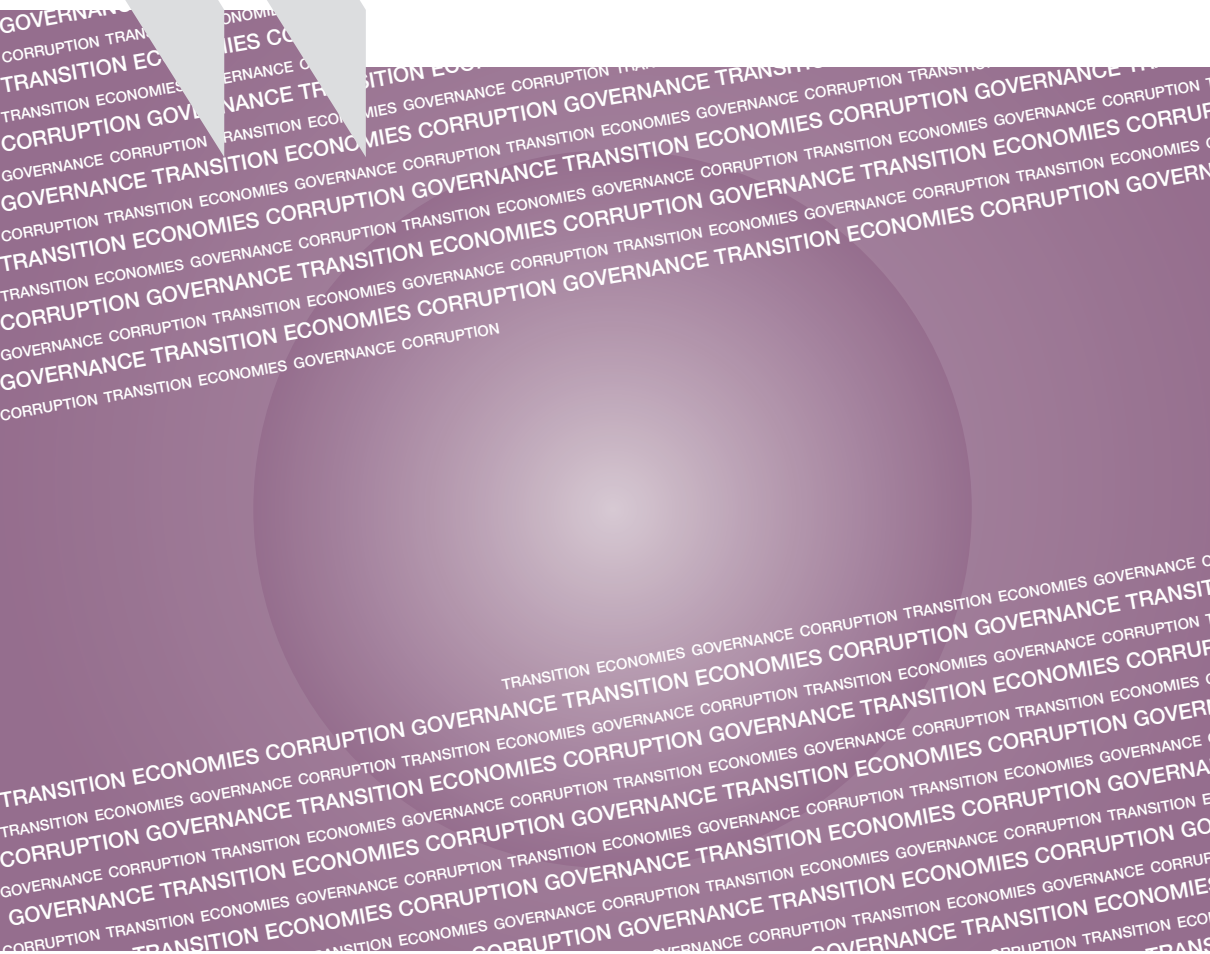
Fighting Corruption in Transition Economies

KAZAKHSTAN



OECD

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Kazakhstan

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КАЗАХСТАН

FOREWORD

The fight against corruption has only recently been placed on the international policy agenda, despite its long-known effects on democratic institutions and economic and social development. Today, many international organisations are addressing the global and multi-faceted challenge of fighting corruption. The main contribution by the OECD has been in the area of fighting corruption in international business transactions. The 1997 *Convention on Combating Bribery of Foreign Public Official in International Business Transactions,* together with the 1996 *Recommendations* and 1997 *Revised Recommendation of the Council on Combating Bribery in International Business Transactions* were adopted by all OECD countries and five non-OECD countries. It is a legally binding document, the implementation of which is systematically monitored. This convention has since become a powerful tool in controlling international bribery.

The *OECD Guidelines for Multinational Enterprises* and *Principles of Corporate Governance* are non-binding tools that help level the competitive playing field for companies and ensure the integrity of business operations. The OECD also addresses the demand side of bribery through its work on public governance, which includes *Recommendations on Improving Ethical Conduct in the Public Service, Guidelines for Managing Conflict of Interest in Public Service* and *Best Practices for Budget Transparency*. The *Support for Improved Governance and Management Programme (SIGMA)* helps the EU candidate and new member countries to reform their public administration, and to strengthen their public procurement and financial control systems. The OECD also fights corruption in aid-funded procurement and has endorsed the *Recommendations on Anti-Corruption Proposals for Bilateral Aid Procurement*.

The OECD supports several regional initiatives to promote anti-corruption actions in non-member countries. The Anti-Corruption Network for Transition Economies — one such initiative — assists the countries of Central, Eastern and South Eastern Europe, Caucasus and Central Asia in their fight against

corruption by providing a regional forum for exchanging experience and elaborating best practices. Ministers launched the Istanbul Anti-Corruption Action Plan in 2003 to provide targeted support to Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine. Implementation of this Action Plan includes reviewing the legal and institutional framework for fighting corruption, identifying its achievements and weaknesses, and proposing further actions.

The review was based on the OECD methodology for self-assessment and peer review. Self-assessment reports were prepared by the governments of Istanbul Action Plan countries. International teams of experts reviewed the reports and provided their assessment and recommendations. The recommendations were endorsed at review meetings, which brought together national governments of Istanbul Action Plan countries, other transition economies and OECD countries, international organisations, international financial institutions, as well as civil society and business associations involved in fighting corruption in the region. The recommendations contain country specific actions in areas such as strengthening anti-corruption policy and institutions, reforming anti-corruption legislation according to international standards, and implementing preventive measures by ensuring an ethical civil service and effective financial control.

This report presents the first systematic international anti-corruption review of Kazakhstan. The results, presented in this publication, provide an important guide for this country in its anti-corruption efforts. The recommendations provide a benchmark for regular monitoring of Kazakhstan's progress. This report also serves as a reference for other partners involved in fighting corruption not only in transition economies, but also in other regions of the world.

Carolyn Ervin
Director for Financial and Enterprise Affairs
OECD

ACKNOWLEDGEMENTS

The review of the legal and institutional framework for fighting corruption in Kazakhstan was carried out within the framework of the Istanbul Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Russian Federation, Tajikistan, and Ukraine. The self-assessment status report was presented by the government and country recommendations were endorsed in October 2005.

Carolyn Ervin, the OECD Director for Financial and Enterprise Affairs, and Patrick Moulette, the Head of the OECD Anti-Corruption Division, opened the review meeting. Olga Savran, OECD Anti-Corruption Division, provided the general management for the Istanbul Action Plan, including the review process. Goran Klemencic, legal advisor to the Istanbul Action Plan, took the lead in designing the review framework, co-ordinated the expert review team, chaired the review meeting and ensured effective discussions which resulted in the endorsement of recommendations by consensus of all the parties.

Andrei Lukin, Deputy Head of the Agency on Economic and Corruption Crimes (Financial Police) of Kazakhstan, led the Kazakh delegation during the October 2005 review. The delegation included Zhenis Makhmetov and Almaz Abilkasimov from the Agency on Economic and Corruption Crimes (Financial Police) and Zhambyl Seiitkul from the Embassy of Kazakhstan in France. The civil society of Kazakhstan was represented at the review meeting by Daniar Kanafin, Assistant Professor of the Kazakh State Law University and Timur Nazkhanov, Deputy Head of the Association of Entrepreneurs of Kazakhstan.

The team of review experts who examined the self-assessment report for Kazakhstan and developed the draft assessment and recommendations included:

Dennis Hawkins, American Bar Association, Central Eastern European Legal Initiative, USA

Ilze Krastina, Corruption Prevention and Combating Bureau (KNAB), Latvia

Olga Zudova, UNODC, Regional Office for Central Asia

Laura Stefan, Ministry of Justice, Romania

Zdenka Vidovic, Court of Audit, Slovenia

The review meeting, which examined the self-assessment report of Kazakhstan and endorsed the recommendations, brought together representatives from all Istanbul Action Plan countries, as well as selected OECD countries and transition economies (Bulgaria, Croatia, France, Italy, Latvia, Norway, Romania, Switzerland, Turkey, the UK and the US), international organisations (UNDP, UNODC and OSCE), civil society and business associations (ABA CEELI, BIAC, International Chamber of Commerce and Transparency International).

Lyndia Levasseur-Tomassi and Dianne Fowler, OECD Anti-Corruption Division, provided effective assistance to the review process and to the publication of this report.

The review was organised with the financial assistance of the Switzerland and of the EU.

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INTRODUCTION

Istanbul Anti-Corruption Action Plan

The Istanbul Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed at the 5th Annual Meeting of the Anti-Corruption Network for Transition Economies (ACN) in September 2003 in Istanbul. ACN Secretariat, based at the OECD Anti-Corruption Division, provides secretarial support for the Istanbul Action Plan. An Advisory Group was established to assist the Secretariat to develop, implement and assess the Work Programme of the Istanbul Action Plan; the Group brings together national coordinators from the Istanbul Action Plan countries, OECD members and donor agencies, international organisations, civil society and business groups.

The implementation of the Action Plan foresees several phases: review of legal and institutional framework for fighting corruption and endorsement of recommendations; implementation of the recommendations though national actions and international support; and review of progress in implementing the recommendations. The first phase – country review of legal and institutional frameworks for fighting corruption – has been conducted in 2004.

Country Reviews

The methodology of the review was based on the OECD practice of mutual examination, and took account of the experience of other organisations, such as the Council of Europe and its GRECO review programme. The Istanbul Action Plan review included the following elements: self-assessment carried out by the governments of examined countries; expert analysis of the self-assessment report by a team of peer reviewers; discussion of the assessment and recommendations developed by the experts during Istanbul Action Plan review meetings; and endorsement of country recommendations based on consensus.

To help the governments to carry out the self-assessment, the Secretariat developed Guidelines for Status Reports. The Guidelines included a series of

questions with comments, covering the following areas: national anti-corruption strategy; promotion of accountability and transparency (ethics in the public service; public procurement; financial control; tax and customs systems; money laundering; corporate accounting and auditing; access to information; private sector and civil society involvement; political party financing); criminalisation of corruption (definition and elements of offences including active and passive bribery and other corruption related offices; sanctions; statute of limitations; definition of a public official; defences and immunities; jurisdiction; confiscation of proceeds; corruption in private sector and liability of legal persons); specialised service; investigation and law enforcement (distribution of powers between law enforcement agencies; mandatory and discretionary prosecution; investigative capacities; organised crime and corruption); international aspects and mutual legal assistance.

The self-assessment reports were developed by the governments of the Istanbul Action Plan countries, based on the inputs of their national institutions, involved in the prevention and combating corruption. The reports were supported by extracts from various legal acts. These reports provided the main basis for country examinations. Additional publicly available sources of information were used as well, such as reports developed by other international organisations. Reports specially prepared for this review by the civil society groups provided an important input.

Teams of review expert teams were established for each country. The experts were nominated by the governments of Istanbul Action Plan countries (excluding the examined country), other transition and OECD countries, international organisations and civil society groups participating in the Action Plan. The expert teams studied the reports and other available information, and developed draft assessments and recommendations for each country. The draft assessment and recommendations were presented at review meetings, which brought together some 80 participants, representing all the main stakeholders. The review meetings provided an opportunity for the national delegations to present their self-assessment report, the review team presented draft assessment and recommendations, and all the participants debated final recommendations. The recommendations were endorsed by consensus.

Assessments and Recommendations

The recommendations include general assessment and recommendations, followed by concrete recommendations in three broad areas: national anti-corruption policy and institutions; legislation and criminalisation of corruption and transparency of the civil service. The assessment and recommendations

vary among the countries reflecting different national situations. While it is impossible to summarise the findings for all the countries, a number of common issues emerged during the review.

Anti-Corruption Policies and Institutions

Many countries have declared the fight against corruption a key priority in the broader framework of economic and social reforms. At the time of the reviews, Georgia and Ukraine were entering the stage of updating their existing anti-corruption strategies; Armenia has adopted its anti-corruption strategy; Azerbaijan and Tajikistan were in the process of elaborating and adopting such policy instruments. While recognising these achievements, the recommendations stress the need to improve the analytical basis for such programmes, including the need to study the patterns and trends of corruption in each country, to identify sectors and institutions where the risk of corruption is particularly high. The recommendations call for reinforcement of implementation measures, and a balanced approach of repressive and preventive measures. They further underline the importance of a participatory process for the elaboration and monitoring of anti-corruption programmes and strategies, which should involve all branches of public authorities, civil society and private sector. Finally, the recommendations stress the importance of effective monitoring and reporting mechanisms to support the implementation of anti-corruption policies.

Armenia, Georgia and Ukraine have established anti-corruption councils or committees responsible for the elaboration and/or monitoring of the implementation of anti-corruption strategies. The recommendations call to strengthen these bodies by ensuring their independence and high moral of their members, promoting public involvement in their work and providing adequate resources for their effective operations. Establishing a national multi-stakeholder anti-corruption council was recommended for Tajikistan. In addition to these policy bodies, it was recommended for all countries to establish specialised anti-corruption law-enforcement agencies, responsible for detection, investigation and prosecution, as well as for the coordination among other law-enforcement agencies involved in the fight against corruption.

The recommendations for all countries stress the importance of awareness raising among the general public and public officials, and training at all levels, including corruption-specific training for policy, prosecutors, judges and other law enforcement officials.

Legislation and Criminalisation of Corruption

The assessment of national anti-corruption legislation confirmed that all reviewed countries have developed core legislation criminalising corruption and corruption related crimes, but national anti-corruption legal standards fall short of international anti-corruption standards, such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The recommendations in the field of anti-corruption legislation require from all countries of the Action Plan to reform national legislation and to bring in line with the international anti-corruption standards, including the following recommendations:

- Criminalise offer and promise of bribe, non-material benefits and trading in influence, and bribery though a third person; clarify provisions about gifts to officials;

- Ensure adequate sanctions for corruption and corruption related offences, strengthen sanctions for active bribery;

- Ensure effective responsibility of legal persons for corruption;

- Ensure mandatory confiscation of proceeds, value based confiscation, and confiscation from third persons; consider introducing legal provisions for checking and seizure of unexplained wealth;

- Ensure sufficient statute of limitation for corruption and corruption related offences;

- Ensure that definition of a public official is broad enough to include all levels of power, state representatives on boards of companies, foreign and international officials;

- Reduce scope of immunities and categories of officials who benefit from them, clarify criteria for lifting immunities;

- Ensure effective international mutual legal assistance;

- Ratify the Council of Europe and the UN Conventions against corruption.

The recommendations call the countries to harmonise their anti-corruption legislation in order to ensure that the provisions of Laws on the Fight against Corruption, which were recently adopted in many countries, are adequately reflected in the Criminal Code and other relevant legislation, and that disciplinary, administrative and criminal corruption offences do not contradict each other, and do not leave legal gaps.

The reviews stressed that more information was needed to assess actual interpretation and implementation of the legal texts. The recommendations call the countries to evaluate continuously the application of their national anti-corruption legislation, and to develop it further based on the analysis of its effectiveness.

Transparency of Civil Service

During the review of corruption prevention measure in civil service, countries have reported about their efforts in developing regulatory frameworks in such areas as merit-based civil service and management of conflict of interest; transparency and fairness in public procurement and taxation; financial control and anti-money-laundering; political party finance; and public access to information. The recommendations propose further reforms in these areas, including the following:

- Introduce unified merit-based system for appointments and promotion in the civil service, which would, to the extend practicable, limit discretional decisions;

- Elaborate and disseminate comprehensive practical guides for public officials on corruption, conflict of interest, ethical standards, sanctions and reporting of corruption; provide training on anti-corruption to officials; introduce codes of conduct for civil servants, particularly in the agencies where the risk of corruption is high; consider the introduction of an ethics supervision body/commissioner;

- Ensure effective implementation of Conflict of Interest legislation, including strengthening of monitoring of its implementation, empowering relevant institutions to verify the accuracy of submitted declaration of assets, sanctions for failure to comply with requirements; Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government;

- Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment

when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of "whistleblowers"; improve the system of internal investigations in cases of suspected or reported corruption offences;

- Introduce measures to limit discretion in public procurement; introduce eligibility criteria to exclude from bidding companies, which had been convicted for corruption; promote electronic contracting; enhance transparency of procedures and publishing public procurement information;

- Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials;

- Pursue the implementation of the FATF recommendations; adopt and enact anti-money laundering legislation; establish and strengthen Financial Intelligence Units; build expertise necessary for financial investigations in corruption-related cases, ensure coordination and exchange of information with financial control/audit institutions;

- Consider establishing an office of an Information commissioner to receive appeals under the Law on Access to information; limit discretion of officials and the scope of information that could be withheld; enhance cooperation with civil society.

Implementation of Recommendations

While these recommendations are not legally binding, they represent the commitment of the participating states, and are expected be implemented as such by their governments. Implementation of these recommendations will not only support the objectives of the Istanbul Anti-Corruption Action Plan, but will also help the countries to meet their legally binding obligations under the United Nation's Convention on Corruption and the Council of Europe's Criminal Law Convention on Corruption.

Besides, the results of the reviews provide a framework for launching the second phase of the Istanbul Action Plan, which will focus at the regular monitoring of national actions to implement the recommendations and at thematic reviews on selected priority issues; they will also provide a benchmark for review of implementation of recommendations, planned under the third phase of the Action Plan.

Following the introduction, the book presents the recommendations. Next section contains the full text of the national self-assessment report. The Istanbul Action Plan is presented in the Annexes. This publication was compiled by the OECD Secretariat; it is available in English and Russian languages. For more information, please refer to the web site of the Anti-Corruption Network for Transition Economies/OECD www.oecd.org/corruption/acn.

SUMMARY ASSESSMENT AND RECOMMENDATIONS

Endorsed on 21 October 2005

National Anti-Corruption Policy, Institutions and Enforcement

General Assessment and Recommendations

According to the draft Status Report, Kazakhstan is aware that corruption and weak public administration have a corrosive impact on socio-economic development, building of market economy and promotion of investment, and are detrimental to political and public institutions in a democratic state. Consequently, the country is committed to develop its anti-corruption strategy taking into account best domestic and international practices. Transparency International's Corruption Perception Index placed Kazakhstan at the 122th place (in the list of 145) in 2004.

Since early 1990's Kazakhstan has been undergoing a reform process of its economic and political system and has encountered serious problems of corruption in various spheres, including bodies of state authority and administration, the business and financial spheres. Different law enforcement bodies have been identified by surveys as especially corruption prone sectors; reasons cited in this respect include: a lack of public oversight over the law enforcement sector, low salaries and gaps in mechanisms of screening and recruitments of employees.

However, it has to be recognised that in recent years the country has made significant improvements in building and strengthening its anti-corruption institutions and the legal framework in this area. According to the Status Report the fight against corruption remains one of the highest priorities of state policy.

In 1998 Law No. 267-1 "On the Fight against Corruption" was adopted. This law presents a rather comprehensive legal document addressing the problem of corruption. It provides for the various actions aimed at prevention, detection, investigation and suppression of corruption-related offences, remediation of its consequences; it determines core principles of anticorruption

efforts, defines categories of corruption-related offences, and the main conditions for administrative liability. The law defines corruption as the "obtaining, illegally, either personally or via intermediaries, of material benefits and advantages by the persons performing state functions or person of equivalent status, where these persons use their official powers and opportunities associated with such powers, for obtaining material benefits, as well as tampering of these persons by way of unlawful mediation of the above benefits and advantages by individuals and legal entities."

With aim to strengthen the implementation of the mentioned Law, a State Programme for the Fight against Corruption for 2001 – 2005, has been approved by a Presidential Decree in 2001. The Programme envisages the creation of political and socioeconomic conditions aimed at reducing the level of corruption, strengthening of the legal framework for the fight against corruption, reducing the shadow economy as a source of corruption, creation of a transparent mechanism of regulation of the economic sphere, strengthening law-enforcement and judicial authorities, advocacy of the state anticorruption policy, and enhancing of international cooperation in the fight against corruption.

Importantly, the Programme -- as a strategy document – has been complemented by the Action Plan of Implementation of the State Programme for the Fight against Corruption for 2001 – 2005 approved by the Government in April 2001. The Action plan lists actions related to preventive and repressive measures against corruption.

As a follow up to the mentioned documents, a Presidential Commission on Corruption and Enforcement of the Civil Service Ethics was established in 2002. The Commission is a consultative and advisory body under the President. Apart from advisory functions, the Commission has analytical tasks to monitor the implementation of the mentioned documents, and is empowered to propose disciplinary sanctions against public officials.

To strengthen implementing the anticorruption strategy at a local level, the Government has in year 2002 approved a model statute of Disciplinary Councils, prescribing the status, responsibilities, organisation, and order of activity of disciplinary councils. Such Councils have been established in all regions. A disciplinary council is a consultative and advisory body, whose activity is coordinated by the Agency for Public Service Affairs of the Republic of Kazakhstan. The main functions of the Council include issuing recommendations on imposing disciplinary actions against public servants for violating the rules of ethics or committing corruption offences; elaborating

recommendations and proposals aimed at strengthening compliance among public service with anti-corruption legislation and ethical standards.

On the law enforcement side, the main anti-corruption law enforcement body is the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruptive Crime. The Agency was created in 2003 on the basis of the former Financial Police. Apart from operational law enforcement powers, the Agency has coordinative, analytical and preventive functions for all major economic, financial and corruption/related crimes; it is also responsible for international cooperation in this field. The Agency's personnel are subject to special screening and recruitment procedures and has its own training academy. It is noteworthy that the Agency has the features of a comprehensive multipurpose anti-corruption body going beyond only the law enforcement functions. Investigative tools afforded by law to the Agency seem to be broad and include special investigative means. Contrary to the specialisation on detection and investigative level, there is no specialisation of prosecutors representing corruption cases in courts.

According to official statistics for 2004, a total of 239 public servants have been convicted for corruptive offences in Kazakhstan, including 44 officers of the Interior Ministry, one official of the prosecution authorities, 3 officials of the judicial bodies, 4 officials of the financial police, 11 officials of the tax authorities, 6 officials of the customs authorities, 5 judges, 3 officials of the national security committee, and 7 regional administrations of various levels. While these numbers are not insignificant, in the light of the high level of Corruption Perception Index in the country, the number of persons, actually convicted for corruption related criminal offences in the last years could be perceived as low.

Specific Recommendations

1. At the end of the State Programme for the Fight against Corruption for 2001 – 2005 and the Action Plan conduct a comprehensive in-depth evaluation of its implementation and impact; elaborate a new program for the next five-year term. The new Program and Action Plan should build on the lessons learned from the current Programme, an analysis of the patterns of corruption in the country and should identify and address sectors vulnerable to corruption. It should propose focused anti-corruption measures or plans for selected institutions have a balanced approach of repressive and preventive measures and should be drafted in consultation with main stakeholders active in relevant areas (Civil Society, Business environment

representatives, etc.). Ensure that the adopted programme and action plan is widely disseminated within the civil service and among general public.

2. Design a institutional monitoring and reporting mechanism for the Programme, possibly building on the existing Presidential Commission, and ensure transparency and unrestricted participation in the monitoring process of the Civil Society in general and of associations with experience in the area of anti-corruption, as well as the private sector / business community.
3. Monitor the activities of the Disciplinary Councils with the view to improve their overall performance.
4. Further strengthen human and material resources and capacities of the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruptive Crime and ensure that within the Agency in addition to specialized anti-corruption investigators adequate additional personnel have expertise in financial control matters.
5. Ensure that prosecutors dealing with corruption cases have adequate specialised knowledge in anti-corruption prosecution. Consider introducing a specialisation of prosecutors bringing corruption cases in courts.
6. Increase analytical capacities of the relevant law enforcement agencies and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions. Review and revise the cooperation procedures among various institutions involved in preventing and fighting corruption with a view to increase the efficiency of their activity, subject to proper checks and balances and due regards to human rights standards.
7. Consider devising and implementing corruption-specific joint trainings for law enforcement (Agency), prosecutors, judges and other relevant officials.
8. Continue to conduct and publish further surveys and relevant research, based on transparent, internationally comparable methodology, to obtain more precise information about the scale of corruption in the country, and in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.
9. Continue to conduct awareness raising campaigns and organize training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and

prevent corruption, and on the rights of citizens in their interaction with public institutions.

10. Ratify the UN Convention against Corruption.

Legislation and Criminalisation of Corruption and the Related Money-Laundering Offence

General Assessment and Recommendations

The Criminal Code of the Republic of Kazakhstan (hereinafter: CC) includes the main criminal offences relating to corruption. In addition to the two corruptive offences of passive (Art. 311) and active (Art. 312) bribery other corruption-related offences in the CC:

- Art. 176 (part 3 (d)), Misappropriation or Embezzlement of Entrusted Property
- Art. 193 (part 3 (a)), Legalisation of Illegally Gained Money or Other Property
- Art. 209 (part 3 (a)), Economic Contraband
- Art. 307. Office Abuse
- Art. 308. Power or Office Abuse
- Art. 310. Mediation in Bribery
- Art. 314. Official Forgery
- Art. 315. Official Omission
- Art. 380. Power Abuse, Exceeding Power or Omission

While more information is needed as to the actual interpretation and implementation of these legal texts, it seems that the definitions of bribery offences fall short of international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

For instance, the subject of the bribe offence is limited to material benefits, and thus would not extend to non-pecuniary and non-tangible benefits. Offers or promises of a bribe as well as solicitation of a bribe are only criminalised under the 'attempt' provisions. Bribery for the benefit of third persons is not covered by the provisions of the CC. The CC does provide for dissuasive sanctions including prison sentences ranging up to 12 years for passive bribery with mandatory confiscation of property. However, the sanctions for active bribery – a fine or an imprisonment for up to three to five years are too low to be dissuasive. The statute of limitation for the lower level of active bribery appears to be only two years, which is not adequate, given the concealed nature of corruption. The CC's definitions of public officials subject to incriminations under corruption offences are confusing and require clarification. Confiscation of property as an additional punishment for corruption cases is discretionary in some cases and mandatory in others. The existing legislation does not provide for criminal liability of legal entities, and there is currently no administrative or civil liability of legal entities for corruption-related cases.

Kazakhstan has criminalized active and passive bribery in the public sector in its CC. Art. 311-313 establish as criminal offences (i) "receiving a bribe for action or inaction for the benefit of the briber or the persons represented by him/her, as well as for patronizing or connivance in the course of his/her official duties", (ii) "giving a bribe", and (iii) "mediation in bribery".

Art. 311 of CC only criminalizes the receipt of a bribe and does not refer to the act of solicitation and Art. 312 is limited to the actual giving of a bribe, not the offer or promise of a bribe. Accordingly, both fall short of international standards requiring criminalization of "solicitation", "promising" and "offering" of a bribe. However, attempts of active and passive bribery are punishable under the CC, which might de facto cover some instances of solicitation, offering, and promising provided for under international standards.

Furthermore, Art. 311 characterizes a bribe as something in the "form of money, securities, other property, the right to property, or benefits of a material nature." Art. 312 does not include such a characterization and merely refers to a "bribe." There appears to be no other definition of bribe in the CC. Accordingly, the bribe is limited to material benefits, and don't cover non-material advantages as a type of undue advantages stipulated by the international standards. On the other hand Art. 13 (Corruption Offences Involving Unlawful Receipt of Benefits and Advantages) of the Law No. 267-1, dated 2 July 1998, "On Anticorruption", list a number of acts which constitute unlawful receipt of benefits and advantages including: accepting any remuneration in the form of money, services and in any other forms from

entities; accepting gifts or services in connection with performance of the public duties, acceptance of invitations to travel abroad for tourist or medical and recreation or other purposes; and enjoying extralegal advantages when receiving loans, credits, purchasing securities, immovable or any other property. However, this provision, which does include some elements of non-material advantages, cannot be used for the purposes of criminal prosecution.

While both Art. 311 and 312 of the CC criminalize the receipt and giving of bribes through intermediaries, these Art. do not criminalize situations when the bribe is for the benefit of third parties. Only receiving/giving directly or indirectly of a bribe by/to the official or the persons equated to the official is covered by the CC, while undue advantages for "another person or entity", as it is required by international standards.

As for sanctions, both Art. 311 and Art. 312 of provide a range of criminal penalties depending on the status of the official and aggravating factors. The disparity between the greater imprisonment sanctions for passive bribery - from up to 5 years to up to 12 years – active bribery - from up to 3 years to up to 5 years should be considered. While public officials should be held to a high standard because of their position, those individuals and groups that seek to corrupt them are equally dangerous to a civilized society. The disparity in sanctions might not provide the kind of effective, proportionate and dissuasive sanctions required by international standards.

Definition of the public officials are provided for in various laws: Law "On Public Service", CC, and Art. 3 of the Law No. 267-1, dated 2 July 1998, On Anticorruption. For the purposes of criminal liability, an official is recognised as a person permanently, temporarily or on special authority exercising organisational and management or administrative functions at public authorities. Both Art. 311 and 312 include the following as individuals who are covered by the bribery statutes - a person authorized to perform state functions, or by a person equated to such person; an official; and a person holding a responsible civil position. For each group of persons there are different and ascending level of sanctions based on the category. In relation to foreign public officials only an offence of giving a bribe is criminalised, while bribery of officials of international organisations is not criminalised.

The legislation provides for obligatory confiscation of property obtained as a result of committing any criminal offence and of instruments of any crime, as well as objects of two specific offences -- illegal entrepreneurship and smuggling. It seems the law does not provide for confiscation of objects of the bribery; although reportedly in practice objects of the bribery are always seized

and confiscated. Section 1 of Art. 18 (Collecting Unlawfully Received Property or Value of Unlawfully Received Services) of the Law "On the Fight against Corruption" states that in all cases of unlawful enrichment as a result of corruptive offences the unlawfully gained property is subject to foreclosure. Value-based confiscation, when original proceeds cannot be confiscated, is not clearly provided for in the legislation, the same seems to be the case with confiscation from *mala fidei* third parties. The CC includes confiscation as an additional penalty that is a different measure from the confiscation of proceeds from crime as required by the international standards.

Active and passive bribery in the private sector is criminalized by the Art. 231 of the CC, although the subject of bribery is limited only to material benefits, and the promise and offering of a bribe is not criminalized.

