



**MAPS**

Methodology for Assessing  
Procurement Systems

# ASSESSMENT OF THE PUBLIC PROCUREMENT SYSTEMS OF THE REPUBLIC OF KAZAKHSTAN AND THE SOVEREIGN WEALTH FUND SAMRUK-KAZYNA

2019







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Methodology for Assessing  
Procurement Systems

## Kazakhstan

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# Assessment of the Public Procurement systems of the Republic of Kazakhstan and the Sovereign Wealth Fund Samruk-Kazyna

2019



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## Acronyms

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ASEAN	Association of Southeast Asian Nations
CIS	Commonwealth of Independent States
CSO	Civil society organization
CSTO	Collective Security Treaty Organization
EAPC	Euro-Atlantic Partnership Council
EBRD	European Bank for Reconstruction and Development
ECO	Economic Cooperation Organization
EEU	Eurasian Economic Union
EEU	Eurasian Economic Union
GoK	Government of Kazakhstan
IMF	International Monetary Fund
IOM	International Organization for Migration
MAPS	Methodology for Assessing Procurement Systems
MoF	Ministry of Finance of Kazakhstan
OECD	Organization for Economic Cooperation and Development
OIC	Organization of Islamic Cooperation
OSCE	Organization for Security and Co-operation In Europe
PEFA	Public Expenditure and Public Accountability
PPL	Public procurement law
PPS	Public procurement system
SCO	Shanghai Cooperation Organization
SDGs	Sustainable Development Goals
SOE	State-owned enterprise
UNCITRAL	UN Commission on International Trade Law
UNWTO	World Tourism Organization
WBG	World Bank Group



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## Executive summary

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1. **This report provides the results of the assessment of the Public Procurement system of the Republic of Kazakhstan using the Methodology for Assessing Procurement Systems (MAPS)<sup>1</sup> and its various steps, including the validation process.** Kazakhstan has a dual public procurement system, in which there are separate systems for a) the government procurement conducted by the general public administration and b) procurement conducted by Sovereign Wealth Fund Samruk-Kazyna, which accounts for the majority of public procurement spending. This MAPS assessment covers both. Due to the nature of the system, this MAPS assessment has to integrated parts and assessments of a) the government procurement system and b) of Samruk-Kazyna's procurement system. This assessment report identifies key findings, lays out the strengths of the analysed procurement systems and the remaining challenges, and provides a series of recommendations to address those challenges and allow for future improvement.
2. **Following a request of the Government of Kazakhstan (GoK) to assess both its general public procurement system (PPS) and the procurement system of the Sovereign Wealth Fund Samruk-Kazyna, using the revised MAPS, GoK and a coalition of international partners, led by the World Bank, the Organisation for Economic Cooperation and Development (OECD) with the European Bank for Reconstruction and Development (EBRD), Islamic Development Bank (IsDB), and Asian Development Bank (ADB) launched the assessment in April 2018.**
3. The MAPS assessment covered the Kazakhstan public procurement system governed by the PPL enacted in 2015 along with related regulations, the amendment to the PPL enacted in December 26, 2018, and subsequent changes to the regulations and procedures that were put into effect between January and March 2019. The assessment of Samruk-Kazyna procurement system covered the current separate rules and regulations. Given that the cut-off date for the assessment has been set as 31 December 2018, the assessment of SK procurement system does not cover the changes that will enter into force in January 2020 as envisaged by the amendments to the Law "On the Fund of National Welfare" enacted in December 26, 2018. Additional commentary by Samruk-Kazyna on progress, as pointed out during the validation of this assessment, can be found in the annex.
4. The assessment is organized in two main volumes: **Volume I** covers procurement carried out under the scope of the Public Procurement Law (PPL), and **Volume II** cover procurement carried out under separate rules and regulations of the Sovereign Wealth Fund Samruk-Kazyna (SK). This approach reflects the specific landscape of the public procurement system in Kazakhstan, with varying frameworks applying to the system for general government procurement and for the procurement of Samruk-Kazyna respectively. Procurement by Samruk-Kazyna, including its numerous companies in the holding, delivers important public services and accounts for the vast majority of public procurement in Kazakhstan. Therefore, the MAPS assessment was conceptualised to include a dedicated, full MAPS assessment of Samruk-Kazyna's procurement system in addition to the assessment of the general government procurement system, in order to provide a better analysis of the overall procurement system in the country. At the end, the report presents consolidated recommendations identifying those areas that cut across both systems.
5. A caveat applies to certain aspects of the MAPS assessment of Samruk-Kazyna: Due to a lack of access to information, the assessment team was unable to conclude the assessment of a) the e-procurement system, b) procurement performance, c) the audit and control framework,

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<sup>1</sup> [www.mapsinitiative.org](http://www.mapsinitiative.org)



and d) the appeals system to the fullest extent. While Samruk-Kazyna's leadership supported the MAPS assessment through interviews and the provision of information, although limited, Samruk-Kazyna representatives did not provide access to procurement data or sample cases, despite repeated requests by the assessment team. Similarly, Samruk-Kazyna did not share vital documents or access for the analysis, such as rules are about the audit, control and appeals framework, or access to full functionalities of the e-procurement system.

6. The concept note for this MAPS assessment anticipated the risk that the assessment team would not have access to necessary data and information. The report presents conclusions based on review of secondary data sources, as well as interviews. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy. Nevertheless, from a purely conceptual point of view, it might be considered incomplete without the access to data or a meaningful sample of procurement documents. As a result, the assessment team recommends that for policy decisions touching upon Samruk-Kazyna, an additional assessment be undertaken to allow for evidence-based policy making.
7. This executive summary pertains to the entire assessment exercise. The first part of this summary consists of a narrative of the main findings of both assessments, providing a concise overview of the state of play of public procurement in Kazakhstan. The second part of the executive summary is a structured, pillar-by-pillar<sup>2</sup> overview of the findings of each of the two MAPS assessments, including areas for improvement, as prescribed in the methodology.

### **Country context**

8. Kazakhstan is the ninth-largest country in the world by area and the largest world landlocked country. It consists of 14 regions. It has a population of around 18 million people, of around 125 nationalities, with Kazakhs (66%) and Russians (20%) accounting for the largest part.
9. In 2010, Kazakhstan joined Russia and Belarus to establish a Customs Union in an effort to boost foreign investment and improve trade. The Customs Union evolved into a Single Economic Space in 2012 and the Eurasian Economic Union (EAEU) in January 2015. Kazakhstan's exports to EAEU countries increased 30.2% in 2017. Imports from EAEU countries grew by 24.1%.
10. According to official statistics, Kazakhstan's gross domestic product (GDP) in 2017 was USD 162.9 billion. Annual GDP growth was 4.0 percent in 2017. Kazakhstan's GDP by purchasing-power parity (PPP), estimated at USD26,490 (2017). Kazakhstan's GDP per capita by purchasing-power parity (PPP), estimated at USD26,490 (2017)<sup>3</sup>
11. Over the past two decades, Kazakhstan has executed fundamental reforms aimed at building the foundations of a "socially oriented market economy". The World Bank ranked Kazakhstan 91st out of 193 countries on its Governance Effectiveness Index in 2016, and 28th in its Doing Business Survey of 2019.
12. **Overall, procurement activities using public funds in the country are estimated at US\$21 billion, or 13 percent of GDP, in 2017.<sup>4</sup> Of this amount, procurement carried out using the PPL amounted to US\$6 billion (or 4 percent of GDP), as published in the Public Procurement Web Portal. This compares to US\$15 billion (9 percent of GDP) which are estimated to have**

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<sup>2</sup> The assessment is structured under the four pillars of the MAPS: Pillar I – Legal and Regulatory Framework; Pillar II – Institutional Framework and Management Capacity; Pillar III – Procurement Operations and Market Practice; and Pillar IV – Accountability, Integrity and Transparency.

<sup>3</sup> <https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=KZ>

<sup>4</sup> Based on information provided in the web-portal of the Ministry of Finance, as well as an estimate based on public procurement plans by SOEs.



**been spent collectively by SK, and national managing holdings, national holdings, national managing companies, and national companies** (i.e. mainly state-owned companies), according to public procurement plans that are publicly available. The most recent figure for its procurement volume provided by Samruk-Kazyna relates to 2016 and accounts for USD 12 billion (8% of GDP). All of these SOEs are governed by separate procurement rules and regulations. Generally, procurement by SOEs, mostly Samruk-Kazyna, can be estimated to account for almost twice the size of government procurement.

13. The country enacted its first PPL in 1997, based on the UN Commission on International Trade Law Model Law on Procurement of 1994 (UNCITRAL Model Law). Since, the GoK has made a continuing effort to develop the public procurement system and comply with international standards. The current PPL was adopted in 2015, and major amendments were adopted on December 26, 2018 and are effective since January 1, 2019.
14. Samruk-Kazyna (SK) was founded in 2008 by Presidential decree as a sovereign wealth fund. Currently, there are 404 portfolio companies within the Fund that are active in diverse areas, including gas, oil, electricity, railway, post, etc. Kazakhstan has a target to reduce the share of government participation in the economy, according to the “Comprehensive Privatisation Plan 2016-2020”.
15. Reforms within Samruk-Kazyna also concern procurement procedures, which have seen major improvements in recent years. The most recent amendments to the Law “On the Fund of National Welfare” as part of December 26, 2018 procurement reform package affected public procurement by SK substantially, but they maintain its dedicated framework.

### **Assessment**

16. **The GoK’s has made substantial and consistent efforts over the last two decades towards improving and bringing the PPS closer to the international standards.** The current PPL was adopted in 2015, primarily to comply with the requirements of the Eurasian Economic Union Treaty (EEUT) on public procurement. Since then, the GoK has improved the legal framework in terms of hierarchical order and identification of a comprehensive set of formal procurement rules and procedures. The GoK has also developed a public procurement web portal (a full-fledged single-window e-procurement system), which has allowed for an increased transparency in the disclosure of procurement documents, procurement notices and the GoK’s main decisions with respect to procurement. This open public platform, with free access to the most recent public procurement rules and regulations, is a major step towards achievement of the PPL’s principle of transparency in public procurement. However, the PPL does not cover the procurement of all goods, works and services (including consulting services) using public funds.
17. **The fact that a major part of the public procurement activity in Kazakhstan is not covered by the general public procurement legal and regulatory framework creates hurdles for effective and efficient public procurement practices.** A large part of the public procurement volume in Kazakhstan is being managed by SOEs, i.e. the quasi-state sector as well as sovereign wealth fund Samruk-Kazyna. The procurement systems for these entities largely followed the above-mentioned reforms of the general PPS, rules, procedures and practices. However, regulatory frameworks remain separate, creating a scattered landscape, with diverse and difficult to follow legal frameworks, generating increased burden for suppliers and interested stakeholders of the different procurement systems. Yet, it is fair to recognise that the most recent reform brought the quasi state sector closer to the general PPS by requiring application of a unified set of rules. Nevertheless, Samruk-Kazyna, the entity with the highest public procurement spending in Kazakhstan by far, remains outside of the general PPS.



