
THE ROLE OF THE PROSECUTOR'S OFFICE IN PREVENTING CORRUPTION IN PRIVATE INVESTMENTS: A CASE OF KAZAKHSTAN

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Manuscript received: 08/08/2024

Revised: 16/08/2024

Accepted: 30/08/2024

DOI: 10.52123/1994-2370-2024-1200

UDC 328.185

CICSTI 82.13.01

Abstract. Investment activities in the Republic of Kazakhstan are fraught with significant corruption risks, stemming from imperfect legislation and the intricacies of bureaucratic procedures involved in implementing investment projects. This article aims to investigate the role of the prosecutor's office in preventing corruption within the realm of private investment in Kazakhstan. To achieve this objective, an analysis of regulatory legal documents governing the prosecutor's office's mandate to safeguard the interests of private investors in Kazakhstan was conducted. Additionally, a content analysis of publications detailing successful cases of investor support within the prosecutor's office was undertaken. The study culminates in an evaluation of the effectiveness of this anticorruption mechanism as an alternative to the utilization of corrupt practices by private enterprises in their interactions with authorities.

Keywords: corruption, investment, protection of investors, prosecutor's office, anti-corruption mechanism.

Аңдатпа. Қазақстан Республикасындағы инвестициялық қызмет заңнаманың жетілмегендігіне және инвестициялық жобаларды іске асыру процесінде бюрократиялық рәсімдердің күрделілігіне байланысты жоғары сыбайлас жемқорлық тәуекелдерімен сүйемелденеді. Осы баптың мақсаты Қазақстан Республикасының жеке инвестициялар саласындағы сыбайлас жемқорлықтың алдын алудағы прокуратура органдарының рөлін зерделеу болып табылады. Осы мақсатқа қол жеткізу үшін прокуратура органдарының Қазақстан Республикасындағы жеке инвесторлардың мүдделерін қорғау жөніндегі қызметін реттейтін нормативтік құқықтық құжаттарға талдау жүргізілді. Прокуратураның фронт-офисі шеңберінде инвесторларды сүйемелдеу бойынша табысты кейстер туралы жарияланымдарға контент-талдау жүргізілді. Зерттеу нәтижелері бойынша жеке кәсіпкерлік субъектілерінің мемлекетпен өзара қарым-қатынаста сыбайлас жемқорлық тәжірибесін пайдаланудың баламасы ретінде осы Сыбайлас жемқорлыққа қарсы тетіктің тиімділігіне баға беріледі.

Түйін сөздер: сыбайлас жемқорлық, инвестициялар, инвесторларды қорғау, прокуратура, сыбайлас жемқорлыққа қарсы тетік.

Аннотация. Инвестиционная деятельность в Республике Казахстан сопровождается высокими коррупционными рисками из-за несовершенства законодательства и сложности бюрократических процедур в процессе реализации инвестиционных проектов. Целью данной статьи является изучение роли органов прокуратуры в предотвращении коррупции в сфере частных инвестиций Республики Казахстан. Для достижения данной цели проведен анализ нормативных правовых документов, регламентирующих деятельность органов прокуратуры по защите интересов частных инвесторов в Республике Казахстан. Проведен контент-анализ публикаций об успешных кейсах по сопровождению инвесторов в рамках фронт-офиса прокуратуры. По результатам исследования дается оценка эффективности данного антикоррупционного механизма, как альтернативы использования коррупционной практики субъектами частного предпринимательства во взаимоотношениях с государством.

Ключевые слова: коррупция, инвестиции, защита инвесторов, прокуратура, антикоррупционный механизм.

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Introduction

Investment activity is a crucial driver of a country's economic development and the well-being of its citizens. However, the presence of corruption can severely undermine the country's investment potential, and corrupt practices can negate government efforts to build a competitive, high-performing economy. In the Republic of Kazakhstan, corruption is recognized at the highest political levels as a threat to national security [1], and combating it is a priority for the country's public administration [2]. Despite these efforts, the incidence of corruption in Kazakhstan remains high. For example, in 2022, 1,724 corruption-related crimes were officially recorded, representing a 10.7% increase from 2021. Additionally, a 2022 survey revealed that 72.1% of entrepreneurs identified corruption among officials during the permit issuance process as a significant barrier to business development [3].