The concealment stipulated by the UN Convention against Corruption is not fully criminalized. It is partially covered by Art. 28 of the CC (promise to conceal a property obtained as a result of committing any offence which was given in advance); and Art. 363, which criminalizes the "covering up" of "grave" or "especially grave" offences. "Covering up" includes, inter alia, concealment of the mentioned property, which was provided after a commitment of an offence. CC defines "grave offences" as offences committed intentionally which are punished from 5 to 15 years of imprisonment, and "especially grave offences" – for more than 12 years of imprisonment accordingly. However, many corruption-related offences do not fall under the definition of grave and especially grave offences. Consequently, the concealment of the said offences is not criminalized.

Legalization of money or other property knowingly derived from an illegal conduct is criminalized as a separate offence under Art. 193 of the CC. The Art. doesn't cover all elements of the "money laundering offence" stipulated by the 1988 UN Convention and other international instruments. According to the national authorities, in 2004 46 criminal cases were instituted under this Art. compared to 14 cases in 2003. However, according to the representatives of law-enforcement and judicial bodies, there have been no convictions under this Art.

The Decree of the President of Kazakhstan from 14 April, 2005 requires the General Prosecution Office to prepare and submit a draft law on combating money laundering and on creation of Financial Intelligence Unit under the General Prosecution Office in the last quarter of 2005. The prepared draft "Law on Combating Money Laundering and Financing of Terrorism", as of 13 June 05, does not define "the money laundering" in line with the international instruments.

The criminal legislation does not envisage criminal responsibility for legal entities for participation in the offences, including corruption offences. The Code on Administrative Offences (Art. 534) has a provision, which states that "giving of illegal material benefits, gifts or services by legal persons to public officials, in case these actions do not contain the elements of a criminal offence, is punished by fine, and if repeated within a year, is punished by seizing the activity of the legal person". It is, though, unclear who is "punished by fine" a legal person or the physical person who is the head/director of the legal person. It seems that monetary sanctions and/or civil liability for legal persons for the corruption offences committed by representatives and/or employees of legal persons are not clearly stipulated by laws either.

Immunities, which are given to the President, Members (Deputies) to Parliament and judges, seem to be balanced, although this issue has to be assessed further. Judges can not be detained or arrested, subjected to administrative measures imposed by judicial bodies, subjected to criminal proceedings without the permission of the President based on the decision by the Supreme Judicial Council, and in certain cases without the permission of the Senate of the Parliament of Kazakhstan except for the cases when "they are caught red-handed" and committing grave crimes. The same kind of immunity is enjoyed by the Members of the Parliament, except for the fact that the permission is required from the relevant Chamber of the Parliament.

Extradition of nationals of Kazakhstan is not allowed, unless it is otherwise stipulated in international treaties (Art. 11 of the Constitution). According to available information, Kazakhstan has not signed any treaty that would provide for extradition of nationals. Nationals are to be tried in accordance with the criminal legislation of Kazakhstan if not extradited to another state on the basis of nationality. Extradition and MLA are possible on condition of reciprocity. Article 13 of the Constitution provides for "the right of persons to defend their rights and freedoms in court". The Criminal Procedure Code stipulates that a final decision on extradition is taken by General Prosecutor or duly empowered prosecutor and doesn't provide for a procedure of judicial appeal of the said decision. Accordingly, in practice judges do not consider these cases.

Specific Recommendations:

11) Harmonise and clarify relationships between violations of the Criminal

12) Ensure effective measures for the provision of international m Code and the Law on the Fight against Corruption.

13) Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards and criminalise trading in influence.

14) Harmonise the concept of "official" from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials elected or nominated to a representative body, as well as persons representing the state interests in commercial joint ventures of on board of companies.

15) Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.

16) Consider changing the existing confiscation regime to allow for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

17) Ensure that the immunity granted by the Constitution to certain categories of public officials.

Transparency of the Civil Service and Financial Control Issues

General Assessment and Recommendations

The Law of 23 July 1999 "On Civil Service" foresees two categories (types) of public officials: political public official and administrative public official. Hiring of administrative officials for the public service is carried out as a result of an open competition, in order to ensure that the selection is made on the basis of objective criteria – such as merits during the service, moral qualities and professional skills. Administrative official can be transferred to another state post without opening an open competition.

Hiring or election of a political official to the post is organised without an open competition for this post. Besides, the Law foresees that the political state official, i.e. a deputy of the parliament, deputy of maslkhat, as well as judges, whose duties at the current public post have expired, and in case this political official meet all the requirements of the post of an administrative public official, has the right to apply for the post of an administrative official without a

competition. The provision of such an except in the Law gives rise to a suspicion that the political influences over the state services cannot be prevented; it also suggests that a system of hiring of civil servants and other public officials that would be based on the merits and professional experience of the persons cannot be created, maintained and strengthened, as a former political public official can be appointed to a vacancy of an administrative public official without an open competition, which does not correspond to the requirement of equal treatment of persons who meet the requirements of the position and apply for it.

Besides, the system of staff reserve for the civil service in practice can create an unnecessary obstacle for hiring to the state service of potentially highly qualified candidates, as the condition for being included into the staff reserve can be rather arbitrary (for instance, the participants of a competition, which did not receive a positive conclusion, can be included in the staff reserve based on the recommendation of the competition commission, but the law does not contain criteria for providing such a recommendation to the participants of the competition); the existence of the reserve poses a risk that qualified workers may stay outside this reserve due to the reasons unrelated to their professional qualities.

Art. 16 of the Law on Civil Service is also unclear, as it provides for exceptions for administrative public officials, who have been employed by state bodies not less than 20 years; it is impossible to analyse if such persons can be promoted to higher positions, or if they comply with the requirements of their current positions without an attestation.

It is noteworthy, that a Code of Ethics for State Officials of Kazakhstan was adopted on 3 May 2005 (Rules of service ethics of state servicemen). However, it remains unclear from the report, if there are separate codes of behaviour for the professions, which are particularly vulnerable for corruption (officers of policy, prosecutors and judges, tax inspectors, and others).

Kazakhstan has introduced a system of declaration of assets for all the persons, who are either candidates for public positions, or candidates for positions related to the execution of public and equal functions, holders of public positions, their spouses, as well as the persons fired from the state service due to negative reasons. However, it remains unclear, if such declarations contain all information, which is necessary to control the conflict of interests (the question is if the state officials are required to declare property and material values, which they do not own but are in their use). It also remains unclear if the tax bodes can execute sufficient control of the declared information in order to

be able to determine a possible conflict of interest or a violation of the limits for compatibility of positions. Art. 9 of the Law on the Fight against Corruption foresees that all the data provided to the tax bodies, mentioned in the said Art., i.e. information contained in the declarations of the state officials, presents service secret. This means that the mass media and other persons do not have access to the declarations of state officials. Treatment of all information contained in the declarations of state officials as service secret does not facilitate openness in the activities of state officials and their accountability for the society; it does not allow the society to take part in the activities of the state officials and to control their activities.

In order to prevent conflict of interest situations for the state officials, the Law on Civil Service and the Law on the Fight against Corruption foresee several prohibitions and limitations (for example, prohibition to carry out any other paid work except for education, scientific and other intellectual activity, prohibition to joint work of close relatives, etc.), which are obligatory for the state officials. But the normative acts do not contain a definition of the conflict of interest, which can complicate the task for the state officials to determine if their activities in the function of a state official present a conflict of interest.

Thus the normative acts do not provide any concrete provisions stating that the official, or other person entrusted to carry out state functions or persons equal to them, when carrying out their official duties of public officials cannot make decisions, or carry out any actions related to the functions of a state official, which influence or can influence personal interests of this official, his/her relatives of business partners.

The responsibility to inform about cases of overlap of conflict of private interests of a state official with the official duties stays with the individual state official. But the normative acts do not provide for details about actions to be undertaken by the senior official (responsibilities of the senior officials) when he/she received an information from a subordinate official about a conflict of interest. For example, there are no detailed provisions which would allow the senior official to delegate the duties of the official with the conflict of interest to another official working in this organization, in order to prevent the conflict of interest. Only measures for a situation when the conflict of interest has actually taken place are foreseen; no measures for the senior official are foreseen for a situation when the subordinated official only informs about a potential conflict of interest.

The public official, according to the Law on the Fight against Corruption, in case of receiving gifts and services by them or members of their families,

except for symbolic signs of attention and souvenirs accepted according to norms of polite behaviour and hospitality, must return such gifts without any financial compensation within 7 days to a special state fund, and pay for the provided services by a transfer of money to the republican budget. But the Law on the Fight against Corruption does not contain clear criteria specifying symbolic signs of attention and hospitality, and therefore the state officials who have received such gifts do not need to deposit them in the fund.

In cases of violation of the Laws on Civil Service and on the Fight against Corruption by state officials disciplinary measures are applied most commonly; under certain cases provided for by the law measure of material responsibility can be applied. Unfortunately, administrative responsibility is not applicable for the violation of the Law on the Fight against Corruption.

It is necessary to note a positive fact, that the Kazakh legislation guarantees protection by the state to the persons reporting about cases of corruption and providing other forms of help in fighting corruption; information about such persons is state secret. At the same time there is a risk of abusing the responsibility of persons reporting false information about corruption, as provided by the law and the Code of administrative violations, as the facts of corruption are difficult to prove and reporting corruption can be presented as provision of false information.

Kazakh legislation establishes and guarantees the right for access and dissemination of information. Art. 20 of the Kazakh Constitution guarantees to any citizen a right to receive and to disseminate information using any means, except for those prohibited by the law, except for information containing state secrets. Art. 18 of the Constitution and the Law on Mass Media oblige state bodies, public associations, state officials and mass media to ensure the right of each citizen to know the documents, decision and sources of information, which are related to his/her rights and interests. However, it is not clear from the report, if there are separate rules of procedures, which provide for a common procedure for receiving and using by national and legal bodies of information, possessed by state and local government authorities.

The Concept of development of civil society in Kazakhstan for 2006-2011 is as a positive fact. This Concept analyses main trends and identified a framework for civil society development in the country, it outlines ways and mechanisms for the development of civil society for the coming years. The Concept foresees close cooperation between the state and the society, including cooperation in the field of fighting corruption.

In 2002 Kazakhstan has passed the Law on Public Procurement, which foresees the establishment of a procurement system based on transparency, competition and objective criteria for decision-making. Open tender is the main form of public procurement; the Law also provides for other forms, such as closed tender, selection of a supplier on the basis of price offers, from single supplier, through open stock exchange. Analysis of the methods of procurement established by the Law on Public Procurement raises questions about the objectivity of the procedure as too much procurement is done from a single supplier. The main body responsible for the implementation of the Law on Public Procurement is the Committee of financial control and public procurement.

It is important to note an positive fact that in order to increase the transparency of the procurement procedures a draft of rules for public procurement has been developed, which foresees the use of an information system and establishes a special order to public procurement using information systems and a special procedure for granting access to the system of electronic public procurement. It is worth noting, that in order to protect honest competition, a list of dishonest and unreliable suppliers has been created, which provides the person responsible for the public procurement with information about enterprises, which are recognised and not being honest or reliable.

Government formed the Committee of Financial Control and Public Procurement at the Ministry of Finance in 2004 with wide duties and responsibilities relating internal control. External control over the execution of the state budget is provided by the Audit Committee established in 2002. This body is directly subordinated and accountable to the President of the Republic of Kazakhstan and has also extensive competences when controlling regularity (compliance with the budget legislation, and other laws and regulations), proper and efficient use of budget funds and completeness and timeliness of budget revenues. For adequate control environment existence of the Budget Code is important, which regulates relations and determines basic budget principles and mechanisms of the budget system functioning including formation and disbursement of budget funds.

Information provided in the Status Report does not allow for an objective assessment of external control arrangements in the public sector. Kazakhstan has two bodies that are responsible for the control over the public funds – Committee for Financial Control and Public Procurement of the Ministry of Finance (mentioned above) and the Audit Committee established by the Presidential Decree. But there is no Supreme Audit institution subordinated to the Parliament.

The tax and customs legislation contains mechanisms for preventing corruption. There is the Tax Committee established within the Ministry of Finance with control, inspection, and supervision tasks prescribed by the Tax Code and other regulations. The custom authorities are obliged to prevent, terminate, and detect corruptive events. The Custom Code adopted in 2003 prescribes among others the customs authority's tasks on the area of fighting crime, types of custom controls and other statutory functions that ensure regularity operation of the customs authorities.

Kazakhstan does not have a special law on money laundering so far but includes some provisions concerning money and transactions in the CC and the Law on Banks and Banking. Some control responsibilities can be attributed to the Agency for the Fight against Economic and Corruptive Crime and to the Agency for Regulation and Supervision of the Financial Market and Financial Organisations. The draft Law "On Anti-Money Laundering and Combating the Financing of Terrorism", which aims for a systematic approach to the fight against money laundering, is prepared. One of its important elements is strengthening the control over transactions and events that can be subject of money laundering risks. Auditing organizations are also included among the financial system entities that are subject of the law (Art. 3). According to the Art. 6 all financial system entities are obliged to develop and introduce internal control systems. Control over the compliance with this law is foreseen by appropriate government bodies. Such arrangement supported by the effective implementation can contribute to efficient prevention and early detection of money laundering attempts.

Corporate Accounting and Auditing Standards is regulated by the Law on Accounting and Financial Reporting and Law on Auditing. Auditors and audit companies are obliged to notify the audited entity of the violations of the legislation identified during an audit and inform responsible authority on these cases.

The Law on Political Parties of 15 July 2002 determines in general terms sources of financing and the use of finances by the political parties. The Law does not allow contributions to a political party and its structural units (branches and local offices) from: foreign states, foreign legal entities and international organisations; foreign citizens and persons without citizenship; legal bodies with foreign participation; state bodies and state organisations; religious associations and charities; anonymous donors. It is worth noting that the Law does not establish the limit to the size of a contribution; therefore parties can accept large financial contributions, which can provide for cases when political decisions can be closely linked to specific economic interests. Besides, the Law

does not prohibit acceptance of contributions from third person (intermediary), therefore cases are possible when individuals can fulfil their personal interests by financing a political party though an intermediary, when a real donor will remain unknown. Besides, the report does not explain what happens to the donations, which were received with the violation of the law; it is not clear if such donations must be given to the state.

According to the Constitutional Law of 28 September 1995 On Elections in Kazakhstan, special elections funds for candidates are to be established. These funds can be financed only through legal financial sources. The Law establishes limitations for the contributions which can be provided to the election funds by specific person from specific sources; financial means received by the election fund are put at a special temporary account in a bank. Banks provide weekly reports to the corresponding elections commission about the receipt of financing to the special temporary accounts and about their expenditures.

However, the system of financing of political parties is not sufficiently transparent; information about the donations received by the parties is not subject to publication in media. Information about the total amount of money received by the fund is published within 10 days after the elections; but this is not sufficient to ensure each natural and legal body, including other parties, with information about concrete donors and the amounts donated by them. Besides, there are no provisions which prohibit the candidates to use administrative resources which are accessible to them in their function of public officials, for financing of elections campaign.

Specific Recommendations:

18) Improve the mechanisms of attestation of state officials, ensure regular assessment of performance and professional skills of state officials in order to determine the needs for improving the qualification of the officials (training), the possibility of promotion or the need for rotation, as well as to verify that the official meets the requirements of the post occupied.

19) Improve the system of hiring and promotion of public officials by increasing the value of criteria for assessing personal merits, which can be objectively verified, and by limiting as much as possible possibilities of arbitrary decisions; ensure stricter criteria for hiring staff by public institutions and local authorities in order to minimise the risk of corruption.

20) Prepare and broadly disseminate comprehensive practical guidelines for state officials about corruption, conflict of interests, ethical norms,

sanctions for non-reporting about corruption; consider introducing regular training at work place for state officials on the above issues.

21) Improve the system of checking of declarations of assets and income by state officials, by adding to the declaration information necessary for controlling the conflict of interest.

22) Improve internal control in state bodies and local authorities, in doing so pay special attention to the activities of those public officials, whose activities are particularly vulnerable to corruption, in order to prevent the conflict of interest of public officials.

23) Improve legal regulation, which establish prohibitions and limitations, as well as responsibilities for preventing of conflict of interest for state officials, in order to prevent that the private or material interests of any state official, his/her relatives or business partners can affect his/her performance in the public interests; in order to promote transparency of state officials activities and their accountability to the society, and to promote the trust of the society to the activities of state officials.

24) Review and further specify provisions of the Law on the Fight against Corruption related to the receipt of gifts, improve the control of implementation of these provisions.

25) Harmonise the provisions of the Administrative Code with the Law on the Fight against Corruption.

26) Review provisions of the Administrative Code, which establish administrative responsibility for false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional disinformation.

27) Introduce in the rules and procedures a common procedure for the natural and legal persons which would allow receiving information from the state and local authorities; provide for a possibility to appeal the refusal to provide such information to these bodies without sufficient grounds.

28) Ensure the right of non-governmental (public) associations to take part in the elaboration of normative acts; regularly involve representatives of non-governmental organisations in other projects related to the prevention and combating corruption, which are important for the society.

29) Ensure that all information about public procurement, except for state secret information, is open to the public, in order to reduce opportunities for violations in this field. Consider carefully both components of the public procurement that might be subject of the controls and audits when searching

for corruptive acts, i.e. the contract and the procedure. Ensure that legal and institutional framework provides for strict examination of the contract files, controlling of entire procurement process as well as reviewing reliability and effectiveness of internal control system.

30) Address corruption risks that are inherent in the organizational environment with appropriate internal control systems and identify the processes, controls and measures needed to mitigate those risks. Strengthen control environment and established such information system that can assist monitoring activities and financial reporting process throughout all public sector entitities. Require internal auditors to conduct proactive auditing to search for corruption offences. Ask an independent external auditor to assist management by providing an evaluation of the entity's process for identifying, assessing, and responding to the corruption risks. Ensure coordinative functioning of financial control and auditing bodies to facilitate revealing of corruption offences, and increase accountability for anti-corruption responsibilities and duties.

31) Review current status and position of the Audit Committee and consider possibilities to develop it into an independent institution subordinated to the Parliament, in accordance with the Lima declaration and ITOSAI auditing standards.

32) Devise and adopt a strategy for the tax and custom services which stresses the importance of corruption prevention and proclaims corruption as a serious violation of working responsibilities leading to obligatory termination of employment. Establish and maintain effective internal control in customs that belongs to a highly vulnerable area with respect to corruption.

33) Strengthen internal control system to assure effective detection and prevention of money laundering. Make external auditors liable to check if their clients are obliged to any provision resulted from the draft law referring money laundering and to examine if there are any risks involved in money laundering. Impose audit companies to define in their internal acts procedures relating suspicious transactions and identification of entities they enter into business relationship, and ask them to keep adequate records. In cooperation with professional associations of auditors develop a list of indicators of suspicious transactions, and ensure their dissemination to the auditors, which can help identifying business events and circumstances that may indicate money laundering activities.

34) Ensure maximum public accountability (including to the civil society) of the bodies, responsible for controlling the financing of political parties,

candidates and elections campaigns, in order to avoid a possibility to discriminate selected parties and candidates and to ensure transparency in financing and expenditures of election funds. Devise and adopt an appropriate legal and institutional framework under which political parties and election funding will be subject of strict controls by an independent audit institution. Annual financial reports of political parties should be examined before publishing. A full audit of reports on election campaigns of all political parties who have the right to claim compensation of financial expenses should be performed before public funds are given from the state budget. The control body should be obliged to verify the accuracy of data on campaign finance provided in the reports, the legality of the way these funds were collected and used and accuracy of the amount claimed for reimbursement. Improve regulation of party financing from private sources; step up the control of party financing in order to prevent and combat the influence of individuals or separate public groups on the policy of the state and local government authorities. Ensure transparency of financing political parties – from the point of view of incomes and expenses, in order to ensure that each natural or legal body can receive information about donors and the amounts donated by them.

STATUS REPORT

National Anti-Corruption Plan (Strategy) Against Corruption

In early 1990's Kazakhstan has launched a broad-scale reform of its economic and political system and encountered serious problems of corruption in various spheres, including bodies of state authority and administration, the business and financial spheres.

According to the results of an expert survey conducted in 2002 by the public foundation Transparency Kazakhstan, the level of corruptive manifestations in public and law-enforcement bodies was as follows. The most corruption-prone were the customs authorities (98 points), the road police (110 points), the tax service (127 points), bodies of the interior (144 points), and the financial police (152 points).[1]

Statistics shows that those bodies use their position and powers to unlawfully restrict in a certain extent the rights and legal interests of natural and legal persons, particularly private business.

Three main reasons are quoted in this respect: a lack of public control over their activity, a low salary of employees, and imperfection of personnel recruitment mechanisms.

According to official statistics for 2004, a total of 239 public servants have been convicted for corruptive offences in Kazakhstan, including 44 officers of the RK Interior Ministry, one official of the prosecution authorities, 3 officials of the justice bodies, 4 officials of the financial police, 11 officials of the tax authorities, 6 officials of the customs authorities, 5 judges, 3 officials of the national security committee, and 7 akims of various levels.

1. The points were conferred according to a 1 (the best score) to 8 (the poorest score) grade scale.

These statistics do not reflect the entire spectrum of measures taken in the fight against corruption, it merely shows the results of public authorities' activities aimed at the detection and investigation of corruptive offences.

The fight against corruption in Kazakhstan is earmarked as one of the priorities of state policy. Kazakhstan is well aware that corruption undermines the process of socioeconomic development, construction of a market economy, and investment raising and has a negative impact on political and social institutions of a democratic state, representing one of the most serious threats to the future development of the state.

Kazakhstan is the CIS leader in development of the anti-corruption legal framework and system. It was one of the first countries in the CIS to have adopted the Law "On the Fight against Corruption" (hereinafter – the Law) on 2 July 1998, which has become an important barrier to corruption.

This is a fundamental law in this sphere, incorporating the goals, objectives, principles of the fight against corruption, defining the notion of corruption, identifying the sphere of application of the Law, bodies engaged in the fight against corruption, envisaging preventive anti-corruption measures and responsibility for corruptive offences.

The main objective of the Law is the protection of citizens' rights and freedoms, ensuring the Republic's national security against the dangers posed by corruptive manifestations, ensuring effective performance of public authorities, officials and other persons discharging public functions, as well as persons equivalent to them, by prevention, termination and exposure of corruption-related offences, eliminating their consequences, and imposing liability on guilty parties.

The Law is also aimed at extending democratic principles, openness, control over public administration, enhancing people's trust towards the state and its institutions, stimulating competent experts to enrol in public service, creating conditions for integrity of persons exercising public functions.

Article 5 of the Law lays the basic principles of the fight against corruption resting on:

- equality of all in front of the law and the court;

- ensuring strict legal regulation of the activity of public authorities, lawfulness and openness of their activity, state and public control over it;

- improvement of the structure of the State machinery, work with the personnel, and procedures for settling issues concerning the rights and lawful interests of physical and legal persons;

- priority of protection of the rights and lawful interests of physical and legal persons, as well as socioeconomic, political-legal, organisational and administrative systems of the state;

- recognition of the admissibility of restrictions of the rights and freedoms of officials and other persons authorised to perform public functions, as well as persons equivalent to them, in accordance with article 39 (para 1) of the Constitution of the Republic of Kazakhstan;

- restoring the infringed rights and lawful interests of physical and legal persons, liquidation and prevention of harmful effects of corruptive offences;

- ensuring personal safety of citizens rendering assistance in the solving of corruptive offences;

- protection by the State of the rights and lawful interests of persons authorised to perform public functions and persons equivalent to them, establishing the level of salary (money allowance) and benefits for such persons ensuring decent living standards to them and their families;

- inadmissibility of delegation of authorities of state regulation of entrepreneurial activity to physical and legal persons exercising such activity, as well as control over it;

- conducting operational search and other actions for purposes of detecting, exposing, terminating, and preventing corruption-related offences, as well as applying special financial control measures in the manner prescribed by the law for purposes of non-admission of the legalisation of unlawfully gained money and other property;

- prohibiting the engagement in entrepreneurial activity, including the occupation of paid positions in economic entities' management bodies, for persons stipulated in paras 1, 2, and 3 of article 3 of this Law, except cases where the engagement in such activities is envisaged by legally prescribed official duties.

The Law "On the Fight against Corruption" defines the notion of corruption as a socially hazardous phenomenon consisting in a legally non-prescribed acceptance, personally or through intermediaries, of property benefits and advantages by persons exercising public functions, as well as persons equivalent to them, using their official powers and related opportunities or another form of using of their powers for purposes of gaining property benefits, as well as the bribery of these persons by unlawful provision of the said benefits and advantages to them by physical and legal persons (article 2).

Corruptive offences are recognised as deeds connected with corruption or creating conditions for corruption, entailing legally established disciplinary, administrative, and criminal responsibility.

In January 2001, a Presidential Decree of the RK has approved the State Programme for the Fight against Corruption for 2001 – 2005 (hereinafter – the Programme).

The Programme is aimed at the implementation of the Strategy of Kazakhstan's Development until 2030, the strategy of national security of the Republic of Kazakhstan until 2005, and the Law of the Republic of Kazakhstan "On the Fight against Corruption."

The Programme envisages the creation of political and socioeconomic conditions promoting the lowering of the level of corruption, improvement of the legal framework for the fight against corruption, opposing the shadow economy as a source of corruption, creation of a transparent mechanism of regulation of the economic sphere, strengthening law-enforcement and judicial authorities, advocacy of the state anticorruption policy, development of international cooperation in the fight against corruption.

A special role in the implementation of the Programme is allocated to mass media, called upon to broadly and objectively cover the state policy of the fight against corruption, actively promote and explain the anticorruption legislation, form an atmosphere of public intolerance of crime and corruption.

The Government Resolution of 11 April 2001 has approved the Action Plan of Implementation of the State Programme for the Fight against Corruption for 2001 – 2005, envisaging such fundamental measures as development of the legal framework for the fight against corruption, preventing corruption in the sphere of public service, resisting the shadow economy as a source of corruption, ensuring transparency of the mechanisms of economic reform, strengthening law-enforcement bodies and the judicial system, advocacy of the state anticorruption policy, development of international cooperation in the fight against corruption.

To ensure efficiency of the fight against corruption, the RK Presidential Decree of 2 April 2002 has formed a Presidential Commission on issues of the fight against corruption and abidance by official ethics by public servants.

The Commission's duties include the elaboration and implementation of measures aimed at stepping up the fight against corruption and violations of the rules of official ethics by public servants, and at enhancing the responsibility of public servants.

This Commission is a consultative and advisory body under the President.

Its functions include:

- developing and submitting to the Head of State proposals on matters related to the fight against corruption, including the improvement of the anticorruption legislation, forms and methods of the fight against corruption;

- monitoring and analysing the status of the fight against corruption, violations of the rules of official ethics by public servants;

- considering the appeals of citizens and legal persons, as well as mass media publications concerning facts of corruptive offences committed by persons occupying responsible public positions, violations of ethics by public servants, and preparing recommendations on these facts for persons authorised to impose disciplinary penalties to conduct official investigation.

The Commission may, within the frames of its competence:

- request central and local public authorities to provide information, documents, and materials necessary to fulfil its statutory objectives, except in criminal cases and materials of operational search;

- hear verbal and receive written explanations from public officials and persons authorised to fulfil public functions or persons equivalent to them;

- send materials to law-enforcement and other public authorities for conducting inspections and adopting legally prescribed measures on facts of violations of official ethics and commission of corruptive offences;

- hear at its sessions information of the heads of law-enforcement and other public authorities on issues of implementation of the anticorruption legislation;

- submit for consideration by relevant authorities and public organisations proposals on disciplinary responsibility of officials who have committed corruptive offences, who do not abide by the RK Law "On the Fight against Corruption," as well as those who have violated the rules of official ethics, including such measures as their dismissal from position;

- when necessary, submit proposals to the Head of State on giving instructions or assignments on questions covered by relevant acts of the Republican President.

For purposes of implementing the anticorruption strategy on the local level, the Government Resolution of 13 December 2002 has approved the model statute of disciplinary councils in the regions and the cities of Astana and Almaty, prescribing the status, responsibilities, organisation, and order of activity of disciplinary councils. A disciplinary council is a consultative and advisory body, whose activity is coordinated by the Agency for Public Service Affairs of the Republic of Kazakhstan.

The main functions of the Council include:

- submitting for consideration by akims of regions and the cities of Astana and Almaty, other administrative-territorial units, heads of the executive authorities financed from the local budget, law-enforcement

bodies and other territorial public authorities and public organisations, recommendations on imposing disciplinary responsibility on public servants for violating the rules of official ethics or committing corruptive offences entailing disciplinary responsibility;

- working out recommendations and proposals for akims and heads of public authorities on the strengthening of state discipline within the borders of a relevant administrative-territorial unit, observance by public servants of requirements of the anticorruption legislation and rules of official ethics;

- considering instructions of the RK Presidential Commission on matters of the fight against corruption and abidance by official ethics by public servants and the Agency, applications of citizens, mass media reports as well as information received from other sources on facts of violation of the anticorruption legislation and rules of official ethics;

- submitting for the Agency's consideration proposals aimed at raising the efficiency of organisation of the fight against corruption and observance of the rules of official ethics by public servants.

In order to prevent corruptive offences by public and law-enforcement authorities, "help-lines" have been organised for citizens of the Republic.

The fight against corruption requires systematic efforts of all strata of society. These efforts should be aimed at the elimination of the causes and conditions for corruption and its implications. The State, in its turn, should provide a legal framework, and create the necessary corruption-prevention conditions. Kazakhstan today has all the necessary prerequisites for a successful fight against corruption, which is confirmed by the measures adopted by the Government.

Promotion of accountability and transparency

Ethics in the Public Service

To ensure effective performance of the public authorities, enhance responsibility of public servants and prevent corruption in the sphere of public service, the Law of the Republic of Kazakhstan "On Public Service" (hereinafter – the Law) has been adopted on 23 July 1999 to regulate legal relations between the State and public servants.

The Law regulates the basic notions and lays the principles of public service, the legal status of public servants, and responsibility for the violation of the legislation on public service.

Public service positions include political and administrative public service positions (article 7).

Political positions include positions occupied by political public servants:

- appointed by the President of the Republic of Kazakhstan, their deputies;
- appointed and elected by Chambers of the Parliament of the Republic of Kazakhstan and Chairmen of the Parliament Chambers, their deputies;
- heading the staff of the Supreme Court of the Republic of Kazakhstan, his/her deputies;
- representatives of the President and Government in accordance with the Constitution;
- heading the central executive authorities and agencies, their deputies.

Other positions determined by the President of the Republic of Kazakhstan can also be qualified as political positions.

Categories of positions are established for administrative public servants. The register of administrative public service positions by the category is approved by the President on presentation of an authorised body.

Categories are not established for political public service positions.