18. **Kazakhstan became a member of the WTO in 2015 and was admitted to the WTO's Government Procurement Agreement (GPA) as an observer in October 2016,<sup>5</sup>** following the continuous efforts to modernize the country's public procurement system.
19. **The rules and institutions of Kazakhstan's public procurement have reached a level of maturity that could potentially enable it to be leveraged to promote economic and market growth, innovation and environmentally sustainable development.** In particular, the public procurement framework could be used to drive SME development through specific provisions to increase the access of small and medium enterprises (SMEs) to procurement opportunities and facilitate their effective participation in government tenders.
20. **The GoK is expanding opportunities for effective linkage of the public procurement system to the overall public financial management and governance systems** to promote public participation in decision-making and monitoring of budget execution.

### ***Procurement practices***

21. The public procurement legal framework has contributed to the development of a relatively well-established practice for procurement planning guided by an analysis of needs for goods, works and services beginning in the first half of the previous [fiscal] year and preparation of annual budget proposals as part of the planning and budgeting process for the next fiscal year. However, this practice does not adopt a structured and holistic approach to procurement planning to inform the best approach to market and optimal procurement methods that would support achievement of fair level of competition and value for money.
22. The assessment of current procurement practices shows that a high level of efficiency has been achieved through the mandatory use of e-procurement system, with 56 days being the average time for conducting open tender procedures as opposed to 58 days, the maximum lead time stipulated in the legal framework. Despite this and the propensity of procuring entities to carry out procurement by open tender, the results are less than optimal. In 2017, of all the procedures using this method, only 32% led to a contract award; 68% of procedures failed and re-procurement took place using Single Source method, which in 2017 accounted for 81.79% of all procurement methods.
23. The reasons for such high rate of failure are not immediately evident but could be possibly emboldened by the fact that the PPL allows for the automatic use of single source method if an open tender failed, without obliging the procuring entities to seek to understand the reasons for such failure. The PPL amendments of December 2018 abolished this possibility, and it remains to be seen if there will be improvements in practice. Furthermore, the use of non-price attributions in evaluation are not frequent, and the legal framework does not provide for the life-cycle costing principles.
24. Though the legal framework does not appear on its face to establish any barriers for participation of foreign bidders, the requirement of obtaining digital signature for foreign bidders to be able to use web-portal, coupled with the recent amendment introducing a fee for the use of web portal by all bidders, as well as requirement for e-bid security to be obtained through a commercial bank in Kazakhstan, create serious barriers to participation of foreign bidders. The existence of these restrictive policies explains, in major part, why in 2017 the contracts awarded to local private sector firms and individuals accounted for 99.7% of all contracts.

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<sup>5</sup> [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm)



25. The practice of applying procurement methods permitted by the PPL shows some signs of inefficiency particularly for the use of the open tender method. In 2017, the use of this procurement method has shown a failure rate of 68 percent. This failure rate includes situation of failed and/or cancelled processes, which consequently led to the use of non-competitive methods such as Single Source. The current practice in applying the open tender methods is also marked by a high rate (50 percent) of non-responsive bids which limits the potential competitive outcomes of bidding processes. Furthermore, the practice of applying fixed discounts for non-price criteria with additional qualification appears inappropriate as some of the requirements are general and not specifically related to the nature of the subject procurement and do not allow to differentiate the qualitative criteria in terms of their importance or relevance in meeting the procurement objectives and outcomes of each specific procurement. There is room for improvement of this practice and its possible alignment with the international best practice of adopting technique of weighting technical and financial as well as life -cycle cost requirements to ensure better procurement outcomes and value for money.
26. **Regarding the assessment of procurement practices by Samruk-Kazyna, the MAPS assessment team was unable to assess those to a meaningful extent, as prescribed by the methodology. This was due to insufficient access to procurement data and procurement documents (sample cases), which were not provided by Samruk-Kazyna, despite repeated requests.** The conclusions presented on the performance of the procurement system of Samruk-Kazyna are based on desktop-research and stakeholder interviews with public officials from the government and Samruk-Kazyna, private sector representatives and representatives of civil society, as well as experts on Kazakhstan’s public procurement system. Despite these efforts, the insight into actual procurement performance of Samruk-Kazyna remains limited and insufficient with regards to the MAPS Methodology, which is duly reflected in the assessment results. Based on available information dating from 2017, 86.5% of procurements managed by the Samruk-Kazyna holding were not conducted competitively. This represents a major concern as it illustrates that the procurement function in Samruk-Kazyna might not achieve general procurement principles nor obtain better value for money.

### ***Professionalization***

27. **The procurement landscape governed by the PPL is with about 23,200 procuring entities very dispersed, out of which 95 percent have organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from a procurement unit of other procuring entity, not counting the procuring entities in the SOEs and their subsidiaries.** However, professional procurement expertise in Kazakhstan lags behind that of most countries in Europe, and there is an urgent need for professional development and capacity building of the procurement workforce. The establishment of an institutionalized and sustainable procurement capacity-building program would represent a major benefit to Kazakhstan’s procurement workforce and civil service in general and would have a positive impact on the overall efficiency of public sector operations.
28. **In fact, Samruk-Kazyna started implementing initial measures towards a professionalization strategy.** The holding has introduced a training offer and is planning on expanding its efforts to professionalise procurement workforce in the Samruk-Kazyna holding structure and subsidiaries by looking at different options to develop a certification mechanism.

### ***Appeals mechanism***

29. **The GoK has introduced measures to improve the transparency of the procurement complaints mechanism.** Although the legal framework allows for complaints to be filed on



public procurement, it is not clear whether the PPL allows for complaints that challenge the documentation for tenders. Further, the Internal Audit Committee (IAC), the first tier of complaints review within the Authorized Body (MoF), may not have the level of independence required for the resolution of complaints, taking into account that Ministry of Finance is a procuring entity itself, and the authority which the Single Public Procurement Organizer reports. Furthermore, given its role in ensuring compliance with legal and regulatory framework, IAC may be asked to review complaints that related to procurement process which may have benefitted from IAC's financial advice and control. The recent PPL amendments created the Complaint Decision Appeal unit within MOF which will allow complaining bidder to challenge the IAC's decision. Though this newly created structure will offer an additional forum for bidders to challenge IAC's decisions, its subordination under the MoF does not provide an adequate level of independence.

30. **Complaints by Samruk-Kazyna are handled internally by the Methodology and Control Department. The arrangement is similar to the government procurement system in its institutional overlap**, given that functions of policy setting, operations and review are closely linked. This raises concerns for institutional independence of the appeals function. Overall, the assessment team had insufficient access to information to come to a conclusive assessment result on these aspects.

### ***Anti-corruption and Accountability Mechanisms***

31. Notably, Kazakhstan has taken steps to strengthen its anti-corruption efforts and has ratified several international agreements and conventions<sup>6</sup> against corruption over the years. Among others, the Anti-corruption Law mandates the reporting on corruption offenses and the country has put in place mechanisms for reporting annual statistics on corruption-related crimes; internal and external corruption risk assessments are carried out by the relevant government bodies and the Agency for Civil services and Anticorruption respectively; adoption of an anti-corruption charter by Kazakhstan entrepreneurs and a model corporate governance code for joint-stock companies with state participation; basic training on anti-corruption is offered as part of curricula for training of civil servants offered by the Academy of Public Administration and local universities; MoF has established a list of bad faith companies and individuals who provide fraudulent information in the course of the procurement procedure, etc.
32. There are however, a number of significant gaps that remain to be addressed such as: further alignment of the anti-corruption and conflict of interest legislation with good international practices, lack of comprehensive provisions in the procurement legislation on preventing and addressing fraud and corruption and other misconduct more generally, grounds for debarment of private sector are limited to engaging in fraud, leaving out corruption, collusion or other forms of misconduct, etc.
33. In terms of the role of civil society in public procurement, the Public Councils<sup>7</sup> created as part of the GoK's 100 Steps agenda are intended to serve as the main instrument for civil society organizations (CSOs) to influence the operations of government agencies and enhance the

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<sup>6</sup> United Nations Convention against Corruption (May 4, 2008); Council of Europe's Convention of Laundering, Identification, Seizure and Confiscation of Proceeds from Crime (May 2, 2011); United Nations Convention against Transnational Organized Crime (June 4, 2008).

<sup>7</sup> "Public councils – consultative, advisory and supervisory bodies formed by ministries, bodies directly subordinate and accountable to the President of Kazakhstan, as well as local government bodies on their competence, together with non-profit organizations and citizens. Law "On Public Councils" dated November 2, 2015 No 383-V ZRK [https://online.zakon.kz/document/?doc\\_id=36800092#pos=4;-257](https://online.zakon.kz/document/?doc_id=36800092#pos=4;-257)



transparency of state decision-making. However, this approach falls short of specific provisions in legislation about public consultation and monitoring mechanisms.

34. **Findings are similar for Samruk-Kazyna as the general government provisions in the area of integrity and accountability apply also for the holding.** More specifically, there is a need to adopt a tailored and risk-based approach to maintaining integrity in Samruk-Kazyna. In addition, crucial functions for policy setting, control and appeals are located in the same branch of the organisation, which provides for a potential conflict of interest and lacking checks and balances. The fact that very limited information about public procurement processes is publicly available for Samruk-Kazyna's operations results in a lack of public oversight that could further compromise integrity and increase accountability.

