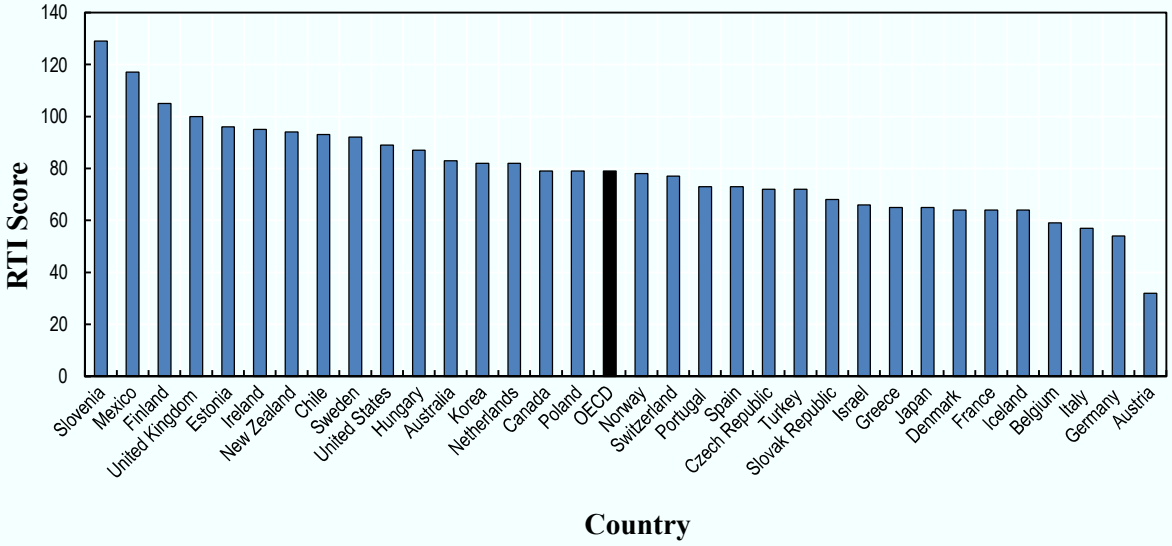
Box 14.2. The Right to Information Rating *(continued)*

Figure 14.1. Weighting of the seven elements of the RTI Legislation

Section	Max Points
1. Right of Access	6
2. Scope	30
3. Requesting Procedures	30
4. Exceptions and Refusals	30
5. Appeals	30
6. Sanctions and Protections	8
7. Promotional Measures	16
Total score	**150**

Source: "RTI Legislation Rating Methodology," Global Right to Information Rating.

Figure 14.2. RTI Score for OECD Member Countries



Source: Global Right to Information Rating, www.rti-rating.org/country-data.
Note: data for Luxembourg was not available.

In Kazakhstan the right to access information held by public authorities and the right to information is guaranteed in Article 20(2) of the Constitution. Developing and implementing a law on Access to Information was included as one of the steps in Kazakhstan's strategy to implement the five institutional reforms. Since 2010, Kazakhstan has been working on developing and implementing an access to information law. Two draft laws existed (2010 and 2012, respectively) before the final law was implemented in November 2015.

In the new law, Article 1(2) defines access to information as a "state-guaranteed, Constitution and law-enforced right of every citizen to freely receive and disseminate information using any means not prohibited by law". Furthermore, Article 2(2) of the Law provides that international treaties ratified by Kazakhstan dominate national laws in case of conflict, thereby formally ensuring that international rules on the right to information should apply in the country. Various provisions in the Law – including Article 7(1) – establish that everyone has the right to request and receive information.

Article 8 of the Law defines the application of the law to the following entities:

1. bodies and institutions of the legislative, executive branches of state power and court system, as well as local state administration and self−administration
2. state institutions which are not state bodies
3. state-owned enterprises
4. legal entities – receivers of budget funds, in respect to information concerning the usage of funds received from state budgets;
5. legal entities – subjects of the market which enjoy a dominant or monopoly status in the market, in respect to information concerning prices for goods (works, services) produced (sold) by them
6. legal entities possessing information concerning ecological situation, emergency situations, natural and techno genic catastrophes, their forecast and consequences, fire security, sanitary-epidemiological and radiation conditions and food security and other factors which create a negative impact on health and security of people, settlements and industrial objects.

In regards to accessing information, anonymous requests for information are not permitted. The law differentiates between requests received orally and in writing. For requests received orally, the information user may articulate their request in person or via telephone. Verbal requests are confined to requests for general information, such as the information holders contact details, schedules of legal proceedings or community meetings, etc.

A written request, on the other hand, can be submitted in writing or through an electronic platform. According to Article 11(5) of the law, a written request must include the following information:

1. If applying as an individual, applicants must provide their last name, name, patronymic and ID number. If applying on behalf of a legal entity, applicants must provide the full name of the legal entity, business identification number, outgoing number and date, last name, initials and a position of a person who signed a request.

2. Postal and electronic addresses, telephone or telefax number and other means of communication.

The written request must be signed by an individual or a representative of a legal entity. A written request submitted electronically does not require its signing by the information user, provided that the latter has an account on the "e-government" web portal and the information user's number provided by a mobile network provider. If all information requested is not provided, the request for information is not processed.

Furthermore, the law does not clarify however where the information can be requested from, either through a central web portal, via a hotline or directly to the entity.

Although the adoption of an Access to Information law is a welcome step in Kazakhstan, concerns remain. Article 3(4) restricts application to mass media outlets, noting that the law shall not apply to the procedure for the provision of information to mass media outlets established by the Law on Mass Media. The latter does regulate access to information by the media and provides for shorter terms of reply to the media requests of information (three days instead of 15 in the Access to Information Law, but with possibility of extension up to one month). However, the regulation in the Mass Media Law is not detailed enough and does not ensure the same level of guarantees as the Access to Information Law. There should be one general regime for accessing government-held information, regardless of the requester, and such regime should be effective.

The law further restricts access to information based on the provisions set out in other laws. For instance, article 5 establishes that "the right for access to information may be limited **only by laws** and only to the extent as necessary in order to protect constitutional and public order, human rights and freedoms, health and human morals" or article 9.3, which allows authorities to "deny access to information in cases and only on the basis of the laws of Republic of Kazakhstan." There is no clear clarification regarding what these laws apply to, which creates confusion both for those requesting information as well as for those providing information.

Reference to other laws is especially problematic since the ATI Law (Article 3.1) explicitly excludes from its scope information with restricted access. This contradicts the basic principles of maximum disclosure and presumption of openness and undermines effectiveness of the law. The fact that the requested information belongs to the restricted in access is also a ground for automatic denial of the request (Article 11.16). This is contrary to international standards according to which any restriction should be proportionate and based on harm and public interest tests applied on a case-by-case basis. No category of information may be *apriori* excluded from the access.

Furthermore, article 1.8 defines information with limited access as "information that is classified as state secrets, personal, family, medical, banking, commercial and other types of secrets protected by law, and also official information noted as "for official use only". Again, it is not clear how information noted as "for official use only" is determined.

Additionally, despite the constitutional and legal guarantees to access to information, in practice journalists are regularly denied access to information. There is a tendency on the part of government entities to not value the work of journalists and view them as a hindrance to their work, thus blocking access (IREX 2016).

Recommendations for reform

The media's access to information should not be excluded from the Law on Access to Information, as all that is related to access to information should be regulated in the same law. Kazakhstan could therefore consider removing the exclusion of media from the scope of the Law on Access to Information. Kazakhstan could also consider clarifying the criteria for exceptions from access by introducing the harm and public interests tests. Kazakhstan could also clarify in the law the criteria for classifying information "for official use".

The ability to request information anonymously is an important element for investigative journalism. Moreover, the identity of the requester has no bearing on the consideration of the request, as no explanation of motives or any other justification of the request should be required; the request should only indicate how (in which form and where) the reply should be provided. Kazakhstan could therefore consider including the right to anonymous requests in the law and developing the appropriate platforms for anonymous access.

Freedom of the press

Investigative journalism is a critical tool in the fight against corruption, as it brings to light cases of fraud and abuse of power which may otherwise remain hidden. Investigating corruption however can be a very dangerous undertaking. According the Committee to Protect Journalists, 1189 journalists have been killed between 1992 and May 2016, 20% of whom were investigating corruption (CPJ, 2016). Many more are being injured, harassed, threatened or illegally detained. It is therefore important that legislative measures exist to protect journalists, including ensuring appropriate intervention whenever threats are received by journalists.