Article 1 of the Law regulates the basic notions:

- **administrative public servant** – a public servant not included in the category of political public servants, discharging official functions on a permanent professional basis at a public authority;
- **public position** – a structural unit of a public authority assigned by laws and regulations to carry out a range of official functions and official duties;

- **public service** – activity of public servants at the public authorities consisting in the discharging of official duties, aimed at the implementation of tasks and functions of the state authority;

- **public servant** – a citizen of the Republic of Kazakhstan occupying a position at a public authority in the legally prescribed manner, paid from the republican or local budgets or the National Bank of the Republic of Kazakhstan, and exercising official functions for purposes of implementing the tasks and functions of the State;

- **official** – a person permanently, temporarily or on special authority discharging the functions of a representative of the authority or exercising organisational or administrative functions at the public authorities;

- **official functions** – functions envisaged by a concrete public position, meeting the goals and objectives facing the public authorities in which public servants carry out their activity, vested with the rights and basic responsibilities established by the law;

- **category of an administrative public position** – classification characteristic of the aggregate administrative positions occupied by administrative public servants, reflecting the volume and nature of official functions;

- **qualification requirements** – requirements set to citizens claiming the occupation of an administrative public position for purposes of determining the level of their professional training, competence and compliance with a concrete administrative position;

- **political public servant** – a public servant whose appointment (election), dismissal and activity bear a determinative political nature, who is responsible for the implementation of political goals and objectives.

Political public servants are enrolled in public service by appointment or election, as well as in other cases, in the manner and on terms prescribed by the legislation of the Republic of Kazakhstan (article 11).

An administrative public position is occupied on a competitive basis, except cases prescribed by this Law (article 12).

An administrative public position may be occupied by an administrative public servant without competitive selection by transfer from another position in case of his/her compliance with the qualification requirements to the relevant vacancy on consent of the administrative public servant and an authorised body or its territorial unit.

Political public servants, as well as deputies of the Parliament, deputies of maslikhats working on a permanent basis, who have terminated their functions and comply with relevant qualification requirements have a right to occupy an administrative public position without competitive selection. The order of occupying administrative public positions by political public servants and deputies of the Parliament, and deputies of maslikhats working on a permanent basis is determined by the President of the Republic of Kazakhstan.

Any direct or indirect restrictions to enrolling to public service for considerations of sex, race, ethnicity, language, social origin, financial status, place of residence, religion, convictions, membership in public associations or any other considerations is not admitted.

Officials admitting to an administrative public position citizens who have not undergone competitive selection, except cases stipulated by this Law, are brought to responsibility in the manner prescribed by article 28 of this Law.

Public servants who have committed crimes and other offences bear criminal, administrative, and material responsibility on grounds and in the manner prescribed by the laws of the Republic of Kazakhstan.

Persons enrolling to public service should comply with the following requirements (article 13):

- have citizenship of the Republic of Kazakhstan;
- be not younger than eighteen years of age, unless stipulated otherwise for relevant positions by the republican legislation;
- have the necessary education, level of professional skills, and conform with the qualification requirements.

A citizen enrolling to public service must present to the tax authorities the information on his/her taxable incomes and property owned by him/her.

An administrative public position is occupied after the citizens undergo obligatory special testing.

Additional requirements for enrolling to political public service are determined by the President of the Republic of Kazakhstan.

Qualification requirements to administrative public positions are developed and approved by the public authorities on the basis of model qualification requirements to position categories.

A competition to occupying an administrative public position ensures citizens' rights to equal access to public service (article 14).

A competition is held by a public authority that has vacant positions or on decision of the President of the Republic of Kazakhstan by an authorised body after the publication of a competition announcement in the national and Russian languages.

Announcements about competitions in the central public authorities and their local units and departments shall be published in newspapers, which are circulated in the territory of the Republic of Kazakhstan. Announcements about competitions in the local public authorities shall be published in newspapers, which are circulated in the territory of the relevant administrative territorial unit.

If the vacancy subject to competition is for restricted time duration, this condition of the future labour agreement must be noted in the announcement about the competition.

All citizens of the Republic of Kazakhstan have the right to take part in the competition. The decision of the competition commission shall be the grounds for giving the administrative state post or for the refusal of such a post. Participants of the competition who were given a positive decision of the competition commission have the right to receive the administrative state post. The Head of the state body must hire the participant who has received the positive decision of the competition commission. Herewith, the requirements foreseen by the legislation for admission to state service must be observed.

Competition participants who have failed to receive a positive conclusion of the competition commission but were recommended by it for public service may be included in the personnel reserve formed by an authorised body. Competition participants included in the personnel reserve may occupy a

relevant administrative public position within one year after the competition without undergoing an additional competition.

The decision of the competition commission can be appealed in the manner prescribed by the legislation of the Republic of Kazakhstan.

A trial period up to three months is envisaged for a citizen accepted to an administrative public position for the first time to determine his/her professional aptitude (article 15).

If the trial results are unsatisfactory, an administrative public servant can be dismissed due to failure to undergo the trial period on coordination with the authorised body or its territorial branches.

If the trial period has expired and the administrative public servant continues public service, he/she is considered to have successfully passed the trial, and the trial period is included in the length of public service. Subsequent dismissal is admitted only on grounds envisaged by the laws of the Republic of Kazakhstan.

If the trial results are unsatisfactory, the administrative public servant can be dismissed due to failure to undergo the trial period on coordination with an authorised body or its territorial branches.

Administrative public servants undergo attestation for purposes of establishing the level of their professional skills, legal culture, and ability to work with people. The order and terms of attestation of administrative public servants are approved by the President of the Republic of Kazakhstan on proposal of an authorised body (article 16).

There are also certain public service-related **restrictions** (article 10).

A public servant is not entitled:

- to be a deputy of representative authorities and a member of bodies of local self-government;
- to engage in another paid form of activity except teaching, scientific, and other creative activities;
- to engage in entrepreneurial activity, including the participation in the management of a commercial organisation, regardless of its form of

incorporation, unless direct participation in the management of a commercial organisation constitutes his/her official duties in accordance with the legislation of the Republic of Kazakhstan;

- to be a representative on third parties' affairs in the public authority in which he/she is a servant or directly subordinate or controlled by it;

- to use materials, technical, financial, and information support means of his/her official activity, other public property and official information for non-official purposes;

- to participate in actions preventing normal functioning of the public authorities and discharging of official duties, including strikes;

- to use the services of individuals and legal entities for personal needs in connection with the implementation of his/her official functions.

A public servant must hand over into trust management within a month after assuming position for the period of staying in public service, in the manner prescribed by law, the shares (blocks of shares) in the authorised capital of commercial organisations owned by him/her and other property the utilisation of which results in the receipt of income, except money legally owned by these persons, as well as other property bailed for hire.

A public servant has the right to receive income from property handed into trust management, including in the form of remuneration, dividends, wins, revenues from the rent of property and other legal sources.

A public servant cannot occupy a position directly subordinate to a position occupied by his/her close relatives (parents, children, adopted parents, adopted children, brothers, sisters, step-brothers, step-sisters, grandfathers, grandmothers, grandchildren) or spouse, except cases stipulated by law.

There are the following restrictions to enrolment to public service:

- incapacity or partial capacity certified in the prescribed manner;

- deprivation of the right to occupy public positions for a certain period of time through court procedures;

- a disease diagnosed by a medical institution, preventing the discharging of official functions, in cases where special qualification

requirements are set to the health condition for occupying relevant positions;

- refusal to assume legally imposed restrictions, in order to prevent actions that may lead to the use of the public service status and related authority for personal, group or other non-official interests;

- imposing disciplinary responsibility for a corruptive offence within two years before the enrolment in public service;

- imposing an administrative penalty by the court for a corruptive offence within a year before the enrolment to public service;

- imposing an administrative penalty by the court for a corruptive offence within three years before the enrolment to public service;

- previous conviction, not cancelled or lifted in a legally prescribed manner at the moment of enrolment to public service.

Non-presentation or distortion of the above data constitutes grounds for refusal from acceptance to public service.

For purposes of implementing a single state policy in the sphere of public service, coordinating the activity of public authorities in matters of training, retraining, and advanced training of public servants, a Decree of the RK President has formed the Agency for Public Service Affairs (hereinafter – the Agency).

The Agency is assigned to fulfil the following tasks:

- implementing a single state policy in the sphere of public service;

- working out proposals on development of the regulatory and legal framework of public service and adopting laws and regulations in the legally prescribed manner within the frames of its competence;

- monitoring the public service personnel status;

- coordinating the activity of public authorities in matters of public servants' training, retraining, and advanced training;

- controlling public authorities' abidance by the legislation on public service.

In keeping with its statutory objectives, the Agency exercises the following functions:

- participates in the elaboration and implementation of government programmes of development and raising the efficiency of public service;

- forms a republican database on public service personnel and a personnel reserve for administrative public service positions;

- elaborates and submits for approval of the President of the Republic of Kazakhstan the Public Service Personnel Reserve Statute;

- develops and forms a republican information system of public service personnel management;

- develops and approves model qualification requirements to categories of administrative public positions;

- develops and submits for approval of the President of the Republic of Kazakhstan the Register of Administrative Public Service Positions by the category and other acts;

- works out proposals on improvement of the system of labour remuneration, social and legal protection of public servants;

- coordinates the activity of the public authorities in matters of public servants' training, retraining, and advanced training;

- coordinates the formation and placement of the state order on state programmes of public servants' training and advanced training;

- hold the testing of public servants and candidates to administrative public positions;

- supervises public authorities' abidance by the legislation on public service;

- considers disciplinary cases versus administrative public servants of categories S-1, S-2, S-3, central executive and other central public authorities, their agencies, who have committed corruptive offences entailing disciplinary responsibility, and violations of the rules of official ethics, as well as officials, up to department heads of the central law-enforcement bodies and special services, except the top executives of these authorities, their first deputies and deputies who have committed corruptive offences entailing disciplinary responsibility, in which case the disciplinary commission of an authorised body for public service affairs is entitled to submit recommendations on holding official investigations with respect of the said officials of the central law-enforcement bodies and special services, as well as proposals on their disciplinary responsibility, to heads of these bodies and services; coordinates the work of disciplinary commissions of the public authorities for considering disciplinary cases of administrative public servants of other categories;

- coordinates the activity of disciplinary councils of regions, the cities of Astana and Almaty, controls and inspects their work, issues consent to the appointment of their leaders;

- considers public servants' complaints against the actions and decisions of public authorities or officials on issues of application of the legislation on public service;

- holds inspections of the activity of the public authorities on matters within its competence;

- submits proposals on the cancellation of decisions of the public authorities adopted with violations of the legislation on public service;

- coordinates the appointment to administrative public positions from the point of view of a candidate’s fitness for the existing qualification requirements;

- consults public servants in cases of violation of their rights and lawful interests;

- determines the terms and procedures for holding competitions to administrative public positions, and supervises the soundness of the competition process;

- on decision of the Republican President, holds competitions to administrative public positions;

- participates in preparing draft international agreements and carries out international cooperation in matters related to public service.

To realise its statutory tasks and exercise its authorised functions, the Agency has the right:

- to submit proposals to the Head of State and the Government of the Republic of Kazakhstan on issues of improvement of public service in the Republic of Kazakhstan;

- to hold competitions to administrative public positions on decision of the Republican President;

- to supervise compliance with the legislation on public service by the public authorities;

- to hold inspections of the activity of public authorities on matters of observance of the legislation on public service;

- to attract other public authorities to the holding of inspections of the staff;

- to request and receive information from public authorities, organisations, and officials necessary for exercising its tasks and functions;

- to submit proposals to public authorities and officials on the cancellation or amendment of decisions adopted with violation of the law;

- within the limits of its competence, to adopt laws and regulations binding on public authorities;

- to establish the competence of territorial bodies.

To enhance the professional level, the level of training, retraining and advanced training of public servants, the Presidential Decree of the Republic of Kazakhstan of 18 September 1998 has formed the Public Service Academy under the President of the Republic of Kazakhstan.

For purposes of raising the responsibility of public servants, observing the ethic requirements and moral standards of a public servant, the Presidential Decree of the Republic of Kazakhstan of 21 January 2000 has approved the Rules of Public Servants' Official Ethics (hereinafter – the Rules).

The Rules introduce binding fundamental requirements to public servants' behaviour originating from the commonly accepted ethic norms and specifics of public service.

Each public servant must take all the necessary measures to observe the Rules, prevent actions involving the violation of the rights and freedoms of citizens of the Republic, adhere to principles of public service and supreme moral values, abide by the public servant's oath of allegiance, observe the state and labour discipline, prevent and terminate facts of violation of ethic norms by other public servants.

It is the duty and responsibility of a public servant as a representative of the State to:

- strictly abide by the Constitution and laws of the Republic of Kazakhstan;
- protect the interests of the State;
- promote the enhancement of unity of the people of Kazakhstan and inter-ethnic consent in the country;
- impartially and honestly fulfil his/her official duties;
- abide by the accepted restrictions imposed by law;
- not disclose state secrets and other legally protected secrets which have become known to him/her during the exercising of his/her official functions;
- not interfere in the activity of persons responsible for taking decisions in issues personally concerning the public servant;

- not accept obligations and prevent actions, appearances and statements capable of discrediting the Republic of Kazakhstan, and preventing normal functioning of the public authorities and fulfilment of official functions by the public servants;

- carefully and economically use the entrusted public property, ensure the integrity of official documents;

- permanently upgrade his/her professional and cultural level;

- resist corruptive manifestations.

In their relations with citizens and legal entities the public servants **must:**

- respect the honour and dignity of other persons;

- prevent the manifestations of red tape and circumlocution in considering their applications, and take the necessary measures within legally established timeframes;

- promote the strengthening of prestige of the state power, citizens' trust towards state institutions;

- ensure the observance and protection of Constitution-guaranteed rights, freedoms, and lawful interests of citizens and legal entities;

- respect the national and other languages of the people of Kazakhstan, diversity of its customs and traditions;

- display modesty, not boast their official position;

- not admit persecution for criticism, demonstrate tolerance of criticism, use the positive critical remarks for improving their professional activity;

- not admit unjustified accusations;

- be polite and correct, respect personal dignity of their subordinates, treat them fairly and justly.

Public servants who have subordinates **must:**

- strictly define the tasks and scope of official functions of their subordinates in accordance with their positions;

- not impel their subordinates to commit illegal actions or actions incompatible with commonly accepted ethic norms;

- ensure familiarisation by the subordinates with these Rules and their observance.

In keeping with the legislation on public service, disciplinary penalty may be imposed on public servants for violation of requirements stipulated by these Rules.

Akims of all levels, in addition to abidance by official ethic norms stipulated by these Rules **shall:**

- display modesty and not admit actions in their private life stirring negative public response;

- prevent cases of personnel selection and appointment in local executive bodies on the basis of cronyism and personal devotion;

- prevent facts of unjustified interference in entrepreneurial activity and cases of lobbying the interests of individual economic entities.

To prevent corruptive offences by public servants, the Law "On the Fight against Corruption" (hereinafter – the Law) provides an exhaustive list of offences creating a corruption-prone climate and connected with illegal receipt of benefits and advantages (article 12).

They include:

- illegal interference in the activity of other public agencies and organisations;

- the use of official authorities for deciding issues connected with satisfying material interests of the said persons or their close relatives and in-laws;

- granting advantages not prescribed by law (protectionism, nepotism) during enrolment and promotion on public and equivalent service;

- granting illicit preference to legal and physical persons during the preparation and adoption of decisions;

- rendering any form of support not stipulated by law to anyone in exercising entrepreneurial activity and other profit-generating activity;

- use of information obtained in the process of exercising public functions for personal or group interests, if such information is not subject to official dissemination;

- unjustified refusal from providing information to physical and legal persons, the provision of which is envisaged by law, delay in its provision, provision of unreliable or incomplete information;

- demanding information from physical or legal persons the provision of which by these persons is not stipulated by law;

- transfer of public financial and material resources to election funds of individual candidates or public associations;

- repeated violation of the legally established procedures for considering the appeals of physical and legal persons and solving other issues within their competence;

- giving presents and providing unofficial services to superior officials, except token gestures of attention and token souvenirs conforming to commonly accepted norms of politeness and hospitality, as well as during the holding of protocol and other official events;

- overt prevention of exercising the rights and lawful interests of physical and legal persons;

- delegating authorities to state regulation of entrepreneurial activity to physical or legal persons exercising such activity, as well as its supervision;

- delegation of state controlling and supervisory functions to organisations which do not have a status of a public authority;

- participation in gambling games involving money or other property with superior, subordinate officials or officials otherwise officially related to them.

The commission by persons authorised to perform public functions or persons equivalent to them of any of the above corruptive offences, not containing elements of a criminal offence, entails demotion, dismissal or another form of suspension from fulfilling public functions or the imposition of another disciplinary penalty in the legally prescribed manner.

A repeated commission of any of the said offences during a year after the imposition of disciplinary penalty for the first offence entails dismissal or another form of removal from fulfilling public functions in the legally prescribed manner.

If deputies of the Parliament of the Republic of Kazakhstan or persons indicated in article 3 (3 (2)) of this Law commit any of the said corruptive offences, the bodies fighting against corruption shall notify thereof the relevant election commission, which must within five days from the date of receiving relevant materials notify the Parliament.

In the event of detection of corruptive offences listed in articles 12 and 13 of the Law committed by public servants, the public authorities indicated in article 6 of the Law (bodies of prosecution, national security, internal affairs, tax, customs, and border service, financial and military police) must conduct an official investigation within the frameworks of their competence, if the deed in question does not contain elements of a criminal offence.

Corruptive offences connected with illicit receipt of benefits and advantages include the following actions of persons authorised to perform public functions or persons equivalent to them (article 13):

- acceptance for fulfilment of public or equivalent functions of any remuneration in the form of money, services, and other forms, from organisations in which the person does not exercise relevant functions and from physical persons, unless stipulated otherwise by law.
  - Money received on the account of a person authorised to fulfil public functions or an equivalent person without the knowledge of such person, as well as remuneration received by him/her in connection with the fulfilment of relevant functions in violation of para one of this sub-item shall be transferred to the republican

budget within a two-weeks term after their detection with the presentation of an explanation to a relevant tax authority of the circumstances of receipt of such funds;

- acceptance of presents or services in connection with the fulfilment of public or equivalent functions from persons officially dependant on them, except token signs of attention and token souvenirs, in accordance with commonly accepted politeness and hospitality norms or during the holding of protocol and other official events.

  – Presents received without the knowledge of the said person, as well as presents received by him/her in violation of para one of this sub-item, are subject to non-repayable surrender to a special public fund within seven days' time, and services rendered to the person under the same circumstances shall be transferred by him/her to the republican budget. The person receiving the presents is entitled to repurchase them from the said fund at retail market prices valid in the relevant locality on consent of a superior official. The revenues from the sale of presents shall be transferred from the special public fund to the republican budget; acceptance of invitations to national and foreign tourist, medical and sanitary, and other trips at the expense of physical and legal persons, both foreign and Kazakh, except trips:

    – at the invitation of a spouse or relatives, at their expense;

    – at the invitation of other physical persons (on consent of a superior official or body), if relations with them are not connected with matters of official activity of the invitees;

    – exercised in accordance with international treaties of the Republic of Kazakhstan or on the basis of mutual agreement between public authorities of the Republic of Kazakhstan and public authorities of foreign countries at the expense of relevant public authorities and (or) international organisations;

    – exercised on consent of a superior official or authority for purposes of participating in scientific, sportive, creative, professional, humanitarian events at the expense of organisations, including trips undertaken within the frameworks of statutory activity of such organisations;

    – using advantages, not envisaged by law, in obtaining credits, loans, purchase of securities, real estate, and other property.

Family members of a person authorised to fulfil public functions or a person equivalent to him/her are not entitled to accept presents and services, invitations to tourist, medical and sanitary, and other trips at the expense of physical and legal persons, both foreign and Kazakh ones, with which the said person is officially related. A person authorised to fulfil public functions or a person equivalent to him/her must within a seven-day period surrender without repay the presents unlawfully received by his/her family members to a special public fund and compensate for the cost of services illegally used by his/her family members by the way of transfer of money to the republican budget.

The commission of corruptive offences by a person authorised to fulfil public functions or an equivalent person, if it does not contain elements of a criminal offence, entails demotion, dismissal or another form of removal from fulfilling public functions or the imposition of another disciplinary penalty in the legally prescribed manner.

A repeated commission of any of the said offences during a year after the imposition of disciplinary penalty for the first offence entails dismissal or another form of removal from fulfilling public functions in the legally prescribed manner.

If deputies of the Parliament of the Republic of Kazakhstan or persons indicated in article 3 (3 (2)) of this Law commit any of the said corruptive offences, the bodies fighting against corruption shall notify thereof the relevant election commission, which must within five days from the date of receiving relevant materials bring them to notice of the Parliament.

Minor offences entailing disciplinary penalty are also stipulated in the note to article 311, Bribe-Taking, of the RK CC.

E.g. the receipt by a person authorised to fulfil public functions or an equivalent person for the first time of property, property rights or another property-related benefit as a gift in the absence of preliminary agreement for earlier performed lawful actions (omissions), if the value of the gift does not exceed two monthly estimates, is not considered a crime due to its insignificance and is subject to disciplinary penalty.

A person shall also be exempted from criminal responsibility for deeds of little significance stipulated by the note to article 312, Bribe-Giving, of the RK CC.

The transfer to a person authorised to fulfil public functions or an equivalent person of a present for lawful acts or omissions previously performed by him/her for the first time shall not entail criminal responsibility if the total sum or the value of the present does not exceed two monthly estimates and the actions (omissions) performed by the person authorised to fulfil public functions or an equivalent person were not specified by preliminary agreement.

If an official investigation conducted by a public authority with respect to a public servant who has committed a corruptive offence reveals the elements of a criminal offence, legal proceedings stipulated by the criminal-processional law shall be initiated with respect of the public servant in accordance with article 36 of the RK CCP and the person shall be brought to criminal responsibility.

Public servants who have committed corruptive offences may be brought to responsibility in accordance with article 28 of the Law "On Public Service."

E.g. non-fulfilment or improper fulfilment by a public servant of his/her statutory duties, committing a corruptive offence, office abuse, violation of the state and labour discipline, as well as non-observance of restrictions imposed by this Law, connected with the tenure of public office, can entail the imposition of the following disciplinary penalties on the public servant:

- admonition:
- reprimand;
- severe reprimand;
- notice of incomplete adequacy;
- dismissal from position.

Disciplinary penalty shall be imposed by persons duly authorised in accordance with their official powers and cannot be imposed for a deed the commission of which entails another form of responsibility stipulated by the law of the Republic of Kazakhstan.

An administrative public servant who committed a disciplinary offence may be temporarily suspended by an executive officer who had appointed him/her before the issue of responsibility is settled in the established manner.

A public servant bears responsibility for unlawful actions. If he/she has doubts about the lawfulness of an official instruction, he/she shall immediately notify thereof in writing his/her direct superior officer and the officer who issued the instruction. If the superior officer confirms the instruction in writing, the public servant shall fulfil it, if its fulfilment does not involve actions classified as criminal offences. Responsibility for the consequences of fulfilment of an unlawful instruction by a public servant shall be imposed on the superior official confirming this instruction.

Public servants committing crimes and other offences, including corruptive ones, shall bear relevant criminal, administrative, and material responsibility on grounds and in the manner prescribed by the laws of the Republic of Kazakhstan.

In addition, public servants' responsibility is envisaged for non-reporting of crimes. Article 364 of the RK CC, Non-Reporting a Crime, envisages criminal responsibility of officials whose official duty is to report the known facts of preparing or committed offences. Officials failing to report these facts shall be subjected to responsibility for office abuse, official omission or negligence.

Moreover, article 8 (12) of the Law "On Public Service" stipulates the duty of a public servant to immediately notify the official authorised to appoint them in cases when the public servant's private interests overlap or contradict their powers.

The Law "On the Fight against Corruption" guarantees immunity to persons assisting in the fight against corruption (article 7).

A person reporting a fact of corruptive offence or otherwise assisting in the fight against corruption is granted protection by the state.

Information on a person assisting in the fight against corruption constitutes state secret and shall be granted only on request of bodies stipulated in items 2 and 4 of article 6 of this Law or the court in the manner prescribed by law. The disclosure of this information entails legally stipulated responsibility.

In case of necessity, bodies engaged in the fight against corruption ensure personal safety of persons assisting in the fight against corruption.

The provisions of this article are not applicable to persons providing intentionally false information, who are subject to responsibility in accordance with this Law.

The protection of persons rendering support in the fight against crime, including corruption, is stipulated by the Law "On Operational Search Activity" (article 23).

Citizens assisting the authorities conducting operational search are granted protection by the state.

The state guarantees to citizens expressing consent to assist the authorities conducting operational search the exercising of their rights and fulfilment of obligations in accordance with this Law, other laws and regulations of the Republic of Kazakhstan.

In case of emergence of a real danger of unlawful encroachment on the life, health or property of citizens in connection with their assistance to the authorities conducting operational search, as well as members of their families and close relatives, these authorities must take all the necessary measures to prevent illegal actions, identify the guilty parties and bring them to account, and when necessary, take special measures for their protection in the manner determined by the Government of the Republic of Kazakhstan.

Information on citizens cooperating or who formerly cooperated on a confidential basis with the authorities conducting operational search constitutes state secret and may be disclosed only upon their written consent.

Citizens cooperating with the authorities conducting operational search are entitled to remuneration.

The period of citizens' paid cooperation on contractual basis with the authorities conducting operational search, as the main occupation is included in their overall work experience. They have a right to pension support, and in the event of their death their families and dependants are entitled to pension for loss of a provider, in accordance with effective law and in the manner determined by the Government of the Republic of Kazakhstan.

In the event of death of a citizen cooperating with the authorities conducting operational search in connection with his/her participation in the operational search actions, the family and dependants of the deceased shall be paid a lump sum allowance:

- in the amount equal to ten times the monetary allowance of the deceased cooperating on a paid basis;

- in the amount of ten annual minimal salaries of the person cooperating voluntarily.

If a citizen cooperating with the authorities conducting operational search sustains injuries or other damage to the health resulting from his/her participation in operational search, he/she shall be paid a lump sum allowance:

- in the amount equal to five years' monetary allowance of those cooperating on a paid basis;

- in the amount of five annual minimal salaries of the person cooperating voluntarily.

Compensation for the damage inflicted by the death, injury or another form of damage to the health connected with the participation in operational search shall be made at the expense of the authorities conducting operational search in the manner determined by the Government of the Republic of Kazakhstan.

In addition to the above measures, on 5 July 2005 Kazakhstan has adopted the Law "On State Protection of Persons Participating in a Criminal Case" establishing a system of measures of state protection of the life, health, property, and lawful interests of the persons participating in the criminal process, members of their families and close relatives, ensuring their safety for purposes of preventing unlawful interference in criminal proceedings.

In accordance with the Code of Criminal Procedure of the Republic of Kazakhstan and this Law, state protection shall be granted to:

- judges,

- the grand jury;

- prosecutors;

- investigators;

- magistrates;

- persons conducting operational search;

- defence attorneys;

- experts;
- specialists;
- secretaries of the court, police officers;
- victims;
- witnesses;
- suspects;
- the accused;
- interpreters;
- witnesses of inquest;
- legal representatives, representatives;
- civil plaintiffs, civil respondents;
- family members, close relatives of persons listed in sub-items of this article (article 3).

Public procurement and public subsidies, licences, or other public advantages

In order to prevent corruption in the sphere of public procurement, licensing and other sectors, the Republic of Kazakhstan adopted the Law "On Public Procurement" (hereinafter – the Law) on 16 May 2002, regulating relations forming in the process of procurement of products, jobs and services from suppliers by public authorities, public institutions, as well as public enterprises, legal entities, fifty and more percent of stocks (shares) or a control parcel of shares of which belongs to the state and its related legal entities, for purposes of efficient use of the money at their disposal.

The main principles of legal regulation of the public procurement process include:

- an optimal and efficient expenditure of money used for procurement;

- granting all potential suppliers equal opportunities for participating in the public procurement process, except cases stipulated by this Law;

- fair competition among potential suppliers;

- openness of the public procurement process.

One of the fundamental principles is the openness of activity connected with public procurement, it is a mechanism of preventing corruptive offences in the public procurement sphere.

Article 6 of the Law describes the principle of openness of activity related to public procurement.

Information on public procurements preparing or held, except information constituting state secret, is published by the tender organiser in the periodical press and is presented to an authorised body in the form and within the period established by the legislation of the Republic of Kazakhstan.

An authorised body regularly publishes information on public procurement in the periodical press and (or) places it in public telecommunication networks (Internet and others) to enable potential suppliers to plan their participation in the public procurement process.

The Law envisages various methods of exercising public procurements (article 9):

- open tendering;

- closed tendering;

- supplier selection on the basis of price offers;

- procurement from a single source;

- procurement through open commodity exchanges.

Open and closed tendering can be conducted through two-step procedures.

To exercise public procurement by methods indicated in sub-items (1), (2), and (4), the tender organiser sets up a tender committee.

The procedures for organising and holding public procurement, forming and operation of the tender committee, as well as branch-specific procurement of products, jobs and services, and terms of contracts concluded on them are determined by the Government of the Republic of Kazakhstan.

The public authorities, public institutions, and state-owned enterprises approve, within ten working days from the date of approval of the financial plan, the annual public procurement plan, specifying the planned selection and volume of the procured products, jobs and services, method and terms of public procurement.

State-owned enterprises in operating control, legal entities, fifty and more percent of stocks (shares) or a control parcel of shares of which belongs to the state, and their related legal entities annually, not later than April 1, approve the annual public procurement plan based on budgets (business plans), specifying the planned selection and volume of the procured products, jobs and services, method and terms of public procurement.

The customer presents the annual public procurement plan to an authorised body within seven working days from the date of its approval.

The format for the annual plan of public procurement is adopted by the authorised body.

To ensure smooth operation of public authorities, public institutions, and state-owned enterprises, the customer is entitled to extend the contract on public procurement of products, jobs and services according to the list determined by the Government of the Republic of Kazakhstan to the first quarter of a following year in the volume not exceeding the volume of public procurement under this contract in the first quarter of the current year, if the law on the republican budget or a decision of the maslikhat on the local budget for the relevant year have not been adopted within the period established by legal acts of the Republic of Kazakhstan.

The National Bank of the Republic of Kazakhstan and public institutions financed from the budget of the National Bank are also entitled to extend the contract on public procurement of products, jobs and services to ensure regular support of their activity, according to the list determined by the Government of the Republic of Kazakhstan, as per item 5 (part 1) of this article, to the first quarter of the following year in the volume not exceeding the volume of public procurement under this contract in the first quarter of the current year, if the

budget of the National Bank of the Republic of Kazakhstan has not been approved by the beginning of the new fiscal year.

Contracts on long-term construction jobs and related products and (or) services, as well as contracts on the purchase of products the technological period of manufacture of which exceeds one year, may be concluded for a term exceeding one year. The procedures for concluding such contracts are established by the Government of the Republic of Kazakhstan.