### ***E-procurement***

35. **The GoK achieved significant results in transferring the public procurement system from a manual to a full-fledged electronic system especially over the last three years.** The legal and institutional framework allows for [all] procurement to be conducted effectively through the Procurement Web Portal, an e-government procurement system (eGP), relaunched by MOF in January 2016. However, there are some cases of public procurement that are not conducted through the e-procurement system, namely the single source procedures under clause 4 and 5 of the Article 44 of the PPL and key stages of the two-stage open tendering. The Procurement Web Portal may benefit from important enhancements, for instance, to **eliminate the requirements that for foreign bidders to be able to obtain a digital certificate, they need to register with VAT authorities which in turn requires the bidder to be physically present in Kazakhstan. Also, the e-GP system should be enhanced to enable and require the procuring entities to fully conduct two-stage tendering and single source method through the system.** Furthermore, to supplement the assessment of the e-procurement system described under Volume I of this report, a security and compliance review (independent audit) is undergoing to assess, validate and ensure that the e-procurement system conforms to international standards for IT system security and quality requirements for open competitive procurement.
36. **Samruk-Kazyna is using e-procurement extensively.** Unlike in the general PPS, the e-procurement system of Samruk-Kazyna offers a less restrictive alternative for the access by foreign bidders who can use a local third-party service provider to gain access. However, this solution remains complex and a potential hurdle. In contrast to the general PPS, Samruk-Kazyna publishes very limited information from its e-procurement system, creating ripple effects for supplier engagement, civil society oversight as well as performance monitoring.

### ***Outlook***

37. **During the next phase of the reform, the Government has an opportunity to further consolidate the procurement landscape,** continue the drive for greater transparency and value for money, strengthen the professionalization of the procurement workforce with clear standards of competence, strengthen further the complaints review mechanism as recently introduced by the amended PPL and enhance contract management arrangements and practices, and promote integrity and citizen engagement in public procurement. First, however, the GoK will need to address the remaining legal, institutional, marketing, integrity and transparency challenges identified by the MAPS assessment.
38. **Samruk-Kazyna's leadership has demonstrated readiness for reform through innovations in discrete areas, such as professionalisation.** Pending additional review and further evidence, the following efforts promise progress: implementing the proposals will increase the capacity and capabilities of the procurement workforce. Additional efforts should be made to increase



competition in the public procurement market of Samruk-Kazyna. A point for reform could also be to revise the appeals and control mechanisms to ensure institutional checks and balances, as well as institutional independence, and in turn increasing trust of suppliers in Samruk-Kazyna’s public procurement system. Further efforts could be undertaken to engage civil society and the private sector.

39. The next section summarises the findings of the MAPS assessment on a pillar-by-pillar approach, including areas for improvement.

## General government procurement system

### Pillar I – Legal and Regulatory Framework

The key strengths of the legal and regulatory framework can be summarized as follows:

- The legal procurement framework is relatively well established, with an adequate hierarchy and corresponding precedence levels (PPL, regulations, instructions, standard templates), all of which are freely accessible at the public procurement web portal [www.goszakup.gov.kz](http://www.goszakup.gov.kz).
- The legal framework provides a broad description of permissible procurement methods and their procedural requirements.
- The use of a single electronic procurement system (public procurement web portal) is mandated and, with few exceptions, is largely consistent with the PPL.
- In keeping with good practice, the web portal provides a mechanism for public discussion of draft tender documentation, to seek feedback and requests for clarification from potential suppliers.
- Tender documentation available through the portal includes model procurement documents and standard contracts for all types of procurement except consulting services. The documents are kept up to date.
- The PPL stipulates that if an international treaty ratified by the Republic of Kazakhstan stipulates procurement rules other than those stipulated in the PPL, the procurement rules of the international treaty shall apply to procurement subject to international treaty.

**The most critical Substantial gaps in the public procurement system** identified by the assessment, and corresponding recommendations, are summarized in Table 1.

*Table 1 - Gaps and Recommendations under Pillar I*

Sub-indicator	Substantive gap	Recommended improvements
<b>1(a) – Scope of application and coverage</b>	The scope of application of legal framework is limited, leaving out a significant volume of activities procured with public funds. This has led to a severe fragmentation of the procurement landscape. The excluded categories include for example: goods, works and services procured by the	Uniformity and universality of the legal framework coverage contribute to predictability and savings in the operation of the procurement system. In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or



	<p>National Bank of Kazakhstan, which in most jurisdictions are covered by the legal framework, save for highly specialized activities. In addition, the legal framework leaves out of its scope, goods, works and services procured by national management holdings, national holdings, national companies and its affiliates, which account for about of 2/3 of the overall procurement expenditures in the country. One such excluded entity with significant procurement activity is National Wealth Fund, Samruk-Kazyna.</p>	<p>through a unified separate special legislation, as many of the excluded categories as practically possible. In this respect, consideration should be given to international practices which show that entities like the National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework.</p> <p>To better inform such future reforms, the Government should undertake a comprehensive study<sup>8</sup> taking stock of the existing procurement rules applied by each of the excluded entity, the performance of these entities and whether they actually achieve value for money while ensuring transparency and fair competition.</p>
<b>1(b) – Procurement methods</b>	<p>The PPL as amended on December 26, 2018 covers a limited range of procurement methods and continues to include an unusually high number (50) of grounds for the use Single Source (SS) procurement. Further, the PPL does not provide for distinct selection methods and procedures for consultancy/advisory services.</p>	<p>Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better value for money and substantial gains in service delivery. Amendments could include (i) making open tender a default method; (ii) more clearly specifying the conditions for the use of each procurement method; (iii) reducing further the circumstances for the use of single source procurement; (iv) including separate provisions of PPR and/or instruction manual to clarify the procedures for the selection of consultancy and advisory services; and (v) introducing framework agreements.</p>
<b>1(d) – Rules on participation</b>	<p>Requirements to obtain the digital signature for foreign bidders to be able to use the web portal</p>	<p>Consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential foreign bidders to obtain digital signature</p>

<sup>8</sup> As part of the study, the Government should assess experience and practices in other countries with transparent procurement systems on how they deal with procurement under Sovereign Wealth Funds. One such example is the Norwegian Government Pension Fund; whose management company follows the procurement rules and procedures as set out in the Norwegian Public Procurement Law. See link: <https://www.nbim.no/en/> and <https://www.nbim.no/no/organiseringen/styringsmodellen/retningslinjer/anskaffelser/>.



	<p>requires, among other conditions, to obtain a certificate of the digital signature which needs a preliminary registration in Kazakhstan tax authority which in turn requires physical presence of bidder in Kazakhstan.</p> <p>In addition, the recent amendments to the PPL have introduced the obligations for potential bidders to: (i) make payment of a fee for using the procurement web portal as potential bidder, and (ii) furnish a bid security only in the form of an electronic bank guarantee, through an account opened in one of the commercial banks of the Republic of Kazakhstan.</p> <p>The above requirements and limitations are not aligned with the PPL which professes open eligibility to all bidders. Most importantly, they constitute a serious barrier to the participation of foreign bidders.</p>	<p>certificates and submit the electronic bid security and pay for the web portal access fee from wherever they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.</p>
<p><b>1(f) – Evaluation and award criteria</b></p>	<p>The application of evaluation criteria based on allocating conditional discounts to bid prices for meeting additional qualifications (experience, functional technical quality and operational characteristics) may not objectively support achievement of value for money procurement decisions. Also, the PPL and its recently introduced amendment do not fully address the confidentiality of the bidder’s information included in the submitted bid. Bidders do not have the possibility to mark those parts of the bids they deem proprietary and commercially sensitive.</p>	<p>Consider improving the use of price and non-price criteria and their evaluation methodologies including combination of weighted quality and price. Revise the relevant provisions of the PPL as recently amended and public procurement regulations (PPR) to bring clarity on various aspects of evaluating bids, including preserving confidentiality of parts of the bid that the bidder does not want to be disclosed to competitors.</p>



<b>1(h) – Right to challenge and appeal</b>	The legal framework does not provide for independent complaints review body.	The current arrangements for review of complaints would need to be revised to ensure a clear level of independence of complaints review body.
<b>1(i) – Contract management</b>	The legal framework lacks clarity regarding the organization of contract management function.	Consider strengthening the legal framework by defining roles and responsibilities for contracts management and by setting requirements for disclosing information on contracts management through the web portal. Also consider strengthening the regulatory requirements for measuring contract implementation performance.
<b>3(a) – Sustainable public procurement</b>	The legal framework lacks the basic concept of sustainable public procurement.	Building sustainability criteria into the legal framework would help ensure value for money throughout the procurement cycle. Efforts could be initially focused on incorporating life cycle costing and non-price dimensions in the evaluation criteria to account for various aspects of procurement object, with the ultimate goal of developing a sustainable procurement policy.

## Pillar II – Institutional Framework and Management Capacity

There are significant strengths under Pillar II, which can be summarized as follows:

- The legal and regulatory procurement framework requires preparation of realistic annual procurement plans. The plans for all procurement activities are published through the web portal. The PPL details the public procurement process and provides adequate linkage to the public budget. A mechanism for feedback on budget execution is in place.
- The integrated public procurement web portal has been operational since 2015. It comprises e-planning, e-procurement, e-contracting, e-implementation, e-payment (active in 2017) and covers full procurement cycle. The portal is integrated with the licensing system, commercial banking systems, the Register of Bad-Faith Suppliers (blacklist) for interoperability.
- The functions of the regulatory and normative body are specified in the legal framework. Although not fully consolidated into one single entity, the regulatory and normative roles are assigned to two units within the Authorized Body under MoF, namely Department of Public Procurement Legislation (DPPL) and the Single Public Procurement Operator (e-Finance Center).
- The responsibilities of procuring entities are adequately defined in the legal framework. The predominantly decentralized nature of the public procurement function has been confirmed by the assessment, which showed that in 2017, about 95 percent of the procuring entities organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from a procurement unit of other procuring entity.



- The Open Contracting Data Standard (OCDS) has been partially implemented on the Procurement Web portal, and the e-Finance Center is currently developing OCDS forms of disclosure and publication.
- The public procurement web portal is widely used at all levels of government—national, regional, sub-regional and municipal—and for the full procurement and contract execution cycle. The system publishes information on procurement activities governed by the PPL, except for some contract management aspects.
- The portal provides adequate linkage to the legal and regulatory framework and related standard procurement documents and guidance /instructions
- The National Security Committee conducts quarterly security vulnerability tests of the public procurement web portal.
- The E-Finance Center is mandated to provide training on the use of the system for procurement staff of all procurement entities.
- The Authorized Body, through E-Finance Center, provides advisory and help desk services on the use of the portal, as well as video instructions and manuals that are available online.

**In addition to these strengths, the assessment identified Substantial gaps** in the institutional framework and management capacity of the PPS, as summarized in Table 2.