The effectiveness of media in the fight against corruption can be further undermined if there is not sufficient protection of journalists and their sources from potential retribution. It can be dangerous for members of the public to provide journalists with information, especially if that information concerns serious misbehaviour or pertains to corruption. Journalists' sources should therefore be protected by law. This should not only include the journalists' contact persons but also their own workspace and research. Exceptions should only be granted by a judge and only for "key witnesses and serious crimes" (Nuutila, 2013). It is very important to clearly specify those restrictions, so that journalists can reliably inform their potential sources about the risks involved in their disclosure of information.

While libel laws may have a role to play in preventing the slander of innocent individuals, it is important to make sure that exceptions to freedom of expression are narrowly defined in order to protect the privacy of others. Exceptions may not be used in combination with harsh penalties (including imprisonment) that aim to deter the media from reporting on corruption cases. Even non-penal libel laws often result in media self-censorship and must therefore be designed as carefully and clearly as possible.

Box 14.3. Evaluating the Independence and Effectiveness of Media: The Freedom of Press Index and the Media Sustainability Index

The Freedom of the Press Index by Freedom House, an organisation which works advocates political rights and civil liberties, ranks countries with a score from 0 (best) to 100 (worst), placing countries into three categories:

- Free (0-30)
- Partly Free (31-60)
- Not Free (61-100)

Freedom House's overall score is based on twenty-three methodology questions, which are divided into three categories: the legal environment, political environment and economic environment. Each methodology question is then scored, with lower scores denoting more freedom. A country's final score is the sum of all the points from the questions.

The Legal Environment category considers laws and regulations which could influence media content as well as their enforcement. Examples of methodology questions under this category include:

- Does the constitution or other basic laws contain provisions designed to protect freedom of the press and of expression, and are they enforced?
- Can individuals or business entities legally establish and operate private media outlets without undue interference?

The Political Environment category evaluates the degree of political influence in the content of the new media. This category, among other things, assesses editorial independence and access to information and sources:

- To what extent are media outlets' news and information content determined by the government or a particular partisan interest?
- Is access to official or unofficial sources generally controlled?

The Economic Environment component considers aspects such as the structure of media ownership and the cost of establishing media as well as barriers to production or distribution. Examples of methodology questions under this category include:

- To what extent are media owned or controlled by the government and does this influence their diversity of views?
- Are there high costs associated with the establishment and operation of media outlets?

Additionally, IREX's Media Sustainability Index (MSI) analyses conditions for independent media in 80 countries. The MSI is scored out of 4, with the following categories:

- **Unsustainable, Anti-Free Press (0-1)**: Country does not meet or only minimally meets objectives. Government and laws actively hinder free media development, professionalism is low, and media-industry activity is minimal.
- **Unsustainable Mixed System (1-2)**: Country minimally meets objectives, with segments of the legal system and government opposed to a free media system. Evident progress in free-press advocacy, increased professionalism, and new media businesses may be too recent to judge sustainability.

Near Sustainability (2-3): Country has progressed in meeting multiple objectives, with legal norms, professionalism, and the business environment supportive of independent media. Advances have survived changes in government and have been codified in law and practice. However, more time may be needed to ensure that change is enduring and that increased professionalism and the media business environment are sustainable.

Box 14.3. **Evaluating the Independence and Effectiveness of Media: The Freedom of Press Index and the Media Sustainability Index** *(continued)*

Additionally, IREX's Media Sustainability Index (MSI) analyses conditions for independent media in 80 countries. The MSI is scored out of 4, with the following categories:

- **Unsustainable, Anti-Free Press (0-1)**: Country does not meet or only minimally meets objectives. Government and laws actively hinder free media development, professionalism is low, and media-industry activity is minimal.
- **Unsustainable Mixed System (1-2)**: Country minimally meets objectives, with segments of the legal system and government opposed to a free media system. Evident progress in free-press advocacy, increased professionalism, and new media businesses may be too recent to judge sustainability.
- **Near Sustainability (2-3)**: Country has progressed in meeting multiple objectives, with legal norms, professionalism, and the business environment supportive of independent media. Advances have survived changes in government and have been codified in law and practice. However, more time may be needed to ensure that change is enduring and that increased professionalism and the media business environment are sustainable.
- **Sustainable (3-4)**: Country has media that are considered generally professional, free, and sustainable, or to be approaching these objectives. Systems supporting independent media have survived multiple governments, economic fluctuations, and changes in public opinion or social conventions.

The MSI is based on five objectives which are further broken down into indicators. The five objectives, as well as selected examples of respective indictors include:

Legal and social norms protect and promote free speech and access to public information

- Legal and social protections of free speech exist and are enforced.
- The laws protect the editorial independence of state of public media.

Journalism meets professional standards of quality

- Reporting is fair, objective, and well sourced.
- Journalists cover key elements and issues.

Multiple news sources provide citizens with reliable, objective news

- Plurality of public and private news sources (e.g. prints, broadcast, Internet, mobile) exist and offer multiple viewpoints.
- Private media produce their own news

Media are well managed enterprises, allowing editorial independence

- Media outlets operate as efficient and self-sustaining enterprises.
- Advertising agencies and related industries support an advertising market.

Supporting institutions function in the professional interests of independent media

- Trade associations represent the interests of media owners and managers and provide member services.

Scoring is completed in two parts. In the first part, a panel of local experts are provided with a questionnaire and are given explanations on each indicator and the scoring system, which they then use to score each indicator. Following this, a thorough discussion takes place in which a panellist has the opportunity to revise their scores based on the results of the discussion. In the second part, an editorial board reviews the scores and offers their own scoring for each indicator which carries the same weight as one individual panel member. The average of the indicator scores then comprise the objective score and subsequently all five objectives are averaged for the country's overall score.

Sources: Freedom House (2016); IREX (2015).

In Kazakhstan, Article 20 of the Constitution guarantees freedoms of speech:

1. The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited.

2. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law.

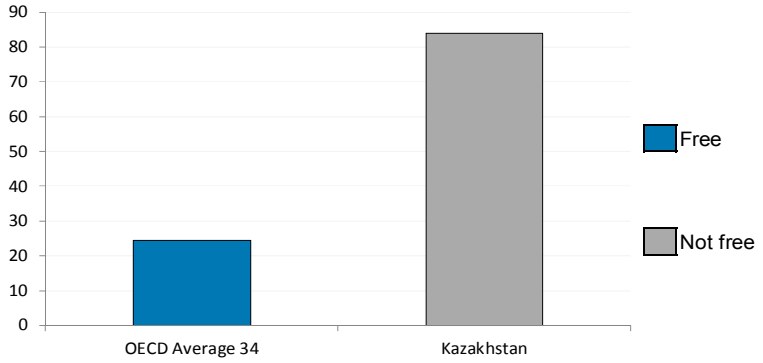
3. Propaganda of or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, class and clannish superiority, as well as the cult of cruelty and violence shall not be allowed.

The rights and obligations of journalists accredited in Kazakhstan are further regulated by the Law on Mass Media. According to the law, journalists have the obligation to research, request, receive and disseminate information, and are granted access to government agencies and officials, as well as private sector organisations, in the course of their duties to provide information to the public. The law also stipulates that journalists can have access to all government documents and materials, except for those that are considered a state secret. They also have the right to check the trustworthiness of the information they receive. The law further states that journalists must not "disseminate information that does not comply with reality".

At the beginning of 2016, the new Criminal Code (as the previous ones) established liability for both slander and insult. Article 130 defines slander as the "dissemination of information that is known to be false and that smears the honour and dignity of another person or undermines his reputation". Slander is punishable by a fine of up to 1,000 monthly estimated indicators or equivalent correctional labour or by restriction of freedom or imprisonment for a term of up to one year. The punishment increases to 2,000 monthly estimated indicators or equivalent correctional labour or by restriction of freedom or imprisonment for a term of up to two years if it is committed publicly or via the use of mass media. Article 131 defines insult as the "abasement of the honour and dignity of another person expressed in an indecent form". Insult is punishable by a fine of up to 100 monthly estimated indicators or equivalent correctional labour, by assignment to public work for a period of up to 120 hours. The same act, if committed publicly or using the mass media or information-communication networks, shall be punished by a fine of up to 200 monthly estimated indicators or equivalent correctional labour, by assignment to public work for a period of up to 180 hours. The Criminal Code also toughens criminal liability for inciting social, national, tribal, racial, class or religious hatred.