Two of the most commonly recognized factors contributing to corruption risk in attracting private investment are flawed legislation and complex bureaucratic procedures. These issues often feed into one another, creating a legislative environment ripe for corruption at various stages of investment project implementation. This environment poses challenges for both domestic and foreign investors. In this context, one of the key mechanisms to combat corruption is the oversight and enforcement of legality in the regulation of business activities and investment support at all levels of government-business interaction. In Kazakhstan, as in many other countries, this role is filled by the prosecutor's office. In 2023, following a directive from the President, Kazakhstan's prosecutor's offices began providing oversight for investment projects to ensure the safety and security of both foreign and local entrepreneurs [4]. This prosecutorial support not only serves as an administrative accelerator but also acts as an anti-corruption mechanism.

The purpose of this article is to examine the role of the prosecutor's office in preventing corruption in Kazakhstan's private investment sector. To achieve this, the article will explore the legislative framework and analyze successful cases where the prosecutor's office has supported the implementation of investment projects.

Prosecutorial oversight of investment projects is a relatively new practice in Kazakhstan, and as such, it has not been extensively studied within the Kazakhstani academic community. Internationally, there is also a lack of theoretical and empirical research specifically addressing the role of prosecutorial anti-corruption efforts in investment activities. However, some international studies have explored the broader anti-corruption activities of prosecutor's offices in other countries where such practices are in place.

First, the effectiveness of anti-corruption efforts by prosecutor's offices has been a subject of study. For example, Carausan (2009), in examining the National Anti-Corruption Directorate within Romania's Prosecutor's Office, notes that any entity with absolute autonomy is vulnerable to external influences, including political ones, which can undermine the principles of political pluralism and the separation of powers [5]. This highlights the potential for corruption within the prosecutor's office itself. Conversely, Van Aken et al. (2010) argue that a prosecutor's office dependent on the executive branch is less motivated to prosecute crimes committed by government officials [6]. Similar conclusions were drawn by Alberti (1995), who examined the external and internal forces at play within Italy's prosecutor and court systems [7]. Amagnya and Akinlabi (2022) support these findings, citing the example of Ghana, where political interference in the anti-corruption prosecutor's office significantly diminished its effectiveness [8].

Second, there has been debate over the need for specialized anti-corruption prosecutor's offices. Hlusk (2018), examining the role of the prosecutor's office in

combating corruption in Belarus, argues for the establishment of specialized prosecutor's offices focused on overseeing high-risk areas of corruption and enforcing anti-corruption laws [9]. On the other hand, Bulanova and Abramenko (2018), in their study of Moldova and Ukraine, contend that creating specialized prosecutor's offices may not be necessary, as the prosecutor's office can contribute to anti-corruption efforts in less costly ways [10]. This raises questions about the legal framework and the prosecutor's office's competencies. Terziev et al. (2020), discussing the powers of anti-corruption bodies, point to Bulgaria as an example where the interaction between the prosecutor's office and other anti-corruption services is clearly regulated [11]. The legal foundation for collaboration between the prosecutor's office and other law enforcement agencies in fighting corruption is essential, as Yuherawan et al. (2022) note in their study of Indonesia, where the absence of such a foundation weakens the legal standing of any prosecutorial investigation [12]. Nonetheless, Darmawangsa (2024), in studying anti-corruption efforts by the High Prosecutor's Office in one of Indonesia's provinces, highlights its effectiveness in implementing preventive programs, providing legal consultations, and offering legal assistance [13].