*Table 2 - Gaps and Recommendations under Pillar II*

Sub-indicator	Substantive gaps	Recommended improvements
<b>4(b) – Financial procedures and the procurement cycle</b>	The public procurement web portal does not include complete information on contract payments.	Enhance the reporting mechanism to cover completion of major contracts, including details on payments and other performance aspects such as time and cost overruns.
<b>5(c) &amp; 5(d) – Status and legal basis of the normative/regulatory institution function</b>	The level of independence of the normative/regulatory units is not adequately established by the PPL.	Consider strengthening and consolidating the normative and regulatory functions into DDPL and ensure that DPPL has the appropriate level of independence.
<b>6(b) – Centralized procurement body</b>	The single public procurement organizer (SPPO) is not fully utilized.	Evaluate the SPPO’s performance and explore better mechanism to implement centralized/consolidated procurement allowed under PPL, as amended in December 26, 2018, to ensure better efficiency and effectiveness.
<b>8(a) – Training, advice and assistance</b>	The PPL lacks a strategy for capacity development and professionalization of the procurement function.	Consider preparing a skills gap inventory and a training needs analysis. This would inform capacity building and professionalization of the procurement function, possibility in partnership with local higher education institutions.



## Pillar III – Procurement Operations and Market Practice

The main strengths under Pillar III can be summarized as follows:

- The PPL provides for procuring entities to determine and analyze their need for goods, works and services, starting in the first quarter of the fiscal year, as part of the planning and budgeting process for the following fiscal year.
- The legal provisions regarding the identification, development and desired outcomes of contracts or projects are relatively clear. Feasibility studies and discussions of outcomes are required for large or high-value contracts and projects.
- In the case of complex procurement contracts, because of the difficulty of formulating detailed specifications for goods, works and services and determine their technical and other characteristics, the PPL provides for the use of two-stage bidding.
- The assessment of the quantitative indicators found that the average time to procure goods, works and services following an open tender procedure is 56 days, compared to the maximum 58 days stipulated in the PPL. This shows that the process is generally efficient, presumably due in part to the mandated use of e-procurement through the procurement web portal.
- All procurement records are securely maintained on the public procurement web portal and are accessible by all interested parties.
- The legal framework requires the Authorized Body to issue an annual public procurement report.
- Open dialogue with the private sector is encouraged by GOK, especially through the National Chamber of Entrepreneurs (NCE) Atameken and other industry associations and NGOs.
- The data show that small and medium companies are growing. This growth was estimated at 3.6 percent in February 2018 compared to the level observed in 2016.<sup>9</sup>

**The Substantial gaps identified by the assessment and recommendations** for possible ways to address them are summarized in Table 3.

*Table 3 - Gaps and Recommendations under Pillar III*

Sub-indicator	Substantive gaps	Recommended improvements
<b>9(a) – Planning</b>	There is a general absence of a <b>strategic approach</b> to procurement planning.	Strengthen the quality and performance of the public procurement system by introducing a more strategic approach, including proper systematic market analysis to inform procurement planning. The market analysis should inform the decision about adopting Single Source in exceptional cases

<sup>9</sup> OECD 2018. *SME and Entrepreneurship Development in Kazakhstan 2018*.

<http://www.oecd.org/countries/kazakhstan/sme-and-entrepreneurship-policy-in-kazakhstan-2018-9789264301450-en.htm>



		instead of using an extensive list of exclusions.
<b>9(b) – Selection and contracting</b>	<p>The system is characterized by:</p> <ul style="list-style-type: none"> <li>- Inadequacy of sustainability criteria and techniques to determine value for money is predominant.</li> <li>- Limitation in use of procurement methods and tender documents.</li> <li>- Insufficient safeguards to protect confidentiality of bid's content throughout the tender process and avoid allowing for the disclosure of sensitive information.</li> <li>- Inefficient use of the open tender method, as demonstrated by the high ratio (68%) of failed and/or cancelled open tender processes in 2017, resulting in additional use of non-competitive methods such as Single Source.</li> </ul>	<p>Consider embedding in the public procurement legal framework more adequate sustainability criteria and techniques to ensure value for money throughout the procurement cycle.</p> <p>Introduce better regulation for integrated use of the two-stage tender procedure through the web portal and adoption of procedure for pre-qualification as a separate exercise before tenders are launched (for complex and high value contracts).</p> <p>Strengthen general confidentiality provisions and introduce appropriate procedures to manage specific confidentiality clauses. This could include elaboration of instructions/guidance for proper marking by the bidder of the confidential information contained in the bids.</p> <p>The legal procurement framework should include more specific provisions for the use of optimal procurement methods based on the market analysis and in accordance with the purpose of the procurement.</p>
<b>9(c) – Contract management in practice</b>	There is a lack of proper mechanisms and practices for contract management performance and monitoring.	<p>Moving the public procurement system to the next level in terms of quality and performance will require further strengthening of contract management performance measures and monitoring. This would allow for objective assessment of procurement outcomes. The PPR could introduce specific clarification and guidance on contract management and adequate technical methodologies and tools to design key performance indicators and ensure their measurement.</p>
<b>10 (c) – Key sectors and sector strategies</b>	The impacts of the public procurement policy is not systematically evaluated.	An assessment is needed of risks and lost opportunities, in terms of, e.g. cost savings and efficiency, due to exclusion of Samruk-Kazyna from the public procurement market.



## Pillar IV – Accountability, Integrity and Transparency

The assessment identified the following key strengths under Pillar IV:

- The GoK is increasingly creating opportunities for the public to participate in decision-making and monitoring of budget execution, including public procurement. Public Councils created as part of the 100-steps agenda are seen by CSOs as the main instrument for influencing the operations of government agencies. In addition, the open reporting meetings held annually by ministers and heads of subnational or municipal governments (*akimats*) give citizens an opportunity to inquire about the use of public resources.
- Civil society can also participate in the legislative drafting process using the Open Legal Acts<sup>10</sup>, which provides for public comment on proposed changes to legislative drafts, including those related to the public procurement system.
- There is some evidence of direct citizen participation in the procurement process through monitoring, including the publication of reports and media items that provide a basic analysis of publicly available information on public procurement.
- Overall, the country's laws and regulations provide a comprehensive control framework, including internal and external audit and internal controls. The existing control framework adequately covers procurement operations.
- Periodic reports of the public audit bodies, published on their websites, include information on the percentage of orders and recommendations that have been implemented. More than 96 percent of external audit recommendations issued in 2017 were implemented in a timely manner.
- The Anti-Corruption Law defines prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties. It also includes procedures for dealing with allegations of fraud, corruption and other prohibited practices; and it obliges individuals, public associations and other legal entities to report corruption offenses.
- The Ministry of Finance maintains a list of bad-faith companies and individuals that have provided fraudulent information during procurement procedures, refused to sign a public contract upon award, or performed poorly on signed contracts.
- The web portal Qamqor, managed by the Committee of Law Statistics and Special Accounts under the General Prosecutor's Office, provides access to statistics on corruption-related legal proceedings and convictions.
- General integrity training programs are offered at the university level and by the Academy of Public Administration.
- A Code of Ethics for civil servants sets out general standards of behaviour. Civil servants are required to inform management in writing of a potential or actual conflict of interest.

**The Substantial gaps identified by the assessment and corresponding recommendations for improvement are summarized in Table 4.**

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<sup>10</sup> "Open Legal Acts" is a portal (<https://legalacts.egov.kz>), part of the e-government, for publishing draft concepts of the laws and regulatory legal acts for public discussion by citizens, consideration of public initiatives and conducting public hearings.



Table 4 - Gaps and recommendations Pillar IV

Sub-indicator	Substantive Gap	Recommended improvements
<b>11 (a) – Transparency and civil society engagement</b>	CSOs and citizens lack adequate capacity and involvement in public procurement.	The procurement legal framework should be revised to promote public oversight through CSOs’ participation in the procurement process and contract management. GoK should establish programs to build CSOs’ capacity to understand, monitor and contribute to improving the performance of the public procurement system.
<b>14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities</b>	The Anti-Corruption Law is still not in compliance with international standards, as noted by the 3 <sup>rd</sup> and 4 <sup>th</sup> rounds of monitoring of the Istanbul Anti-Corruption Plan.	Amend the Anti-Corruption Law to make it consistent with international standards. Amend the PPL, regulation and tender documents to include definitions of fraud, corruption and other prohibited procurement practices.
<b>14(b) – Provisions on prohibited practices in procurement documents</b>	There is a general lack of CSO participation in monitoring compliance with the PPL, assessing corruption risks, and assessing the effectiveness of anti-corruption measures.	Amend the PPL to include definitions of fraud, corruption and other prohibited practices.

**Based on the recommendations of this assessment, the Authorized Body could prepare a detailed action plan** that identifies the resources and responsibilities of each involved entity.



## General government procurement system: Overview of compliance with MAPS indicators

Red flags raised	Gaps identified	Overall compliance
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Pillar I		Pillar II		Pillar III		Pillar IV		
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring	
	1(b) Procurement methods		4(b) Financial procedures and the procurement cycle		9(b) Selection and contracting		11(b) Adequate and timely access to information by the public	
	1(c) Advertising rules and time limits		5. The country has an institution in charge of the normative / regulatory function.		5(a) Status and legal basis of the normative / regulatory institution function		9(c) Contract management	11(c) Direct engagement of civil society
	1(d) Rules on participation	5(b) Responsibilities of the normative / regulatory function		10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	12(a) Legal framework, organisation and procedures of the control system	
	1(e) Procurement documentation and technical specifications	5(c) Organisation, funding, staffing, and level of independence and authority					10(b) Private sector's organisation and access to the public procurement market	12(b) Coordination of controls and audits of public procurement
	1(f) Evaluation and award criteria	5(d) Avoiding conflict of interest					10(c) Key sectors and sector strategies	12(c) Enforcement and follow-up on findings and rec.
	1(g) Submission, receipt, and opening of tenders	6. Procuring entities and their mandates are clearly defined.		6(a) Definition, responsibilities and formal powers of procuring entities				12(d) Qualification and training to conduct procurement audits
	1(h) Right to challenge and appeal		6(b) Centralized procurement body	13. Procurement appeals mechanisms are effective and efficient.				13(a) Process for challenges and appeals



Pillar I		Pillar II		Pillar III	Pillar IV	
	1(i) Contract management	7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology			13(b) Independence and capacity of the appeals body
	1(j) Electronic Procurement		7(b) Use of e-Procurement			13(c) Decisions of the appeals body
	1(k) Norms for safekeeping of records, documents and electronic data.		7(c) Strategies to manage procurement data		14. The country has ethics and anticorruption measures in place.	14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities and penalties
	1(l) Public procurement principles in specialized legislation	8. The public procurement system has a strong capacity to develop and improve.	8(a) Training, advice and assistance		14(b) Provisions on prohibited practices in procurement documents	
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures		8(b) Recognition of procurement as a profession			14(c) Effective sanctions and enforcement systems
	2(b) Model procurement documents for goods, works, and services		8(c) Monitoring performance to improve the system			14(d) Anti-corruption framework and integrity training
	2(c) Standard contract conditions					14(e) Stakeholder support to strengthen integrity in procurement
	2(d) User's guide or manual for procuring entities					14(f) Secure mechanism for reporting prohibited practices or unethical behaviour
3. The legal framework reflects the country's secondary policy objectives and international obligations	3(a) Sustainable Public Procurement (SPP)					14(g) Codes of conduct / codes of ethics and financial disclosure rules
	3(b) Obligations deriving from international agreements					