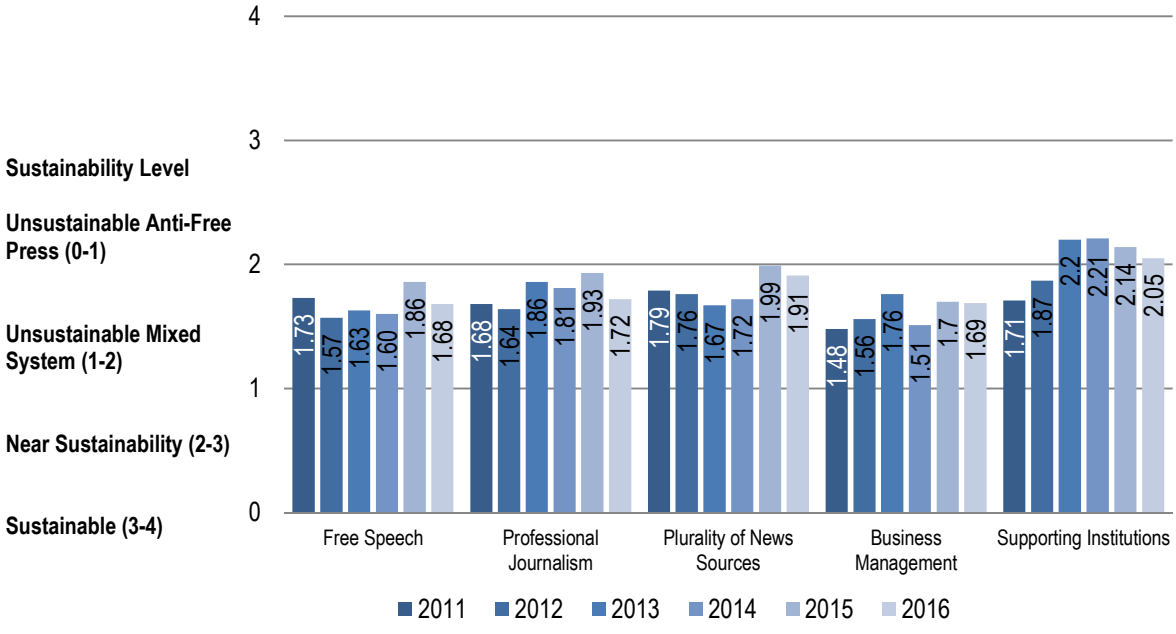
Although the law contains provisions for free speech and prohibits censorship, in practice the government of Kazakhstan restricts these rights. As shown in Figure 14.3, according to Freedom House, the press in Kazakhstan is rated as "not free". Similarly, Kazakhstan scores poorly on the IREX Media Sustainability Index (MSI), which ranks Kazakhstan as an "unsustainable mixed system" (for more information on both rankings, see Box 14.3).

Figure 14.3. Freedom of the Press Indicator, Freedom House, 2015



Source: Based on data from Freedom of the Press Indicator, Freedom House (https://freedomhouse.org/report/freedom-press/freedom-press-2016).

Figure 14.4. Media Sustainability Index – Kazakhstan



Source: Media Sustainability Index (2016), https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-full.pdf.pdf, (last accessed 5 October 2016).

The above-mentioned articles are used by the government to restrict press freedom and undermine reporting on corruption. Independent experts further noted journalists do not report on corruption due to the risk of conviction under the Criminal Code. According to Adil Soz, an independent non-governmental organisation that documents abuses of freedom of expression in Kazakhstan, 39 charges of slander under the Criminal Code have been laid against journalists and ordinary citizens between January and April 2016. Organisations for freedom of expression and protection of journalists, such as Freedom House and the Committee to Protect Journalists, as well as credible international news agencies, have reported on cases whereby journalists have been convicted under the Criminal Code for reporting on alleged corruption offences by public authorities. Recently, there has been a growing tendency in Kazakhstan to charge and convict individuals on the grounds of "inciting discord" because of the content of their social media posts (Human Rights Watch, 2016).

Furthermore, although censorship is forbidden under the Constitution, both censorship and self-censorship is common. In 2013, the main oppositional national newspapers were banned and in 2014, the government of Kazakhstan advanced legislation that strengthened its ability to control media content and shut down news outlets at will (Freedom House, 2015). Specifically, the legislation imposed new requirements under the existing Law on Emergency Situations, which can include forms of social unrest like mass protests. Article 16 (1.2) of the Law allows for such restriction on the territories of emergency: "establish[ing] control over mass media outlets by requiring mandatory samples of the print media and radio-, TV-materials". This provision does not explicitly allow the authorities to obtain materials prior to publication and approve their contents. However, the same article states that the procedure for application of this and other restrictions should be established by the Government. The Government established such a procedure in 2014 (Adilet, n.d.) which requires the media to submit their content for prior approval before publication or broadcasting. Publishing/broadcasting materials without prior approval results in suspension of the media outlet's activity (Freedom House, 2015).

Likewise, self-censorship in Kazakhstan is a growing problem. Based on interviews with key stakeholders, IREX found that "reporters, editors and owners agree that the problem is less censorship in the classic sense, but self-censorship by journalists and the owners of publications. […] Employees of certain government-funded publications and television channels [have noted that they] have a list of persons and subjects that are taboo" (IREX, 2016). The findings further noted that "some editors report that they are in constant contact with authorities regarding corrections of stories… [and some] editors have noted their fear of preparing stories on social and political issues", as reporting on such subjects can lead to complaints and potential lawsuits (IREX, 2016).

These cases, and others like them, have raised concern throughout the international community. In March 2016, the EU parliament condemned the deteriorating climate for the media and free speech in Kazakhstan, stating that "MEPs are deeply concerned about the climate for the media and free speech in Kazakhstan, where strong pressure on independent media outlets includes some being closed down, and news agency directors and journalists being detained, placed under criminal investigation and sentenced to prison" (European Parliament, 2016). Similarly, the former OSCE Representative on Freedom of the Media Dunja Mijatović initiated a petition in which she called on the Kazakh authorities to "immediately stop the practice of mass detentions of members of the media, a practice that has an enormous chilling effect on media freedom and safety of journalists in the country" (OSCE, 2016b).

Recommendations for reform

Kazakhstan should cease targeting journalists and media outlets under the Criminal Code for incitement of national or social discord, slander and insult. Kazakhstan could consider repealing criminal liability for libel and insult.

Kazakhstan should remove the requirement for media outlets to submit content to the authorities prior to publishing during a state of emergency.

Media ethics and professionalism

The media should ensure that they exercise their role as watchdog in a professional, ethical and accountable manner. The IREX standards for professional journalism include the requirements for reporting to be fair, well-sourced and objective, with journalists following recognised and accepted ethical standards. Possible ways to ensure ethics and accountability include codes of conduct, designed by the media themselves. Similarly, both journalists and editors should refrain from self-censorship and ensure that there is coverage of key events and issues, as well as the existence of quality niche reporting and programming (e.g. investigative, economics/business, local, political).

In their assessment of journalists' professionalism against these indicators, IREX found media professionalism in Kazakhstan to be low, with stories frequently based on one source of information and differing from reality. "Parquet journalism" or "lazy journalism" is a frequent practice: journalists do not engage in analysis, but simply describe events or publish press releases. IREX further noted that there is no general standard of journalistic ethics recognised by the entire community. A code of ethics was adopted by the Editors-in-Chief Club, but this was primarily seen as a gesture of support for the election campaign, rather than genuine commitment to ethics. Some civil society organisations also noted the lack of consultation surrounding the code. IREX criticised this lack of ethical standards as leading to "non-objective, low quality journalism and publications that promote propaganda and corruption among journalists" (IREX, 2016).

Recommendations for reform

As a first step towards increased professionalism, the code of ethics adopted by the Editors-in-Chief club could be updated - following a broad consultation - as required and adhered to by all editors. Likewise, a similar code of ethics could be developed, consulted and implemented by journalists. In order to protect media independence, the government should not be involved in the development or implementation of such a code.