In Russia, the prosecutor's office has been recognized as an effective entity in conducting anti-corruption reviews of legal acts since 2009 (Borodina, 2021) [14]. Bachtina (2015) notes that the prosecutor's office stands out from other state bodies due to its greater independence and the obligation of developers to respond to its recommendations [15]. Trofimov (2009), analyzing prosecutorial oversight of investment activities in Russia, identifies several unique aspects of this practice. First, the prosecutor's priority is to ensure legality rather than the feasibility of investment projects. Second, the prosecutor's office, due to its authority and specific role, can coordinate the efforts of oversight bodies at all levels, from federal to local. Trofimov suggests that the effectiveness of prosecutorial oversight could be enhanced through collaboration with other state regulatory organizations [16]. Dolgacheva (2020) observes that Russian prosecutor's offices have been effective in reducing administrative barriers for investors by overturning illegal acts in the business sector [17]. In addition to ensuring legal stability, which is a key factor in providing guarantees for investors, the Russian prosecutor's office is also authorized to implement the so-called "regulatory guillotine," a process of reviewing and canceling regulatory acts that create an unfavorable business environment (Soloviev, 2020) [18]. In Kazakhstan, the regulatory guillotine is also a tool for reducing administrative barriers, though it is generally considered the purview of the executive branch rather than the law enforcement sector.

In any country, the prosecutor's office, as the body responsible for overseeing legality, acts as a bureaucratic filter, thereby directly or indirectly contributing to the reduction of corruption. In some countries, the prosecutor's office may also directly engage in investigating corruption offenses or serve as an anti-corruption agency. However, studies on the role of the prosecutor's office in combating corruption, particularly in the context of private investments, remain relatively scarce. The existing literature shows mixed conclusions about the effectiveness of prosecutorial anti-corruption efforts.

Given this context and the literature review, the study discusses the issue of the effectiveness of prosecutorial oversight as a "filter" in preventing corruption during the implementation of investment projects in Kazakhstan.

Research Hypotheses:

(1) Prosecutorial oversight of investment projects reduces corruption risks among leaders and employees of executive bodies.

(2) Prosecutorial oversight of investment projects introduces potential corruption risks from within the prosecutor's office itself.

Materials and methods

Doctrinal analysis, recognized as a source of knowledge of state legal phenomena and institutions [19], was employed to study, analyze, and synthesize information concerning the legislative role of the Prosecutor's Office in preventing corruption within the realm of attracting private investment. The data for this analysis were sourced from the Information and Legal System of Regulatory Legal Acts of the Republic of Kazakhstan 'Adilet', the official website of the President of the Republic of Kazakhstan, and the website of the Electronic Government of the Republic of Kazakhstan. Regulatory legal documents and other pertinent materials governing the activities of the Prosecutor's Office, as well as presidential directives pertaining to the subject under investigation, were scrutinized.

Additionally, a qualitative content analysis of textual reports detailing successful instances of resolving investor issues with the intervention of prosecutors in news outlets was conducted. According to Mayring and Fenzl (2019), content analysis involved the process of generalization, focusing on the thorough examination and organization of text content [20]. This research method was chosen due to the absence of comprehensive reporting on official government agency websites. The search was performed using the Google News platform with key queries such as 'prosecutor's office helped the investor', 'prosecutor's office to protect investors', and 'prosecutor's office to support investors' (in Kazakh and Russian languages). Relevant reports were selected based on headline and content examination. The primary selection criterion was semantic correspondence, ensuring that the report highlighted a successful case in which the prosecutor's office resolved an investor-related issue within the scope of the initiative under review. However, it is acknowledged that the complexity of objective text interpretation and the potential for differing interpretations by other researchers pose limitations on the findings [21].