The public procurement method is selected by the customer in accordance with this Law.

Open tendering is the main public procurement method, organised and held by a tender organiser. Closed tendering is held upon coordination with an authorised body in cases when products, jobs and services, due to their complicated or specialised nature, are available only from a limited number of potential suppliers known to the tender organiser in advance.

Open tendering is the main method of public procurement, except cases for which this Law envisages another procurement method (article 10).

The tender is organised and held by a tender organiser. After approval of the budget (business plan), the customer is entitled to take a decision to hold a tender for public procurement of products, jobs and services necessary in the next year and envisaged by the approved budget (business plan).

The administrator of republican budget programmes is authorised to act as a tender organiser for subordinate public institutions and to appoint one of them as the sole tender organiser.

If the customer is a public authority or a public institution, another public authority or public institution can be appointed tender organiser.

The akim of a relevant administrative-territorial unit is authorised to appoint a single tender organiser from among administrators of local budget programmes.

An administrator of local budget programmes, except cases when a single tender organiser is appointed by the akim of a relevant administrative-territorial unit, is authorised to act as a tender organiser for subordinate public institutions at relevant budgetary levels, and to appoint one of them as the sole tender organiser.

State-owned enterprises and legal entities fifty and more percent of stocks (shares) or a control parcel of shares of which belongs to the state are authorised to act as the sole tender organiser for its related legal entities and also to appoint one of them as the sole tender organiser.

The National Bank of the Republic of Kazakhstan can act as the tender organiser for state-owned enterprises and legal entities of which it is a founder (authorised body).

Some customers, except public institutions subordinate to public authorities, may hold a single tender for public procurement of identical products, jobs and services. In this case, the sole tender organiser is appointed by the RK Government.

Closed tendering is held in individual cases and is regulated by article 18 of the Law.

Closed tendering is held on coordination with an authorised body in cases when products, jobs and services, due to their complicated or specialised nature, are available only from a limited number of potential suppliers known to the tender organiser in advance.

A notification about closed tendering should be sent to all potential suppliers that have the procured products, jobs and services available, not later than one month prior to the date of termination of acceptance of applications for participation in this tendering.

The list of potential suppliers eligible to receive a notification is approved by the customer's CEO.

Provisions of the Law are applicable to public procurement through closed tendering.

The next procurement method is the supplier selection on the basis of price offers (article 20).

A supplier is selected on the basis of price offers on available products, jobs and services, a detailed specification of which is insignificant for the customer and the decisive condition is the price.

The supplier selection on the basis of price offers is used only if the annual volumes of public procurement of any identical products, jobs and services in

value terms do not exceed four thousand monthly estimates established by the law on the republican budget for a relevant fiscal year.

Public authorities and public institutions financed from the state budget, the budget of the National Bank are entitled to select a supplier on the basis of price offers only if the annual volumes of public procurement of any identical products, jobs and services in value terms do not exceed two thousand monthly estimates established by the law on the republican budget for a relevant fiscal year.

The fragmentation of annual volumes of procurement of identical products, jobs and services during a fiscal year for purposes of applying the method of supplier selection on the basis of price offers is not admitted.

A customer requests written price offers to procured products, jobs and services from not less than two unrelated potential suppliers and considers all the price offers received within the established period. The customer purchases the product, job and service from a potential supplier who presented the lowest price offer.

Public procurements from a single source are held without tendering, only in cases when (article 21):

- the procured products, jobs and services are available only from one potential supplier which is a natural monopoly, or some concrete potential supplier has exclusive rights with respect to these products, jobs and services in the absence of an alternative;

- the procured products, jobs and services are available only from a market entity occupying a dominant (monopolistic) position on a certain product market, the share of which on such market equals one hundred percent, or in the absence of an alternative;

- the procured products, jobs and services are available only from a potential supplier which is a state monopoly;

- the proclamation of a state of emergency caused by natural disasters (earthquakes, mudflows, avalanches, floods, etc.), natural fires, epidemics and epizooties, crop and forest lesions, diseases and pests, as well as emergencies caused by industrial, transport, and other accidents, fires (explosions), accidents entailing discharges (discharge danger) of strong poisonous, radioactive, and biologically hazardous

substances, sudden collapse of buildings and structures, breaks of dam, accidents at electric power and communication life-support systems, purification devices in the manner prescribed by the legislation of the Republic of Kazakhstan, causes an urgent demand for these products, jobs and services, which rules out the tendering possibility;

- the customer which has procured products, equipment, technologies, jobs or services from a certain supplier has a need to make more procurements from the same supplier for purposes of unification, standardisation or ensuring compatibility with the earlier procured products, equipment, technologies, jobs or services;

- a tender is recognised invalid and (or) the measures adopted by the customer have not resulted in conclusion of a contract on public procurement. This provision is not applicable to cases when a tender is recognised invalid;

- the suppliers of products, jobs and services the procurement of which has an important strategic meaning are determined by the Government of the Republic of Kazakhstan;

- products, jobs and services are procured by state-owned enterprises, legal entities fifty and more percent of stocks (shares) or a control parcel of shares of which belongs to the state and related legal entities in the event of breakages, failure of communications, mechanisms, plants, spare parts and materials in transit, requiring immediate recovery, with obligatory subsequent notification of an authorised body within the period of not more than ten calendar days;

- there is a need to conduct public procurement of products, jobs and services of daily and (or) weekly use in the period before the summation of the tender results;

- a local executive authority purchases the right of claim on housing mortgage in the event of inability of a mortgagor – citizen of the Republic of Kazakhstan to fulfil obligations under the housing mortgage loan.

If the annual volume of procurement of identical products, jobs and services for public authorities and public institutions financed from the state

budget or the budget of the National Bank in value terms exceeds two thousand monthly estimates established by the law on the republican budget for a relevant fiscal year, and for state-owned enterprises and legal entities fifty and more percent of stocks (shares) or a control parcel of shares of which belongs to the state, as well as their related legal entities – four thousand monthly estimates established by the law on the republican budget for a relevant fiscal year.

Procurements of products, jobs and services of a natural monopoly or a market entity occupying a dominant (monopolistic) position on a certain product market, with one hundred percent share on that market, does not require coordination with an authorised body.

The fragmentation of annual volumes of procurement of identical products, jobs and services during a fiscal year is not admitted if the size of at least one of such fragment parts is less than:

- four thousand monthly estimates established by the law on the republican budget for a relevant fiscal year for public authorities and public institutions financed from the state budget or the budget of the National Bank of the Republic of Kazakhstan;

- four thousand monthly estimates established by the law on the republican budget for a relevant fiscal year for state-owned enterprises and legal entities fifty and more percent of stocks (shares) or a control parcel of shares of which belongs to the state, as well as their related legal entities.

In the event of public procurement from a single source, the tender committee requests a potential supplier to provide all the necessary justifications of the price of products, jobs and services offered by this potential supplier.

The formation of a tender committee is not required during public procurement from a single source in the case stipulated by item 1 (6) of this article.

In the event of public procurement from a single source the potential supplier should meet the qualification requirements stipulated by article 8 of this Law. The procedures for coordinating public procurements from a single source, as well as the list of documents necessary for considering applications in such cases are established by an authorised body.

If public procurements are made from a single source, the tender committee must draw up a procurement protocol containing the following information:

- justification of applying public procurement from a single source;
- a brief description of the products, jobs and services procured from a single source;
- name and location of the supplier with which a public procurement contract is to be concluded.

The last method of public procurement is procurement through open commodity exchanges, stipulated by article 22 of the Law:

- If the products purchased in the process of public procurement are included in the list of exchange products subject to marketing only through open commodity exchanges, public procurements shall be made through commodity exchanges in accordance with the law of the Republic of Kazakhstan on commodity exchanges.
- If the annual volumes of public procurement of any identical products included in the list of exchange commodities in value terms does not exceed four thousand monthly estimates established by the law on the republican budget for a relevant fiscal year, and for public authorities and public institutions financed from the state budget or the budget of the National Bank of the Republic of Kazakhstan – four thousand monthly estimates established by the law on the republican budget for a relevant fiscal year, the customers are entitled to select another public procurement method, unless a different minimal volume is determined by the law of the Republic of Kazakhstan on commodity exchanges.

The Law imposes restrictions, also preventing corruption in this sphere, specifically, article 7 imposes the following restrictions:

- close relatives (parents, spouse, brothers, sisters, children) or in-laws (brothers-in-law, sisters-in-law, spouse's parents and children) of the official or authorised representative of a potential supplier, participating in the public procurement process has no right to

represent the customer's interests connected with the public procurement process;

- a potential supplier and (or) its employee rendering a customer consultative services consisting in the preparation of tender documentation is not entitled to participate in the tender for public procurement of products, jobs and services connected with the consultative services rendered;

- a potential supplier and its related party are not entitled to participate in one tender (bidding);

- if a tender application is waived on grounds stipulated by this article, the protocols on the tender results shall reflect the grounds for its waiver, which are communicated to the potential supplier which has filed this tender application.

A mechanism of appealing unlawful actions is envisaged for cases of violation of the law on public procurement (article 29).

In the event of violation of the law of the Republic of Kazakhstan on public procurement in the public procurement process, a potential supplier is entitled to appeal against the actions and decisions of the tender organiser, the customer, and the tender committee in the manner prescribed by the legislation of the Republic of Kazakhstan. The method of public procurement cannot be appealed.

In the event of violation of the law of the Republic of Kazakhstan on public procurement, an authorised body is entitled to invalidate the decisions of the tender organiser, the customer or the tender committee until the conclusion of a public procurement contract and terminate the public procurement process.

If a public procurement contract has been concluded or entered into force, an authorised body must file a court claim to recognise this transaction invalid.

The Government has appointed an authorised body regulating the public procurement process – the RK Agency for Public Procurement, transformed in December 2004 into the Committee for Financial Control and Public Procurement of the Finance Ministry of the Republic of Kazakhstan.

On 17 April 1995, the Republic of Kazakhstan has adopted the Law "On Licensing" (hereinafter – the Law), regulating relations connected with state licensing of activity or concrete actions subject to licensing.

Article 3 of the Law prescribes the main principles of licensing:

Licenses are issued on equal grounds and on equal terms to all persons meeting the requirements set for a concrete form of license. Granting a preferential right to license issuance to state-owned enterprises is prohibited, except the forms of activity referred to state monopoly by legal acts.

Citizens engaged in entrepreneurial activity without the formation of a legal entity (individual entrepreneurs) obtain a license through procedures established for legal entities.

The Government of the Republic of Kazakhstan may establish a simplified licensing procedure for small enterprises.

Licensing for purposes of competition restriction or granting an advantage to some groups of entrepreneurs depending on the forms of their ownership, departmental interests or location. The issuance of licenses should not contribute to increasing monopoly or restriction of free entrepreneurial activity.

Licenses are inalienable, i.e. not subject to transfer by the licensee to other physical or legal persons, unless stipulated otherwise by legal acts.

The obtaining of licenses is required for exercising only the forms of activity and actions the licensing of which is stipulated by this Law.

Introduction of licensing requirements or their cancellation for different forms of activity are established by this Law and may be caused by considerations of state security, state monopoly realization, ensuring law and order, environmental protection, property, life and health of citizens.

This Law establishes the terms and procedures for license issuance, licensing the export and import of products (jobs, services), forms of activity subject to mandatory licensing and responsibility for violating the licensing legislation.

Article 24 of the Law introduces responsibility for violating the licensing legislation:

Engaging in an activity without a relevant license or with violation of the licensing rules and procedures entails administrative and criminal responsibility prescribed by law.

The revenues from exercising the activity requiring a license without obtaining a license are subject to confiscation to a relevant budget by the tax authorities, except the following cases:

- in the event of exercising activity by small enterprises upon the expiration of the period stipulated by article 17 of this Law;

- revenues from holding lotteries without relevant licenses are subject to confiscation in favour of the republican budget in the manner prescribed by the Government of the Republic of Kazakhstan.

The public authorities (licensors) and their officials shall be brought to responsibility for violating the licensing legislation as prescribed by legal acts of the Republic of Kazakhstan.

A brief analysis of the Laws of the Republic of Kazakhstan "On Public Procurement" and "On Licensing" has shown that the Government has introduced a system of measures aimed at eliminating corruption, abuses, and other violations of the legislation in this sphere.

Financial control / State audit

One of the efficient mechanisms of control over proper expenditure of state finances is financial control.

Financial control powers enable to detect and prevent abuses by officials, corruptive offences and crime in the state budget and financial sphere.

Governmental Resolution of the Republic of Kazakhstan of 29 October 2004 has formed the Committee of Financial Control and Public Procurements at the Finance Ministry of the Republic of Kazakhstan (hereinafter – the Committee) on the basis of the former Committee of Financial Control at the Finance Ministry.

The main tasks of the Committee include:

Verification of compliance with the legislation of the Republic of Kazakhstan of the activity of state financial control facilities regarding the

execution, accounting and reporting on the execution of the republican and local budgets, evaluation of its execution, utilisation of loans, revenues from the sale of products (jobs, services) by public institutions remaining at their disposal.

Control over the organisation and holding of public procurements, abidance by the legislation of the Republic of Kazakhstan on public procurement.

The functions of the Committee include:

- obtaining the necessary information from the public authorities that have internal control units, considering reports of the public authorities that have internal control units on the implementation of plans and results of internal control;

- evaluating the efficiency of control exercised by persons acting as customers in the process of public procurement;

- considering applications (complaints) of potential suppliers (suppliers) against the actions (omissions) of customers, public procurement tender organizers, tender committee members, secretary of the tender committee, and adopting relevant measures;

- in the event of violation of the legislation of the Republic of Kazakhstan on public procurement, invalidating decisions of the tender organiser, customer or the tender committee until the conclusion of a public procurement contract and terminating the public procurement process;

- issuing decisions before the conclusion of public procurement contracts on revision or cancellation of decisions of the tender organizers, customers and tender committees issued with violation of the legislation of the Republic of Kazakhstan on public procurement;

- exercising financial control of compliance with the RK legislation, financial reporting and efficiency of the activity of state control facilities;

- detecting, terminating and preventing improper, unjustified and inefficient expenditure of funds from the republican and local budgets in accordance with the RK legislation;

- controlling the execution of an emergency state budget;

- controlling the observance of the state financial control standards by internal control units;

- drawing up protocols of administrative offences, considering cases of administrative offences and imposing administrative penalties for administrative offences in cases and in the manner prescribed by the RK Code of Administrative Offences;

- controlling the activity of public authorities and organizations of all forms of ownership in issues concerning the completeness and timeliness of making non-tax payments to relevant budgets;

- controlling the accuracy of forming and utilizing revenues from the sale of products (jobs, services) by public institutions, remaining at their disposal;

- exercising control over the observance of the RK legislation on public procurement;

- detecting, terminating and preventing inefficient use of funds allocated for public procurement;

- holding inspections of abidance by the legislation on public procurement.

In order to exercise external control over the execution of the republican budget and prevent corruption in the public authorities and institution, Presidential Decree of the Republic of Kazakhstan of 5 August 2002, No. 917, has formed the Audit Committee for control over the execution of the republican budget and approved the Statute of the Audit Committee (hereinafter – the Audit Committee).

The Audit Committee is a public authority exercising external control over the execution of the republican budget and is directly subordinated and accounting to the President of the Republic of Kazakhstan.

The main tasks of the Audit Committee are:

- control over the abidance by requirements of the budget legislation and other laws and regulations governing the execution of the republican budget;

- fulfilment of instructions of the President of the Republic of Kazakhstan on matters connected with the execution of the republican budget;

- control over proper and efficient use of funds from the republican budget, credits, state and state-guaranteed loans allocated for implementing state and departmental Government programmes and other expenses in accordance with a single budget classification;

- control over the completeness and timeliness of revenues to the republican budget.

The competence of the Audit Committee includes:

- controlling the observance of the budgetary legislation of the Republic of Kazakhstan by public institutions financed from the republican budget; the implementation of republican budget programmes (sub-programmes) and proper utilisation of credits, as well as state-guaranteed loans; controlling the activity of the public authorities from the point of view of ensuring complete and timely revenue of funds to the republican budget; funds allocated from the republican budget for cancelling state liabilities;

- exercising control over financial reporting of public institutions financed from the republican budget;

- exercising control over the efficiency of utilization of funds from the republican budget, including those received on public order;

- requesting and receiving the necessary documentation and information from the government of the Republic of Kazakhstan and the controlled entities on matters concerning the completeness of revenue and utilisation of funds from the republican budget;

- evaluating the economic efficiency and expediency of the approved republican budget programmes (sub-programmes);

- requesting and receiving data from the National Bank of the Republic of Kazakhstan on audit results of banks and organisations conducting individual forms of banking transactions, from the point of view of receipt, transfer, as well as proper use of funds from the republican budget on the basis of bank accounts of the controlled entities;

- elaborating drafts and submitting proposals on the application of laws and regulations governing the execution of the republican budget;

- attracting relevant specialists of the public authorities to control of the execution of the republican budget;

- requesting and receiving within the established periods the necessary documents, references, verbal and written explanations on control-related issues from the controlled entities;

- submitting proposals for consideration of the public authorities on suspending transactions on accounts of organizations and individuals that have violated the budget legislation during the utilization of funds from the republican budget for the period of the supervisory measures;

- hearing reports of officials of the controlled entities on matters of execution of the republican budget;

- submitting presentations to the President of the Republic of Kazakhstan on facts of non-abidance by the laws and regulations on the execution of the republican budget by officials of the controlled entities, detected by the Audit Committee;

- using the services of relevant specialists on matters of activity of the Audit Committee in the manner prescribed by law;

- in case of detection of elements of offences in the actions of officials of the controlled entities during the disbursement of funds from the republican budget, other facts of violation of the legislation of the Republic of Kazakhstan, referring the control materials and presentations to law-enforcement authorities in the established manner.

Issues of adoption, execution and control over the execution of the state budget are regulated by the Budget Code of the Republic of Kazakhstan (hereinafter – the Budget Code).

The Budget Code regulates budgetary and inter-budgetary relations and establishes the main provisions, principles, and mechanisms of the budget system functioning, formation and disbursement of budgetary funds.

Principles of the budget system stipulated by article 3 of the Code are directed at ensuring equal, fair, transparent distribution of state budgetary resources and include the following principles:

- the principle of uniformity – ensuring the application of uniform budgetary legislation of the Republic of Kazakhstan, including the use of a uniform budget classification, uniform procedures of the budget process on the territory of the Republic of Kazakhstan;

- the principle of completeness – reflecting in the budgets and the National Fund of the Republic of Kazakhstan all the revenues and expenditures envisaged by the legislation of the Republic of Kazakhstan, preventing the netting of mutual claims at the expense of budget funds, as well as concessions of the rights of claims to budget funds;

- the principle of realism – consistency of the approved (specified, adjusted) budget indications with the approved (adjusted) parameters and lines of mid-term fiscal policy and mid-term plan of socioeconomic development of the Republic of Kazakhstan and the regions;

- the principle of transparency – obligatory publication of laws and regulations in the sphere of budget legislation of the Republic of Kazakhstan, approved (specified, adjusted) budgets and reports on their execution, other information related to fiscal policy of the state, except data constituting state or another legally protected secret; openness of the budgetary process, exercising state financial control;

- the principle of consistency – observance by bodies of state administration of earlier adopted decisions in the budgetary sphere;

- the principle of efficiency and effectiveness – elaborating and executing the budgets, proceeding from the need to achieve certain results envisaged by the passports of budget programmes with the use of an optimal volume of budgetary funds, necessary for attaining these results, or ensuring the best result with the use of an approved volume of budgetary funds;

- the principle of priority – conducting the budget process in accordance with priority lines of socioeconomic development of the republic and its regions;

- the principle of responsibility – imposing liability on participants of the budget process for violating the budget legislation of the Republic of Kazakhstan;

- the principle of budget independence – establishing a stable distribution of revenues between budgets of different levels and identifying the spheres of their expenditures in accordance with this Code, the right of public administration at all levels to independently exercise the budget process in accordance with this Code, inadmissibility of requisitioning of surplus proceeds gained during the execution of the local budgets, unused residues of local budget means in favour of a superior budget, inadmissibility of imposing additional expenses on subordinate budgets without relevant compensation.

In accordance with the Budget Code, the Government annually elaborates and the Parliament approves the Law "On the Republican Budget."

In keeping with article 138 (3) of the Budget Code, the republican budget is subject to publication in mass media.

Tax and custom system and fiscal treatment of bribes

Due to the powers and functions assigned to tax and customs authorities by the Government, these authorities possess information on the activity of commercial companies and, as a result, are corruption-sensitive.

The republican tax and customs legislation contains mechanisms for preventing corruption in those spheres, which will be described below.

For purposes of regulating relations connected with the institution, maintenance, order to calculation and payment of taxes and other obligatory

payments to the budget, as well as relations between the state and the taxpayers connected with fulfilment of tax obligations in the Republic of Kazakhstan, the Code "On Taxes and other Obligatory Payments to the Budget" (hereinafter – the Tax Code) has been adopted on 12 June 2001.

The Government Resolution of the Republic of Kazakhstan of 9 October 2002 has approved the Statute of the Tax Committee at the Finance Ministry of the Republic of Kazakhstan, describing its goals, main functions, rights, and obligations.

The tax authorities are vertically subordinate directly to a relevant body of the tax service and are not related to local executive authorities.

The state has assigned the tax services with the task of ensuring complete revenue of taxes and other dues to the budget, completeness and timeliness of transferring obligatory pension payments and social deductions to the state social insurance fund, as well as exercising tax surveillance of fulfilment of tax obligations by taxpayers.

The tax authorities are assigned with the duty, in the event of detection in the course of a tax inspection of facts of intentional evasion of taxes and other obligatory budgetary dues, as well as facts of intentional sham bankruptcy constituting the elements of an offence, to present materials to relevant law-enforcement authorities referred to their investigative jurisdiction, for taking a procedural decision in keeping with legal acts of the Republic of Kazakhstan.

The Tax Code is based on such fundamental principles as equality of all people before the law, the principle of justices, the principle of openness, etc. (article 4).

Taxes and other dues to the budget of the Republic of Kazakhstan should be concrete. Concreteness of taxation signifies a possibility of stipulating in the tax legislation of all grounds and procedures for the emergence, fulfilment, and termination of a taxpayer's tax obligations (article 6).

Taxation in the Republic of Kazakhstan is universal and compulsory.

Granting individual tax exemptions is prohibited (article 7).

The tax system of the Republic of Kazakhstan is uniform on the entire territory of the Republic of Kazakhstan for all taxpayers (article 8).

Laws and regulations governing taxation issues are subject to obligatory publication in official media (article 9).

The tax services have the right to:

- work out and approve laws and regulations stipulated by this Code;
- within the frames of their competence, explain and issue comments on the emergence, fulfilment and termination of tax obligations;
- exercise tax supervision in the manner prescribed by this Code;
- inspect a taxpayer's monetary documents, book records, reports, accounts valuations, availability of money, securities, settlements, declarations, and other documents connected with the fulfilment of tax obligations, with the observance of requirements established by legal acts of the Republic of Kazakhstan;
- demand from a taxpayer the presentation of documents on the calculation and payment (deduction and transfer) of taxes and other dues to the budget on the forms established by an authorised public authority, explanations on their filling, as well as documents confirming the correctness of calculation and timeliness of payment (deduction and transfer) of taxes and other dues to the budget, obligatory pension contributions to cumulative pension funds and social deductions to the State Social Insurance Fund;
- in the course of exercising a tax inspection in the manner determined by legal acts of the Republic of Kazakhstan, seize a taxpayer's documents evidencing the commission of tax offences;
- inspect any taxation objects and objects related to taxation, regardless of their location, used for profit-generating purposes, and conduct inventories of a taxpayer's premises (except residential premises);
- obtain information from a taxpayer according to the list approved by the Government of the Republic of Kazakhstan, information in the form of electronic documents in the manner determined by an authorised public body;

- on issues related to taxation of an inspected taxpayer – legal entity and individual entrepreneur, receive from banks or organisations conducting certain types of banking transactions, in the manner prescribed by the legislation of the Republic of Kazakhstan, information on existence and numbers of bank accounts, balances and movement of money on those accounts, abiding by all requirements set by legal acts of the Republic of Kazakhstan to disclosure of information constituting commercial, banking, and other legally protected secret;

- indirectly determine a taxpayer's tax obligation in cases stipulated by the special part of this Code;

- attract specialists of other public authorities to tax inspections;

- file court claims in keeping with the legislation of the Republic of Kazakhstan;

- file court claims for liquidation of a legal entity on grounds stipulated by article 49 (2, sub-item 4) of the Civil Code of the Republic of Kazakhstan (article 16).

Article 17 regulates the duties of the tax authorities:

- to observe the taxpayer's rights;

- to protect the interests of the state;

- to exercise tax control over the fulfilment of tax obligations by a taxpayer, completeness of calculation and timeliness of payment of social contributions to the State Social Insurance Fund, as well as timely deduction and transfer of obligatory pension contributions to cumulative pension funds;

- to keep, in the established manner, the record of taxpayers, taxation objects and taxation-related objects, accounting of the calculated and paid taxes and other dues to the budget;

- to explain the rules of filling the established tax reporting forms;

- to conduct tax inspections strictly on instructions;

- to observe the tax secret in accordance with provisions of this Code;

- to serve a notice to a taxpayer on fulfilment of a tax obligation within terms and in cases stipulated by this Code;

- on a taxpayer's request, to provide within a period not more than three days a statement of his/her personal account on the status of settlements with the budget on fulfilment of the tax obligations;

- to ensure the integrity during five days of copies of receipts confirming the fact of fulfilment of obligations on the payment of taxes and other budget dues;

- to exercise control over the abidance by procedures for accounting, storage, assessment, and sale of property appropriated by the state, the completeness and timeliness of its transfer to a relevant authorised body in keeping with the legislation of the Republic of Kazakhstan, as well as the completeness and timeliness of budgetary revenue from its sale;

- to apply methods of ensuring the fulfilment of tax obligations and charge a taxpayer's tax arrears using enforcement powers in accordance with this Code;

- to impose administrative fines on a taxpayer in accordance with the Code of Administrative Offences of the Republic of Kazakhstan.

The customs authorities are assigned with the duties to prevent, terminate, and detect crimes and offences, including corruptive ones, within the limits of their competence.

The Customs Code of the Republic of Kazakhstan (hereinafter – the Customs Code) adopted on 5 April 2003 determines the legal, economic, and organisational basis of the customs techniques in the Republic of Kazakhstan.

Article 19 of the Customs Code prescribes the main tasks of the customs authorities.

- participation in development and implementation of the customs policy of the Republic of Kazakhstan;

- ensuring, within the frames of their competence, sovereignty and economic security of the Republic of Kazakhstan;

- ensuring the observance of the customs and other laws of the Republic of Kazakhstan, control over the observance of which is assigned to the customs authorities;

- ensuring the observance of measures of tariff and non-tariff regulation established by the legislation of the Republic of Kazakhstan with respect to products and vehicles transported across the customs border of the Republic of Kazakhstan;

- protection of the rights and interests of participants of foreign economic and other activities in the customs sphere;

- fighting crime in the customs sphere in accordance with the legislation of the Republic of Kazakhstan;

- implementation and improvement of customs clearance and customs control, and creating favourable conditions for accelerating trade across the customs border of the Republic of Kazakhstan;

- exercising currency control within the limits of their competence;

- ensuring the fulfilment of international obligations of the Republic of Kazakhstan and participating in the elaboration of international agreements of the Republic of Kazakhstan in the customs sphere; cooperating with the customs and other competent authorities of foreign countries and international organisations in customs-related matters;

- participation in implementing a single budget policy, development of the logistic and social basis of the customs authorities;

- ensuring, within the frames of their competence, measures for protection of national security, human life and health, environmental protection;

- radiation control on the State Border of the Republic of Kazakhstan.

In pursuance of the set objectives, the customs authorities are vested with the rights stipulated by article 23 of the Customs Code:

- to issue regulatory legal acts within the limits of their competence, stipulated by this Code;

- to request and receive from the public authorities and authorities of foreign countries, participants in foreign economic and other activity, the necessary information, documents, data referring to the customs sphere;

- to exercise licensing and control over the activity of licensees to ensure the license requirements by them, within the limits of the competence established by this Code and the licensing legislation of the Republic of Kazakhstan;

- to file court claims in accordance with legal acts of the Republic of Kazakhstan;

- in keeping with legal acts of the Republic of Kazakhstan, to detain and convey persons who have committed offences or are suspected of committing crimes to official premises of the customs or law-enforcement bodies of the Republic of Kazakhstan;

- to conduct documenting, video, audio recording, filming and photographing of facts and events in accordance with legal acts of the Republic of Kazakhstan;

- to delegate official representatives of the customs authorities to foreign countries on the basis of relevant international agreements of the Republic of Kazakhstan;

- to develop, create and operate information systems, communication systems, and data transmission systems, technical means of customs control, as well as information protection means, in accordance with the legislation of the Republic of Kazakhstan;

- to procure products, including weapons, special technical and other means, for exercising the functions assigned to the customs authorities in keeping with the legislation of the Republic of Kazakhstan;

- to conduct operative investigative activity in accordance with the legislation of the Republic of Kazakhstan on operative investigative activity.

The main duties of the customs authorities on fulfilling their statutory functions are stipulated by article 24 of the Customs Code:

- to observe the lawful rights of participants in foreign economic and other activities in the customs sphere and protect the interests of the state;

- to consider complaints against decisions, actions (omissions) of a subordinate customs authority and officials of a customs authority;

- to promote, within the limits of their competence, the development of foreign trade and economy of the Republic of Kazakhstan, to contribute to the acceleration of trade across the customs border of the Republic of Kazakhstan;

- to exercise customs control over the transfer of goods and vehicles across the customs border of the Republic of Kazakhstan;

- to conduct inquiry on cases of crime in the customs sphere in the manner prescribed by the legislation of the Republic of Kazakhstan on criminal procedure;

- to consider cases of administrative offences in the customs sphere and impose administrative penalties in the manner prescribed by the legislation of the Republic of Kazakhstan on administrative offences;

- within the limits of their powers, to render support to participants in foreign economic and other activities in exercising their rights;

- to ensure completeness of charging and timeliness of transfer of customs payments and taxes to the republican budget;

- to charge customs payments and taxes not paid to the state budget within the established terms, as well as penalty in the manner prescribed by this Code;

- to take decisions on the issuance of licenses, decisions, permits, qualification certificated to conduct activity in the customs sphere within the terms established by the legislation of the Republic of Kazakhstan;

- to keep customs statistics of foreign trade and special customs statistics in the Republic of Kazakhstan;

- to ensure the integrity of goods and vehicles appropriated in favour of the state;

- to ensure, within the frames of their competence, the protection of the customs border of the Republic of Kazakhstan and control over the observance of the customs control zone regime;

- to ensure safe operation of the customs authorities, protection of officials of the customs authorities and members of their families against unlawful actions in keeping with the legislation of the Republic of Kazakhstan;

- to conduct activity on prevention, detection, and termination of offences by officials of the customs authorities within the frames of their competence;

- to gather and analyse information on offences in the customs sphere;

- to execute, within the limits of their competence, court decisions, written orders of prosecutors and other officers of law-enforcement authorities, render them support in conducting certain processional actions;

- to take measures, in interaction with national security bodies and other relevant public authorities, to ensure protection of the State Border of the Republic of Kazakhstan;

- to render support to the tax authorities and other public authorities in detecting, preventing, and terminating offences in the sphere of tax, currency, and other legislation of the Republic of Kazakhstan;

- to ensure permanent timely information of participants in foreign economic and other activities in the customs sphere, including on

amendments and additions to the customs law of the Republic of Kazakhstan, in the manner prescribed by this Code;

- to ensure timely consideration and issuing responses or conducting other actions in connection with requests and proposals filed in the customs sphere;

- to grant free consultation in the customs sphere;

- to exercise customs administration in accordance with the customs law of the Republic of Kazakhstan.