Media ownership and transparency

A plurality of media owners helps to ensure integrity by reducing the risk of public opinion being dominated by a single actor. Relying solely on publicly-owned media makes it difficult to gauge whether reporting on the government, including reporting on government corruption, is unbiased. On the other hand, relying solely on privately-owned media may result in media 'moguls' who use their position to exert undue influence on reporters and the content of the news. Therefore, opting for and promoting a mix of both public and private media is the most sensible approach (Stapenhurst, 2000). Ideally, public and private media would each act as a check on the other, enabling them to perform the media's watchdog function together.

Similarly, transparency in media ownership is also a crucial component of integrity. For the public to evaluate the objectivity of specific media outlets and for the government

to evaluate media diversity, business interests of media owners should be transparent and accessible to all. If the media owner does business with the government, transparency is even more relevant to prevent any form of undue political influence. Media owners should therefore be required by law to disclose their business interests to an independent regulator or directly to the public in the form of a publicly available registry, but ideally to both. It is also important to establish beneficial owners of the media, especially in the broadcasting sector.

The Government of Kazakhstan noted that Article 6 of the Law on Mass Media grants mass media owners the right to act as editors, journalists, publishers, and/or distributors of media. It was further noted that a competition policy exists, which is implemented by the anti-monopoly authority. The role of the anti-monopoly authority is to produce proposals for the formation of state policy in the sphere of protection of competition and the restriction of monopolistic activity. The central and local executive bodies then participate in the implementation of state policy in the sphere of competition within their competences defined by this law and other legislative acts of Kazakhstan. State bodies, within their competence, are obliged to contribute to the development of competition and to not commit acts that adversely affect competition (Article 5 of the Law of the Republic of Kazakhstan dated December 25, 2008 No.112-IV).

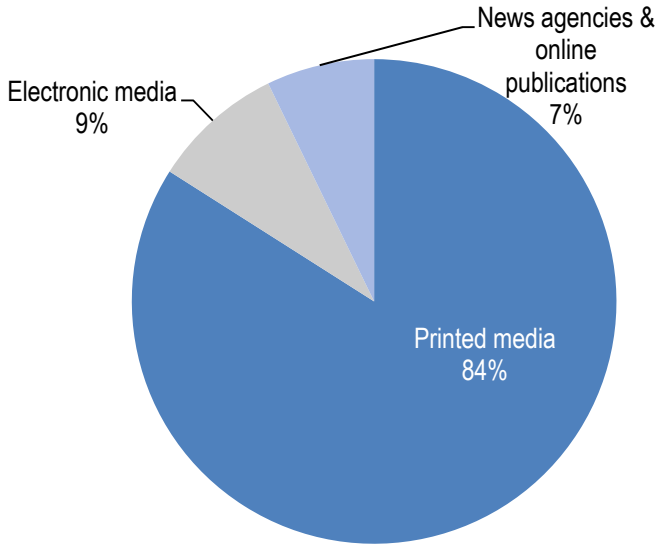
In practice, however, it is not clear how either the media law or the competition policy ensure independence from government control. The Law on Mass Media does not limit the ability of the government to create and own media resources, which means that the majority of media is government funded (IREX, 2016). Although funding is distributed on both a competitive and non-competitive basis, the process is neither transparent nor objective, frequently has negative impacts on competitiveness, misrepresents the audience and undermines editorial independence (IREX, 2016; Soros Kazakhstan, 2016). Independent experts in Kazakhstan confirmed this, noting that the financing of media outlets in Kazakhstan by the government and by the private sector is not transparent. The National Budget earmarks KZT 48 million for the media sector, and financing from the government comes in two different forms: 90% through direct government funding and 10 per cent from competitions and tenders announced by the ministries and city administrators (IREX, 2016; Soros Kazakhstan, 2016). While information on tenders and competitions is publicly available, and while media outlets who receive government funding are required by law to publically disclose the amount, independent media experts in Kazakhstan noted that finding the information is difficult in practice (Soros Kazakhstan, 2016).

Additionally, there is a lack of competition in the market for distribution and delivery of print press, as Kazakhstan's printing presses are government controlled (Freedom House 2015; IREX, 2016). There is also an absence of competition and limited development of modern technologies for production, distribution and delivery of information products, further undermining the media market (IREX, 2016).

The majority of media outlets are also partly or wholly owned by the state or by members or associates of the president's family, although there is some privately owned media (Freedom House, 2015). It is not evident whether media owners are required to disclose their business interests. Despite being privately owned, 95 per cent of private media relies on state subsidies due to a lack of advertising revenue (Freedom House, 2015; IREX, 2016; Soros Kazakhstan, 2016). Television is tightly controlled by the government, with broadcast transmission facilities under government oversight (Freedom House, 2015). There are over 1 000 daily and weekly newspapers in Kazakhstan, with the

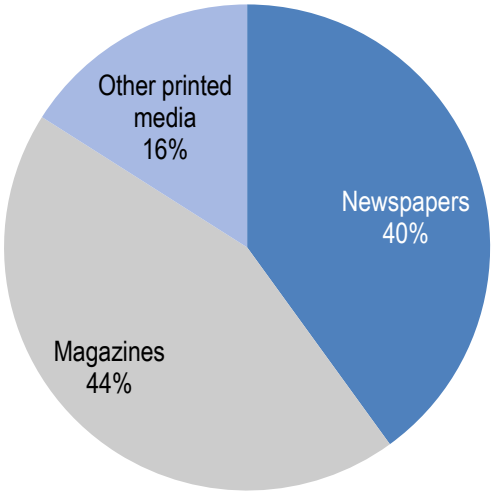
majority of them also run by the government or controlled by groups or individuals closely associated with the president. Not surprisingly, these newspapers do not publish critical content. The reach of government control has also extended to the internet in recent years, with authorities attempting to influence information disseminated on the web by blocking websites (IREX, 2016).

Figure 14.5. Overview of Active Media Outlets in Kazakhstan



Source: Ministry of Information and Communication of the Republic of Kazakhstan, Media, http://mic.gov.kz/en/kategorii/smi-3, (accessed 5 October 2016).

Figure 14.6. Overview of Press Media in Kazakhstan, by type



Source: Ministry of Information and Communication of the Republic of Kazakhstan, Media, http://mic.gov.kz/en/kategorii/smi-3, (accessed 5 October 2016).

Recommendations for reform

The Kazakh government could contribute to greater competition amongst media outlets by progressively liberalising the media sector and divesting government ownership of media outlets.

The disclosure of business interests of media owners to either an independent regulator and/or the public could be legislated and implemented to encourage transparency. Similarly, the disclosure of the beneficial owners of the media, especially in the broadcast sector, could be legislated and implemented to encourage transparency.

Action Plan and potential OECD support

Recommendations

- The media's access to information should not be excluded from the Law on Access to Information, as all that is related to access to information should be regulated in the same law. Kazakhstan could therefore consider removing the exclusion of media from the scope of the Law on Access to Information.

- Kazakhstan could consider clarifying the criteria for exceptions from access by introducing the harm and public interests tests. Kazakhstan could also clarify in the law the criteria for classifying information "for official use".

- The ability to request information anonymously is an important element for investigative journalism. Moreover, the identity of the requester has no bearing on the consideration of the request, as no explanation of motives or any other justification of the request should be required. The request should only indicate how (in which form and where) the reply should be provided. Kazakhstan could therefore consider including the right to anonymous requests in the law and developing the appropriate platforms for anonymous access.

- Kazakhstan should cease targeting journalists and media outlets under the Criminal Code for incitement of national or social discord, slander and insult. Kazakhstan could consider repealing criminal liability for libel and insult.

- Kazakhstan should remove the requirement for media outlets to submit content to the authorities prior to publishing during a state of emergency.

- As a first step towards increased professionalism, the code of ethics adopted by the Editors-in-Chief club could be updated - following a broad consultation - as required and adhered to by all editors. Likewise, a similar code of ethics could be developed, consulted and implemented by journalists. In order to protect media independence, the government should not be involved in the development or implementation of such a code.

- The Kazakh government could contribute to greater competition amongst media outlets by progressively liberalising the media sector and divesting government ownership of media outlets.

- The disclosure of business interests of media owners to either an independent regulator and/or the public could be legislated and implemented to encourage transparency. Similarly, the disclosure of the beneficial owners of the media, especially in the broadcast sector, could be legislated and implemented to encourage transparency.