Results

According to the Constitution of the Republic of Kazakhstan, one of the key functions of the prosecutor's office is to exercise supreme oversight of legal compliance (Constitution of the Republic of Kazakhstan, Article 83) [22]. As outlined in the Constitutional Law of the Republic of Kazakhstan "On the Prosecutor's Office", the prosecutor's office is accountable solely to the President (Article 3). Its duties include ensuring legality within the territory of Kazakhstan, protecting and restoring violated rights and freedoms, and coordinating the activities of state bodies in matters of law enforcement, public order, and crime prevention (Article 4) [23]. The Law of the Republic of Kazakhstan "On Combating Corruption" further specifies the prosecutor's office's authority in identifying, preventing, investigating, and prosecuting corruption offenses, as well as holding those responsible accountable (Article 22) [24]. Thus, the current legislation of Kazakhstan grants the prosecutor's office comprehensive oversight over legal compliance across various sectors and empowers it to carry out law enforcement and anti-corruption activities.

The involvement of the prosecutor's office in overseeing investment projects stems from a directive issued by the President of Kazakhstan on April 19, 2023 [4], which mandates assigning prosecutors to each significant investment project. The President emphasized that this measure would contribute to improving the investment climate. The implementation of this directive has been carried out in two formats: administrative and legal.

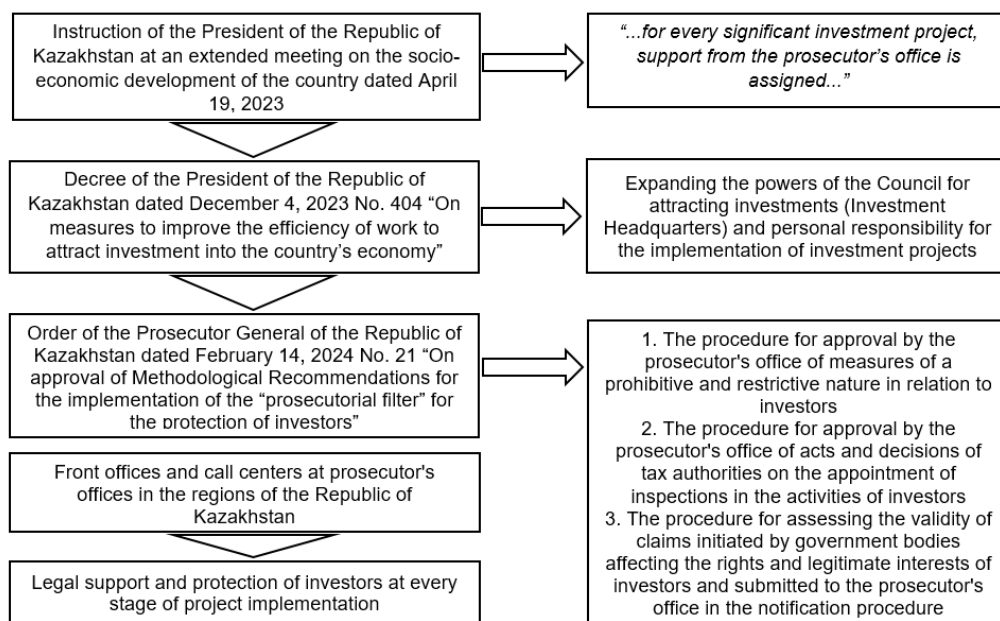
The administrative format was realized by establishing contacts between prosecutors, the Ministry of Foreign Affairs of Kazakhstan, and Kazakh Invest, as well

as between regional prosecutor's offices and local executive bodies. In all regions of Kazakhstan, front offices (working groups for addressing investors' issues) have been established within the prosecutor's offices, and call centers have been set up [25].

The legal format, in addition to existing legislation, was implemented through the adoption of several new regulatory legal acts. For example, the powers of the Investment Headquarters (Council for Investment Attraction under the Ministry of Foreign Affairs of Kazakhstan) were strengthened by a Presidential Decree [26]. Following subsequent decisions by the Investment Headquarters, the General Prosecutor of Kazakhstan issued an order (hereafter referred to as the Order) that formalized the methodology for implementing the "prosecutorial filter." Although this order does not specify the powers of front offices in supporting investors, the methodology includes several measures that restrict state bodies from hindering entrepreneurial activities without prior coordination of any restrictive measures with the prosecutor's office [27]. This Order is mandatory for all levels of the prosecutor's office, state bodies (both central and local executive), and quasi-governmental organizations, and it is disseminated for informational purposes.