## Procurement System of Samruk-Kazyna

### Pillar I - Legal, Regulatory and Policy Framework

The key strengths of this Pillar can be summarized as follows:

- Overall, the procurement legal and regulatory framework is comprehensive and well-defined and generally covers most aspects of a well-functioning public procurement system.
- Rules for advertising rules and time limits are clearly defined.
- Requirements for procurement documents and technical specifications are clearly defined in the legal and regulatory framework.
- According to the legal and regulatory framework, all procurement procedures have to be carried out through the e-procurement system.
- Implementing regulations are strong and provide guidance for procurers.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:

#### *Gaps and recommendations Pillar I*

Sub-indicator	Substantive Gaps	Recommended improvements
<b>1(d) – Rules on participation</b>	<p>Competition in Samruk-Kazyna is hindered by a number of legal requirements restricting participation of suppliers. If not addressed, this will result in inefficient public procurement that does not achieve value for money:</p> <p>An extensive list of exceptions provides grounds for single sourcing and discourages the use of competitive procurement methods.</p> <p>Suppliers' access to the procurement market hindered by complex rules on participation, different lists, pre-qualification, provisional discounts, set-asides and preferences.</p> <p>There is no general prohibition on the artificial splitting of the contracts to avoid the usage of competitive methods (see sub-indicator 1(b)).</p> <p>Participation is hindered by “in-house procurement”, which foresees that items in 424 categories are required to be purchased from companies within the Samruk-Kazyna holding. While this list has been reduced since February 2018, the number is still substantive.</p>	<p>Reduce exceptions that allow for non-competitive procurement.</p> <p>Introduce a legal prohibition for artificial contract splitting.</p>
<b>1(f) - Evaluation and award criteria</b>	<p>Award decisions are effectively based on price-based criteria. A system of discounts translates limited quality considerations</p>	<p>Clearly delineate eligibility, selection and award criteria.</p>



	<p>into price-discounts. Eligibility criteria reference technical specifications in a “pass/fail” approach. However, these legal requirements are not commensurate to the at times complex procurements conducted by Samruk-Kazyna, which require a balanced approach to quality and price considerations. Life cycle costing will be introduced through the standard on category management.</p> <p>There are no legal specifications on safeguarding sensitive information included in a bid, such as trade secrets.</p>	<p>Strengthen the use of quality considerations in award criteria: Change the legal requirements to allow for quality considerations as part of the award criteria, following international good practice for example on the basis of “Most Economically Advantageous Tender” (MEAT). Introduce measures that safeguard sensitive business information.</p>
<b>1(g) - Submission, receipt, and opening of tenders</b>	<p>Bids are not required to be opened right after the opening deadline but rather on a date and time envisaged in the documents; furthermore, there are no specific rules on the retention and future accessibility of the records of proceedings for bid opening and there is no specific prohibition of the non-announcement/protection of sensitive information from a business / trade perspective.</p>	<p>Require the bids to be opened immediately after the deadline for submission. With the e-procurement, it will be much easier, as the software will open the bids automatically.</p> <p>In addition, a clear retention policy should be introduced, not only for the records of bid openings but also for all documents created during the procurement procedure. The publication of sensitive information could be prohibited.</p>
<b>1(h) – Right to challenge and appeal</b>	<p>The units in charge of reviewing appeals in Samruk-Kazyna have limited independence, due to the institutional arrangements in the Samruk-Kazyna holding that place this unit together with the institutional and operational oversight over procurement. The functions for control (audit) and appeals are located in the same unit and are not sufficiently differentiated, which adds to the lack of independence. In addition, rules contain gaps related to process, such as no specification of the deadline for submitting a challenge, no provision on suspending procedures, and no need for publication of appeals decisions.</p>	<p>Create a dedicated, independent review function within Samruk-Kazyna that is independent of both the operational oversight and policy making body for public procurement, as well as independent from the audit function.</p> <p>Clarify the rules for appeals procedures to include suspension, deadlines and publication of decisions.</p>
<b>2(b) – Model procurement documents for goods, works, and services</b>	<p>The assessment team was unable to identify neither model procurement documents nor standard contracting conditions in publicly available spaces as of December 31, 2018. In addition, such documents were not made available to the assessment team for review so that the corresponding sub-indicators could not be</p>	<p>The newly approved Standard for Contract Management includes standard contracting conditions and model procurement documents, according to Samruk-Kazyna representatives. As part of its implementation, model procurement documents for all</p>
<b>2(c) – Standard contract conditions</b>		



	fully reviewed. Making these types of documents and clauses available to the public allows companies to better prepare for tenders and establishes clear expectations that prevent wrongdoing.	categories of procurement, as well as standard contracting conditions, should be made publicly available.
<b>3(a) Sustainable Public Procurement (SPP)</b>	Samruk-Kazyna's public procurement system makes no consideration of sustainability, be it in terms of a general policy or with regards to concrete procurements.	As a first step, Samruk-Kazyna could adopt a general strategy on sustainability to outline how sustainability could be considered in public procurement and how it could be implemented. Additional measures could include capacity building activities as well as the use of technical specifications reflecting sustainability considerations.

## Pillar II - Institutional Framework and Management Capacity

The key strengths of this Pillar can be summarized as follows:

- The Methodology and Control Department as the normative function in Samruk-Kazyna's procurement system has a high standing within the holding and the government as a whole.
- E-procurement is mandatory to be used for all procurements, which is a great achievement that enables further progress in reforming the public procurement system.
- Samruk-Kazyna recently approved a certification mechanism for public procurers, which represents a step towards increased professionalization of the procurement function.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:

### *Gaps and recommendations Pillar II*

Sub-indicator	Substantive Gaps	Recommended improvements
<b>4(b) – Financial procedures and the procurement cycle</b>	In exceptional circumstances, contracting entities in Samruk-Kazyna can start a procurement procedure when the budget is preliminarily approved (i.e. before the formal approval). Contracts can only be signed after the formal approval, which means that there is no guarantee that procurement processes result in an award.	Limit the number of cases in which procurements can be launched without formal budget approval and consider allowing multi-annual procurement cycles for recurring needs. To implement these changes successfully, increase the staff's capacity to plan procurements.
<b>5(c) Organisation, funding, staffing, and level of independence and authority</b>	According to stakeholders, staffing of the Procurement Methodology and Control Department is not adequate to the functions entrusted to it. This might affect the quality of delivering the assigned tasks.	The leadership of Samruk-Kazyna could ensure adequate staffing of the Procurement Methodology and Control Department.



<b>5(d) – Avoiding conflict of interest</b>	Policy making, review (appeals) function and audit (control) function are located in the same unit. This overlap in responsibilities can result in an institutional conflict in implementation, which is why good international practice suggests separating these functions.	Checks and balances rely on independent institutions. The functions of policy making, operations, appeals and control should be separated as much as possible. At minimum, an independent appeals body to hear and decide suppliers' complaints should be established.
<b>6(a) Definition, responsibilities and formal powers of procuring entities</b>	No information about the number of contracting authorities in Samruk-Kazyna was available to the assessors. While de facto, decision making power is delegated, the assessors were unable to identify specifications about delegation of decision making authority in the legal and regulatory framework.	The leadership of Samruk-Kazyna could gather statistics and information about the procurement units within its structure. The legal and regulatory framework could describe the rights and obligations of the procurement unit and responsible units with regards to decision making. It is also recommended to adopt a risk-based approach, balance the necessity for approval with the involved risk and monetary sums.
<b>7(a) – Publication of public procurement information supported by information technology</b>	Access to procurement information is relatively restricted and not available to the general public: Procurement information is generally available only for registered users in the e-procurement system. In order to register, interested parties have to a) possess a Kazakh tax number, or b) register through a fee-based system. This practice has implications for several aspects of the public procurement system: a lack of transparency has negative implications for integrity and accountability, as well as on competition.	Increase the transparency of the procurement system by making information throughout the procurement cycle more widely available.
<b>7(c) Strategies to manage procurement data</b>	The assessors were unable to verify information on data management strategies provided by Samruk-Kazyna due to a lack of access to information. No annual procurement report could be found online.	It would be advisable to publish annual procurement reports, introducing aggregated data for the procurement of Samruk-Kazyna and its subsidiary companies.
<b>8. The public procurement system has a strong capacity to develop and improve</b>	Samruk-Kazyna's certification programme does not speak to substantive, permanent trainings and the organisation does not provide for permanent training programmes.	Samruk-Kazyna could establish clear rules on substantive, permanent training programmes as part of the efforts to certify procurers, starting with a training needs assessment of all its employees involved in procurement transactions. Based on



	<p>There is no advisory service or training for suppliers or the general public. No training strategy exists. Procurement is not recognized as a profession.</p> <p>The existing framework does not speak to the question whether and how certification translates into appointment, promotion and continuous development.</p> <p>While past data is reportedly being used for decision making, the assessment team was unable to identify any consistent performance monitoring system based on performance indicators that would inform decision-making or improvements of the procurement system. A range of information is likely available through the e-procurement system. Not to use this information to conduct strategic decision-making puts the long-term efficiency and effectiveness of the procurement system at risk. In addition, the lack of objective, transparent indicators to measure success creates vulnerabilities.</p>	<p>the results, procurement training strategy should be developed which in its turn will serve as a basis for the permanent training program. This training programme should be routinely evaluated and amended based on the needs of the stakeholders.</p> <p>Advisory services advisory services not only for contracting authorities but also for suppliers and for the public in general should be provided.</p> <p>The changing context created through the certification programme could be used to make appointments and promotions more competitive and ground them in a structured career path. Appointments and promotions could be based on the results achieved by the procurers during the qualification and certification programme.</p> <p>Create and publicise performance indicators and analyse them with available data. Publish the results of the analysis. Track progress from year to year by repeatedly using consistent indicators.</p>
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### Pillar III - Public Procurement Operations and Market Practices

The key strengths of this Pillar can be summarized as follows:

- Wide use of e-procurement provides a promising basis to monitor and enhance procurement performance.
- The private sector is organised to some extent, with an important coordination and engagement role played by the National Chamber of Commerce Atameken.
- Samruk-Kazyna plans on introducing a pool of pre-qualified suppliers, a system which has model character for the Kazakhstan public procurement system as a whole.
- Subsidiaries within the holding develop sector strategies.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:



Sub-indicator	Substantive Gaps	Recommended improvements
9(a) – Planning	<p>The assessment team was unable to conduct a full assessment of this indicator, as Samruk-Kazyna did not grant access to data or sample cases to conduct an analysis of the performance of the procurement system.</p> <p>That said, as detailed below, assessors assigned a red flag to this indicator given that current procurement practices do not appear to achieve value for money.</p> <p>According to stakeholder interviews, several tasks are not regularly conducted, including needs analysis, consideration of sustainability considerations, determination of best value for money, incentives for improved performance, civil society engagement.</p> <p>The assessment team was unable to determine whether a range of other aspects mandated by the assessment criteria were adhered to, including the quality of procurement and bidding documents; participation of civil society and bidders; evaluation, selection and award practices; and contract management practices.</p> <p>Data available in previous publications indicates that 86.5% of the overall procurement volume is procured using the “single source” method,<sup>11</sup> which indicates a low level of competition in the procurement system. This fact in itself represents a red flag.</p> <p>The only procurement documents available to the assessment team were from the second-tier subsidiary “KazAutoZhol”, whose shares are owned by the Samruk-Kazyna subsidiary Kazakhstan Temir Zholy for trust management. The assessed cases</p>	Two types of interventions are recommended:
9(b) – Selection and contracting		a) conduct performance analysis, using the information from the e-procurement system, and make results publically available. In case necessary, the way information is stored in the e-procurement system could be amended to facilitate analysis.
9(c) – Contract management		b) increase the capacity of the procurement workforce to reach a higher level of compliance with rules, as well as better value for money.

<sup>11</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia (2017), Anti-Corruption Reforms in Kazakhstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>.



	largely confirmed the findings of the assessment team about the lack of documentation related to the contract management stage, lack of aggregated data and statistics and high level of cancelled procedures.	
<b>10(b) – Private sector’s organisation and access to the public procurement market</b>	<p>Several findings point to hindrances in access for certain supplier groups, which, as a whole, suggests substantial hindrances to competition.</p> <p>According to stakeholder interviews, suppliers perceive Samruk-Kazyna’s procurement market to be a field largely for companies within the holding, with limited opportunities for external companies.</p> <p>There is limited diversity in the private sector’s organisation, with most activity and engagement taken up by Atameken.</p> <p>Foreign suppliers are at a disadvantage compared to domestic suppliers, given the fee-based system to access the e-procurement system which does not exist for domestic suppliers.</p>	<p>Aim at increasing competition within Samruk-Kazyna’s public procurement market.</p> <p>Introduce additional avenues for engaging suppliers and building their capacity, while maintaining high integrity standards.</p> <p>Publish more information on procurements to allow potential suppliers to prepare.</p> <p>Encourage diversity in supplier’s organisations and engagement.</p>

#### Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System

The key strengths of this Pillar can be summarized as follows:

- Transparency of the legal and regulatory framework has increased, as has the procurement process to a limited extent, due to e-procurement.
- The main cornerstones of an audit and control framework are in place.
- First, promising steps are undertaken to engage civil society.
- The most important elements of an anti-corruption framework are in place.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:



Sub-indicator	Substantive Gaps	Recommended improvements
<p><b>11. Transparency and civil society engagement foster integrity in public procurement</b></p>	<p>Changes to the policy framework are not based on a transparent process, as evidenced by the most recent reform. While some engagement of civil society took place, this engagement remained limited to Atameken. There was no evidence that feedback was taken into account; capacity building measures for civil society do not seem to be widely known where they exist. Overall, given these findings, there does not appear to be an enabling environment for public consultation and monitoring.</p> <p>Despite far-reaching rules mandating wide publication of detailed public procurement information, the assessment team was unable to access a large share of these types of information. Partly, this seems to be linked to hurdles to registering for the e-procurement portal (see pillar II). This represents a serious lack of transparency from the perspective of the general public, which has results for effectiveness and efficiency of the public procurement system.</p> <p>While formally, civil society is allowed to participate in public procurements, the assessors were unable to determine to what extent the participation really takes place.</p>	<p>Contribute to an active civil society by advertising capacity building efforts. Aim at including more than one organisation in consultations. Devise a forum for discussing changes to the legal and regulatory framework with integrity.</p> <p>This assessment criterion is linked to other indicators across the MAPS indicator framework, and recommendations follow accordingly: procurement information should be published widely and for the general public along the procurement cycle and in analytical form as appropriate. Representatives of civil society could be involved in all stages of procurement process.</p>
<p><b>12. The country has effective control audit systems</b></p>	<p>A de-facto verification of the quality of audit rules and processes was not possible. Samruk-Kazyna did not provide access to the rules, standards, guidance and manuals or any other documents regulating audit within Samruk-Kazyna beyond publically available documents. In addition, the assessment team did not have access to any quantitative information on audits, or insight into audit case files to verify outcomes, enforcement or timeframes.</p> <p>Notably, the assessment team was unable to establish whether there is independent, external oversight over audit within Samruk-Kazyna.</p> <p>In addition, there is no specific consideration of public procurement in</p>	<p>In order to comply with this indicator, substantial changes to the audit structure should be undertaken. Samruk-Kazyna could consider further separating the audit function from the day-to-day operations of the fund, notably the public procurement function.</p> <p>More information about audits, associated rules and standards, as well as data about their implementation and enforcement should be made available or collected where this is not yet done. Audit structures and auditors should be equipped with a “public procurement lens”, i.e., mechanisms should be introduced</p>



	the audit function; no training or specific guidance is available.	to the audit toolbox that take account of the specific aspects of public procurement, and auditors should receive specific training on public procurement.
<b>13(b) – Independence and capacity of the appeals body</b>	The assessors were unable to definitely determine the roles and responsibilities with regards to appeals procedures due to a lack of access to rules on the appeals function. The Procurement Methodology and Control Department assumes the role of appeals body, while also being responsible for a range of other tasks that might interfere with the independence needed for a review body. In addition, the capacity of the Procurement Methodology and Control Department seems limited, and it did not appear plausible how all these different functions can be completed by such a limited number of staff.	Clarify roles and responsibilities with regards to the appeals procedure and establish them in an independent unit unrelated to regular procurement policy making and control. Equip the appeals unit with sufficient capacity.
<b>13(c) – Decisions of the appeals body</b>	The assessment team did not have access to any information, files or documents that provided insight on the practical implementation of the rules on the appeals mechanism. None of the appeals decisions are publicly available. Therefore, no evaluation of the quality of the decisions of the appeals body was possible.	Publish decisions of the appeals body in line with international good practices.
<b>14(c) – Effective sanctions and enforcement systems</b>	While there are indications on national level that the enforcement of anti-corruption legislation does take place, Samruk-Kazyna as a holding does have some gaps with regards to effective sanctions and enforcement systems. Assessors were unable to identify a reporting protocol, evidence of enforcement or a debarment regime.	Introduce clear guidance on reporting misconduct related to corruption – internally in Samruk-Kazyna and then externally to the authorities. Introduce and apply a debarment system that considers integrity offenses (possible to link it to the supplier blacklist.) Publish information on the identification and prosecution of integrity-related offenses.
<b>14(d) – Anti-corruption framework and integrity training</b>	Samruk-Kazyna largely falls under general anti-corruption framework of Kazakhstan as a whole. However, similar to other international holdings, Samruk-Kazyna could benefit from employing an integrity framework specific to the risk profile of the organisation. Samruk-Kazyna is largely lacking a comprehensive anti-corruption framework that includes preventative measures.	Identify corruption risks in the area of public procurement in Samruk-Kazyna and implement a preventative framework to mitigate these risks.



<p><b>14(e) – Stakeholder support to strengthen integrity in procurement</b></p>	<p>The assessors did not find evidence to indicate that external stakeholders were involved in procurements to strengthen integrity. Failure to involve civil society (as relevant) in for example complex procurement processes can result in less accurate needs assessments for the end user, and in turn low value for money. In addition, civil society can have the role of an “integrity watchdog” to concretely prevent corruption in all phases of the procurement cycle.</p>	<p>Begin to increasingly involve civil society in more complex procurements with a high impact on local communities. Aim at involving citizens irrespective of associations. Strengthen the capacity of civil society organisations to participate in and monitor public procurement processes.</p>
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## Public procurement system of Samruk-Kazyna: Overview of compliance with MAPS indicators

Red-flags raised	Gaps identified	Overall compliance
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Pillar I		Pillar II		Pillar III		Pillar IV	
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	1(b) Procurement methods		4(b) Financial procedures and the procurement cycle		9(b) Selection and contracting		11(b) Adequate and timely access to information by the public
	1(c) Advertising rules and time limits	5. The country has an institution in charge of the normative / regulatory function.	5(a) Status and legal basis of the normative / regulatory institution function		9(c) Contract management		11(c) Direct engagement of civil society
	1(d) Rules on participation		5(b) Responsibilities of the normative / regulatory function	10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	12(a) Legal framework, organisation and procedures of the control system
	1(e) Procurement documentation and technical specifications	5(c) Organisation, funding, staffing, and level of independence and authority	10(b) Private sector's organisation and access to the public procurement market		12(b) Coordination of controls and audits of public procurement		
	1(f) Evaluation and award criteria	5(d) Avoiding conflict of interest	10(c) Key sectors and sector strategies	12(c) Enforcement and follow-up on findings and rec.			
	1(g) Submission, receipt, and opening of tenders	6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities and formal powers of procuring entities	12(d) Qualification and training to conduct procurement audits			
	1(h) Right to challenge and appeal		6(b) Centralized procurement body		13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals	



Pillar I		Pillar II		Pillar III	Pillar IV	
	1(i) Contract management	7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology			13(b) Independence and capacity of the appeals body
	1(j) Electronic Procurement		7(b) Use of e-Procurement			13(c) Decisions of the appeals body
	1(k) Norms for safekeeping of records, documents and electronic data.		7(c) Strategies to manage procurement data		14. The country has ethics and anticorruption measures in place.	14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities and penalties
	1(l) Public procurement principles in specialized legislation	8. The public procurement system has a strong capacity to develop and improve.	8(a) Training, advice and assistance		14(b) Provisions on prohibited practices in procurement documents	
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures		8(b) Recognition of procurement as a profession			14(c) Effective sanctions and enforcement systems
	2(b) Model procurement documents for goods, works, and services		8(c) Monitoring performance to improve the system			14(d) Anti-corruption framework and integrity training
	2(c) Standard contract conditions					14(e) Stakeholder support to strengthen integrity in procurement
	2(d) User's guide or manual for procuring entities					14(f) Secure mechanism for reporting prohibited practices or unethical behaviour
3. The legal framework reflects the country's secondary policy objectives and international obligations	3(a) Sustainable Public Procurement (SPP)					14(g) Codes of conduct / codes of ethics and financial disclosure rules
	3(b) Obligations deriving from international agreements					



## Recommendations for Improvement Priorities

The recommendations emerging from the application of the MAPS, both for the general government public procurement system as well as for Samruk-Kazyna's procurement system have identified several key areas for improvement the details of which have been highlighted in the relevant sections and volumes of this report. The present section summarizes the critical areas that need to be improved urgently given their impact on the performance of the two procurement systems. However, setting the sequencing to implement the recommended improvement activities to address key weaknesses in the two assessed systems would be left the discretion of the GOK. The validation process would offer the opportunity for the GOK and participating development partners to explore possible ways and means to support the recommended actions plan.