Action Plan

Reform Areas	**Potential OECD Support**
Access to information for media	Share best practices from OECD on ATI laws, procedures and evaluation
Freedom of expression and removing measures that result in censorship	Share best practices from OECD member countries on promoting a vibrant and independent media
Competition in media sector	
Professionalisation of media sector	Support through training and sharing of good practices on ethics and integrity in the media sector

Note

1. See for example OECD (forthcoming), OECD Functional Review of Kazakhstan on Open Government.

References

Adil Soz (2016), *Violations of freedom of speech in Kazakhstan April, 2016* (Digest), www.adilsoz.kz/monitoring/show/id/118.

Adilet (n.d.) "*On approval of rules applying additional measures and temporary restrictions in emergency situations"*, http://adilet.zan.kz/rus/docs/P1400000035.

Committee to Protect Journalists (2016), "*1189 Journalists Killed since 1992",* www.cpj.org/killed/.

DFID (2015) "*Why Corruption Matters: Understanding Causes, Effects and How to address them",* www.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf.

Freedom House (2016), Freedom of the Press 2016 Methodology, https://freedomhouse.org/report/freedom-press-2016-methodology;

Freedom House (2015), *"Kazakhstan",* https://freedomhouse.org/report/freedom-press/2015/kazakhstan.

Global Right to Information (2016), "*Global Right to Information Rating (2016)",* www.rti-rating.org/country-data.

IREX (2016), *"Europe and Eurasia Media Sustainability Index: Kazakhstan",* www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-kazakhstan.pdf.pdf.

IREX (2015), Europe & Eurasia Media Sustainability Index 2015, www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2015-summary.pdf.pdf

Media Sustainability Index (2016), https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-full.pdf.pdf, (last accessed 5 October 2016)

Ministry of Information and Communication of the Republic of Kazakhstan, *Media,* http://mic.gov.kz/en/kategorii/smi-3, (accessed 5 October 2016).

OECD (2014), "*Anti-Corruption Reforms in Kazakhstan, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan",* OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf.

OECD (2011), The Call for Innovative and Open Government: An overview of country initiatives Publishing, http://dx.doi.org/10.1787/9789264107052-en.

RTI Legislation Rating Methodology," Global Right to Information Rating.

Soros Kazakhstan (2016), *Expert Interview: "We are for media free from state order", Diana Okremova*, http://en.soros.kz/press_center/experts/Diana_Okremova, (accessed 5 October 2016).

Stapenhurst, Rick (2000), The Media's Role in Curbing Corruption, World Bank Institute Working Papers,

United States Department of State (2015) "*Kazakhstan 2015 Human Rights Report",* www.state.gov/documents/organization/253177.pdf.

Whaites et al. (2015), *A Governance Practitioner's Notebook: Alternative Ideas and Approaches*, OECD Publishing, Paris, www.oecd.org/dac/governance-peace/governance/governance-practitioners-notebook.htm.

Chapter 15.

Criminalising bribery in Kazakhstan

Criminal liability for bribery is a necessary element of any comprehensive anti-corruption framework. The corruption of public officials undermines integrity of the public administration, affects social and economic development of the country, and erodes trust in public institutions. Criminalisation is one of the main tools to combat such serious wrongdoing as public corruption. This chapter provides an assessment of the actions taken to criminalise bribery in Kazakhstan. With a focus on the so-called active part of the bribery transaction (i.e. actions of the bribe-giver), this chapter analyses how the standards set by the OECD, United Nations and the Council of Europe's binding international treaties are implemented in Kazakhstan.

Role of bribery criminalisation in promoting integrity and combating corruption

Corrupting of public officials undermines integrity of the public administration, affects social and economic development of the country and erodes trust in public institutions. Criminalisation is one of the main tools to combat such serious wrongdoing as public corruption. Criminal law is effective in punishing corrupt behaviour and deterring future offences. Therefore, the criminal liability for bribery is a necessary element of any comprehensive anti-corruption framework.

Bribery is the most frequent act of corruption. It includes two parties (bribe-giver and bribe-taker) and may involve intermediaries and other third parties. This chapter focuses on the so-called active part of the bribery transaction, i.e. actions of the bribe-giver.[1]

Criminalisation of bribery is one of the main international standards in the area of anti-corruption. The OECD's, UN's and Council of Europe's binding international treaties[2] and reports of their associated monitoring mechanisms[3] set detailed standards and requirements on the effective criminal liability for bribery.

Relevant standards can be summarised as follows:

- **Offer/Promise/Giving**. The national law should explicitly criminalise the offer, promise or giving of an undue advantage (bribe) to a public official. Each element should be criminalised as a complete and autonomous active bribery offence. A complete offence means that an offer or promise of a bribe should not be treated as an attempt or preparation to bribe giving. The autonomous nature of such an offence means that offering or promising of an undue advantage does not require that the public official respond positively or even know of such offer or promise.

- **Directly or indirectly**. Active bribery should be expressly criminalised when committed either directly or indirectly, i.e. through intermediaries.

- **Third party beneficiaries**. For the bribery offence, it should not matter whether the undue advantage is intended for the official himself or another person (e.g. corrupt official's family member) or legal entity (e.g. political party with which the official is affiliated or an offshore jurisdiction company controlled by the official). This element should also be explicitly mentioned in the offence.

- **Undue advantage**. The definition of a bribe or an undue advantage should be sufficiently broad to include an intangible benefit (i.e. a benefit not constituting or represented by a physical object and when its value cannot be precisely measured) and a non-pecuniary benefit (i.e. that does not relate to or consist of money).

- **Definition of a public official**. The bribery offence should cover a broad range of public officials, both domestic and foreign. Domestic public officials include officials holding a legislative, executive, administrative, judicial, prosecutorial offices, officials in local self-government bodies, persons performing a public function, including for a public agency or a public enterprise, or persons providing public services, e.g. domestic arbitrators, jurors, notaries, forensic experts. It should be irrelevant whether that person is appointed or elected, holds a permanent or temporary position, is paid or unpaid, holds an auxiliary position or the one with administrative/managerial functions. The definition of a foreign public official is comparable with that of a domestic official with reference to a

foreign state. The definition should be autonomous, i.e. not dependent upon the foreign country classification. Foreign public officials should also include officials of an international or supra-national organisation or body, parliamentary assemblies of an international or supra-national organisation of which the country is a member, judges and officials of international courts, foreign arbitrators and foreign jurors.[4]

- **Other elements**. Active bribery is committed when the purpose of offering, promising or giving a bribe is to induce the official to act or refrain from acting in the exercise of his or her official duties. This covers situations when an official, in exchange for a bribe, acts outside his competence (duties, functions). The offence could also occur when the bribe aims to make the official carry out legal acts (e.g. when the company giving the bribe was the best-qualified bidder).

- **Sanctions**. Bribery should be punished with effective, proportionate and dissuasive sanctions. For natural persons, the statute should allow deprivation of liberty as a sanction and it should be sufficient to enable effective mutual legal assistance and extradition. Disqualification of persons convicted of corruption offences from holding a public office should also be available.

- **Confiscation**. National law should provide for mandatory confiscation of instrumentalities and proceeds of bribery. Such provisions should explicitly cover: confiscation of proceeds that were transformed into other assets or were intermingled with property acquired from legal sources (converted or mixed proceeds); value-based confiscation, which enables to confiscate proceeds that were hidden, destroyed, spent or transferred into possession of a bona fide third party; and confiscation of benefits that were derived from the bribery proceeds (e.g. profit derived from a business permit obtained through bribery).

- **The statute of limitations**. The statute of limitations applicable to the active bribery offence should allow an adequate period of time for the investigation and prosecution of this offence (at least five years). It should be possible to suspend and interrupt the statute of limitations in certain situations.

- **Effective regret**. Active bribery perpetrators are often released from liability when a person was extorted (forced under duress) to give a bribe or when a person reported about the bribe-giving to the law enforcement authorities. Such defence should not be automatic – the court should have the possibility to take into account different circumstances, e.g. the motives of the offender. It should be valid only during a short period of time after the commission of a crime and, in any case, before the law enforcement bodies became aware of the offence from other sources. The person who denounces the crime should be obliged to co-operate with the authorities and assist in the prosecution of the bribe-taker. This defence should not be applicable in cases when bribery was initiated by the bribe-giver. Importantly, the effective regret defence should not be applicable to foreign bribery, as there is no guarantee that the country of the public official would prosecute the bribe-taker.