Figure 1 illustrates the legal framework for prosecutorial oversight of investors in the Republic of Kazakhstan.

Figure 1. Mechanism of prosecutorial support for investors in the Republic of Kazakhstan



Note: compiled by the authors

The initiative for prosecutorial oversight of investment projects, introduced in 2023, effectively became an alternative to the PBI (Protecting Business and Investments) project led by the Anti-Corruption Service. The PBI project also aimed to support entrepreneurs and investors in overcoming bureaucratic delays and administrative obstacles during their ongoing activities and the implementation of investment projects. Despite the success of the PBI project, the President decided to reformat this effort. The likely reason for transferring the responsibility for protecting investors from bureaucratic hurdles to the prosecutor's office was the office's larger staff size (a total of 5,866 employees) compared to the Anti-Corruption Service (1,868 employees), including their regional branches [28]. Moreover, prosecutors possess greater legal expertise in administrative matters, whereas Anti-Corruption Service officers primarily specialize in criminal offenses. It is important to note that the Anti-Corruption Service continues to protect entrepreneurs who do not fall into the category of investors.

Since the project's inception, the Prosecutor's Office of the Republic of Kazakhstan, in cooperation with the Ministry of Foreign Affairs of the Republic of Kazakhstan, has monitored a number of ongoing investment projects. Through monitoring the progress of these projects and directly engaging with entrepreneurs, several projects requiring support due to delays in their implementation stages have been taken under protection. In total, between 2023 and 2024, approximately 100 cases of practical assistance to investors were provided within the framework of prosecutorial oversight [25], with some of these cases receiving media coverage (see Table 1).

Table 1. Results of media content analysis: successful cases of prosecutorial support in investment project implementation

Business entity, region	Problematic question	Publication date
LLP "Munaykhim LTD" (Aktobe region)	Providing the required volumes of gas	09/19/2023
Erudite Business LLP (Aktobe region)	Lack of infrastructure on the allocated land plot	09/19/2023
JSC "Vostokmashzavod" (East Kazakhstan region)	Restrictions (seizure) on company accounts and property, despite the completion of enforcement proceedings	10/02/2023
Big Farm LLP (Akmola region)	Obtaining permits for construction	10/09/2023
Bagdar LTD LLP (Almaty)	Obtaining permission to employ foreign citizens performing construction work	12/19/2023
LLP "INDUSTRIAL PLACE" (Almaty)	Obtaining a certificate of absence of green spaces	12/09/2023
Finish Business Hub LLP (Akmola region)	Provision of land for construction	12/13/2023
KyzylArayCopper LLP (Karaganda region)	Disagreements with peasant farms regarding the construction of power lines. Onerous obligations under the memorandum with the akimat	12/23/2023
TLC Zhetygen LLP (Almaty region)	Manipulations with cadastral numbers of land plots	01/18/2024
Rubber Technical Items LLP (Akmola region)	Unreasonable additional charges of customs duties, VAT and penalties	01/19/2024
Rainbow Logistics 2 LLP (Astana)	Registration of a commissioned property	01/25/2024

Business entity, region	Problematic question	Publication date
LLP "Astana Green Agro" (Astana)	Unreasonable arrest by a bailiff	01/31/2024
Algyr Aktau LLP (Mangistau region)	Delays in the issuance of land plots	02/02/2024
LLP "Zhanarys" (Mangistau region)	Initiating an unjustified inspection due to the lack of permits for construction (if any)	02/02/2024
Ringo-Milk LLP (West Kazakhstan region)	Refusal to provide a state loan for the purchase of breeding livestock in the absence of objective reasons	02/05/2024
LLP "BM Sport" (Astana)	Allocation of land plots for construction	03/07/2024
TOO "Black Biotechnology" (Almaty city)	Obtaining an environmental report for obtaining a license for the extraction and use of mineral and chemical resources	03/29/2024
Mezgilder Qushteri LLP (Ulytau)	Unreasonable blocking of bank accounts by the fiscal authority, failure to issue an environmental permit due to discrepancies in legislation	04/12/2024
LLP "EGMK" (Pavlodar region)	Obtaining permits for the transportation of large cargo and land for the construction of a temporary berth	04/13/2024
ParkViewResidence LLP (Turkestan region)	Extension of commissioning deadlines due to delays in construction and installation work schedule	04/16/2024