### Improvement priorities for the public procurement system.

The MAPS assessment identified the following seven priorities areas for improvement:

- I. **Legal framework Coverage:** the scope of application of the PPL is limited and the lack of uniformity and universality of the legal framework coverage appear not contribute to predictability and savings in the operation of the procurement system. **In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible.** In this respect, consideration should be given to international practices which show that entities like National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework.

**To better inform such future reforms, the Government should undertake a comprehensive study taking stock of the existing procurement rules applied by each of the excluded entity, assess the performance of these entities whether they achieve value for money while ensuring transparency and fair competition.**

- II. **Rules on participation:** Revise the current requirements for the access to e-procurement system and participation to bidding such as the requirement for electronic digital signature and the obligation to furnish a bid security only in the form of an electronic bank guarantee, through an account opened in one of the commercial banks of the Republic of Kazakhstan to ensure proper alignment with the PPL which professes open eligibility to all bidders.

**GOK is recommended to consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential foreign bidders to obtain digital signature certificates and submit the electronic bid security and pay for the web portal access fee from wherever they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.**

- III. **Procurement methods:** Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better value for money and substantial gains in service delivery. Amendments could include (a) making open tender a default method; (b) more clearly specifying the conditions



for the use of each procurement method; (c) reducing further the circumstances for the use of single source procurement; and (d) introducing framework agreements.

- IV. **Evaluation criteria and support to value for money.** Improve the current approach for application of evaluation criteria based on allocating conditional discounts to bid prices for meeting additional qualifications to ensure achievement of better value for money procurement decisions.

**Consider improving the use of price and non-price criteria and their evaluation methodologies including combination of weighted quality and price.** Revise the relevant provisions of the PPL as recently amended and public procurement regulations (PPR) to bring clarity on various aspects of evaluating bids, including preserving confidentiality of parts of the bid that the bidder does not want to be disclosed to competitors.

- V. **Contract management and performance monitoring:** Ensure moving the public procurement system to the next level in terms of quality and performance will require further strengthening of contract management performance measures and monitoring through (a) better definitions by legal framework of roles and responsibilities for contracts management, and (b) setting requirements for measuring contract implementation performance including KPIs.
- VI. **Professionalization:** Preparing a public procurement skills gap inventory and a training needs analysis. This would inform capacity building and professionalization of the procurement function, possibility in partnership with local higher education institutions. The establishment of an institutionalized and sustainable procurement capacity-building program would represent a major benefit to Kazakhstan's procurement workforce and civil service in general and would have a positive impact on the overall efficiency of public sector operations.
- VII. **Integrity and accountability:** Consider targeted measures to address corruption risks in public procurement. Some legal changes, such as revisions to the anti-corruption law as well as revisions to the procurement legal and regulatory framework, could ensure that corruption risks in the public procurement process are adequately captured by the legal and regulatory framework. In addition, practical guidance for procurers on preventing and reporting misconduct could be expanded.

## Improvement priorities for Samruk-Kazyna's public procurement system

The MAPS assessment identified the following eight priorities areas for improvement:

- I. **Legal and Regulatory Framework:** It could be explored to what extent a unified public procurement framework for Kazakhstan would be beneficial. This could be beneficial also for Samruk-Kazyna as it could enhance competition and facilitate access for all interested companies to procurement opportunities.

Samruk-Kazyna could consider including missing aspects in its legal and regulatory framework, such as changing the rules in a way to promote sustainable and strategic procurement, clarifying the legal hierarchy of norms and evaluating the need to regulate PPPs. An important measure would also be to review and reduce the number of exceptions for open tendering currently permitted by the law, in order to enhance competition. Additional changes might be needed in the area of regulating bid opening, rules for information retention and for the review function.

- II. **Competition:** To enhance competition, Samruk-Kazyna could make efforts to eliminate preferences and set-asides. Increasing transparency is important as a prerequisite for fair competition. Aside from increasing trust and enabling civil society to engage in public



procurement, procurement information could allow potential suppliers to prepare and improve their submissions, resulting in better outcomes for the contracting authorities.

Samruk-Kazyna should make efforts to increase and diversify their supplier base to ensure access to the best value for money. As part of these efforts, Samruk-Kazyna could also devise activities to train and engage suppliers, while maintaining high integrity standards.

- III. **Strategic procurement practices:** As part of an effort to increase the performance of public procurement, Samruk-Kazyna could undertake efforts to make public procurement more strategic and sustainable, for example by devising a strategy on sustainability in its broadest sense (i.e., balancing the economic, social and environmental effects of public procurement.)

Samruk-Kazyna could conduct performance analysis, using the information from its e-procurement system, and make results publically available. The way information is stored in the e-procurement system could be amended to facilitate analysis. Monitoring of key performance indicators (KPIs) can be a useful way to identify opportunities to increase performance. This area is also amenable to capacity building initiatives.

In implementing these measures, a focus should be places on the market analysis and planning stage, as well as the contract management stage. These were areas that exhibited particular challenges.

- IV. **Contract management and performance monitoring:** Special emphasis in all measures should be given to how contracts are managed. Beyond improving performance, this relates to evidence-based monitoring of contract performance. KPIs should be used to monitor performance of all procurements; analysis should be undertaken and published. The reporting mechanism in the general public procurement framework could be expanded to cover completion of major contracts, including details on payments and other performance aspects such as time and cost overruns. As part of these efforts, attention should be paid to the links between contract implementation and budget execution, streamlining the two wherever possible and limiting cases in which procurements are launched without formal budget allocation.
- V. **Professionalization:** Samruk-Kazyna could expand its successful professionalization efforts by developing a more structured approach to professionalization, including a procurement training strategy which can serve as a basis for structured professionalization programme. The programme should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions and other relevant topics. A full-fledged certification programme for procurers with diversified and targeted offers, linked to career trajectories should be part of this programme.
- VI. **Institutions, tools and strategies:** The current efforts to introduce tiered prequalification processes can be coupled with efforts to centralise those items in the more standardised categories. Considerable economies of scale could be achieved by using modern techniques combined with partial centralisation. Two stage procedures could be more widely used. Samruk-Kazyna's public procurement system suffers from institutional arrangements that limit the institutional independence of crucial actors in the public procurement system. The responsibility for policy setting internal to the holding should be separated from the task of overseeing the appeals, review and audit functions.
- VII. **Integrity and accountability:** Samruk-Kazyna could benefit from a risk-based approach to corruption, identifying specific risks in the area of public procurement and implementing strategies to mitigate these risks. In the area of control and audit, rules need to be clarified and the institutions (see above) structured in a way to allow for effective checks and balances.



A specific debarment system could be introduced that takes into account integrity offenses (possible to link it to the supplier blacklist.)

VIII. **Civil society & engaging the public:** This aspect is linked to other areas mentioned above and an area of concern for both procurement systems. For Samruk-Kazyna specifically, efforts should be undertaken to increase transparency of its procurement operations. In publicizing more information, Samruk-Kazyna could adopt the Open Contracting Data Standard (OCDS) to increase transparency and facilitate civil society oversight. Finally, civil society could be increasingly involved in more complex procurements.



# 1. Introduction

1. **Following a request of the Government of Kazakhstan (GoK) to assess both its general public procurement system (PPS) and the procurement system of the Sovereign Wealth Fund Samruk-Kazyna, using the revised MAPS, GoK and a coalition of international partners, led by the World Bank, the Organisation for Economic Cooperation and Development (OECD) with the European Bank for Reconstruction and Development (EBRD), Islamic Development Bank (IsDB), and Asian Development Bank (ADB) launched the assessment in April 2018. The timing of the assessment aligns with the objectives of Kazakhstan Strategic Plan 2050 which depends on optimal and effective use of public resources. The Strategic Plan's objectives, in turn, align with the OECD Recommendation of the Council on Public Procurement, the Sustainable Development Goals (SDGs), and the World Bank Group's (WBG) Systematic Country Diagnostic for Kazakhstan.**
2. **The main objective of the assessment is to support Government of Kazakhstan's (GoK's) efforts to further improve the quality and performance of public procurement.** The main objective is to assess whether the core principles of public procurement, including value for money, economy, integrity, fitness for purpose, efficiency, transparency and fairness are achieved for the entire public procurement system under the procurement framework. The assessment supports these efforts by identifying gaps in the system's performance and recommending ways to address them. The proposed recommendations aim at achieving a sound public procurement system that contributes to increasing public trust and enhances the nation's prosperity through transparency, fairness, value for money and good governance in the use of public resources.
3. **The scope and methodology of the assessment were designed to** (a) identify strengths and weaknesses of the public procurement system, their relative importance, and major risks and their likely consequences for the efficiency of the system; (b) identify any Substantial gaps that negatively impact the quality and performance of the PPS; (c) identify and recommend actions to strengthen the system; and (d) form the basis for elaboration of a strategy and reform action plan to continuously improve the quality and performance of the public procurement system.
4. **The assessment was jointly led by Ministry of Finance of Kazakhstan (MoF), referred to as the Authorizing Body, by the World Bank and by the OECD/EBRD, and was conducted by a team comprising the most active international partners in Kazakhstan, including the World Bank, Islamic Development Bank (IsDB), Asian Development Bank (ADB), the EBRD and the OECD. The multidisciplinary team included the organisations experts in procurement, governance, legal, financial management, e-procurement, and corporate finance. Under the leadership of MoF, the team established close collaboration with all relevant government institutions, private sector actors and civil society organizations (CSOs).**

## Summary of the assessment period

- i. **Initiation workshop** held in March 2018 in Astana.
- ii. **Data collection process** – from March to April 2018 on Government Public Procurement System and SK' procurement system from all open and available sources.
- iii. **Main assessment mission** – From April 17 to August 1, 2018 – led by World Bank for the assessment of the Government Public Procurement System. OECD led SK's procurement system.
- iv. **First Draft Report on MAPS assessment of Government public procurement system** prepared by WB team on Dec. 7, 2018 and circulated for comments to ADB (Dec. 13, 2018); IsDB (Dec. 7, 2018); EBRD (Dec. 13, 2018); OECD (Dec. 12, 2018).
- v. **First Draft Report on MAPS assessment of SK procurement system** prepares and submitted for WB comments on April 9, 2019. The WB's comments on the draft were discussed with OECD and EBRD in Tashkent in the margin of 15<sup>th</sup> PRIMO Forum.
- vi. **Revised consolidated KZ MAPS draft Report** – finalized end of May 2019.