- **Corporate liability**. Legal persons should be held liable for bribery committed in their interests because corruption offences are often committed for the benefit of

companies. Individual liability of company employees is not effective in deterring corporate wrongdoing. Corporate liability can be of criminal, administrative and/or civil nature. However, it should be a liability that is triggered by the criminal offence and it should be effective. For that, the corporate liability has to be autonomous (not dependent on detection, investigation, prosecution or conviction of the natural offender) and provide for dissuasive and proportionate sanctions, including monetary sanctions. Companies should be also punished for a failure to supervise or to implement adequate internal control that resulted in the bribery.5

- **Jurisdiction**. National jurisdiction to prosecute bribery should be sufficiently broad. It should allow, in particular, prosecution of bribery when committed on the country's territory by any person; prosecution of bribery committed abroad by the country's citizen (or permanent resident); or when the crime is related to an offence committed on the country's territory.

- **Investigative and prosecutorial independence**. Authorities in charge of investigation and prosecution of bribery should have an adequate level of independence from political and other undue influence. They need to have sufficient means (resources) and powers to pursue bribery, including high-profile cases involving senior public officials or foreign jurisdictions.

- **Investigative tools**. National authorities should be able to use a wide range of open and covert investigative techniques to investigate bribery. These include undercover operations, interception of telecommunications, forensic accounting and IT experts. Investigative agencies should have effective access to bank and other financial information.

- **International co-operation**. Effective international co-operation is crucial to successful prosecution of transnational bribery. National laws should set a clear legal framework for such co-operation, allow its different forms and provide efficient procedures. Relevant national authorities should have necessary resources.

Box 15.1. **OECD Anti-Bribery Convention**

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction. The Convention was signed in 1997 and entered into force in 1999. As of June 2016, 41 countries acceded to the Convention, including all OECD Member-States and seven non-OECD countries (Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia, and South Africa).

In 2009 the OECD Council adopted the Recommendation for Further Combating Bribery of Foreign Public Officials. The Recommendation was adopted by the OECD in order to enhance the ability of the States Parties to the Anti-Bribery Convention to prevent, detect and investigate allegations of foreign bribery and includes the Good Practice Guidance on Internal Controls, Ethics and Compliance.

The Convention establishes an open-ended, peer-driven monitoring mechanism to ensure the thorough implementation of the international obligations that countries have taken on under the Convention. This monitoring is carried out by the OECD Working Group on Bribery. The country monitoring reports contain recommendations formed from rigorous examinations of each country.

Monitoring is subject to specific agreed upon Principles and takes place in several phases:

- Phase 1 evaluates the adequacy of a country's legislation to implement the Convention
- Phase 2 assesses whether a country is applying this legislation effectively
- Phase 3 focuses on enforcement of the Convention, the 2009 Anti-Bribery Recommendation, and outstanding recommendations from Phase 2
- Phase 4 focuses on enforcement and cross-cutting issues tailored to specific country needs, and outstanding recommendations from Phase 3.

According to the 2014 enforcement data:

- 361 individuals and 126 entities have been sanctioned under criminal proceedings for foreign bribery in 17 Parties between the time the convention entered into force in 1999 and the end of 2014.
- At least 95 of the sanctioned individuals were sentenced to prison for foreign bribery.
- At least 110 individuals and 200 entities have been sanctioned in criminal, administrative and civil cases for other offences related to foreign bribery, such as money-laundering or accounting, in 8 Parties.
- Approximately 393 investigations are ongoing in 25 Parties to the Anti-Bribery Convention.
- Prosecutions are ongoing against 142 individuals and 14 entities in 12 Parties for offences under the Convention.

Sources: OECD (2014a);.OECD (2011); OECD (2010); OECD (2009a); OECD (2009b); OECD (1999);

Section II of this Chapter will analyse how the above standards are implemented in Kazakhstan.

Current status and critical analysis

Elements of active bribery

Kazakhstan has criminalised active bribery of public officials (Article 367 of the Criminal Code (CC) adopted in 2014 and enacted in most of its part on 1 January 2015). Relevant incriminations, however, fall short of the international standards explained above.

Box 15.2. **Article 367, Giving of a Bribe, Criminal Code of Kazakhstan**

"Giving of a bribe to the person authorised to perform state functions, or the person equaled to him, or the person holding a responsible state position, or an official, as well as to an official of a foreign state or international organisation, personally or through an intermediary, shall be punished with a fine in the amount of 20 times the amount of the bribe, or deprivation of liberty for up to three years, with the confiscation of property or without it, with the lifetime deprivation of the right to hold certain positions or carry out a certain activity. […] Notes.

1. The first time giving to a person mentioned in paragraph 1 of Article 366 of this Code, for previously committed legal action (inaction) by such person, of a gift in the amount or of value not exceeding two monthly calculation rates, if the committed action (inaction) was not conditioned by a prior agreement, shall not entail criminal liability.

2. The person who gave a bribe shall be released from criminal liability, if he was extorted by the person mentioned in paragraph 1 of Article 366 of this Code, or if such person [the bribe-giver] voluntarily reported about the bribe-giving to the law enforcement or special state authority."

The offer and promise of a bribe are not criminalised as complete offences. Kazakhstan refers to the inchoate (incomplete) offences – attempt and preparation – which in conjunction with active bribery offence are supposed to cover the offer and promise of a bribe. However, such an approach has generally not been accepted by the international monitoring mechanisms. The criminalisation of the offer and promise of a bribe as inchoate offences is not recognised as functionally equivalent for a number of reasons:

- preparation of a bribery offence triggers liability only with regard to offences of certain gravity
- attempted bribery takes place when the offence was not completed due to reasons beyond the person's control, thus excluding other situations (for example, when a person offers a bribe but withdraws it before receiving an unambiguous refusal from a potential bribe-taker)
- incomplete crimes receive lower level sanctions
- liability for promise or offer of a bribe is more effective than trying to cover the same acts through attempt because it does not require proof of intent to complete the offence

- prosecution of a promise/offer of a bribe as an incomplete crime does not cover all practical situations (for example, an oral promise or offer, which will be considered as demonstration of intent to give a bribe and without performance of minimal actions, which will constitute preparation for bribery or attempted bribery, will go unpunished).[6]

Giving a bribe in Kazakhstan does not explicitly include the situation when the benefit goes to the third party. However, the passive bribery offence (Article 366 CC) does include such an element. It should be included in Article 367 CC as well.

According to Article 366 CC, the bribe includes money, securities, other property, property rights or benefits of material nature. It is not apparent that this definition is applicable to active bribery as well. Even if it is, it does not cover non-pecuniary benefits (i.e. not relating to or consisting of money) and intangible benefits (no constituting or represented by a physical object and not having a value that can be measured). Examples of such benefits include: honorific titles and distinctions, scholarship, internship, promotion or horizontal transfer, positive media coverage, sexual relations, preferential treatment. Therefore, the criminal law of Kazakhstan still lacks a clear definition of the bribe and is not broad enough to comply with the international standards.

Recommendation for reform

Kazakhstan could align the offence of active bribery with international standards, in particular by covering all necessary elements, and extending the definition of a bribe to non-pecuniary and intangible benefits.

Definition of a public official

Article 367 CC defines bribe-takers as "persons authorised to perform state functions", "persons equalled to such persons", "persons holding responsible state position", "official", as well as officials of foreign states or international organisations. All these terms are defined in Article 3 CC. The new Criminal Code covers all national public officials, except for jurors (OECD, 2014b).

As to bribery of the foreign officials, the current Criminal Code does not define the term "officials of foreign state or international organisation". However, in November 2015, the Supreme Court of Kazakhstan in its normative resolution defined this term in line with the international standards, which is important for the proper criminalisation of foreign bribery. Kazakhstan should focus now on the enforcement of the relevant provisions.

Recommendation for reform

Kazakhstan could issue guidelines and train its investigators and prosecutors to promote enforcement of foreign bribery.

Sanctions and confiscations

The new Criminal Code of 2014 has slightly reduced sanctions for active bribery, especially for high-level officials. The new code also allows for release from imprisonment in case of minor or medium gravity bribery offences if the perpetrator provides compensation for damages. Limiting sanctions for bribery to financial compensation however may not be dissuasive and could allow corrupt officials to avoid harsh sanctions by paying off. This may negate other positive provisions on sanctioning included in the new code, e.g. calculation of the amount of the fine in relation to the

amount of the bribe, mandatory lifetime ban to hold public office in case of a bribery conviction, excluding bribery offences from the possibility to apply for conditional releases, and the non-applicability of statute of limitations to corruption crimes.