Note: compiled by the authors based on content analysis, chronologically

The main issues addressed by the prosecutor's office front offices include delays in land registration procedures and permit issuance (related to construction projects or ongoing activities). Additionally, individual cases demonstrate the prosecutor's office assistance in coordinating projects with local communities and private investors.

Discussion and Conclusion

As previously noted, the implementation of the President of Kazakhstan's directive for prosecutorial oversight of investment projects was executed in two formats: legal and administrative.

- The main document within the legal framework is the Order. The provisions of this document regulate the following elements of the "prosecutorial filter" for investors:
 - Coordination of restrictive measures (Chapter 2, Clauses 7-14 of the Order);
 - Monitoring and reviewing the legality of administrative offense cases (Chapter 3, Clauses 15-19 of the Order);
 - Approval of tax audit acts and decisions (Chapter 4, Clauses 20-24 of the Order);
 - Evaluation of the validity of legal claims (Chapter 5, Clauses 25-28 of the Order).

These functions are preventive in nature, reducing the likelihood of unjustified claims by state bodies against investors. For example, if a local executive body

attempts to revoke a previously issued decision to allocate a land plot, according to subclause 5 of clause 6 in Chapter 2 of the Order, this action must be coordinated with the prosecutor's office. A similar requirement applies to decisions by authorized bodies to revoke or refuse to extend the validity of previously issued permits (subclauses 2 and 3 of clause 2 in Chapter 2 of the Order), among other cases. This reduces the potential for unlawful or questionable acts that could create corruption risks.

In the administrative implementation of the directive, regional prosecutor's offices have established front offices to support investors. These front offices function as advisory and consultative bodies. In this context, the role of the prosecutor's office as an oversight body transforms into that of a "legal advisor" in resolving disputes. On one hand, entrepreneurs who are more aware of their rights are less likely to engage in corrupt activities. On the other hand, the presence of an administrative lever in the form of a controlling body encourages more proactive behavior among civil servants. Legal awareness and improved legal literacy are critical in combating corruption (Zhussupbekova, 2016) [29]. However, the constant evolution of legislation complicates the task of comprehensive legal education for citizens and entrepreneurs.

Additionally, the involvement of prosecutors in the implementation of investment projects alleviates the emotional burden on officials responsible for making decisions on permit issuance and approvals, ensuring legality and correctness in their actions.

According to a survey conducted in 2023 by the research services center "Amanat" (a private company) among 10,000 respondents in Kazakhstan, 74.8% of businesses expressed their willingness to contribute personally to reducing corruption [30]. This suggests that investors will support the initiative of prosecutorial oversight of investment projects as an anti-corruption mechanism.

Thus, Hypothesis 1 is confirmed, and prosecutorial oversight of investment projects is an effective measure for reducing corruption risks.

The Prosecutor's Office of the Republic of Kazakhstan operates in accordance with the Constitutional Law of the Republic of Kazakhstan No. 155-VII ZRK, dated November 5, 2022. According to this Constitutional Law, the prosecutor's office exercises supreme oversight over the legality of actions taken by state bodies (Article 6) and acts on behalf of the state (Article 1). The activities of the prosecutor's office do not typically involve direct contact with business entities, which likely makes prosecutors less susceptible to corruption compared to other state officials. According to official legal statistics, prosecutors are among those who commit the fewest corruption-related offenses (see Table 2).