Money Laundering

Money laundering is nothing but legalisation of money or other property, referred by the criminal legislation of the Republic of Kazakhstan to the group of economic and corruptive offences.

Money laundering pursues the goal of legalising illicit funds, monies and other property in the legitimate economy.

The republican criminal legislation envisages criminal responsibility for the legalisation of illegally gained money or other property – article 193 of the RK Criminal Code (hereinafter – the CC).

The legalisation of come proceeds is to a certain extent also a criminal intent of organised crime, which is accompanied with the establishment of corrupt connections.

An offence is considered complete not only upon the completion of a monetary transaction, but also in the event of any transfer of this money, including during the transaction if the goal of the transfer is the laundering of illegally gained property.

Article 193 (part 2) of the CC envisages aggravating circumstances of a crime committed:

- by a person using his/her official position. Such use means the legalisation (laundering) of money or property acquired by a person exercising managerial functions at a commercial or other organisation.

Article 193 (part 3) envisages responsibility for existence of the following qualifying elements:

- if the deed stipulated by parts one and two is committed by a person authorised to fulfil public functions or an equivalent person with the use of his/her official position.

The note to this article envisages exemption from criminal responsibility of a person which has voluntarily reported a preparing or committed legalisation of illegally gained money or property , if his/her actions do not contain the elements of offences envisaged by parts two and three of this article, or another crime.

The competence of the Agency for the Fight against Economic and Corruptive Crime (the financial police) includes among other functions the detection, termination, and investigation of offences stipulated by article 193 of the CC.

For purposes of working out a systematic approach to the fight against money laundering, the Government and interested public authorities are elaborating the Draft Law "On Resisting the Legalisation (Laundering) Crime Proceeds and the Financing of Terrorism" which is expected to be completed and submitted for consideration of the Parliament at the end of 2005.

Certain restrictions to providing data and information to public authorities are imposed by the banking legislation envisaging the protection of the interests of banks and their clients.

In accordance with article 50 of the Law of the Republic of Kazakhstan "On Banks and Banking," banking secret includes the information on the existence, holders and numbers of bank accounts of depositors, clients and correspondents of a bank, on the balance and movement of money on those accounts and the bank's own accounts, on the bank's transactions (except general banking transactions terms), as well as information on the existence, owners, nature and value of the clients' property stored at lock boxes, vaults, and premises of the bank.

Data on credits granted by a bank in the process of liquidation do not constitute banking secret.

Banks guarantee secret of transactions and deposits of its depositors, clients and correspondents, as well as the secret of property stored at lock boxes, vaults, and premises of the banks.

Bank officials, employees, and other persons granted access to data constituting banking secret for purposes of fulfilling their official duties, bear criminal responsibility for their disclosure, except cases stipulated by items 4 – 8 of article 50 of the Law of the Republic of Kazakhstan "On Banks and Banking."

A banking secret may be disclosed only to the owner of the account (property), to any third party on the basis of written consent of the account (property) owner issued at the moment of his/her personal presence at the bank, to a credit bureau on loans granted, in accordance with the legislation of Kazakhstan, as well as to persons stipulated in items 5 – 8- of article 50 of the Law of the Republic of Kazakhstan "On Banks and Banking" on grounds and within the limits stipulated by this article.

Obligatory notification by the bank of the tax authorities of the opening of bank accounts to a legal or physical person conducting entrepreneurial activity without the formation of a legal entity, as well as providing information on the balance of bank accounts of physical persons by the liquidation commission of a bank undergoing forced liquidation, to a collective accounts (deposits) guarantees (insurance) organisation and by an agency bank for purposes of applying measures aimed at the return of money to depositors, does not constitute disclosure of a banking secret.

Bank references on existence and numbers of bank accounts are issued to a bank with respect of which the account(s) owner is a borrower, guarantor, surety or pledgor, on the basis of a written request signed by chairman of the bank's board or the person substituting for him/her, on condition of presentation of a credit confirmation document.

References on existence and numbers of bank accounts of a legal entity, as well as current accounts of a physical person conducting entrepreneurial activity without the formation of a legal entity, on the balance and movement of money on such accounts are issued to:

- bodies of inquiry and preliminary investigation on criminal cases in their charge on a prosecutor's sanction;

- courts on cases in their charge on the basis of a court determination;

- the prosecutor on the basis of a decision to conduct an inspection within the frames of their competence, on material under its consideration;

- the customs authorities on export and (or) import transactions of clients on a prosecutor's sanction;

- the tax authorities connected with taxation of the person under investigation;

- enforcement bodies on court enforcement cases on the basis of a written request signed by the senior officer or the court bailiff, sealed by a stamp of an enforcement body and sanctioned by a prosecutor.

References on the existence and numbers of bank accounts of a physical person, on the balance and movement of money on these accounts, as well as the information available on the nature and value of his/her property stored at lock boxes, vaults, and premises of the bank, are issued to:

- representatives of the physical person on the basis of a notarised power of attorney;

- bodies of inquiry and preliminary investigation: on criminal cases in their charge, when the money and other property of a physical person on accounts or stored at the bank may be arrested, foreclosed or confiscated on the basis of a written request signed by the senior officer or investigator, sealed by a stamp of the body of inquiry or preliminary investigation and sanctioned by the prosecutor;

- the courts on cases in their charge on the basis of a determination, resolution, decision, sentence of the court on cases when money and other property of a physical person on accounts or stored at the bank may be arrested, foreclosed or confiscated;

- the prosecutor on the basis of a decision on holding an inspection on materials under his/her consideration, within the frames of his/her competence.

References on the movement of money on bank accounts, stipulated by items 6 and 7 of article 50 of the Law of the Republic of Kazakhstan "On Banks

and Banking" are granted in the form of statements of a client's personal account on the movement of cash on his/her bank accounts.

References on the existence and numbers of bank accounts of a physical person and on the balance of these accounts and the information on the existence, nature and value of his/her property stored at lock boxes, vaults, and premises of the bank, are issued in the event of the owner's death to:

- persons indicated by the account (property) owner in the testamentary disposition;
- the courts and notaries on cases on inheritance in their charge on the basis of a notary's written request sealed by his/her stamp. The written notary's request should be supplemented with a copy of the account owner's death certificate;
- foreign consular institutions on cases of inheritance in their charge.

General conditions of a transaction are open to public and cannot be subject of commercial or bank secret.

This provision is not applicable to the terms of conducting a concrete transaction, referred by this Law to the banking secret or referred to the category of commercial secret by the bank in accordance with effective law.

Inspection (investigation) of the bank activity is conducted by an authorised body independently or with the participation of other organisations.

An authorised body inspecting the activity of banks is authorised to examine the activity of the banks' related parties exclusively for purposes of determining the level and nature of their influence on the banks' activity in accordance with the legal regulations of the authorised body.

Banks, as well as related parties must render assistance to the inspecting authority in matters specified in the authorised body's inspection assignment, and provide an opportunity of questioning any officials and employees, and access to any sources of information necessary for the inspection.

Employees of the authorised body are prohibited to disclose or transfer to third parties the information obtained during inspection of the banks' activity.

Persons conducting inspections bear responsibility for disclosure of information obtained in the course of inspection of the banks' activity and constituting banking or commercial secret.

For purposes of exercising control and supervision of the financial market, Presidential Decree of the Republic of Kazakhstan of 31 December 2003 has formed the Agency for Regulation and Supervision of the Financial Market and Financial Organisations (hereinafter – the Agency).

The main tasks of the Agency include:

- the implementation of measures to prevent violations of the rights and lawful interests of financial services' consumers;
- the creation of equal conditions for the functioning of relevant types of financial organisations based on principles of fair competition;
- raising the standards and methods of financial organisations' activity regulation and supervision, applying measures for ensuring timely and complete fulfilment of their obligations;
- setting standards for the activity of financial organisations, creating incentives for improving financial organisations' corporate governance;
- financial market and financial organisations' monitoring for purposes of preserving a stable financial system;
- concentrating supervisory resources on particularly sensitive financial market sections for purposes of maintaining financial stability;
- encouraging the introduction of modern technologies, ensuring completeness and availability to consumers of the information on activities of financial organisations and financial services rendered by them.

Corporate Accounting and Auditing Standards

Keeping accounts and records, publication of financial reports, as well as the application of accounting and auditing standards in the Republic of Kazakhstan is regulated by the Law "On Accounting and Financial Reporting"

of 26 December 1995, No. 2732, the Law "On Auditing" of 20 November 1998, and the Tax Code.

Control over the observance of the law on financial activity is exercised by the Tax Committee of the Republic of Kazakhstan Finance Ministry.

Specifically, article 67 of the Tax Code establishes separate accounting and rules of keeping tax records, envisaging that taxpayers conducting some forms of activity must keep separate record of taxation objects and taxation-related objects. Separate accounting is also regulated, according to which a taxpayer is to keep separate records for each type of activity by conducting calculations on the basis of accounting data (for users of natural resources – for each deposit, unless stipulated otherwise by a contract on natural resources utilisation).

Article 66 of the Tax Code regulates the drawing up and keeping of accounting documents, defining the notion of accounting documents as primary documents, accounting registers and other documents constituting the basis for determining taxation object and taxation-related objects, and for calculating tax liabilities. The period of storage of accounting documents is envisaged until the expiration of the statute of limitations.

The Criminal, Civil Codes, and the Code of Administrative Offences of the Republic of Kazakhstan impose a ban on creation of extra-balance accounts, conducting extra-balance or improperly executed transactions, recording non-existent expenses, entering in accounts liability documents with inaccurate indication of their objects, use of false documents for purposes of bribery or concealment of bribery.

Specifically, the **Criminal Code** envisages punishment: for illegal entrepreneurship (article 190); illegal banking (article 191); sham entrepreneurship (article 192); legalisation of illegally gained money or other property (article 193); providing intentionally false information to public authorities on security transactions for purposes of gaining property benefit, inflicting serious damage (article 204); evading customs payments and dues (article 214); violating accounting rules (article 218); providing intentionally false information on banking transactions (article 219); tax evasion by a citizen (article 221), and tax evasion by organisations (article 222).

The **Code of Administrative Offence** envisages punishment for committing offences in the financial sphere, in particular: for engaging in entrepreneurial and other activity and conducting actions (transactions) without relevant registration or license, a special permit, qualification attestation

(certificate) (article 137); illegal banking (article 138); engaging in prohibited forms of entrepreneurial activity (article 143); illegal use of another entity's trademark, service mark, name of a product's place of origin or brand name (article 145); non-provision or untimely provision of information on entrepreneurial activity (article 146); exercising entrepreneurial activity without relevant re-registration of a legal entity, a subsidiary, a representative office (article 148); illegal interference of officials in entrepreneurial activity (article 151); sham entrepreneurship (article 154); illegal trade in products or other items (article 162); sale of products without documents (article 164); incomplete and untimely contribution of non-tax payments to the budget (article 166); violations connected with non-presentation and untimely presentation or presentation to an authorised body of information that does not contain the data that is to be provided in accordance with the banking legislation, or presentation of unreliable data (information) (article 171); violation of the accounting legislation by an official (article 178); violation of the accounting legislation by a legal entity (article 179); violation of the rules of reporting on currency transactions (article 180); improper execution of a reference certificate (article 181); drawing up a false auditor's (audit organisation's) opinion (article 184); providing unreliable information to an auditor (audit organisation); evading compulsory audit (article 186); illegal actions of officials of a public institution or a state-owned enterprise in operating management (a public enterprise) consisting in acceptance of monetary obligations at the expense of the state budget (article 204), non-presentation of tax reports, as well as documents necessary for monitoring a taxpayer (article 206); concealment of taxation objects (article 207); violation of the rules of accounting incomes, expenditures, and taxation objects (article 208); understatement of the sums of taxes and other dues to the budget (article 209); failure by a tax agent and other authorised bodies (organisations) to fulfil the obligations of deduction and (or) transfer of taxes and other dues to the budget (article 210); making abstracts from a fictitious invoice (article 211); non-fulfilment of legitimate requirements of the tax bodies and their officials (article 219).

The **Civil Code** envisages the invalidation of a transaction inconsistent with the legislation, a transaction aimed at attaining illegal objectives, a transaction concluded with the intention to evade the fulfilment of obligations, etc. (articles 157, 158, 159, and 160).

In addition, according to the Law "On the Fight against Corruption," all public authorities and officials must engage in the fight against corruption within the limits of their competence; according to the Law "On Auditing," auditors and audit organisations must inform an authorised public authority for regulation and supervision of the financial market and financial organisations

and notify the audited entities of the violations of the legislation of the Republic of Kazakhstan detected as a result of audit of banks, insurance (reinsurance) organisations, and cumulative pension funds.

Access to information

Article **20 of the Constitution** of the Republic of Kazakhstan **guarantees the freedom of speech** and creative activity and bans censorship.

At the same time, **anyone has the right to freely receive and disseminate information by any method** not prohibited by law. The list of data constituting state secrets of the Republic of Kazakhstan is determined by law.

Propaganda or advocacy of a forced change of the constitutional order, violation of the Republic's integrity, undermining state security, war, social, racial, ethnic, religious, class, and clan superiority, as well as the cult of brutality and violence, **are not admitted**.

In addition, social relations in the sphere of mass media are regulated by the **Law** of the Republic of Kazakhstan **"On Mass Media"** of 23 July 1999, No. 451-1.

In keeping with this Law, the public authorities, public associations, officials and mass media must provide each citizen with an opportunity to familiarise himself/herself with the documents, decisions and information sources concerning his/her rights and interests.

Mass media's relations with citizens and organisations are arranged in the following manner.

Official reports of the public authorities are placed in mass media in accordance with legal acts.

Public authorities must provide information on equal terms if requested by mass media representatives, irrespective of their form of ownership and membership, except information constituting state secrets.

The public authorities and other organisations must provide the requested information not later than three days after receipt of the application or give a response with the indication of the presentation deadlines or a motivated refusal. A response to an application requiring additional examination or investigation

should be given within a period not later than one month from the date of its receipt.

If a mass medium application is filed with the public authorities or other organisations whose competence does not include the settlement of the issues in question, this application should be referred within the period not exceeding five days to relevant authorities, with notification thereof of the mass medium.

A refusal to provide the requested data may be appealed by a mass medium representative with a superior authority or official and later through court proceedings in the manner stipulated by the law for appealing against unlawful actions of bodies of public administration and officials, infringing the rights of citizens.

To solve urgent problems of the population, improve work on considering citizens' appeals and enhancing the responsibility of senior officials of the central and local executive authorities, the Government of the Republic of Kazakhstan issued Resolution No. 974 of 4 September 2002 "On Organisation of Citizens' Appointments at Central and Local Executive Authorities of the Republic of Kazakhstan."

This Resolution establishes the order of citizens' appointments with both the senior officials of the central executive authorities of the Republic of Kazakhstan, akims of regions and the cities of Astana and Almaty, and by the chambers of the Presidential Staff and the Office of the Prime Minister of the Republic of Kazakhstan.

In pursuance of this Government Resolution, the necessary conditions have been created and telephones for contact are published by the periodical press disseminated on the entire territory of Kazakhstan.

Private sector initiatives and civil society involvement

In accordance with article 33 of the Constitution, the citizens of Kazakhstan have the right: to participate in the management of affairs of the state directly or through their representatives, apply personally, and file individual and collective appeals to the public authorities and bodies of local self-government; elect and be elected to public authorities and bodies of local self-government, and participate in a republican referendum.

At the same time, citizens recognised incapable by the court and those serving a prison sentence on a court order, do not have the right to elect and be elected and to participate in a republican referendum.

Citizens of the Republic are granted an equal right to access to public service. Requirements to a candidate to a public service position are conditioned only by the nature of job responsibilities established by law.

Local representative authorities (maslikhats) and executive authorities exercise local public administration and express the will of the population of relevant administrative-territorial units, and determine the measures necessary for its realisation with account taken of the national interests, and control their implementation (articles 85 and 86 of the Constitution).

The Republic of Kazakhstan recognises local self-government ensuring independent solution by the population of issues of local significance. The population exercises local self-government directly through elections, as well as via elected and other bodies of local self-government in rural and urban local communities embracing the territories of compact residence of population groups (article 89 of the Constitution).

Procedures for the organisation and activity of bodies of local self-government are determined by the citizens themselves within the limits established by law.

Proceeding from the fundamental principles of the Constitution, one of the priority lines of democratisation of social life in the Republic is the development of the nongovernmental sector.

The state renders effective support to nongovernmental organisations. The nongovernmental sector in Kazakhstan has mostly formed during ten years of its development and become a genuine public force and an important resource of further democratisation of the country.

In this connection, the Law of the Republic of Kazakhstan "On Non-profit Organisations" has been adopted on 16 January 2001. The subject of its regulation has been identified as relations emerging in connection with the creation, activity, reorganisation, and liquidation of non-profit organisations. Non-profit organisations can be set up in the form of an institution, public association, fund, religious organisation, affiliation of legal entities in the form of an association (union) and in a different form, including notary chambers,

lawyers' bars, chambers of commerce and industry, auditors' chambers, cooperatives of apartment proprietors.

Government Resolution of the Republic of Kazakhstan No. 85 of 23 January 2002 has approved the Concept of State Support of Nongovernmental Organisations. The main goals of this Concept are determined as the rendering of efficient support to socially oriented nongovernmental organisations by active participation with them, their involvement in solution of socially significant problems, rendering information, consultative, methodological, organisational, and technical support, as well as assistance through the state social order.

In pursuance of this Concept, Government Resolution of the Republic of Kazakhstan No. 253 of 17 March 2003 has approved the Programme of State Support of Nongovernmental Organisations and the Action Plan for its implementation. The necessary organisational legal measures have been mapped out in this connection, as well as measures for the development of public initiative in the regions, setting up consultative and advisory bodies (councils) at the local executive authorities on matters of interaction with nongovernmental organisations, information, consultative, methodological, organisational, and technical support of nongovernmental organisations, training and advanced training of public servants in these issues.

Nongovernmental organisations are legal entities registered in accordance with the Law of 17 April 1995 "On State Registration of Legal Entities and Registration of Subsidiaries and Representative Offices."

An application is filed to the registration authority for state registration, supplemented with the statute of the organisation executed in the national and Russian languages, and presented in three copies. Such registration is made not later than 10 working days from the date of filing the said application.

In accordance with the legislation of Kazakhstan (article 120 of the Tax Code), a non-profit organisation is an organisation, except joint-stock companies, institutions and consumer cooperatives, except cooperatives of apartment (building) proprietors, exercising the activity in public interests and not pursuing the objective of gaining profit as such, and does not distribute the net profit or property gained among its participants.

The profit of a non-profit organisation received in the form of deposit commission, grant, admission and membership fee, condominium participants'

contribution, charity donation, property donated free of charge, gratis contributions and donations is exempt from taxation.

Other income is taxable according to the general procedures. A non-profit organisation must keep separate accounts of incomes exempt from taxation and incomes taxable in the generally established manner.

If the incomes received are subject to taxation in the generally accepted manner, the sum of expenses of the non-profit organisation referable to discounts in the overall sum of expenses is calculated on the basis of a proportionate method, proceeding from the share of incomes subject to taxation in the generally established manner in the overall amount of incomes of the non-profit organisation.

At the same time, special attention is given to the improvement of state support of small and medium business.

E.g. social relations in the area of state support of small entrepreneurship are regulated by the Law of the Republic of Kazakhstan No. 131-1 of 19 June 1997 "On State Support of Small Entrepreneurship."

State support of small entrepreneurship is exercised on the basis of state, sector, and regional programme and represents a complex of relevant measures.

Proposals to include individual projects to these programmes can be introduced both by interested public authorities, public organisations and citizens.

The State Programme of Development and Support of Small Entrepreneurship in the Republic of Kazakhstan for 2004 – 2006, approved by the Presidential Decree of the Republic of Kazakhstan No. 1268 of 29 December 2003, is currently being implemented in that sphere.

The measures adopted within the frameworks of this Programme include the development of the small enterprise sphere by evaluating the impact of decisions adopted by the executive authorities for removing the barriers preventing business efficiency, and involvement of entrepreneurs and their public organisations in this process.

The Law provides the following guarantees to small business entities.

Unjustified interference of public officials in economic activity of small business entities is not admitted.

The public authorities exercising control and supervisory functions may ban or suspend the activity of a small business entity only through court procedures. The ban or suspension of the activity without a court decision may be admitted on exclusive cases stipulated by legislative acts of the Republic of Kazakhstan for a period not more than 3 days. The act banning or suspending the activity remains in force until the court decision is adopted.

Controlling officials of the public supervisory authorities must carry out inspections of small business entities only upon the presentation of a special instruction issued on strict accounting forms.

The damage, including lost profit, inflicted on a small business entity as a result of fulfilment of instructions of the public authorities or their officials, contradicting the law, violating entrepreneurs' rights, is subject to compensation by these authorities.

The bans issued by public authorities or officials, restricting entrepreneurial activity, not based on the law, are invalid and not subject to implementation.

In addition, expert councils on matters of support and development of small and medium entrepreneurship have been created and are currently operating at the public authorities.

Government Resolution of the Republic of Kazakhstan No. 917 of 19 August 2002 has approved the Model Statute of Expert Councils, the main objectives of which are determined as: the rendering of consultative support in development and implementation of state policy in the sphere of small and medium entrepreneurship, development of proposals for the improvement of legal norms of small and medium entrepreneurship protection and development; rendering support in the preparation of documents on matters of interaction and cooperation of the public authorities and organisations with small and medium business entities.

The Expert Council is headed by the chief executive official of the public authority at which it is created and is formed by scientists, representatives of associations and public affiliations of entrepreneurs, as well as employees of the relevant public authorities on a cost-free basis.

Considering the initiatives of the private sector and the civil society, the Head of State delivers an annual nation address to the people of Kazakhstan on the situation in the country and the main lines of domestic and foreign policy (article 44 of the Constitution).

Political Party Financing

In accordance with article 44 of the Constitution, the financing of political parties and professional unions by foreign legal entities and citizens, foreign states and international organisations is not admitted in Kazakhstan.

The legal basis for the creation of political parties, their rights and obligations, activity guarantees are regulated by the Law of the Republic of Kazakhstan of 15 July 2002 "On Political Parties."

According to this Law, the political party funds are formed by admission and membership fees, revenues from entrepreneurial activity, donations of citizens and nongovernmental organisations of the Republic of Kazakhstan contributed in the manner prescribed by the central executive authority ensuring tax control over the fulfilment of tax obligations before the state, on condition that these donations are documentarily supported and their source is indicated.

Donations to a political party and its structural units (branches and representative offices) by foreign states, foreign legal entities, and international organisations, foreigners and persons without citizenship, legal entities with foreign participation, public authorities and public organisations, religious associations and charity organisations, as well as anonymous donations are not admitted.

The money of political parties is placed on bank accounts registered in accordance with effective law of Kazakhstan.

Political parties' money and other property cannot be distributed among its members and should be spent in keeping with their statutory objectives. The use of political parties' resources for charity purposes is allowed.

Members of political parties are not liable for its obligations, and a political party is not liable for the obligations of its members.

The Constitutional Law of 28 September 1995 "On Elections in the Republic of Kazakhstan" envisages public and private financing of elections.

E.g. elections of the President, deputies of the Parliament, except deputies of Majilis Parliament, elected on the basis of party lists, maslikhats, members of local self-government bodies, are financed from the republican budget.

The republican budget allocates funds to cover the expenses on the organisation and activity of election commissions, rent of premises, travel expenses, compensation of consultants, experts, members of the linguistic commission, appearances of candidates, except candidates running on the basis of party lists, in mass media (15-minutes television appearance, 10-minutes radio appearance, publications in printed media – two articles not more than 0.1 of a printed page); holding candidates' public election functions and issuance of election campaign materials of candidates, except candidates running on the basis of party lists; candidates' travel expenses, except candidates running on the basis of party lists, in amount established by the Central Commission for Elections.

Election financing by international organisations and international public associations, foreign public authorities, foreign legal entities and citizens, as well as persons without citizenship, any form of their direst or indirect participation in the financing of elections in the Republic is prohibited.

Foreigners, persons without citizenship, foreign legal entities are prohibited to conduct activity contributing to the nomination and election of candidates, political parties nominating a party list, and achievement of a certain election result.

In the event of private election financing, the candidates' election campaign during the elections of the President, deputies of the Parliament and deputies of maslikhats, can be financed from election funds formed in the manner established by this Law.

Election funds are subject to state registration.

Election funds are formed from the following sources: personal funds of deputy candidates at election constituencies, political party funds; funds allocated to a candidate by the public association of the republic which nominated him/her; voluntary donations of citizens and organisations of the Republic. Voluntary donations by the public authorities and organisations, bodies of local self-government, charity organisations, religious associations, Kazakh legal persons with foreign participation in their authorised capital, as well as anonymous donations of physical and legal persons are prohibited.

Only legally gained resources may be channelled towards election funds. Information about the overall amount of money channelled to the fund is published in mass media within ten days after the elections.

Monetary resources forming the election fund are entered on a special provisional account opened at banking institutions by a relevant election commission after registration of a candidate or a party list. Incomes are not accrued or paid on the said account. The right to administer the election fund for the above purposes belongs exclusively to the candidate and political parties nominating party lists. The banks provide a weekly report to a relevant election commission on the crediting of money to special provisional accounts and its expenditure. These data are provided on request of a relevant commission for election within twenty-four hours. The order of expenditure of the election fund resources and a relevant banking institution are determined by the Central Commission for Elections.

If a candidate lifts his/her candidacy, a political party revokes its party list or cancels the decision on the nomination of a candidate or a party list, or registration of a candidate or a party list, the money contributed to the election fund is subject to immediate return to citizens and organisations who contributed it. In such case the expenses connected with the return of the said resources are covered by the citizens and organizations who contributed them.

All financial transactions on special provisional accounts are terminated on 18 hours on the day preceding the date of the elections.

In the event of a repeated vote, transactions on special provisional accounts of candidates whose candidacy is subject to a repeated vote, shall be resumed on the day of appointment of the date of the repeated vote and terminated at eighteen hours on the days preceding the date of the elections.

The total amount of money contributed to an election fund from the moment of its formation must not exceed the margin established by this Law.

A candidate or a political party must provide to a relevant election commission, not later than five days after the establishment of the election results, a report on the utilisation of resources of the election fund. Two third of the election fund resources left unspent on purposes of the election campaign are channelled to the republican budget, and one third is returned to the candidate or the political party.

The violation of the established rules and procedures for spending the election fund resources by a candidate or a political party nominating a party list, entails the cancellation of the decision on registration of the candidate or the party list, and after the elections before registration of a candidate as President, deputy of the Parliament, deputy of the maslikhat, member of a local self-government body – invalidation of the elections on a relevant territory or constituency.

At the same time, for purposes of ensuring compliance by political parties with the legislation and rules regulating elections in the Republic and the party activity, the legislation of the Republic of Kazakhstan envisages criminal and administrative responsibility for unlawful actions connected with financial activities of parties.

E.g. the Criminal Code envisages punishment for rendering assistance to political parties and professional unions of foreign states, financing, providing premises of property, as well as rendering any other support to political parties or professional unions of other states, if these deeds have entailed serious violation of the rights and lawful interests of citizens or organisations or legally protected interests of society or the state, in the form of a fine in the amount from three hundred to one thousand minimal monthly estimates or corrective labour for a term up to two years, or arrest for a term up to six months, or imprisonment for a term up to one year (article 338 of the RK CC).

At the same time, the Code of Administrative Offence envisages administrative responsibility for violations of the law, not containing elements of a criminal offence.

Non-presentation by a candidate, a person elected deputy or to another elected position, or a political party of data on the amount of revenues (donations) to election funds and the sources of the election funds, as well as a report on the utilisation of the election fund resources, entails the imposition of a fine on the candidate, the person elected deputy or to another elected position in the amount up to 15, and on a legal entity – in the amount up to 55 monthly estimates (article 108).

The rendering of financial or other material assistance to candidates, political parties nominating party lists, except their election funds, entails the imposition of a fine on citizens in the amount from 15 to 25, and on legal entities – in the amount from 30 to 50 monthly estimates (article 108-1).

The acceptance by a candidate to deputy or to another elected public position or by a political party of donations in any form from a foreign state, an international organisation or an international public association, foreign public authorities, foreign legal entities and citizens, as well as persons without citizenship, entails the imposition of a fine on the candidate to deputy or another elected position in the amount from 20 to 50 , and on a legal entity – in the amount from 50 to 100 monthly estimates with confiscation of the donated objects (article 109).

Criminalisation of Corruption

For purposes of preventing, terminating and solving corruptive offences, and imposing liability on the guilty parties, the Criminal Code of the Republic of Kazakhstan envisages the elements of corruptive and other offences, specifically, misappropriation or embezzlement of entrusted property (article 176, part 3 (d)), legalisation of unlawfully gained money and other property (article 193, part 3 (a)), economic contraband with the use of official position (article 209, part 3 (a)), office abuse (article 307), exceeding power or office (article 308, part 4 (c)), unlawful participation in entrepreneurial activity (article 310), bribe-taking (article 311), bribe-giving (article 312), bribe solicitation (article 313), official forgery (article 314), official omission (article 315), and power abuse, exceeding power or official omission (article 380).

Active and Passive Bribery

Definition and elements of the offences

Article 311. Bribe-Taking

Part one. The taking by a person authorised to fulfil public functions, or an equivalent person, personally or through an intermediary, of a bribe in the form of money, securities, other property, property rights or property benefits for actions (omissions) in favour of the bribe-giver or persons represented by him/her, if such actions (omissions) constitute the official functions of the person authorised to fulfil public functions, or an equivalent person, or he/she can promote such actions (omissions) due to his/her official position, as well as general official patronage or tolerance – shall be penalised with a fine in the amount from seven hundred to two thousand monthly estimates or in the amount of the salary or another income of the convicted person over the period from seven months to one year, or restriction of freedom for a term up to five years, or imprisonment for the same term with deprivation of the right to

occupy certain positions or engage in certain activities for a term u p to five years, with or without property confiscation.