The new Criminal Code's revised provisions on confiscation are mostly aligned with international standards. The provisions enable confiscation of bribery instrumentalities and proceeds[7], value-based confiscation, confiscation of converted or mixed proceeds, and confiscation of benefits derived from the bribery proceeds. However, confiscation is still optional for some corruption offences, including for the basic offence of active bribery. There are also no sufficient guarantees of protection of *bona fide* third parties to whom criminal proceeds were transferred. Originally, the above-mentioned progressive provisions were supposed to be enacted starting from 2018, but this decision was revised and the new confiscation provisions were enacted starting from 2016.

The new Criminal Procedure Code of Kazakhstan (enacted on 1 January 2015) also includes a new mechanism of non-conviction based confiscation. It allows for confiscation of the proceeds of crime of the suspect/accused (or of a third party) if such suspect/accused is wanted internationally or the case was terminated for certain reasons (e.g. due to the expiry of the statute of limitations, death). Such a mechanism is new in the region and may be effective to forfeit assets of the bribery perpetrators who cannot be convicted for objective reasons. At the same time, such provisions may be prone to abuse and therefore should be balanced with additional guarantees securing the defendant's rights (e.g. through the publication of the information about relevant proceedings, the mandatory participation of the defendant's legal counsel unless he refused after being properly notified, etc.).

Duration of the statute of limitations for corruption crimes is not an issue in Kazakhstan, as the new Criminal Code excluded the possibility of the release from liability due to the expiration of the limitations periods for such offences. This is a progressive approach.

Recommendation for reform

Kazakhstan could strengthen protection of bona fide third parties in confiscation proceedings.

Effective regret and other exemptions from liability

As to the effective regret defence, relevant provisions in the Kazakh Criminal Code provide too broad possibilities for release from liability. While such provisions may be effective to encourage reporting of corruption and detecting passive bribery of public officials, effective regret provisions may be abused and undermine the deterrent effect of the criminal liability if due restrictions are not in place, especially taking into account that bribery often occurs upon the initiative of the bribe-giver. The Criminal Code of Kazakhstan does not provide for a period of time for when the reporting of bribery should happen or that such a report should come before the authorities found evidence on their own. In addition, the application of the effective regret defence is not excluded for foreign bribery, as required by international standards.

Another provision of the Criminal Code raises concern as well. Article 367 CC exempts from liability first time giving of a gift to a public official for previously taken legal action (inaction), if there was no prior agreement about such exchange and if the gift does not exceed the equivalent of about EUR 15. This provision is intended to cover low-value gifts presented as a gratitude to public officials after a public service was provided.

Such a provision contradicts international standards, as it allows money gifts and encourages the culture of corruption in public institutions, thereby undermining the understanding that no gratitude is required or expected for the provision of public services.

Recommendation for reform

Kazakhstan could review provisions on effective regret and other exemptions from liability to prevent their abuse and ensure that bribery offences are punished with criminal sanctions regardless of the amount of the bribe.

Liability of legal persons

Legal persons are not liable for active bribery, or for other crimes in Kazakhstan. Article 678 of the Code of Administrative Offences of Kazakhstan establishes liability of legal persons for "providing illegal remuneration, gifts, benefits or services" to public officials, but only if such action contains no elements of a crime. This contradicts international standards since corporate liability – even if it has an administrative nature – should cover criminal offences of bribery. Therefore, if the natural person commits the crime of active bribery on behalf of the legal person, the latter will not be held liable under current legal provisions. Furthermore, administrative sanctions in accordance with current law are not considered effective and dissuasive. Liability is not autonomous, and there is no liability for lack of supervision or control.

Recommendation for reform

Kazakhstan could introduce effective corporate liability for bribery with dissuasive and proportionate sanctions.

Law enforcement authorities

In 2011, the investigation of corruption-related criminal offences was exclusively assigned to the Financial Police of Kazakhstan. The latter has been reorganised several times since then. First, it was merged with the Civil Service Agency in 2014; then, just one year after in December 2015, the joint Agency for Civil Service Issues and Counteraction of Corruption was transformed into the Ministry of Civil Service Issues which includes in its structure the National Bureau for Countering Corruption (Anti-Corruption Service). The National Bureau for Countering Corruption kept the jurisdiction to investigate criminal corruption offences, including active bribery of public officials. In September 2016, yet another reorganisation took place: the Ministry was transformed back into the Agency for Civil Service Issues and Counteraction of Corruption with the National Bureau attached to it. The Agency was also directly subordinated to the President of Kazakhstan, instead of the Government. Such frequent institutional changes in the set-up of the authority in charge of bribery investigation raise concerns, as they may disrupt the functioning of the agency and diminish its capacity.

Prosecution of the corruption criminal offences is carried out by the Prokuratura of Kazakhstan. There is no anti-corruption specialisation within the prosecution service. However, the prosecution service includes the Department of Special Prosecutors who may investigate crimes directly and have a wide discretion to take over cases from any investigating authority, including corruption cases. The monitoring reports of the Istanbul Action Plan noted that such arrangements might affect the autonomy of the pre-trial investigation bodies, including at the time the financial police.

Investigative authorities in Kazakhstan possess a wide array of instruments to detect and effectively investigate corruption crimes. This includes various overt and covert investigative measures, such as access to financial information, including bank data (upon authorisation of the prosecutor or upon the court's or prosecutors' direct request). The former financial police bodies have developed an electronic analytical system to detect high-risk operations in the public sector (e.g. in public procurement) and uncover possible corruption crimes.

Recommendation for reform

Kazakhstan could raise capacity of law enforcement authorities to effectively investigate and prosecute bribery – in particular foreign bribery and corporate liability, apply new confiscation provisions. This could be achieved, in particular, by providing regular practical trainings on the modern methods of financial investigation, foreign bribery offence and corporate liability.

Mutual legal assistance in bribery cases

Kazakhstan can provide and receive international assistance in criminal cases based on the bilateral or multilateral treaties or, in their absence, based on a request and according to the mutuality principle. The Prosecutor General's Office acts as the central authority for mutual legal assistance at the investigative stage, and the Supreme Court of Kazakhstan for the adjudication stage of proceedings.

Kazakhstan is a Party to the United Nations Convention against Corruption and can therefore rely on its provisions as the basis for legal co-operation in criminal matters. International legal co-operation is regulated in detail by the Criminal Procedure Code, which provides for a wide range of instruments of co-operation, including video conferencing, search, arrest and confiscation of assets, and joint investigative teams. It is not clear if Kazakhstan will be able to provide assistance in the cases involving legal persons, as they are not held liable under the Kazakh law.

Recommendation for reform

Kazakhstan could review its law and practice to ensure that it is able to provide effective mutual legal assistance in corruption cases, in particular by using modern tools, such as joint investigation teams, videoconferencing, special investigative measures, assistance in foreign bribery cases and cases involving legal person, recovery of assets.

Public availability of enforcement data

Some criminal enforcement data are published online at the web-site of the special legal statistics committee under the Prosecutor's General Office.[8] The available data allow tracking the number of cases detected, investigated, prosecuted and adjudicated. Analysis of the trends and challenges based on such comprehensive statistics has not been conducted.

Recommendations for reform

Kazakhstan could ensure preparing and making public regular analysis of criminal statistics on detection, investigation, prosecution and adjudication of bribery offences to show trends and challenges in criminal law enforcement.

Action Plan and potential OECD support

Recommendations

- Kazakhstan could align the offence of active bribery with international standards, in particular by covering all necessary elements, and extending the definition of a bribe to non-pecuniary and intangible benefits.

- Kazakhstan could issue guidelines and train its investigators and prosecutors to promote enforcement of foreign bribery.

- Kazakhstan could strengthen protection of bona fide third parties in confiscation proceedings.

- Kazakhstan could review provisions on effective regret and other exemptions from liability to prevent their abuse and ensure that bribery offences are punished with criminal sanctions regardless of the amount of the bribe.

- Kazakhstan could introduce effective corporate liability for bribery with dissuasive and proportionate sanctions.

- Kazakhstan could raise capacity of law enforcement authorities to effectively investigate and prosecute bribery – in particular foreign bribery and corporate liability, apply new confiscation provisions. This could be achieved, in particular, by providing regular practical trainings on the modern methods of financial investigation, foreign bribery offence and corporate liability.