Table 2. Individuals Convicted of Corruption Offenses in the Republic of Kazakhstan in 2023

Category of Public Officials	Number of Convictions
Law Enforcement Officials	177
Officials of Akimats and Their Departments	168
Ministry of Finance Employees	38
Ministry of Emergency Situations Employees	30
Ministry of Defense Employees	27
...	...
Prosecutors	3
TOTAL:	916

Note: Compiled based on data from the "Legal Statistics" website <https://qamqor.gov.kz/crimestat/statistics>

The legal framework for the implementation of the prosecutorial shield, as previously mentioned, is based on two regulatory documents (Figure 1). In contrast, the administrative framework lacks a legal basis and involves ongoing interactions between the prosecutor's office, local executive bodies, and business entities.

An analysis of cases involving the support of investors during the implementation of investment projects demonstrates the practical application of legal assistance provided by the prosecutor's office to entrepreneurs (Table 1). Additionally, it reveals the influence of the administrative leverage wielded by an independent state body. Upon closer examination of individual cases, it becomes evident that the prosecutor's office also acted as an arbitrator between the investor and the local community (including other businesspeople, activists, or ordinary citizens). For example, the case of Big Farm was not related to delays in issuing construction permits but to local residents' dissatisfaction and a shortage of pasture land where the farm was allegedly planned. In this instance, the prosecutor's office acted as a negotiator, explaining to the local community the benefits and advantages of the future production for regional development. This suggests that the prosecutor's office is not a neutral participant but is, instead, actively interested in the investor's project.

Another case with similar circumstances involves the implementation of the KyzylArayCopper LLP project. With the intervention of the Karaganda region prosecutor's office, several issues were resolved, including the allocation of land plots under private use (such as farms) for the investor's infrastructure.

Given the significant administrative influence the prosecutor's office exerts on both the activities of executive bodies and the decisions of local communities, potential corruption risks may arise within the actions of the prosecutors themselves. As Šumah (2018) notes, the more economic activity is regulated and restricted, the greater the authority and decision-making power of officials, and the higher the likelihood that individuals will be willing to pay to bypass these restrictions. In this scenario, it may be more beneficial for the investor to secure full support throughout the entire project implementation process from the prosecutor's office, represented by specific division heads, rather than paying at each stage of approval. This supports Hypothesis 2. Another significant factor contributing to corruption risk (also supporting Hypothesis 2) is the so-called "fusion" of independent bodies operating within the same territory. Although the prosecutor's office of the Republic of Kazakhstan is an entirely independent structure, its activities within a region governed by the local akim (mayor) and its close interaction with local authorities do not rule out the possibility of a corrupt symbiosis at the level of the corresponding division heads. Furthermore, according to the Law of the Republic of Kazakhstan "On Counteracting Corruption" (Article 8), the prosecutor's office is not subject to external analysis of corruption risks.

Thus, while the prosecutor's office effectively reduces bureaucracy and prevents corrupt "interference" by officials, at this stage, this anti-corruption mechanism can be considered effective but temporary. However, the continued prosecutorial oversight of investors in its current form could lead to new corruption risks originating from the prosecutor's office itself.

In this regard, more fundamental issues that necessitated the introduction of prosecutorial oversight for investors must be addressed in the future.

First, the improvement of legislation and better synchronization of various regulatory legal acts governing business activities in the implementation of investment projects.

Second, streamlining the role of the prosecutor's office in supporting investors through the adoption of regulations for interaction with businesses and local executive

bodies, as well as strengthening control over potential corruption risks within the prosecutor's office.

Third, enhancing the legal awareness of investors and local executive officials involved in investment projects through the creation of knowledge centers and specialized digital platforms.

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ЖЕКЕ ИНВЕСТИЦИЯЛАР САЛАСЫНДАҒЫ СЫБАЙЛАС ЖЕМҚОРЛЫҚТЫҢ АЛДЫН АЛУДАҒЫ ПРОКУРАТУРАНЫҢ РӨЛІ: ҚАЗАҚСТАН ЖАҒДАЙЫ

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