Part two. The same offence committed by an official, as well as bribe-taking for illegal actions (omissions) – shall be penalised with imprisonment for a term from three to seven years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to seven years with or without property confiscation.

Part three. Offences stipulated by parts one and two of this article committed by a person occupying a responsible public position – shall be penalised with imprisonment for a term from five to ten years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to seven years with or without property confiscation.

Part four. Offences stipulated by parts one, two and three of this article committed:

- through extortion;
- by a group of persons on preliminary agreement or by an organised group;
- on a large scale;
- repeatedly – shall be penalised with imprisonment for a term from seven to twelve years with property confiscation.

Notes:

A large bribe is recognised as a sum of money, value of securities, other property of property benefits exceeding five hundred monthly estimates.

The receipt by a person authorised to fulfil public functions, or an equivalent person for the first time of property, property rights or another property benefit as a gift in the absence of preliminary agreement for earlier performed legal actions (omissions), if the value of the gift does not exceed two monthly estimates, is not an offence due to little significance, and shall be penalised with a disciplinary penalty.

Article 311 of the CC envisages the elements of the crime of bribe-taking (active bribery).

Bribe-taking – by a person authorised to fulfil public functions, or an equivalent person, personally or through an intermediary, in the form of money, securities, other property, property rights or property benefits for actions (omissions) in favour of the bribe-giver or persons represented by him/her, if such actions (omissions) constitute the official functions of the person authorised to fulfil public functions, or an equivalent person, or he/she can promote such actions (omissions) due to his/her official position, as well as general official patronage or tolerance.

The subject of a bribe may be money, securities, other property, property rights or property benefits.

Property rights as the subject of a bribe mean the vesting of a person with the authority to own, use or administer property.

Property benefits as the subject of a bribe include the granting to a bribe-taker of various material services, both cost-free and at intentionally understated prices.

According to general rules, the size of the bribe received by an official does not matter for deciding whether his/her actions contain elements of an offence. However, the note to articles 311 and 312 of the CC indicates deeds, which are not criminal due to little significance, if the person receives a bribe for the first time and the value of the present does not exceed two monthly estimates. In such case the person shall be penalised with disciplinary sanctions.

The objective aspect of this offence consists in the taking by a person personally or through an intermediary for actions (omissions) in favour of the bribe-giver or persons represented by him/her, if such actions (omissions) constitute the official functions of the person authorised to fulfil public functions, or an equivalent person, or he/she can promote such actions (omissions) due to his/her official position, as well as general official patronage or tolerance.

The methods of bribe-taking may be diverse: acceptance of a bribe, consent to registering a property right, etc.

Bribe-taking refers to so-called formal elements of offence, a crime is considered complete as of the moment of receipt of the subject of the bribe,

regardless of the fact whether the bribe-taker has fulfilled the actions (omissions) for the fulfilment of which the bribe was given. It does not matter whether the bribe was received in full amount or in part. However, if part of a bribe was received and the overall agreed amount of it reached a significant level, the deed shall be qualified as encroachment on bribe-taking on a large scale.

The subjective aspect of bribe-taking is characterised by direct intent. The subject should be aware of taking a bribe and be willing to do it. At the same time, the intent of the guilty party should signify the fact of bribe-taking for committing the aforementioned deeds. The mere fact of discovering of the object of the bribe in possession of the suspect is insufficient. It is necessary to establish the official's will to take a bribe. If money or property was planted on an official, or material services were provided against his/her will, there are no elements of bribe-taking.

The subject under part one of this article is a person authorised to fulfil public functions, or an equivalent person. The subject under part two of this article is an official or a person authorised to fulfil public functions, or an equivalent person. If the subject of an offence poses as an official or a person authorised to fulfil public functions, or an equivalent person, not being any of the above, the deed shall be qualified as bribe solicitation.

Part four of this article envisages special qualifying elements of bribe-taking:

- through extortion;
- by a group of persons on preliminary agreement or by an organised group;
- on a large scale.

Extortion shall be recognised as "the demand by an official of a bribe under the threat of committing actions that could inflict damage on lawful interests of the bribe-giver or intentional placement of the latter in conditions under which he/she is compelled to give a bribe in order to prevent harmful consequences for his/her legally protected interests."

An offence shall be considered committed by a group of persons on preliminary agreement if it was committed by persons who had agreed in advance on joint commission of the offence.

An offence shall be considered committed by an organised group if it was committed by a steady group of persons united in advance for purposes of committing one or several crimes (article 31 of the CC).

It is necessary to bear in mind that applicably to bribe-taking a group can be formed only by officials or persons authorised to fulfil public functions, or equivalent persons.

A large scale of a bribe is recognised as a sum of money, value of securities, other property or property benefits exceeding five hundred monthly estimates. If illegal remuneration on a large scale is received in portions, but these actions constitute the episodes of one continuous offence, the act shall be qualified as bribe-taking on a large scale.

Article 312. Bribe-Giving

Part one. Bribe-giving to a person authorised to fulfil public functions, or an equivalent person, personally or through an intermediary – shall be penalised with a fine in the amount from two hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from two to five months, or corrective labour for a term up to two years, or restriction of freedom for a term up to three years, or arrest for a term from three to six months, or imprisonment for a term up to three years.

Part two. Bribe-giving to an official, as well as bribe-giving in exchange for committing intentionally illegal actions (omissions) or repeatedly or by an organised group – shall be penalised with a fine in the amount from seven hundred to two thousand monthly estimates or in the amount of the salary or another income of the convicted person over the period from seven months to one year, or restriction of freedom for a term up to five years, or imprisonment for the same term.

Notes:

The transfer to a person authorised to fulfil public functions, or an equivalent person for the first time for earlier conducted lawful actions (omissions) of a present in the sum or value not exceeding two monthly estimates shall not entail criminal responsibility if the actions (omissions) conducted by a person authorised to fulfil public functions, or an equivalent person were not connected with preliminary agreement.

A bribe-giver shall be exempt from criminal responsibility if there has been bribe extortion with his/her respect by a person authorised to fulfil public functions, or an equivalent person, or if this bribe-giver has voluntarily reported the fact of bribe-giving to an authority empowered to initiate criminal proceedings.

Article 312 of the CC envisages the elements of bribe-giving (passive bribery).

Bribe-giving – to a person authorised to fulfil public functions, or an equivalent person, personally or through an intermediary.

The subject of bribe-giving may be money, securities, other property, property rights or property benefits.

The objective aspect of the offence consists in bribe-giving to a person authorised to fulfil public functions, or an equivalent person, personally or through an intermediary.

These are formal elements of an offence. Bribe-giving shall be considered completed as of the moment of its acceptance in full volume or partially by the bribe-taker, regardless of whether he/she has fulfilled any actions (omissions) in the interests of the bribe-giver or persons represented by him/her. The acceptance of a bribe by a person is an obligatory condition for recognising bribe-giving as a complete offence.

The subjective aspect of bribe-giving is characterised with direct intent and the goal of inducing a bribe-taker to committing actions (omissions) in favour of the bribe-giver r persons represented by him/her, if such actions constitute the official functions of the guilty party or he/she can promote such actions (omissions) due to his/her official position. The subject should be aware of bribe-giving to a person authorised to fulfil public functions, or an equivalent person for committing actions in his/her favour of persons represented by him/her or general official patronage or tolerance.

The subject of bribe-giving may be any person who has reached the age of sixteen.

Part two of this article envisages the following qualification elements:

- bribe-giving to an official;

- bribe-giving in exchange for committing intentionally illegal actions (omissions);

- repeated bribe-giving;

- bribe-giving by an organised group.

Illegal actions (omissions) of a bribe-taker in pursuance of which the bribe is given may be diverse: illegal issuance of drivers' license, provision of an apartment, etc.

The commission of two or more acts envisaged by one and the same article or part of an article of the Special Part of this Code shall be recognised as repeated offence (article 11 of the CC).

An offence shall be considered committed by an organised group if it was committed by a steady group of persons united in advance for purposes of committing one or several crimes (article 31 of the CC). In case of bribe-taking, a group can be formed only by officials or persons authorised to fulfil public functions, or equivalent persons.

Sanctions

Article 39 of the CC envisages the forms of punishment applicable to persons convicted for offences.

The court can apply the following main sanctions to persons recognised guilty of committing offences (depending on the categories of offences):

- fine;

- deprivation of the right to occupy a certain position or engage in certain activities;

- social jobs;

- corrective labour;

- restriction to military service;

- restriction of freedom;

- arrest;
- custody at a disciplinary military unit;
- imprisonment;
- death penalty.

In addition to the main penalties, the following additional sanctions can be imposed on convicts:

- deprivation of a special, military or honorary title, an official rank, a diplomatic rank, qualification class, and state awards;
- property confiscation.

Fines and deprivation of the right to occupy a certain position or engage in certain activities can be applied both as the main and additional sanctions.

In accordance with article 52 (part 3) of the CC, penalties are appointment with account taken of the nature and level of social danger of the offence, the personality of the offender, including his/her behaviour before and after committing the offence, circumstances mitigating and aggravating the responsibility and punishment, as well as the influence of the punishment on correction of the convict and the living standards of his/her family or dependents.

Before the appointment of a penalty the court examines all circumstances mitigating criminal responsibility and punishment (article 53 of the CC).

The following circumstances are recognised as mitigating criminal responsibility and punishment:

- committing a minor offence for the first time due to accidental circumstances;
- minority of the offender;
- pregnancy;
- the guilty person's having small children;

- commission of the crime as a consequence of serious personal, family or other circumstances, or for motives of compassion;

- commission of the crime as a result of physical or psychological compulsion or dur to material, official or other dependence;

- sincere repentance, surrender, active assistance to investigating the crime, conviction of the other accomplices and search of the property gained as a result of the crime.

Before appointing punishment the court also examines the circumstances aggravating criminal responsibility and punishment (article 54 of the CC).

The following circumstances are recognised as aggravating the responsibility and punishment:

- repeated crime, crime relapse;

- inflicting grave consequences by the offence;

- committing an offence as a member of a group of persons, by a group of persons on preliminary agreement, an organised group or a criminal association;

- a particularly active role in committing an offence;

- commission of an offence by a person, thereby violating an oath or professional vow;

- committing an offence by abusing the trust rendered to the guilty person due to his/her official position or agreement;

- committing an offence with the use of an official uniform or documents of a representative of the authorities;

Statute of limitations

The statute of limitation terms are envisaged by article 69 of the CC and are applied to persons who have committed offences.

Part 1. A person shall be exempt from criminal responsibility if the following periods have passed from the date of commission of the offence:

- two years after committing a minor offence (minor offences are recognised as intentional deeds the commission of which entails the maximum penalty not exceeding two years of imprisonment, as well as careless actions, the commission of which entails a maximum penalty of five years of imprisonment);

- five years after committing an average crime (average crimes are recognised as intentional deeds the commission of which entails a maximum penalty not exceeding five years of imprisonment, as well as careless actions, the commission of which entails a maximum penalty of five years of imprisonment);

- ten years after committing a grave crime (grave crimes are recognised as intentional deeds the commission of which entails a maximum penalty not exceeding twelve years);

- fifteen years after committing an especially grave crime (especially grave crimes are recognised as intentional deeds the commission of which entails a penalty in the form of imprisonment for a term exceeding twelve years, or death penalty).

Part 2. The statutes of limitations are calculated from the date of commission of an offence until the moment of entry of the sentence into legal force.

Part 3. The course of the statutes of limitations shall be suspended if a person who has committed an offence evades investigation and trial. In such case the course of the statute of limitations shall be resumed as of the moment of detention or surrender of the person. However, a person cannot be brought to criminal responsibility if twenty-five years have passed from the moment of committing the offence and the statute of limitations has not been interrupted.

Part 4. The course of the statutes of limitations shall be interrupted if the person who has committed a grave or an especially grave crime commits a new intentional offence before the expiration of the periods indicated in part one. In such cases, if the person commits a new offence before the expiration of the statute of limitations, the statute of limitations for each offence shall be calculated separately.

Other corruption and corruption-related offences

In addition to the two corruptive offences described above, stipulated by articles 311 and 312 of the RK CC, this category includes other corruption-related offences.

Article 176 (part 3 (d)), Misappropriation or Embezzlement of Entrusted Property

Misappropriation or embezzlement, or theft of property entrusted to the guilty party – shall be penalised with a fine in the amount from two hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from two to five months, or social jobs for a term from one hundred and twenty to one hundred and eighty hours, or corrective labour for a term up to two years, or arrest for a term up to six months, or imprisonment for a term up to three years.

The same offence committed:

- by a group of persons on preliminary agreement;
- repeatedly;
- with the use of official position – shall be penalised with a fine in the amount from five hundred to one thousand monthly estimates or in the amount of the salary or another income of the convicted person over the period from five months to one year, or restriction of freedom for a term up to four years, or imprisonment for a term from two to five years with or without property confiscation, with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Offences stipulated by parts one or two of this article, committed:

- by an organised group;
- on a large scale;
- by a person formerly tried two or more times for theft or extortion;
- by a person authorised to fulfil public functions or an equivalent person, if it involves the use of an official position – shall be penalised

with imprisonment for a term from five to ten years with property confiscation and deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, and in cases stipulated by item (d) – up to seven years.

Article 193 (part 3 (a)), Legalisation of Illegally Gained Money or Other Property

Conducting financial and other transactions with money and other property acquired by admittedly illegal means, as well as the use of the said money or other property for purposes of entrepreneurial or other business activity – shall be penalised with a fine in the amount from five hundred to seven hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from five to seven months, or arrest for a term up to six months, or imprisonment for a term up to three years with or without a fine in the amount up to one hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period up to two months.

The same offence committed:

- by a group of persons on preliminary agreement;
- repeatedly;
- with the use of official position – shall be penalised with imprisonment for a term from two to five years with or without property confiscation.

Offences stipulated by parts one or two of this article, committed:

- by a person authorised to fulfil public functions or an equivalent person, if it involves the use of an official position;
- by an organised group;
- by a criminal community (criminal organisation) or on a large scale – shall be penalised with imprisonment for a term from three to seven years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, and in cases stipulated by item (a) – up to seven years with or without property confiscation.

Note:

This article qualifies a large scale of an offence as conducting a transaction or using money or other property to the sum exceeding ten thousand monthly estimates.

A person voluntarily reporting a preparing or conducted legalisation of money or another property gained by illegal means shall be exempt from criminal responsibility if his/her actions do not contain the elements of offences stipulated by parts two and three of this article, or another crime.

Article 209 (part 3 (a)), Economic Contraband

The transfer of large volumes of products or other items across the customs border of the Republic of Kazakhstan, except those indicated in article 250 of this Code, in defiance or in concealment from the customs control, or with fraudulent use of documents or customs identification means, or involving non-declaration or unreliable declaration of products, items, and valuables banned or restricted for transportation across the customs border, with respect of which special rules of transportation across the customs border are established – shall be penalised with a fine in the amount from two hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from two to five months, or arrest for a term from four to six years, or imprisonment for a term up to three years with or without a fine in the amount up to one hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period up to one month.

The same offence committed:

- repeatedly;
- by a person with the use of his/her official position;
- with the application of violence to a person exercising customs control –
- shall be penalised with imprisonment for a term from two to five years with or without property confiscation.

The same offence committed:

- by a person authorised to fulfil public functions or an equivalent person, if it involves the use of an official position;

- by an organised group – shall be penalised with imprisonment for a term from three to eight with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, and in cases stipulated by item (a) – up to seven years with property confiscation.

Note:

Offences stipulated by this article shall be recognised committed on a large scale if the value of the transported products exceeds one thousand monthly estimates.

Article 307. Office Abuse

The use by a person authorised to fulfil public functions or an equivalent person of his/her official powers in defiance of the interests of the service for purposes of gaining benefits and advantages for himself/herself or other persons or organisations, or inflicting damage on other persons or organisations, if it has entailed a serious violation of the rights and lawful interests of citizens or organisations or legally protected interests of society or the state – shall be penalised with a fine in the amount from one hundred to two hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from one to two months, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, or arrest for a term up to four months, or imprisonment for a term up to two years.

The same offence committed by an official – shall be penalised with a fine in the amount from three hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from three to five months, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or imprisonment for a term up to four years.

The same offence committed by a person occupying a responsible public position – shall be penalised with a fine in the amount from five hundred to eight hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from five to eight months, or imprisonment for a term up to six years with or without deprivation of the right

to occupy certain positions or engage in certain activities for a term up to five years.

Offences stipulated by parts one, two or three of this article, entailing grave consequences – shall be penalised with imprisonment for a term up to eight years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to seven years.

Notes:

Persons authorised to fulfil public functions include officials, deputies of the Parliament and maslikhats, judges and all public servants, in keeping with the legislation of the Republic of Kazakhstan on public service.

Persons equivalent to persons authorised to fulfil public functions include:

- persons elected to bodies of local self-government;
- citizens registered in the legally established manner as candidates to the Republic of Kazakhstan President, deputies of the Republic of Kazakhstan Parliament and maslikhats, as well as members of elected bodies of local self-government;
- officers permanently or temporarily working at bodies of local self-government, whose remuneration is paid from the state budget of the Republic of Kazakhstan;
- persons exercising managerial functions at public organisation and organisations the share of the state in the authorised capital of which is not less than thirty-five percent.

Officials are recognised as persons permanently, temporarily or on special authority exercising organisational and management or administrative functions at public authorities, bodies of local self-government, as well as the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan.

Persons occupying a responsible public position are recognised as persons occupying positions established by the Constitution of the Republic of Kazakhstan, constitutional and other laws of the Republic of Kazakhstan for direct fulfilment of public functions and functions of the public authorities, as

well as persons occupying political public service positions in accordance with the legislation of the Republic of Kazakhstan.

Article 308. Power or Office Abuse

Power or office abuse, i.e. the commission by a person authorised to perform public functions or an equivalent person of actions lying evidently beyond his/her rights and authorities and entailing a serious violation of the rights and lawful interests of citizens or organisations or legally protected interests of society or the state – shall be penalised with a fine in the amount from two hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from two to five months, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, or arrest for a term from four to six months, or imprisonment for a term up to three years.

The same offence committed by an official – shall be penalised with a fine in the amount from three hundred to seven hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from three to seven months, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or imprisonment for a term up to five years.

The same offence committed by a person occupying a responsible public position – shall be penalised with a fine in the amount from five hundred to one thousand monthly estimates or in the amount of the salary or another income of the convicted person over the period from five to nine months, or imprisonment for a term up to eight years with or without deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

Offences stipulated by parts one, two or three of this article entailing grave consequences of committed:

- with the use of violence or threat of violence;
- with the use of weapons or special devices;
- for purposes of gaining benefits and advantages fore himself/herself or other persons or organisations or inflicting damage on other persons or organisations – shall be penalised with imprisonment for a term up to ten years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to seven years.

Article 310. Illegal Participation in Entrepreneurial Activity

The foundation by a person authorised to perform public functions or an equivalent person of an organisation exercising entrepreneurial activity, or participation in the management of such an organisation personally or through a trustee in defiance of a legally established ban, if these actions involve the granting of benefits and advantages to such an organisation or another form of patronage – shall be penalised with deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, with a fine in the amount from one hundred to two hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from one to two months, or social jobs for a term from one hundred and eighty to two hundred and forty hours, or arrest for a term from three to six months, or imprisonment for a term up to one year.

The same offences committed by an official – shall be penalised with deprivation of the right to occupy certain positions or engage in certain activities for a term up to ten years with a fine in the amount from three hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from three to five months, or imprisonment for a term up to two years.

The commission by officials of actions entailing the delegation of licensing authorities to nongovernmental organisations, including public associations – shall be penalised with a fine in the amount from one hundred to two hundred monthly estimates or deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Article 313. Bribe Solicitation

Bribe solicitation, or assisting a bribe-taker and a bribe-giver in the achievement or implementation of the agreement on the taking and giving of a bribe between them – shall be penalised with a fine in the amount from one hundred to three hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from one to three months, or corrective labour for a term up to one year, or restriction of freedom for a term up to two years, or arrest for a term up to four months, or imprisonment for a term up to two years.

The same offence committed repeatedly or by an organised group or by a person with the use of his/her official position – shall be penalised with a fine in the amount from five hundred to one thousand monthly estimates or in the

amount of the salary or another income of the convicted person over the period from five months to one year, or restriction of freedom for a term up to four years, or imprisonment for the same term.

Article 314. Official Forgery

Official forgery, or entry by a person authorised to perform public functions or an equivalent person of admittedly false data in official documents, as well as making corrections in the said documents distorting their real content, or the issuance of admittedly false or forged documents, if these acts are committed for purposes of gaining benefits and advantages for oneself or other persons or organisations, or inflicting damage on other persons or organisations – shall be penalised with a fine in the amount from one hundred to two hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from one to two months, or social jobs for a term one hundred and eighty to two hundred and forty hours, or corrective labour for a term up to two years, or arrest for a term up to six months, or imprisonment for a term up to two years.

The same offence committed by an official – shall be penalised with a fine in the amount from three hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from three to five months, or imprisonment for a term up to three years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

Offences stipulated by part one of this article committed by a person occupying a responsible public position – shall be penalised with a fine in the amount from five hundred to one thousand monthly estimates or in the amount of the salary or another income of the convicted person over the period from three to seven months, or imprisonment for a term up to five years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to seven years.

Article 315. Official Omission

Official omission, or non-fulfilment by a person authorised to perform public functions or an equivalent person of his/her official duties for purposes of gaining benefits and advantages for himself/herself or other persons or organisations, or inflicting damage on other persons or organisations, if this has entailed serious violations of the rights and lawful interests of citizens and organisations or legally protected interests of society or the state – shall be

penalised with a fine in the amount from one hundred to two hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from one to two months, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, or arrest for a term up to four years, or imprisonment for a term up to two years.

The same offence committed by an official – shall be penalised with a fine in the amount from three hundred to five hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from three to five months, or imprisonment for a term up to three years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

The same offence committed by a person occupying a responsible public position – shall be penalised with a fine in the amount from five hundred to eight hundred monthly estimates or in the amount of the salary or another income of the convicted person over the period from five to eight months, or imprisonment for a term up to five years with or without deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

Offences stipulated by parts one, two or three of this article, entailing grave consequences – shall be penalised with imprisonment for a term up to eight years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to seven years.

Article 380. Power Abuse, Exceeding Power or Omission

Power or office abuse by a chief officer or an official, exceeding power or office, as well as official omission committed for mercenary considerations or another personal interest and inflicting serious damage – shall be penalised with restrictions to military service for a term up to two years, or arrest for a term up to six months, or imprisonment for a term up to five years.

The same offence entailing grave consequences – shall be penalised with imprisonment for a term from three to ten years.

Offences stipulated by parts one and two of this article committed at war time or in a combat environment – shall be penalised with imprisonment for a term from five to twenty years or death penalty or a life sentence.

Concept and definition of a "public official"

The Law "On Public Service" defines the main concept of a public official.

An official is recognised as a person permanently, temporarily or on special authority exercising organisational and management or administrative functions at public authorities.

The following persons are equivalent to persons authorised to perform public functions:

- persons elected to bodies of local self-government;
- citizens registered in a legally established manner as candidates to the Republic of Kazakhstan President, deputies of the RK Parliament and maslikhats, as well as members of elected bodies of local self-government;
- employees permanently or temporarily working at bodies of local self-government, whose compensation if paid from the state budget of the Republic of Kazakhstan;
- persons exercising managerial functions at public organisations and organisations with not less than thirty-five percent of state participation in the authorised capital.

In addition, notes 3 and 4 to article 307 of the CC provides a definition of the concept of officials:

Officials are recognised as persons permanently, temporarily or on special authority exercising organisational and management or administrative functions at public authorities, bodies of local self-government, as well as the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan.

Persons occupying a responsible public position are recognised as persons occupying positions established by the Constitution of the Republic of Kazakhstan, constitutional and other laws of the Republic of Kazakhstan for direct fulfilment of public functions and functions of the public authorities, as well as persons occupying political public service positions in accordance with the legislation of the Republic of Kazakhstan.

Defences and exceptions

Justice in the Republic of Kazakhstan is administered only by the court (article 75 of the Constitution).

Judicial authority is administered by civil, criminal, and other forms of proceedings established by law.

Judicial authority is exercised on behalf of the Republic of Kazakhstan and is aimed at protecting the rights, freedoms and lawful interests of citizens and organisations, ensuring compliance with the Constitution, laws, regulations, and international agreements of the Republic (article 76 of the Constitution).

Judicial authority covers all cases and disputes emerging on the basis of the Constitution, laws, regulations, and international agreements of the Republic.

The courts are not empowered to apply laws and regulations infringing human and citizens' rights and freedoms fixed by the Constitution. If the court decides that an applicable law or regulation infringes human and citizens' rights and freedoms fixed by the Constitution, it must suspend proceedings in the case and apply to the Constitutional Council with a presentation to recognise this act unconstitutional (article 78 of the Constitution).

The powers of the court as the bearer of judicial authority are also stipulated by article 59 of the Code of Criminal Procedure.

The court is entitled to:

- recognise a person guilty of committing an offence and appointing a penalty;
- apply forced medical measures or forced educational measures to a person;
- cancel or change a decision issued by a subordinate court.

On the pre-trial stages of a criminal case the court considers complaints against the decisions of the criminal prosecution authority in cases and in the manner prescribed by this Code.

If the consideration of a case by the court reveals circumstances contributing to the commission of a crime, violations of the rights and freedoms of citizens, as well as other violations of the law committed during the inquiry, preliminary investigation or consideration of the case by a lower-ranking court, the court may issue a partial decision to direct the attention of the relevant organisations, officials or persons exercising managerial functions to those circumstances and facts of violations of the law requiring the issuance of the necessary measures. If, according to the law, the detected offences entail administrative responsibility, the court shall have the right, at the same time with the adoption of a decision on the criminal case, to impose an administrative penalty on the physical or legal person guilty of the administrative offence, in accordance with the Code of Administrative Procedure (CAP) of the Republic of Kazakhstan, except persons with respect of which the court issues an accusatory verdict in this case.

Defences and exceptions in the prosecution of corruptive and other offences are established by the legislation on criminal procedure of the Republic of Kazakhstan and apply equally to all categories of offences.

E.g. article 26 of the RK CAP envisages the right to defence of a suspect and a defendant.

A suspect and a defendant have a right to defence. They can exercise this right both personally and through a defence attorney, a legal representative.

The authority conducting a criminal case must explain to the suspect and the defendant their rights and ensure their opportunity to defend themselves against the accusation with all means not prohibited by law and to take measures for the protection of their personal and property rights.

In cases stipulated by this Code the authority conducting criminal proceedings must ensure participation of the defence attorney of the suspect and the defendant in the case.

The participation of the defence attorney and legal representative of the suspect and the defendant in the criminal proceedings does not belittle the rights of the latter.

A suspect and a defendant shall not be forced to testify, provide any sort of materials to criminal prosecution authorities and render any kind of support to them.

The suspect and the defendant shall retain all the guarantees of a right to defence also during the consideration of a criminal case versus a person accused or joint commission of a crime.

A defence attorney is a person exercising the protection of the rights and interests of the suspect sand the defendants and rendering them legal support in the legally established manner (article 70 of the CAP).

Defence attorney may be lawyers, the spouse, close relatives or legal representatives of the defendant, representatives of trade unions and other public associations in cases of these associations' members. Foreign lawyers are admitted to participation in a case as defence attorneys, if this is envisaged by an international agreement of the Republic of Kazakhstan with a relevant country on a mutual basis in the manner prescribed by law.

A defence attorney is admitted to participate in a case from the moment of presentation of an accusation or recognition of a person suspect in accordance with article 68 (part one) of this Code.

One and the same person cannot be a defence attorney of two suspects or defendants if the interests of one of them contradict the interests of the other.

A lawyer shall not have the right to refuse from the assumed duty of defence of a suspect or a defendant.

The participation of a defence attorney in criminal proceedings is obligatory in cases if (article 71 of the CAP):

- it is petitioned by the suspect or the defendant;
- the suspect or the defendant has not reached the age of majority;
- the suspect or the defendant cannot independently exercise his/her right to defence due to physical and psychic handicaps;
- the suspect or the defendant does not know the language of the legal proceedings;
- a person is accused of committing a crime the appointed penalty for which may exceed ten years of imprisonment, life sentence or death penalty;

- arrest as a restraint measure is applied to the defendant, or he/she has been forcefully referred to an in-patient forensic psychiatric expert examination;

- there are contradictions between the interests of the suspects or the defendants, one of whom has a defence attorney;

- a representative of the victim (a private accuser) or a civil claimant participates in criminal proceedings;

- a public prosecutor participates in consideration of the case in court;

- the defendant is staying outside the territory of the Republic of Kazakhstan are is evading the appearance at preliminary investigation bodies.

If in the presence of the circumstances stipulated by part one of this article a defence attorney has not been invited by the suspect or the defendant themselves, their legal representatives, as well as other persons on their instruction, the authority conducting criminal proceedings must ensure the participation of a defence attorney on a relevant stage of the case, of which it shall issue a decision binding on the professional lawyers bar.

The defence attorney must use all legal means and methods of defence to reveal the circumstances denying the accusation or mitigating the responsibility of the suspect or the defendant, and render them the necessary legal assistance (article 74 of the CAP).

A defence attorney participating in investigatory proceedings is entitled, on permission of the prosecutor or the investigator, to put questions to the interrogated persons. The prosecutor or the investigator may overrule the questions of the defence attorney, but at the same time must enter all the questions asked in the interrogation transcript. The defence attorney may add written remarks to the interrogation transcript concerning the correctness and completeness of its filling.

The defence attorney shall participate in the examination of the evidence and disclose to the court his/her opinion on the merits of the case and the proof of a criminal charge, the circumstances mitigating the responsibility of the defendant or acquitting him/her, on penalty measures and other issues connected with the legal proceedings (article 316 of the CAP).

In the event of non-appearance of a defence attorney and impossibility to substitute for him/her at a given court session, the hearing of the case shall be postponed. Substitution for a defence attorney who failed to appear at a court session shall be admitted only on consent of the defendant. If the participation of a defence attorney invited by the defendant is impossible for a longer period, the court shall postpone the main court deliberations and propose to the defendant to select another defence attorney, and in the event of his/her refusal – appoint a new defence attorney.

Immunities

The legislation on criminal procedure guarantees immunity to individual categories of public officials and foreigners.

The specifics of proceedings in cases vs. persons granted exemptions and immunities against criminal prosecution are prescribed in chapter 53 of the RK Code of Criminal Procedure (hereinafter – the CCP).

Preliminary investigation procedures with respect of a deputy of the Republic of Kazakhstan Parliament are prescribed in **article 496 of the CCP.**

A criminal case versus a deputy of the Republican Parliament may be initiated only by the head of a public authority of the Republic of Kazakhstan conducting inquiry and preliminary investigation. The Prosecutor General of the Republic of Kazakhstan shall be immediately notified of the initiation of a criminal case. After the performance of urgent investigative actions, the case shall be referred to the investigator through the Prosecutor General of the Republic of Kazakhstan not later than in forty-eight hours. A preliminary investigation of cases versus Parliamentary deputies of the Republic of Kazakhstan is mandatory.