- Kazakhstan could review its law and practice to ensure that it is able to provide effective mutual legal assistance in corruption cases, in particular by using modern tools, such as joint investigation teams, videoconferencing, special investigative measures, assistance in foreign bribery cases and cases involving legal person, recovery of assets.

- Kazakhstan could review its law and practice to ensure that it is able to provide effective mutual legal assistance in corruption cases, in particular by using modern tools, such as joint investigation teams, videoconferencing, special investigative measures, assistance in foreign bribery cases and cases involving legal person, recovery of assets.

- Kazakhstan could ensure preparing and making public regular analysis of criminal statistics on detection, investigation, prosecution and adjudication of bribery offences to show trends and challenges in criminal law enforcement.

Action Plan

Reform Areas	**Potential OECD Support**
Revision of the criminal law with regard to bribery offences to align it with international standards	Advice on drafting relevant amendments
Raising capacity of law enforcement authorities	Organise trainings and workshops on foreign bribery, liability of legal persons, financial investigations, mutual legal assistance etc. for investigators, prosecutors, and judges Create guidance for investigators, prosecutors and judges on how to comply with the laws in place

Further reading

OECD (forthcoming), *"International Co-operation in Corruption Cases",* OECD Anti-Corruption Network for Eastern Europe and Central Asia, OECD Publishing, Paris.

OECD (2016), *"Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2013-2015",* OECD Anti-Corruption Network for Eastern Europe and Central Asia, OECD Publishing, Paris.

OECD (2015), *"Foreign Bribery Offence and its Enforcement in Eastern Europe and Central Asia",* OECD Anti-Corruption Network for Eastern Europe and Central Asia, OECD Publishing, Paris.

OECD (2014), *"Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials",* OECD Publishing, Paris.

OECD (2013), *"Specialised Anti-Corruption Institutions: Review of Models",* OECD Anti-Corruption Network for Eastern Europe and Central Asia, OECD Publishing, Paris.

OECD (2013), *"Manual on Investigation and Prosecution of Corruption Offences",* OECD Anti-Corruption Network for Eastern Europe and Central Asia, OECD Publishing, Paris.

OECD (2012), *"Typology on Mutual Legal Assistance in Foreign Bribery Cases",* OECD Publishing, Paris.

OECD/The World Bank (2012), *"Identification and Quantification of the Proceeds of Bribery: Revised Edition",* OECD/The World Bank.

OECD (2011), *"Anti-corruption Specialisation of Prosecutors in Selected European Countries",* OECD Anti-Corruption Network for Eastern Europe and Central Asia, OECD Publishing, Paris.

OECD (2009), *"Typologies on the Role of Intermediaries in International Business Transactions",* OECD Publishing, Paris.

OECD (2008), *"A Glossary of International Standards in Criminal Law",* OECD Publishing, Paris.

Notes

1. This chapter concerns only active bribery of a public official. It does not cover passive bribery of a public official, private-to-private corruption, trafficking in influence and other forms of corruption or related offences.

2. For example, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 17 Dec. 1997, 2802 U.N.T.S. I-49274 (OECD Anti-Bribery Convention); United Nations Convention against Corruption, 31 Oct. 2003, U.N. Doc A/58/422 (UNCAC); Council of Europe Criminal Law Convention on Corruption, 27 Jan. 1999, E.T.S. no. 173 (CoE Criminal Law Convention).

3. For example, the OECD Working Group on Bribery, the OECD Istanbul Anti-Corruption Action Plan, and the Council of Europe's Group of States against Corruption (GRECO).

4. A detailed overview of foreign bribery standards is available in OECD (2016), "Foreign Bribery Offence and its Enforcement in Eastern Europe and Central Asia".

5. A detailed overview of standards on corporate liability for corruption is available in OECD (2015), "Liability of Legal Persons for Corruption in Eastern Europe and Central Asia".

6. For additional details and references to the relevant positions, see: OECD (2013), "Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2009-2013", pp. 51-53, available at http://goo.gl/ZB1OuN; and OECD (2014), *Kazakhstan: Third Monitoring Round Report, Istanbul Anti-Corruption Action Plan*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, October 2014, pages 36-39, available at http://goo.gl/yGUpEo.

7. "Instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence. "Proceeds" means any economic advantage, derived from or obtained, directly or indirectly, through the commission of a criminal offence, including any savings by means of reduced expenditure derived from the crime. Proceeds may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits.

8. See for example http://service.pravstat.kz.

References

Council of Europe (1999), "Criminal Law Convention on Corruption", *Council of Europe Treaty Series*, No. 173, Strasbourg, 27 January, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f3f5.

Criminal Code of the Republic of Kazakhstan, 2014.

OECD (2016), *Foreign Bribery Offence and its Enforcement in Eastern Europe and Central Asia*, OECD Publishing, Paris, www.oecd.org/corruption/acn/ACN-Foreign-Bribery-Offence-Enforcement-ENG.pdf.

OECD (2015), *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, OECD Publishing, Paris, www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf.

OECD (2014a), Working Group on Bribery: 2014 Data on Enforcement of the Anti-Bribery Convention, www.oecd.org/daf/anti-bribery/Working-Group-on-Bribery-Enforcement-Data-2014.pdf

OECD (2014b), *Anti-Corruption Reforms in Kazakhstan: Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan*, OECD Publishing, Paris, www.oecd.org/corruption/anti-bribery/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf.

OECD (2013), *Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2009-2013*, OECD Publishing, Paris, www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf.

OECD (2011) convention on combating bribery of foreign public officials in international business transactions, www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

OECD (2010), Good Practice Guidance on Internal Controls, Ethics, and Compliance, www.oecd.org/daf/anti-bribery/anti-briberyconvention/44884389.pdf

OECD (2009a), Country Monitoring Principles for the OECD Anti-Bribery Convention, www.oecd.org/daf/anti-bribery/anti-briberyconvention/countrymonitoringprinciplesfortheoecdanti-briberyconvention.htm

OECD (2009b), Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, www.oecd.org/daf/anti-bribery/44176910.pdf

OECD (1999), Phase 1 country monitoring of the OECD Anti-Bribery Convention, www.oecd.org/daf/anti-bribery/anti-briberyconvention/phase1countrymonitoringoftheoecdanti-briberyconvention.htm

OECD (1997), "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", Paris, 17 December, www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

United Nations (2003), "United Nations Convention against Corruption", *United Nations Treaty Series*, Vol. 2349, No. 42146, New York, 31 October, p.41, https://treaties.un.org/doc/Publication/UNTS/Volume%202349/v2349.pdf.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(42 2017 18 1 P) ISBN 978-92-64-27287-3 – 2017

OECD Public Governance Reviews

OECD Integrity Scan of Kazakhstan

PREVENTING CORRUPTION FOR A COMPETITIVE ECONOMY

This series includes international studies and country-specific reviews of government efforts to make the public sector more efficient, effective, innovative and responsive to citizens' needs and expectations. Publications in this series look at topics such as open government, preventing corruption and promoting integrity in the public service, risk management, illicit trade, audit institutions, and civil service reform. Country-specific reviews assess a public administration's ability to achieve government objectives and preparedness to address current and future challenges. In analysing how a country's public administration works, reviews focus on cross-departmental co-operation, the relationships between levels of government and with citizens and businesses, innovation and quality of public services, and the impact of information technology on the work of government and its interaction with businesses and citizens.

This report looks at how to curb corruption and build a more competitive economy in the Republic of Kazakhstan by assessing four crucial factors: governance, prevention, detection, and prosecution and recovery. In its analysis, it draws on good international practices as well as OECD instruments and tools in 15 policy areas: regulatory governance, competition policy, public financial management, development co-operation, public sector integrity, public procurement, tax administration and transparency, export credits, lobbying, whistleblower protection, business sector integrity, criminalising bribery, civil society, and media. The report provides recommendations for improving Kazakhstan's laws and policies as well as effectively implementing them in each of these areas.

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264272880-en***.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.
Visit ***www.oecd-ilibrary.org*** for more information.

OECD*publishing*
www.oecd.org/publishing

THE LONDON BOOK FAIR WINNER
INTERNATIONAL EXCELLENCE Awards 2017
IN PARTNERSHIP WITH THE PUBLISHERS ASSOCIATION

ISBN 978-92-64-27287-3
42 2017 18 1 P

9 789264 272873