A deputy of the Republic of Kazakhstan Parliament shall not be arrested, detained, brought to criminal responsibility during his/her stay in office without the consent of a relevant chamber of the Republic of Kazakhstan Parliament, except cases of being caught at the scene of the crime or commission of grave or especially grave crimes.

In order to obtain consent to imposing criminal responsibility on a deputy, arrest or detention, the Prosecutor General of the Republic of Kazakhstan shall submit a presentation to the Senate or the Majilis of the Republic of Kazakhstan Parliament. The presentation shall be submitted before the presentation of an accusation to the deputy, issuance of a sanction to arrest, decision of the issue of

the necessity of forced conveying of the deputy to the criminal prosecution authority.

If a relevant chamber of the Republic of Kazakhstan issues its consent to the imposition of criminal responsibility on a deputy, further investigation shall be conducted in the manner prescribed by this Code, considering the specifics stipulated by this article.

If a relevant chamber of the Republic of Kazakhstan issues its consent to the arrest or detention, the issue of applying these restraint measures and processional enforcement to the deputy shall be decided in the manner prescribed by this Code.

If a relevant chamber of the Republic of Kazakhstan does not give its consent to the imposition of criminal responsibility on a deputy, the criminal case shall be terminated on the said grounds.

If a relevant chamber of the Republic of Kazakhstan does not give its consent to arrest or detention, other restraint or processional enforcement measures shall be applied to the deputy in the manner prescribed by this Code.

Supervision over the lawfulness of investigating a criminal case versus a deputy of the Republic of Kazakhstan Parliament is exercised by the Prosecutor General of the Republic of Kazakhstan. The sanctions to conduct investigatory activities with respect of a deputy of the Republic of Kazakhstan Parliament, which, according to this Code, should be sanctioned by a prosecutor, shall be issued by the Prosecutor General of the Republic of Kazakhstan. The extension of the term of arrest with respect of a deputy of the Republic of Kazakhstan Parliament in the manner prescribed by **article 153** of this Code shall be executed by the Prosecutor General of the Republic of Kazakhstan.

Upon completion of the investigation of a case with an accusatory verdict, it shall be referred by the investigator to the Prosecutor General of the Republic of Kazakhstan in the manner prescribed by this Code for reference to court.

A preliminary investigation versus the Chairperson or a member of the Constitutional Council of the Republic of Kazakhstan is envisaged by **article 497 of the CCP**.

A criminal case versus the Chairperson or a member of the Constitutional Council of the Republic of Kazakhstan may be initiated only by the head of the public authority of the Republic of Kazakhstan conducting inquiry and

preliminary investigation. The Prosecutor General of the Republic of Kazakhstan shall be immediately notified of the initiation of a criminal case. After the performance of urgent investigative actions, the case shall be referred to the investigator through the Prosecutor General of the Republic of Kazakhstan not later than in forty-eight hours. A preliminary investigation of cases versus Parliamentary deputies of the Republic of Kazakhstan is mandatory.

The Chairperson or a member of the Constitutional Council of the Republic of Kazakhstan shall not be arrested, detained, brought to criminal responsibility during his/her stay in office without the consent of the Republic of Kazakhstan Parliament, except cases of being caught at the scene of the crime or commission of grave or especially grave crimes.

In order to obtain consent to imposing criminal responsibility on the Chairperson or a member of the Constitutional Council of the Republic of Kazakhstan, arrest or detention, the Prosecutor General of the Republic of Kazakhstan shall submit a presentation to the Republic of Kazakhstan Parliament. The presentation shall be submitted before the presentation of an accusation to the Chairperson or a member of the Constitutional Council of the Republic of Kazakhstan, issuance of a sanction to arrest, decision of the issue of the necessity of his/her forced conveying to the criminal prosecution authority.

A preliminary investigation versus a judge is envisaged by **article 498 of the CCP**.

A criminal case versus a judge may be initiated only by the Prosecutor General of the Republic of Kazakhstan, who assigns the investigation to the authority conducting inquiry and preliminary investigation. A preliminary investigation of cases versus a judge is mandatory.

A judge shall not be arrested, detained, brought to criminal responsibility during his/her stay in office without the consent of the Republic of Kazakhstan President based on conclusion of the Supreme Judicial Council of the Republic of Kazakhstan or in the case envisaged by **article 55** (sub-item 3) of the Constitution – without the consent of the Senate of the Republic of Kazakhstan Parliament, except cases of being caught at the scene of the crime or commission of grave or especially grave crimes.

In order to obtain consent to imposing criminal responsibility on a judge, arrest or detention, the Prosecutor General of the Republic of Kazakhstan shall submit a presentation to the President of the Republic of Kazakhstan, and in the

case envisaged by **article 55** (sub-item 3) of the Constitution – to the Senate of the Republic of Kazakhstan Parliament. The presentation shall be submitted before the presentation of an accusation to the judge, issuance of a sanction to arrest, decision of the issue of the necessity of forced conveying of the judge to the criminal prosecution authority.

A preliminary investigation versus the Prosecutor General of the Republic of Kazakhstan is envisaged by **article 499 of the CCP**.

A criminal case versus the Prosecutor General of the Republic of Kazakhstan may be initiated only by his/her first deputy. The Prosecutor General of the Republic of Kazakhstan shall be suspended from duty by the President of the Republic of Kazakhstan from the moment of initiation of a criminal case versus him/her until the completion of the investigation, on the presentation of the first deputy of the Prosecutor General. The Prosecutor General of the Republic of Kazakhstan shall not be arrested, detained, brought to criminal responsibility during his/her stay in office without the consent of the Senate of the Republic of Kazakhstan Parliament, except cases of being caught at the scene of the crime or commission of **grave or especially grave crimes**.

In order to obtain consent to imposing criminal responsibility on the Prosecutor General of the Republic of Kazakhstan, arrest or detention, the first deputy of the Prosecutor General shall submit a presentation to the Senate of the Republic of Kazakhstan Parliament. The presentation shall be submitted before the presentation of an accusation to the Prosecutor General of the Republic of Kazakhstan, issuance of a sanction to arrest, decision of the issue of the necessity of his/her forced conveying to the criminal prosecution authority.

After the first deputy of the Prosecutor General of the Republic of Kazakhstan receives a decision of the Senate of the Republic of Kazakhstan Parliament, further proceedings on the case shall be conducted in the manner prescribed by parts four, five, six, and seven of **article 496** of this Code.

Supervision over the lawfulness of investigating a criminal case versus the Prosecutor General of the Republic of Kazakhstan is exercised by his/her first deputy. The sanctions to conduct investigatory activities with respect of the Prosecutor General of the Republic of Kazakhstan shall be issued by his/her deputy. The extension of the term of arrest with respect of the Prosecutor General of the Republic of Kazakhstan in the manner prescribed by this Code shall be executed by the First Deputy Prosecutor General of the Republic of Kazakhstan.

Court examination of a criminal case versus a deputy of the Republic of Kazakhstan Parliament, Chairperson or a member of the Constitutional Council of the Republic of Kazakhstan, a judge, the Prosecutor General of the Republic of Kazakhstan is prescribed by **article 500 of the CCP**.

The case shall be considered in accordance with the general rules of court procedures, considering the provisions of this article.

The court is entitled to apply arrest to the defendant deputy of the Republic of Kazakhstan Parliament, Chairperson or a member of the Constitutional Council of the Republic of Kazakhstan, a judge, the Prosecutor General of the Republic of Kazakhstan as a restraint measure and detention as a processional enforcement measure, filing a presentation for the issuance of a consent thereto in the manner prescribed, accordingly, by part three of article **496**, part three of article **497**, part three of article **498**, part two of article **499** of this Code, if the issuance of such consent to arrest or detention by the public authorities stipulated by item 4 of article **52**, item 5 of article **71**, item 2 of article **79**, item 3 of article **83** of the Constitution of the Republic of Kazakhstan has been denied during preliminary investigation, or such consent was not requested.

Persona granted diplomatic immunity against criminal prosecution are indicated in **article 501 of the CCP**.

In keeping with the legislation of the Republic of Kazakhstan and international agreements ratified by the Republic of Kazakhstan, the following persons are granted immunity against criminal prosecution:

- heads of diplomatic missions of foreign countries, members of the diplomatic corps of these missions and members of their families, if they live together with them and are not citizens of the Republic of Kazakhstan;

- on a reciprocal basis, members of the maintenance staff of diplomatic missions and members of their families living together with them, if these employees and their family members are not citizens of the Republic of Kazakhstan or do not permanently reside in Kazakhstan, heads of consulates and other consular officials with respect of offences committed by them during the performance of official functions, unless stipulated otherwise by an international agreement of the Republic of Kazakhstan;

- on a reciprocal basis, members of the administrative and technical maintenance staff of diplomatic missions and members of their families living together with them, if these employees and their family members are not citizens of the Republic of Kazakhstan or do not permanently reside in Kazakhstan;

- diplomatic messengers;

- heads and representatives of foreign states, members of parliamentary and governmental delegations and, on a reciprocal basis – members of delegations of foreign states arriving in Kazakhstan for participating in international negotiations, international conferences and meetings or on other official missions, or in transit across the territory of the Republic of Kazakhstan for the same purposes, and family members of the above persons accompanying them, if those family members are not citizens of the Republic of Kazakhstan;

- heads, members, and personnel of the missions of foreign states at international organisations, officials of those organisations situated on the territory of the Republic of Kazakhstan, on the basis of international agreements or generally accepted international traditions;

- heads of diplomatic missions, members of the diplomatic staff of missions of foreign states in a third country in transit across the territory of the Republic of Kazakhstan, and members of their families accompanying the above persons or travelling separately from them, in order to join them or return to their home country;

- other persons, in accordance with an international agreement of the Republic of Kazakhstan.

In accordance with an international agreement of the Republic of Kazakhstan, persons stipulated in this article as well as other persons may be brought to criminal responsibility only if a foreign state presents an explicit refusal from immunity against criminal investigation. The question of such a refusal shall be solved on the presentation of the Prosecutor General of the Republic of Kazakhstan through the Foreign Ministry of the Republic of Kazakhstan by diplomatic methods. In the absence of a refusal of a relevant foreign state from immunity against criminal investigation of the said persons, criminal investigation shall not be initiated against them, and an initiated case shall be terminated.

Jurisdiction

Chapter 55 of the Code of Criminal Procedure contains the fundamental provisions on the order of interaction of the authorities conducting a criminal case with competent authorities and officials of foreign countries on criminal affairs.

Procedural and other actions conducted in the frameworks of legal assistance (article 521 of the CCP).

Procedural actions stipulated by this Code and other actions envisaged by other laws and international agreements of the Republic of Kazakhstan may be conducted in the frameworks of legal assistance to investigation authorities and courts of foreign countries with which the Republic of Kazakhstan has concluded an international agreement on legal assistance, or on the basis of reciprocity.

If the provisions of an international agreement ratified by the Republic of Kazakhstan contradict this Code, the provisions of the international agreement shall be applied.

Expenses connected with the rendering of legal assistance shall be covered by the requested institution on the territory of its national state, unless stipulated otherwise by the international agreement of the Republic of Kazakhstan.

Interaction procedures in matters of rendering legal assistance (article 523 of the CCP).

A request for conducting an investigatory action shall be sent through the Prosecutor General of the Republic of Kazakhstan, and a judicial action – through the Justice Minister of the Republic of Kazakhstan or their respective deputies or authorised officials who when necessary seek the mediation of the Foreign Ministry of the Republic of Kazakhstan.

The request shall be executed in the language of the foreign state to which it is sent, unless stipulated otherwise by an international agreement of the Republic of Kazakhstan.

The court, the prosecutor, the investigator, and the inquiry officer shall draw up a request on the rendering of legal assistance in procedural and other actions on the territory of another state in writing on a special form, sign it and seal it with the official stamp of the authority conducting the criminal case.

The request on the rendering of legal assistance on a motivated application of a relevant prosecutor or the court shall be sent, accordingly, to the Prosecutor General, the Justice Minister of the Republic of Kazakhstan or an authorised prosecutor.

The Prosecutor General of the Republic of Kazakhstan or the Justice Minister shall solve the issue of sending the request for the rendering of legal assistance to a competent institution of another state.

The procedures for rendering legal assistance in matters of extradition and criminal prosecution are regulated by articles 527 and 529 of this Code.

Sending materials in a case for continuing criminal prosecution (article 527 of the CCP).

In the event of commission of a crime on the territory of the Republic of Kazakhstan by a foreigner who left the territory of the Republic of Kazakhstan, the authority conducting the criminal case shall issue a motivated decision to suspend proceedings in the case and a decision on the transfer of the investigative and judicial jurisdiction. The materials of the case shall be sent to the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor with an application for conducting criminal prosecution for solving the issue of referring the case to another country in keeping with an international agreement.

Fulfilment of requests for continuing criminal prosecution or initiating a criminal case (article 528 of the CCP).

A request of a relevant institution of a foreign state on the transfer for further investigation of a criminal case versus a citizen of the Republic of Kazakhstan who committed a crime on the territory of a foreign state and returned to the Republic of Kazakhstan shall be considered by the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor. Preliminary investigation and judicial proceedings in such cases shall be conducted in the manner prescribed by this Code.

The evidence obtained during the investigation of a case on the territory of a foreign country by a duly authorised authority or official within the frames of their competence in the established form shall be valid during the continuation of the investigation in the Republic of Kazakhstan, as well as the other evidence gathered in the case.

In the event of commission of an offence on the territory of another state by a citizen of the Republic of Kazakhstan who later returned to the Republic of Kazakhstan before criminal proceedings were instituted against him/her, a criminal case may be initiated and investigated by bodies of preliminary investigation of the Republic of Kazakhstan on the basis of materials in this case provided by an institution of a foreign state to the Prosecutor General's Office of the Republic of Kazakhstan.

The authority conducting a criminal case must notify the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor if the final decision adopted in the case and provide a copy of this decision.

Sending a request for the extradition of a person for imposing criminal responsibility or enforcement of a sentence (article 529 of the CCP).

In cases and in the manner prescribed by the legislation of the Republic of Kazakhstan and international agreements, the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor shall address a competent institution of a foreign state with a request for the extradition of a person who is a citizen of the Republic of Kazakhstan who has committed an offence, if an accusatory sentence has been issued against this person or a decision to bring charges against him/her.

In cases and in the manner prescribed by international agreements and the legislation of the Republic of Kazakhstan, the authority conducting a criminal case shall file an application for the extradition of a person who committed an offence on the territory of the Republic of Kazakhstan and then left its territory to the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor, attaching the necessary documents to it.

An extradition request shall contain:

- the name of the authority conducting criminal proceedings;
- the first, middle and last name of the convict (defendant), year of birth, citizenship data, description of the appearance and photographs;
- presentation of the circumstances of the committed offence supplemented with the text of the law establishing responsibility for this crime with obligatory indication of the sanction;

- data about the place and time of issuance of the sentenced entered into legal force or a decision to bring charges, supplemented with copies of relevant documents.

The extradition request should be supplemented with: a copy of the decision to bring charges, a copy of the decision to take into custody, documents confirming the citizenship of the person subject to extradition, conclusion of a relevant prosecutor on the lawfulness and validity of the extradition request.

Limits of criminal responsibility of extradited persons (article 530 of the CCP).

A persons extradited by a foreign state cannot be brought to criminal responsibility, punished or extradited to a third country for another crime, not connected with the extradition, without the consent of the extraditing state.

Fulfilment of a foreign citizen extradition request (article 531 of the CCP).

A request for the extradition of a citizen of a foreign state accused of committing an offence or convicted on the territory of a foreign state shall be considered by the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor, whose instructions shall serve as grounds for the extradition. If there are several requests for extradition of a person filed by several countries, the decision on which country the person should be extradited to shall be taken by the Prosecutor General of the Republic of Kazakhstan.

The extradition terms and procedures shall be determined by this Code and the international agreement of the Republic of Kazakhstan with the foreign state.

If a citizen of a foreign state with respect of whom an extradition request has been filed is serving a sentence for another crime on the territory of the Republic of Kazakhstan, extradition may be postponed until the sentence is served or the person is released from punishment on any legitimate grounds. If a citizen of a foreign country is brought to criminal responsibility, his/her extradition may be postponed until the issuance of a sentence, serving the sentence, or release from criminal responsibility or punishment on any grounds. If the extradition postponement may entail the expiration of the statute of limitations for criminal prosecution or damage the investigation of the offence, the person whose extradition is sought under the request may be extradited for a period determined by an agreement between the parties.

The person extradited temporarily shall be returned after conducting procedural actions in a criminal case for which he/she was extradited, but not later than three months after the extradition. This period may be extended on mutual agreement, but not longer than the term of the punishment of the accused or the term to which the person may be punished for the crime committed on the territory of the Republic of Kazakhstan.

After receiving the instruction of the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor on extradition, the administration of the place of detention shall within thirty days organise the escorting and handing over of the extradited person to a relevant authority of the country to which he/she is extradited, and report about the implementation thereof to the Prosecutor General of the Republic of Kazakhstan or the authorised prosecutor.

Refusal from extradition (article 532 of the CCP).

Extradition shall be denied if:

- the person is granted political asylum in the Republic of Kazakhstan;
- the deed underlying the extradition request is not considered an offence in the Republic of Kazakhstan;
- a sentence has already been passed and entered into legal force versus the person for the same crime, or proceedings in the case have been terminated;
- a criminal case cannot be initiated or a sentence cannot be enforced in accordance with the legislation of the Republic of Kazakhstan due to the expiration of the statute of limitations or for other grounds.

Extradition may be denied if the crime in connection with which the extradition request is filed was committed on the territory of the Republic of Kazakhstan or outside its borders, but was directed against the interests of the Republic of Kazakhstan.

Extradition arrest (detention and taking into custody for extradition) (article 534 of the CCP).

In case of receipt of a duly executed extradition request from a competent institution of a foreign country and existence of legal grounds for the person's extradition, he/she may be detained and subjected to the restrained measure in

the form of extradition arrest. The person may be arrested on petition of the requesting state also before the receipt of the extradition request. The petition should contain a reference to the decision on taking into custody or to the sentence entered into legal force, and the indication that the extradition request will be filed additionally. After examining the presented materials and in case of existence of sufficient grounds to assume that the detained person is on a wanted list, and in the absence of circumstances stipulated by article 532 of this Code, the prosecutor shall issue a decision on extradition arrest, which shall be announced to the arrested person against his/her signature. The prosecutor shall immediately issue a report on the performed extradition arrest to the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor, indicating the state the citizen of which the arrested person is, and the name of the circulating authority.

A person may be detained for a period up to three days without a petition stipulated in part one of this article, if these are legal grounds to suspect that this person has committed a crime entailing extradition on the territory of another country.

The institution of another country which has filed or can file an extradition request or a petition for arrest shall be immediately notified of the taking of the person into custody, with the proposal of the extradition time and place.

If extradition has not taken place within thirty days, the person taken into custody shall be released on a prosecutor's order. A person detained in accordance with part two if this article shall be released if a request for his/her extradition is not filed within the period stipulated by the legislation of the Republic of Kazakhstan on detention. Repeated taking into custody shall be admitted only upon the consideration of a new extradition request in accordance with part one of this article.

Extradition arrest of the detained person, as per article 531 of this Code, shall be warranted by a prosecutor for a term up to one month.

The release of an arrested person for extradition shall be sanctioned by the prosecutor who performed the extradition arrest, including upon the expiration of the terms indicated in this article, if extradition has not taken place within this period, which shall be immediately reported to the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor.

Corruption in the private sector

The legislation of the Republic of Kazakhstan does not cover corruption in the private sector.

Confiscation of proceeds from corruption

The Law of the Republic of Kazakhstan "On the Fight against Corruption" stipulates measures for eliminating the consequences of corruptive offences (article 18).

E.g. in all cases of unlawful enrichment of persons authorised to perform public functions or their equivalent persons as a result of corruptive offences, the unlawfully gained property is subject to foreclosure, and the cost of illegally received services collected in favour of the state.

In the event of a refusal to voluntarily surrender the illegally gained property or pay its cost or the cost of unlawfully received services to the state, the recovery in favour of the state shall be enforced on a court decision on the claim of a prosecutor, the tax service or other public authorities and officials duly authorised by the law. The said authorities shall arrest the offender's property until court issues its decision.

If a person exercising public functions or a person equivalent to such person after dismissal or another form of suspension from performing relevant functions for committing a corruptive offence refused to fulfil the requirements stipulated by item 1 of this article, the official or the authority issuing the decision on such a suspension shall notify the tax authority at the place of residence of the guilty person of the illegal incomes.

Liability of legal persons

The legislation of the Republic of Kazakhstan does not cover the responsibility of legal persons

Specialised Services

The Law of the Republic of Kazakhstan of 4 July 2002, No. 336-II determines the legal status, tasks, principles of organisation and activity, and authorities of the financial police bodies.

Bodies of financial police are special public authorities exercising law-enforcement activity aimed at the prevention, detection, and investigation of major and other unlawful encroachments on human and citizens' rights, interests of society and the state by conducting operational search, preliminary investigations and inquiry, administrative proceedings, within the frames of their legally prescribed authorities.

Presidential Decree of the Republic of Kazakhstan of 23 December 2003 No. 1255 has transformed the RK Financial Police Agency into the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruptive Crime (financial police) (hereinafter – the Agency).

The Agency is the central executive authority of the Republic of Kazakhstan exercising the guidance and, within legally prescribed frameworks, inter-departmental coordination and other special executive and permissive functions for prevention, detection, termination, solving, and investigation of economic, financial and corruptive crimes and offences for purposes of ensuring economic security.

In accordance with part 3 of article 192 and part 3 of article 285 of the RK Code of Criminal Procedure, the competence of financial police bodies includes preliminary investigation and inquiry.

According to article 6 of the Law of the Republic of Kazakhstan of 15 September 1994, No. 154-XIII "On Operational Search Activity," financial police bodies are entitled to conduct operational search.

The Agency's main objectives are:

- ensuring, within the frames of its authorities, the economic security of the state, legal rights and interests of entrepreneurial entities, society and the state;
- prevention, detection, termination, solving, and investigation of corruptive crimes and offences in the economic and financial spheres;
- participation in development and implementation of the state policy of the fight against corruption and crime in the economic sphere;
- analysis and forecast of the operative situation in the Republic, taking operative measures on matters requiring the interference of financial policy bodies;

- coordination and holding of Republic-wide, regional operative investigative and preventive measures on matters within its competence, developing optimal solutions for the use of the available forces and means, rendering practical and methodological support to territorial, specialised bodies and educational institutions of the financial police, summing up and disseminating the best work practices;

- within the frames of its competence, improvement of the structure of the financial police bodies, development of measures for the improvement of interaction of territorial, specialised bodies and educational institutions of the financial police between each other and with other public authorities;

- exercising general guidance of the territorial, specialised bodies and educational institutions of the financial police;

- exercising international cooperation on matters within the jurisdiction of the financial police bodies;

- within the frames of its competence, logistic, financial, personnel, information support of the activity of territorial, specialised bodies and educational institutions of the financial police.

The Agency exercises the following functions within the frameworks of its authority:

- ensures the guidance, coordination, and harmonisation of the actions of the territorial, specialised bodies and educational institutions of the financial police along the main lines of their activity;

- analyses the practice of operational search, administrative, investigative activities, and inquiry of the financial police bodies;

- improves the forms and methods of fighting against economic, financial and corruptive offences, determines the tactics and methodology of operative search, develops and implements measures for raising the efficiency of performance of the financial police bodies;

- identifies priority lines of activity of the financial police bodies, develops legal, organisational, and economic mechanisms of their implementation;

- organises personnel selection, placement, training, education, and advanced training for territorial, specialised bodies and educational institutions of the financial police;

- implements the tasks assigned to the financial police bodies, supervises their implementation by the territorial, specialised bodies and educational institutions, and other entities in charge of the financial police;

- within the frames of its statutory authorities, issues laws and regulations;

- organises scientific research and developments in topical areas of activity of the financial police bodies;

- exercises operative search, organises and supervises the implementation of the said activity by the territorial and specialised bodies of the financial police, and renders them practical and methodological support;

- conducts the search:

  – of persons on criminal cases and cases of administrative offences, referred to the jurisdiction of the financial police bodies;

  – of respondents whose whereabouts are unknown on claims filed in the interests of the state on a court decision;

- interacts with the relevant bodies of foreign countries in matters of fighting against economic, financial, and corruptive crimes and offences, participated within the frames of its authority in the activity of international organisations;

- informs the Government of the Republic of Kazakhstan and the interested public authorities on the status of the fight against economic and corruptive offences;

- interacts with the other public authorities;

- ensures proper and efficient use of the allocated material resources and budgetary allowances, keeps accounting and reporting on them, as well as inner-departmental monitoring of the financial and business activity of the territorial, specialised bodies and educational institutions of the financial police.

The Agency has the following rights within the frames of its competence:

- to submit proposals to the Government on matters of creation, reorganisation, and liquidation of the financial police bodies, educational institutions, and institutions in charge, as well as organisational, manning, personnel, and logistic support of the financial police bodies;

- to participate in development of laws and regulations on matters of ensuring the economic security of the state and other issues related to the activity of the financial police bodies;

- to conduct operational search, inquiry, and preliminary investigations;

- to have access to documents, materials, statistic data, and other information on materials and criminal cases in proceeding, as well as to demand their provision from the chief executives and other officials of organisations, physical persons, make copies of them, and receive explanations;

- to detain persons evading the appearance on summons on criminal cases in proceeding;

- to withdraw or confiscate documents, products, items or other property in keeping with the legislation on criminal procedure and the legislation on administrative offences of the Republic of Kazakhstan;

- to use relevant temporary isolation wards and investigative isolation wards in the manner prescribed by the legislation of the Republic of Kazakhstan;

- too cooperate with relevant authorities of foreign countries, international organisations in matters referred to the jurisdiction of the financial police bodies;

- to participate in development and implementation of programmes of fighting crime in the Republic of Kazakhstan;

- to draw up reports and consider cases of administrative offences, conduct administrative detention, and to apply other measures stipulated by the legislation of the Republic of Kazakhstan on administrative offences;

- to demand that authorised bodies and officials perform inspections, examinations, audits, and assessments in cases stipulated by the legislation of the Republic of Kazakhstan;

- to create and use information systems ensuring the solution of the tasks assigned to the financial police bodies, to organise research in the course of preliminary investigation, inquiry, proceedings in cases of administrative offences in the manner prescribed by the legislation of the Republic of Kazakhstan;

- to conduct scientific research, educational, publishing, activity in the manner prescribed by the legislation of the Republic of Kazakhstan;

- to issue binding instructions and presentations to physical and legal persons to eliminate the causes and conditions of crimes and other offences.

In accordance with the Agency Statute, citizens of the Republic of Kazakhstan who have reached the age of majority and whose personal, moral, business, and professional characteristics, educational level and health condition make them fit to serve at bodies of financial police shall be accepted for service at the financial police bodies.

Persons who have reached the age of sixteen, with secondary education, fit to undergo service at the financial police bodies shall be enrolled for training at the educational institutions of the financial police bodies.

Citizens of the Republic of Kazakhstan not older than forty years old shall be accepted for service at the financial police bodies, and not older than thirty-

two years old – to untitled positions and junior command personnel. In exceptional cases the said age margin may be changed by decision of the head of an authorised body.

Persons previously convicted and exempted from criminal responsibility for non-acquitting grounds, as well as those dismissed from the public authorities for negative motives shall not be accepted to service at the financial police bodies.

Citizens enrolling for service at the financial police bodies take an oath, the text of which is approved by the President of the Republic of Kazakhstan.

Officers of the financial police bodies are banned from membership of parties, professional unions, coming out in support of some political party, organising strikes and participating in their holding, engaging in any other paid activity (except educational, scientific or another form of creative activity), conduct entrepreneurial activity, and be a member of the managing body or supervisory council of a commercial organisation.

The Financial Police Academy has been established within the system of the financial police bodies for purposes of training, retraining and advanced training of personnel.

The duties to fight against corruption are assigned also to other public authorities listed in article 6 of the Law "On the Fight against Corruption."

The heads of public authorities, organisations, bodies of local self-government, within the frames of their authorities, ensure the fulfilment of requirements of this Law and the application of disciplinary measures stipulated by it, attracting for this purposes the personnel, supervisory, legal, and other services.

The detection, termination, prevention of corruptive offences and imposing liability on persons guilty of committing them is exercised, within the frames of their competence, by the prosecution, national security, interior bodies, the tax, customs, and financial police.

Officials and authorities must within the period stipulated by the legislation in form in writing the person or authority that has sent the case, material, report, presentation on a corruptive crime of offence, on results of their consideration.

Matters of organising separate investigative groups from among representatives of different departments are legally fixed by the Republic of Kazakhstan Code of Criminal Procedure.

In exceptional cases, in the event of establishment of facts of incompleteness and bias of the investigation or the complexity and importance of a criminal case, investigative groups may be set up uniting the investigators of several authorities.

A decision on creation of such groups is taken by the prosecutor or head of the investigative department; the competence of the said officials is regulated by article 198 of the RK CCP.

Preliminary investigation in a criminal case, in the event of its complexity or large volume, may be assigned to a group of investigators (an investigative group), which shall be indicated in the decision to initiate a criminal case, or a separate decision shall be issued. Decision thereon may be adopted by head of the investigative department. The decision should indicate all the investigators assigned to conduct the investigation, including the investigator in charge of the group. The suspect, the defendant, the victim, the civil claimant, the civil respondent, and their representatives should be familiarised with the decision to investigate the case by a group of investigators, and they should be granted explanation of their right to reject the head of the investigative group, as well as any investigator from the group.

The investigative group may include investigatory from several authorities exercising preliminary investigation. A decision on creating such a group may be taken both on a prosecutor's instruction and on the initiative of heads of the investigative departments of those authorities. The decision is executed by a joint decision of the heads of the investigative departments submitted with the observance of requirements indicated in part one of this article.

The Prosecutor General of the Republic of Kazakhstan in exceptional cases, in the event of establishment of facts of incompleteness and bias of the investigation or the complexity and importance of a criminal case, may form an investigative group from among the investigators of several authorities conducting preliminary investigation, appointing a prosecutor to be in charge of this group, and issue a relevant decision in support of such ruling. Control over the lawfulness of the investigation conducted by such investigative group shall be exercised by the Prosecutor General of the Republic of Kazakhstan.

Investigation and Enforcement

Distribution of powers and responsibilities among police, prosecutor in the investigation

According to article 75 of the Constitution, justice in the Republic of Kazakhstan is administered only through courts. Judicial authority is administered by civil, criminal, and other forms of proceedings established by law.

The Republican courts include the Supreme Court and local courts, established by the law. The establishment of special and extraordinary courts under any name is not admitted. A judge administering justice is independent and abides only by the Constitution and Law.

The functions of the prosecution authorities are regulated by article 83 of the Constitution, the prosecution office exercises on the behalf of the state the supreme control over the accuracy and uniformity of application of laws, presidential decrees, and other laws and regulations on the territory of the Republic, the lawfulness of operational search actions, inquiry and investigation, administrative and executive proceedings, takes measures for detection and elimination of any violations of the law, protests the laws and other legal acts contradicting the Constitution and laws of the Republic, represents the interests of the state in court and conducts criminal prosecution in cases, in the manner and within the limits prescribed by law.

The competence of the prosecutor as an official includes control over the lawfulness of operational search actions, inquiry, investigations, and court decisions, as well as criminal prosecution on all stages of the criminal case. A prosecutor participating in consideration of a criminal case by the court represents the interests of the state by supporting the prosecution and acts as a public prosecutor.

The prosecutor is entitled to file claims to a defendant or a person bearing property liability for his/her actions, in protection of the interests: of the victim incapable of independently administering the right to file and pursue a claim due to his/her helpless condition, dependence from the defendant or for other reasons; the state.

The authorities of a prosecutor in pre-trial proceedings and consideration of a case by the court are determined, respectively, by articles 190, 192 (parts

six and seven), 197, 289, 317, 296 (part three), 458, 460 of the Code of Criminal Procedure of the Republic of Kazakhstan.

The prosecutor is independent in discharging his/her procedural functions and abides only by law (article 62 of the CCP).

Bodies of inquiry stipulated by article 65 of the CCP include:

- bodies of the interior;
- national security bodies;
- bodies of justice – in cases of offences connected with the procedures for criminal penalty enforcement;
- the financial police bodies;
- the customs authorities – in cases of contraband and evasion of paying customs dues.

Depending on the nature of the offence, the inquiry bodies are assigned to:

- take the necessary criminal procedural and operational search actions in keeping with the legally established competence for purposes of detecting the elements of offences and persons who committed them, preventing and terminating offences;
- take criminal procedural and operational search actions in the manner prescribed by article 200 of this Code in cases requiring obligatory preliminary investigation;
- conduct inquiry in cases not requiring obligatory preliminary investigation in the manner prescribed by article 37 of this Code;
- conducting preliminary investigation in cases prescribed by part three of article 288 of the CCP.

Mandatory versus discretionary prosecution

The legislation on criminal procedure of the Republic of Kazakhstan envisages obligatory pre-trial investigation in a criminal case in case of

sufficient grounds. According to article 177 of the RK CCP, the motives for initiating a criminal case include:

- citizens' application;
- surrender;
- report of a public official or a person fulfilling administrative functions in an organisation;
- a mass media report;
- direct detection of evidence of an offence by officials and authorities empowered to initiate a criminal case.

The grounds for initiating a criminal case consist in the presence of sufficient evidence of elements of an offence in the absence of circumstances excluding criminal proceedings.

A body of inquiry must accept the application and report on an offence for consideration (article 183 of the CCP).

A criminal prosecution authority must accept, register and consider the application or report on any committed or preparing offence. The applicant shall be issued a document on the registration of the accepted application or report of the offence with the indication of the person who received the application or report, the time of its registration and time when a decision should be adopted on the application or the report.

Unjustified refusal to accept an application or a report on a crime may be appealed with the prosecutor or the court in the manner prescribed by this Code.

An application or a report on a crime filed with the court, except the initiation of cases of private accusation, shall be referred to the prosecutor, about which the applicant shall be notified.

If the court detects the elements of an offence in the course of consideration of a criminal, civil or administrative case, it must issue a particular decision to convey this information to the prosecutor.

In the event of detection of elements of an offence, bodies of inquiry must fulfil procedural actions stipulated by article 200 of the CCP.

In the event of detection of elements of an offence requiring obligatory preliminary investigation, the body of inquiry shall have the right to initiate a criminal case and conduct urgent investigative actions to detect and register the evidence of the offence: inspection, search, seizure, examination, detention and interrogation of suspects, interrogation of victims and witnesses. The body of inquiry shall immediately notify the prosecutor of the detected crime and initiation of a criminal case.

During the implementation of urgent investigative actions, but not later than five days after the initiation of a case, the body of inquiry must refer the case to an investigator, notifying the prosecutor thereof in writing within twenty-four hours.

After the case is referred to the investigator, the body of inquiry shall conduct investigative and operational search actions only on instruction of the investigator. In the event of referral to the investigator of a case in which the person who committed the offence was not established, the body of inquiry must take search actions for identifying the person guilty of committing the offence, notifying the investigator of the results.

In addition, there is a legal mechanism of control on materials of pre-trial proceedings and initiated criminal cases. In this case, the point at issue is internal control of the body of inquiry in cases of offences pre-trial investigation of which is conducted by the body of inquiry; the head of the body of inquiry monitors the timeliness and lawfulness of actions of the inquirers (article 66 of the CCP).

In addition, according to articles 62, 190, 192, 197, and 289 of the CCP, the prosecutor exercises surveillance of the lawfulness of inquiry and investigation within their competence.

In accordance with articles 37, 38, and 271 of the CCP, a victim who does not agree with the issued decision shall have the right of appeal against the actions of the body of inquiry, preliminary investigation, the prosecutor and the court with a higher-ranking prosecutor or a superior court.

Investigative capacities

For purposes of detection, investigation, and registration of the evidence of offence, the legislation on criminal procedure envisages investigative measures such as interrogation, confrontation, inspection, exhumation, examination, identification, search, seizure, arrest of correspondence, interception of

communications, wire-tapping and recording, investigative experiment, verification of evidence on the spot, legal expertise.

In addition, there are special methods, including arrest of correspondence, interception of communications, wire-tapping and recording.

If there are sufficient grounds to assume that the letters, telegrams, radiograms, postal packages, parcels, and other postal and telegraph dispatches may contain evidence, documents and objects significant for the case, arrest may be imposed on them.

The investigator issues a warrant to impose arrest on postal and telegraph dispatches, which is sanctioned by a prosecutor. The warrant should indicate: the name of the communications institution assigned with the duty to detain the postal and telegraph dispatches, the name, first name and middle name of persons whose postal and telegraph dispatches are subject to detention, their address, type of the postal and telegraph dispatches to be arrested, the term of their arrest.

The warrant to impose arrest on postal and telegraph correspondence shall be sent to the head of a relevant communications institution which must detain the postal and telegraph dispatches and immediately notify the investigator thereof.

The inspection, seizure, and making copies of the detained postal and telegraph dispatches shall be conducted by the investigator at a communications institution in the presence of witnesses. When necessary, the investigator is entitled to invite a specialist and an interpreter to participate in the inspection and seizure of postal and telegraph dispatches. A protocol is drawn up in each case of inspection of the postal and telegraph dispatches, indicating which postal and telegraph dispatches were inspected, copied and by whom, which were forwarded to the addressee or detained for a period determined by the investigator.

The arrest of postal and telegraph dispatches shall be cancelled by the investigator or prosecutor, when the need for such a measure is no longer relevant, but in any case not later than the investigation is completed (article 235 of the CCP).

The interception of communications transmitted by technical, including computer, communication channels, and withdrawal of information from

computer systems relevant to the investigated case shall be conducted on the basis of an investigator's warrant sanctioned by the prosecutor.

The investigator's warrant sanctioned by the prosecutor shall be sent to the authority conducting operational search actions.

Communications and computer information received as a result of interception shall be recorded by a specialist on a relevant carrier and handed over to the investigator (article 236 of the CCP).

Covert wire-tapping and recording conversations with the use of video and audio equipment or other special technical devices, as well as the tapping and recording of conversations conducted from telephones and other intercoms of a suspect, a defendant, and other persons who may possess information on a crime, including a corruptive offence, in cases of grave and especially grave crimes may be conducted on the basis of an investigator's warrant sanctioned by the prosecutor, if there are sufficient grounds to assume that the wire-tapping will enable to obtain the data significant for the case.

If there is a threat of violence, extortion and other criminal actions with respect of the victim, witness or members of their families, covert wire-tapping and recording with the use of video, audio equipment and other technical devices may be conducted on an investigator's warrant sanctioned by the prosecutor, as well as the listening and recording of conversations conducted from their telephones or other intercoms.

Having recognised the listening to conversations and communications and their recording necessary, the investigator shall issue a motivated warrant indicating: the criminal case and grounds for which this investigative action should be applied, the name, first name and middle name of persons whose communications are subject to listening and recording and during which time; the body assigned to carry out the technical aspect of the listening and recording of communications and conversations. The said warrant shall be presented to the prosecutor and if the latter issues a sanction, referred by the investigator to a relevant authority for implementation.

In urgent cases, wire-tapping and recording of communications and conversations shall be conducted on an investigator's warrant without the sanction of a prosecutor, with subsequent presentation, within twenty-four hours, of a report to the prosecutor on the listening and recording of communications and conversations. Having received this report, the prosecutor shall verify the lawfulness of this investigative action and issue a decision on its

lawfulness or unlawfulness. If a decision is adopted that the conducted listening and recording of communications and conversations was unlawful, this action shall not be admitted as evidence in the case.

The listening and recording of communications and conversations may be introduced for a term not exceeding six months. They shall be cancelled by an investigator's warrant when the need for such measures ceases, but in any case not later than the completion of the investigation.

During the entire period indicated in the warrant, the investigator shall be empowered to demand from the authority conducting the technical aspect of the listening to provide a phonogram for inspection and listening. The phonogram shall be provided to the investigator sealed and supplemented with a cover letter, which should indicate the motives for the listening, the time of beginning and end of recording communications and conversations, the necessary technical characteristics of the devices used and the quality of the recording.

The inspection and listening to the phonogram shall be conducted by the investigator in the presence of witnesses and when necessary – a specialist, which shall be entered in the protocol, including verbatim reproduction of the part of the phonogram of the communications and conversations relevant to the case, and a characteristic of the quality of the sound of the recorded persons' speech. The participants of the listening and recording of communications and conversations shall be warned about the responsibility for disclosure of the data which have become known to them. The phonogram shall be attached to the protocol, and its part irrelevant to the case shall be destroyed after the entry of the sentence into legal force or termination of the criminal case (article 237 CCP).

Organised crime and corruption

The problems of fighting organised forms of crime are acute for all countries today. Experience shows that crime in all its forms and manifestations has no borders, no nationality, and in the event of failure to take adequate measures penetrates all spheres of society's life.

We know from the experience of developed countries of Europe and the United States about the wide networks of criminal communities, such as the Sicilian mafia, La Cosa Nostra, Yakudza, and others, which have existed for many years and the fight against them has continued all this time with varied success.

Scientific research and practice shows that organised crime is never isolated from other forms of crime, but on the contrary, coalesces with them. Organised crime operates on the junction point of criminal, economic and corruptive crime, where bad faith business, corrupt public officials and the criminal world are united with a common goal of illegal enrichment, resorting to such unlawful methods as violence, brutality, bribery, etc.

Kazakhstan has some experience in the fight against organised crime and corruption, disposes of a relevant legal framework and qualified specialists.

It would be wrong to assume that there is no organised in Kazakhstan. On the contrary, one has to admit that since the times of the Soviet Union Kazakhstan has been a transit country for drugs trafficking from countries of Central Asia and Afghanistan. Moreover, the southern regions of Kazakhstan (the Shuya valley) are rich in wild grown hemp, which is also being trafficked to other countries. This problem has remained acute for the Republic after the collapse of the USSR. Organised criminal groups are engaged in illegal drugs trafficking and their smuggling to other countries of the CIS and Europe.

It would be wrong to assert that organised crime has penetrated all spheres of society's life and coalesced with corruption. There are certain cases of abuse by public officials by their official powers, theft of large sums of money, gaining benefits and advantages for themselves, and these facts are not just a few. The public authorities conducting the fight against corruption detect and terminate such offences.

The fight against organised crime in Kazakhstan is assigned to the Republican Ministry of Internal Affairs, which is vested with the competence and powers of a body of inquiry, preliminary investigation, and is empowered to conduct operational search actions.

Article 235 of the Criminal Code stipulates responsibility for the creation, guidance of a criminal group or a criminal community (a criminal organisation), participation in a criminal community.

Part 1. Creation of an organised criminal group, as well as its guidance – shall be penalised with imprisonment for a term up to six years.

Part 2. Creation of a criminal community (criminal organisation) for committing grave or especially grave crimes, as well as the guidance of such a community (organisation) or its structural units, as well as the creation of an association of organisers, leaders or other representatives of organised criminal

groups for purposes of developing plans and conditions for committing grave of especially grave crimes – shall be penalised with imprisonment for a term from five to ten years with or without property confiscation.

Part 3. Participation in a criminal community (criminal organisation) or an association of organisers, leaders or other representatives of organised criminal groups – shall be penalised with imprisonment for a term from three to eight years.

Part 4. Offences stipulated by parts one, two or three of this article committed by a person with the use of his/her official position – shall be penalised with imprisonment for a term from eight to fifteen years with or without property confiscation.

One of the priority objectives facing the public authorities is cooperation in the sphere of fighting crime and corruption, exchange of experience, information exchange, and rendering all sorts of assistance in the fight against organised crime.

International Aspects

At present, the Republic of Kazakhstan has signed agreements on mutual legal assistance (hereinafter – MLA) with Uzbekistan, Ukraine, Azerbaijan, Turkey, Turkmenistan, India, DPRK, Georgia, Kyrgyzstan, the Islamic Republic of Pakistan, Lithuania, Mongolia, and China.

In addition, the CIS Convention on legal assistance and legal relations in civil, family, and criminal cases (Minsk, 22 January 1993) and the CIS Convention on legal assistance and legal relations in civil, family, and criminal cases (Kishinev, 7 October 2002), also regulating the order of MLA provision, are in force within the CIS frameworks.

The aforementioned international agreements envisage:

- exchange of information of interest on preparing or committed crimes and physical and legal persons and organisations involved in them;
- fulfilment of requests for taking operational search actions;
- search for persons hiding from criminal prosecution or serving a sentence, extradition of criminals;

- exchange of experience of work, including internships, consultations, seminars, and training courses;

- exchange of legislative, legal and regulatory acts, assistance in acquiring educational and methodological literature;

- conducting joint scientific research on problems of mutual interest;

- mutually beneficial exchange of scientific and technological literature and information.

At the same time, the said international agreements particularly focus on the terms of extradition of criminals.

E.g. a convicted person may be extradited according to Agreement only on the following conditions:

- if this person is a citizen of the country f enforcement of the sentence;

- if the sentence has entered into legal force;

- if at the moment of receiving an extradition request the convicted person should serve punishment for not less than six months;

- if the convicted person agrees to extradition or when, taking into consideration his/her age or physical or psychic condition, one of the Negotiating Parties or close relatives or a legal representative of the convicted person consider it necessary;

- if the offence for which a sentence has been passed is a crime according to the legislation of the sentence enforcement country;

- if the material damage inflicted by the crime has been compensated;

- if the country issuing the sentence and the country of the sentence enforcement agree to the extradition of the convicted person.

Officials of administrative bodies of the criminal enforcement system of the state passing the sentence shall explain to the convicted person or his/her legal representative about the possibility of extradition and its legal implications.

In exceptional cases, the Negotiating Parties may agree to the extradition of a convicted person even if his/her remaining sentence to be served is less than six months or if the material damage inflicted by the crime has not been compensated in full measure.

In addition, when necessary, representatives of the Parties or their central competent authorities will hold working meetings and consultations for considering the issues of strengthening and enhancing the efficiency of cooperation based on Agreement. All disputable questions related to the interpretation or application of the Agreement provisions shall also be solved by consultations and negotiations between the Parties.

In addition, in the absence of an agreement on mutual legal assistance Kazakhstan may render mutual assistance on the basis of the norms of the legislation on criminal procedure.

E.g. article 529 of the Code of Criminal Procedure of the Republic of Kazakhstan (sending a request for the extradition of a person for imposing criminal responsibility or enforcement of a sentence) stipulates that the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor shall address a competent institution of a foreign state with a request for the extradition of a person who is a citizen of the Republic of Kazakhstan, who has committed an offence, if a guilty verdict has been passed with respect of this person or a decision to bring charges against him/her.

In cases and in the manner prescribed by international agreements and the legislation of the Republic of Kazakhstan, the authority conducting criminal proceedings shall file a petition on the extradition of a person who has committed an offence on the territory of the Republic of Kazakhstan and then left its territory to the Prosecutor General of the Republic of Kazakhstan or an authorised prosecutor, attaching the necessary documents.

An extradition request shall contain:

- the name of the authority conducting criminal proceedings;
- the first, middle and last name of the convict (defendant), year of birth, citizenship data, description of the appearance and photographs;
- presentation of the circumstances of the committed offence supplemented with the text of the law establishing responsibility for this crime with obligatory indication of the sanction;

- data about the place and time of issuance of the sentenced entered into legal force or a decision to bring charges, supplemented with copies of relevant documents.

These procedural actions also spread on cases of corruption.

One of important conditions of rendering MLA is the existence of effective international treaties and agreements on MLA-related issues. If the said treaties and agreements are in place, MLA is granted on the basis of an international request (hereinafter – IR) which should meet certain requirements.

In particular, IR should indicate:

- the name of the requested institution;
- the name of the requesting institution;
- the name of the case in which legal assistance is requested;
- first names and last names of the parties, witnesses, suspects, defendants, convicts or victims, their place of residence and place of stay, citizenship, occupation, and in criminal cases also the place and date of birth and, if possible, the first names and last names of parents; for legal persons – their name and location;
- if the persons stipulated in sub-item (d) have their representatives – their first names, last names, and addresses;
- the contents of the request, as well as other data necessary for its implementation;
- in criminal cases also the description and qualification of the committed offence and data on the scope of the damage if it has been inflicted as a result of the offence.

The instruction on the presentation of the document should also indicate the precise address of the recipient and the name of the presented document.

The instruction should be signed and sealed by the official stamp of the requesting institution.

The request for the rendering of legal assistance may be denied if the rendering of such assistance may inflict damage on the sovereignty or security on contradicts the legislation of the requested Negotiating Party.

Bilateral agreements of the Republic of Kazakhstan with a number of countries (the Republic of Uzbekistan, the People's Democratic Republic of Korea, Georgia, the Islamic Republic of Pakistan, the People's Republic of China) on matters of rendering legal assistance in civil and family cases envisage the rendering of MLA in cases of the said category.

MLA may be provided in pre-investigative inspections in keeping with international agreements concluded by the Republic of Kazakhstan on the said issues.

E.g. agreements are in force between the Government of the Republic of Kazakhstan and the Government of the Lithuanian Republic, the Cabinet of Ministers of Ukraine, and the Government of Turkmenistan on cooperation in the fight against violations of the tax legislation, agreements between the Government of the Republic of Kazakhstan and the Government of the Republic of Moldova, the Government of the Russian Federation, and the Government of the Republic of Uzbekistan on cooperation in information exchange in the sphere of fighting economic crime and violations of the tax legislation, the agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on cooperation and information exchange in the fight against violations of the tax legislation, the agreement between the Government of the Republic of Kazakhstan and the Government of the Azerbaijani Republic on cooperation in the fight against economic and financial violations, as well as return of unlawfully transferred currency assets.

The Negotiating Parties shall render each other legal assistance by implementing procedural, operational search, and other actions envisaged by the legislation, including:

- the drawing up and sending of documents, presenting originals or certified copies of relevant documents and materials, including banking, financial, legal, and business documents;
- the sending and issuance of material evidence;
- conducting expert evaluations;

- providing judicial documents;
- recognising and implementing judicial decisions in civil and family cases, sentences in criminal cases in the civil claims aspect, execution inscriptions;
- presenting documents.

LITERATURE USED

- Constitution of the Republic of Kazakhstan
- RK Criminal Code
- RL Code of Criminal Procedure
- Tax Code "On Taxes and Other Obligatory Payments to the Budget"
- RK Law No. 267-1 of 2 July 1998 "On the Fight against Corruption"
- RK Law No. 45301 of 23 July 1999 "On Public Service"
- RK Law No. 2444 of 31 August 1995 "On Banks and Banking in the Republic of Kazakhstan"
- RK Law No. 72-II of 5 July 2000 "On State Protection of Persons Participating in a Criminal Case"
- RK Law No. 321-II of 16 May 2002 "On Public Procurement"
- RK Law No. 2200 of 17 April 1995 "On Licensing"
- RK Law No. 154-XIII of 15 September 1994 "On Operational Search Activity"
- RK Law No. 336-II of 4 July 2002 "On Financial Police Bodies in the Republic of Kazakhstan"
- Presidential Decree of the Republic of Kazakhstan No. 917 of 5 August 2002 has formed the Audit Committee for control over the execution of the republican budget and approves the Statute of the Audit Committee

- Presidential Decree of the Republic of Kazakhstan No. 1255 of 23 December 2003 has transformed the RK Financial Police Agency into the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruptive Crime (financial police)

Annex 1

Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, The Kyrgyz Republic, The Russian Federation, Tajikistan and Ukraine[1]

PREAMBLE[2]

We, the Heads of Governmental Delegations from Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan and Ukraine[3] at the 5th Annual meeting of the Anti-Corruption Network for Transition Economies[4] on the 10th of September, 2003, in Istanbul, Turkey:

BUILDING on the guidance of the Anti-Corruption Network for Transition Economies expressed at its 4th Annual meeting in Istanbul in March

1. The Action Plan is open for endorsement by other transition economies not engaged in targeted sub-regional initiatives.

2. The Action Plan, together with its implementation plan, is a legally non-binding document which contains a number of principles towards policy reform which participating countries politically commit to implement on a voluntary basis and which can provide a basis for donor assistance.

3. Kazakhstan and the Kyrgyz Republic have joined the Istanbul Anti-Corruption Action Plan in 2004.

4. Following countries are involved in the Anti-Corruption Network for Transition Economies: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Former Yugoslav Republic of Macedonia, Montenegro, Georgia, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Romania, the Russian Federation, Serbia, Slovenia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine. European Union, Council of Europe, OECD, United Nations, EBRD, World Bank, Transparency International and Open Society Institute are collective members of the Network. State Secretariat for Economic Affairs (SECO) of Switzerland has provided the primary funding for the Action Plan activities in 2003, and the OECD provides the Secretariat for the Network.

2002 to develop a special sub-regional Anti-Corruption Action Plan for those transition economies not yet engaged in targeted sub-regional initiatives;

CONVINCED that corruption is a widespread phenomenon and is inimical to the practice of democracy, erodes the rule of law, hampers economic growth, discourages domestic and foreign investment, and damages the trust of citizens in their governments;

ACKNOWLEDGING that corruption raises serious moral and political concerns and that fighting corruption requires strong action by governments as well as the effective involvement of all elements of society including business and the general public;

RECOGNISING the value of co-operation and action-oriented knowledge sharing both among the countries participating in this Action Plan and with other countries active within the framework of the Anti-Corruption Network and other regional and international anti-corruption initiatives;

RECALLING that national anti-corruption measures can benefit from existing regional and international instruments and good practices such as those developed by the countries in the region, the Council of Europe (CoE), the European Union (EU), the Financial Action Task Force on Money Laundering (FATF), the Organisation for Economic Co-operation and Development (OECD), the Organisation for Security and Co-operation in Europe (OSCE), and the United Nations (UN);

WELCOMING the pledge made by donor countries and international organisations to support the countries of the region in their fight against corruption through technical cooperation programmes;

ENDORSE this Anti-Corruption Action Plan as a framework for developing effective and transparent systems for public service, promoting integrity in business operations and supporting active public involvement in reform; and commit to take all necessary means to ensure its implementation.

PILLARS OF ACTION

PILLAR 1
Developing effective and transparent systems for public service

Integrity in the Public Service

- Establish open, transparent, efficient and fair employment systems for public officials that ensure the highest levels of competence and integrity, foster the impartiality of civil service, safeguard equitable and adequate compensation and encourage hiring and promotion practices that avoid patronage, nepotism and favouritism;

- Adopt public management measures and regulations that affirmatively promote and uphold the highest levels of professionalism and integrity through the promotion of codes of conduct and the provision of corresponding education, training and supervision of officials in order for them to understand and apply these codes; and

- Establish systems which provide for appropriate oversight of discretionary decision-making; systems which govern conflicts of interest and provide for disclosure and/or monitoring of personal assets and liabilities; and systems which ensure that contacts between government officials and business services users are free from undue and improper influence, and that enable officials to report such misconduct without endangering their safety and professional status.

Accountability and Transparency

- Safeguard accountability of public service through, inter alia, appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on decision making and performance;

- Ensure transparent procedures for public procurement, privatisation, state projects, state licences, state commissions, national bank loans and other government guaranteed loans, budget allocations and tax breaks. These procedures should promote fair competition and deter corrupt activity, and establish adequate simplified regulatory environments by abolishing overlapping, ambiguous or excessive regulations that burden business;

- Promote systems for access to information that include such issues as political party finance, and electoral campaign funding and expenditure.

PILLAR 2
Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution

Take concrete and meaningful steps to actively combat bribery by:

- Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat bribery of public officials, including anti-money laundering legislation that provides for substantial criminal penalties for the laundering of the proceeds of corruption;

- Ensuring the existence and enforcement of universally applicable rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities. This includes the strengthening of investigative and prosecutorial capacities by fostering inter-agency co-operation, by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering evidence, by protecting those persons who bring violations to the attention of authorities and by conducting thorough examinations of all revelations of corruption; and

- Strengthening bi- and multilateral co-operation in investigations and other legal proceedings by providing (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) co-operation in searching for and identifying forfeitable assets as well as prompt international seizure and repatriation of such assets.

Corporate Responsibility and Accountability

- Promoting corporate responsibility and accountability so that laws, rules and practices with respect to accounting requirements, external audit and internal company controls are fully applied to help prevent and detect bribery of public officials in business. This includes the existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery in the books, records, accounts and financial statements of companies;

- Ensuring the existence and the effective enforcement of legislation to eliminate tax deductibility of bribes and to assist tax inspectors to detect bribe payments; and

- Denying public licenses, government procurement contracts or access to public sector contracts for enterprises that engage in bribery or fail to comply with open tender procedures.

PILLAR 3
Supporting Active Public Involvement in Reform

Public discussion and participation

Encourage public discussion of the issue of corruption and participation of citizens in preventing corruption by:

- Initiating public awareness campaigns and education campaigns at different levels about the negative effects of corruption and joint efforts to prevent it with civil society groups such as NGOs, labour unions, the media, and other organisations; and the private sector represented by chambers of commerce, professional associations, private companies, financial institutions, etc.;

- Involving NGOs in monitoring of public sector programmes and activities, and taking measures to ensure that such organisations are equipped with the necessary methods and skills to help prevent corruption;

- Broadening co-operation in anti-corruption work among government structures, NGOs, the private sector, professional bodies, scientific-analytical centres and, in particular, independent centres;

- Passing legislation and regulations that guarantee NGOs the necessary rights to ensure their effective participation in anti-corruption work.

Access to information

Ensure public access to information, in particular information on corruption matters through the development and implementation of:

- Requirements to give the public information that includes statements on government efforts to ensure lawfulness, honesty, public scrutiny

and corruption prevention in its activities, as well as the results of concrete cases, materials and other reports concerning corruption

- Measures which ensure that the general public and the media have freedom to request and receive relevant information in relation to prevention and enforcement measures.

- Information systems and data bases concerning corruption, the factors and circumstances that enable it to occur, and measures provided for in governmental and other state programmes/plans for the prevention of corruption, so that such information is available to the public, non-governmental organisations and other civil society institutions.

IMPLEMENTATION

In order to implement these pillars of action, participating governments of the region concur with the attached Implementation Plan and will endeavour to comply with its terms. Participating governments of the region will take measures to publicise the Action Plan throughout government agencies, NGOs engaged in the fight against corruption, and the media; and in the framework of the Advisory Group Meetings, to meet regularly and to assess progress in the implementation of the measures provided for in the Action Plan.

IMPLEMENTATION PLAN

Introduction

The Action Plan contains legally non-binding principles and standards towards policy reform which participating governments of Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan, and Ukraine voluntarily agree to implement in order to combat corruption and bribery in a co-ordinated and comprehensive manner and thus contribute to development, economic growth and social stability. Although the Action Plan describes policy objectives that are currently relevant to the fight against corruption in participating governments, it should remain flexible so that new ideas and priorities can be taken into account as necessary. This section describes the implementation of the Action Plan. Taking into account national conditions, implementation will draw upon existing instruments and good practices developed by participating countries, regional institutions and international organisations.

Identifying Country Mechanisms

While the Action Plan recalls the need to fight corruption and lays out overall policy objectives, it acknowledges that the situation in each country of the region may be specific. To address these differences, each participating country will identify priority reform areas which would fall under the three pillars, and aim to implement necessary measures in a workable timeframe.

Mechanisms

Advisory Group: To facilitate the implementation of the Action Plan, each participating government will designate a national coordinator who will be their representative on a Advisory Group. The Advisory Group will also comprise experts on methodical and technical issues to be discussed during a particular Steering Group meeting as well as representatives of participating international organisations and civil society. The Advisory Group will meet on an annual basis and serve three main purposes: (i) to review progress achieved in implementing each country's priorities; (ii) to serve as a forum for the exchange of experience and for addressing issues that arise in connection with the implementation of the policy objectives laid out in the Action Plan; and (iii) to promote a dialogue with representatives of the international community, civil society and the business sector in order to mobilise donor support.

Funding: Funding for implementing the Action Plan will be solicited from international organisations, governments and other parties from inside and outside the region actively supporting the Action Plan.

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Fighting Corruption in Transition Economies

KAZAKHSTAN

This report is a review of Kazakhstan's legal and institutional framework for fighting corruption, in accordance with the framework provided by the Anti-Corruption Network for Transition Economies, based at the OECD. The review examines: 1) national anti-corruption policy and institutions currently in place in Kazakhstan; 2) national anti-corruption legislation and preventive measures to ensure integrity of civil service; and 3) effective financial control.

The review process is based on the OECD practice of mutual analysis and policy formulation. The main input for the review was the self-assessment report prepared by the government of Kazakhstan. An international group of peers then provided an expert assessment and draft recommendations. Finally, a review meeting (attended by national governments, international organisations, civil and business associations) discussed the report and its expert assessment, and endorsed the recommendations for Kazakhstan.

This publication contains all the recommendations, as well as the full text of the self-assessment report provided by the government of Kazakhstan. Thus, it provides an important guide for the country as it develops its anti-corruption actions, and it will serve as a useful reference for other countries reforming their anti-corruption policies, legislation and institutions.

While these recommendations are not legally binding, they represent Kazakhstan's commitment to fighting corruption. Implementation of these recommendations will also help the country meet its legally binding obligations under the United Nation's Convention on Corruption and the Council of Europe's Criminal Law Convention on Corruption. The results of this review will also be used to regularly monitor Kazakhstan's progress in implementing the recommendations.

For more information, please refer to the website of the Anti-Corruption Network for Eastern Europe and Central Asia ***www.oecd.org/corruption/acn*** and the website of the OECD Anti-Corruption Division ***www.oecd.org/daf/nocorruption***.

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