## Main reasons for delay occurred in the delivery of the first KZ MAPS draft report:

- As per initial deliverable schedule (Concept Note attached), the final KZ MAPS report was planned for December 2019. However, while the team was about to finalize the draft report, the GOK enacted an amendment of the PPL as well as an amendment of the SK Law on December 26, 2019. This has mandated the modification of the deliverable schedule to allow the KZ MAPS teams (WB and OECD) to update the assessment in view of the amendments that were effective January 2019.
- Also, there were delays in completion of the assessment by OECD team of the procurement system the Sovereign Wealth Fund Samruk-Kazyna mainly due to limited access to the relevant procurement data in Samruk-Kazyna. The review teams (WB and OECD) had to adjust the timetable for consolidated report finalization accordingly.



5. **The assessment was launched at an initiation workshop held in March 2018 in Astana**, attended by key procuring agencies, private companies, industry associations and non-government organizations (NGOs). The workshop helped establish a common understanding of the assessment's objectives and the use of the MAPS core tool—comprising 4 pillars, 14 indicators and 55 sub-indicators—to take a snapshot of the country's public procurement system and how it compares to internationally accepted procurement principles and practice.
6. For the government procurement system, the qualitative analysis focused on the legislative framework and institutional structure of the PPS. The quantitative analysis looked at (a) 150 randomly selected public procurement transactions and contracts; and (b) online survey responses from private sector actors and NGOs.
7. The sovereign wealth fund Samruk-Kazyna represents a major part of the procurement system in Kazakhstan and accounts for the vast majority of public procurement spending. Therefore, since its conceptual design, the MAPS assessment aimed at evaluating the national procurement systems in the country. Therefore, considering the nature of public procurement in Kazakhstan, with a clear dual system (Government Procurement and Samruk-Kazyna), any MAPS assessment of public procurement in the country needs to incorporate a MAPS-based analysis of the Samruk-Kazyna public procurement system from the start. For this reason, the MAPS assessment team did not consider using any of the MAPS modules that could eventually apply, namely the Entity Level one.
8. Samruk-Kazyna's leadership supported the MAPS assessment through interviews and the provision of information, although limited. Additional information was provided as part of the validation of the assessment. However, all in all, the assessment team did not have sufficient access to information, data or systems to conclude the assessment of all issue areas to the fullest extent. Samruk-Kazyna representatives did not provide access to procurement data or sample cases, despite repeated requests by the assessment team. Similarly, Samruk-Kazyna did not share vital documents or access for the analysis, such as rules are about the audit, control and appeals framework or access to full functionalities of the e-procurement system. That means that it was not possible to conclude the assessment of a) the e-procurement system, b) procurement performance, c) the audit and control framework, and d) the appeals system to the fullest extent.
9. The concept note for this MAPS assessment anticipated the risk that the assessment team would not have access to necessary data and information. The report presents conclusions based on review of secondary data sources, as well as interviews with: a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy. Nevertheless, from a purely conceptual point of view, it might be considered incomplete without the access to data or a meaningful sample of procurement documents. As a result, the assessment team recommends that for policy decisions touching upon Samruk-Kazyna, an additional assessment be undertaken to allow for evidence-based policy making.
10. In addition, Samruk-Kazyna provided commentary on the assessment, which also details additional progress made since the cut-off date for this assessment (December 2018). This final report incorporates these comments wherever they pertain to the findings before the cut-off date in December 2018. Other comments related to the situation of Samruk-Kazyna's procurement system after the cut-off date of 31 December 2018 and could therefore not be



reflected in the assessment as such. However, the commentary is annexed to this assessment in order to reflect the progress made by Samruk-Kazyna to date as part of its ongoing reform.

11. **The results of the MAPS assessment are presented in two volumes. Volume 1** reviews procurement governed by the Public Procurement Law (PPL) and related regulations. **Volume 2** reviews procurement governed by separate procurement rules and regulations used by the Sovereign Wealth Fund Samruk-Kazyna.
12. The MAPS assessment covers the Kazakhstan public procurement system governed by the PPL enacted in 2015 along with related regulations, the amendment to the PPL enacted in December 26, 2018 , and subsequent changes to the regulations and procedures that were put into effect between January and March 2019. The assessment of SK procurement system covered the current separate rules and regulations and does not cover the changes to public procurement of SK that will enter into force in January 2020 as envisaged by the amendments to the Law “On the Fund of National Welfare” enacted in December 26, 2018.

## 2. Analysis of Country Context

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### 2.1. Political, economic and geostrategic situation of the country

13. **The Kazakhstan is the ninth-largest country in the world by area and the largest landlocked country.** It has a territory of roughly 2.7 million square kilometres (1.04 million square miles) and a population of about 18.0 million. Kazakhstan shares borders with Russia, China, Kyrgyzstan, Uzbekistan, and Turkmenistan, and adjoins a large part of the Caspian Sea. Kazakhstan's neighbours, namely Russia and China historically constituted major centres of economic and political activity. The country consists of 14 regions, subdivided into 177 districts. The population consists of around 125 nationalities, with Kazakhs and Russians accounting for the largest segments, roughly 68 and 20 percent, respectively.
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- The map shows Kazakhstan in the center, colored in yellow. It is surrounded by Russia to the north, China to the east, Turkmenistan to the south, and Uzbekistan to the southwest. The Caspian Sea is visible to the west. Major cities like Astana and Almaty are marked. The map also shows the borders of neighboring countries: Russia, China, Turkmenistan, and Uzbekistan.
14. **According to official statistics, Kazakhstan’s gross domestic product (GDP) in 2017 was USD 162.9 billion.**<sup>12</sup> Annual GDP growth was 4.0 percent in 2017, up significantly from 1.1 percent for 2016. The main factors for growth were the slight increase in oil and metal market prices in 2016-2017 and increased trade with the EU, Russia and China. With oil prices projected to reach US\$65, on average, during 2018-20, the current account balance is projected to improve during those years. GDP growth is expected to reach 3.7 percent in 2018 due to higher oil prices and output. Kazakhstan continues to entertain the ambition to achieve OECD standards within the framework of the OECD Kazakhstan Country Program, first launched in 2015 and renewed in November 2018.<sup>13</sup>
  15. **Kazakhstan’s medium-term economic outlook faces potential risks from both external and domestic factors.** The economy’s vulnerability to external shocks remains the primary challenge to achieving stable and sustainable development. External demand from China and Russia, Kazakhstan’s main trading partners, as well as global oil demand and prices, will remain

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<sup>12</sup> Committee on Statistics of the Ministry of National Economy, Republic of Kazakhstan.

<sup>13</sup> <http://www.oecd.org/eurasia/countries/kazakhstan.htm>



the key external factors impacting Kazakhstan's economic performance. Local factors include the pace of implementation of structural and institutional reforms, especially in anticipation of a political transition over the medium term, as well as the potential worsening of problems in the banking sector.

16. **Over the past two decades, Kazakhstan has executed fundamental reforms aimed at building the foundations of a “socially oriented market economy”.** The World Bank ranked Kazakhstan 91<sup>st</sup> out of 193 countries on its Governance Effectiveness Index in 2016,<sup>14</sup> and 28<sup>th</sup> in its Doing Business Survey of 2019.<sup>15</sup> Kazakhstan also ranked 39<sup>th</sup> out of 193 countries in the United Nations' E-Gov Development Index in 2018.<sup>16</sup> The GoK is working to improve the business environment in all regions of the country. The recent Doing Business Survey provided the Government with feedback from the business community and helped it to fine tune the design of business regulatory reforms.
17. **The Constitution of the Republic of Kazakhstan, adopted on August 30, 1995, serves as a framework for the development of legislation and the establishment and evolution of State institutions.**<sup>17</sup> The latest amendments of March 10, 2017 transferred several powers from the Presidency to the Parliament. This action aimed at strengthening the legislative branch by giving it more decision-making authority. Nevertheless, the institution of the President remains the driving force in determining development priorities, while the Parliament is the supreme legislative body of the country. It consists of two chambers: The Senate and the lower house, the *Mazhilis*, whose members discharge their mandate on a permanent basis. Regional public administrations consist of regional representative bodies, known as *Maslikhats*, and are responsible for their respective territories (village, rural district, district, city, region/oblast). *Akimats* are part of a unified system of the executive bodies of Kazakhstan and ensure implementation of general State policy in conjunction with the interests and development needs of their territories.
18. **Kazakhstan plays an active role in regional cooperation and is a member of several regional and international organizations.** These include the Commonwealth of Independent States (CIS), Eurasian Economic Union (EEU), and the Shanghai Cooperation Organization (SCO). The country also engages in regional security dialogue with the Association of Southeast Asian Nations (ASEAN), Collective Security Treaty Organization (CSTO), and Euro-Atlantic Partnership Council (EAPC). Kazakhstan held the chairmanship of the Organization for Security and Co-operation In Europe (OSCE) in 2010. The country became a full-fledged member of the Organization of Islamic Cooperation (OIC) in 1995, and in 2011 hosted the OIC's 38<sup>th</sup> session. Kazakhstan is also a member of several other international organizations, including the Economic Cooperation Organization (ECO), the European Bank for Reconstruction and Development (EBRD), the World Tourism Organization (UNWTO), International Organization for Migration (IOM), the World Bank, the International Monetary Fund (IMF), the Asian Development Bank, the Islamic Development Bank and some others.
19. **The GoK has made good progress in bringing national anti-corruption legislation in conformity with the basic provisions of international anti-corruption agreements.** Kazakhstan has ratified the United Nations Convention against Corruption (May 4, 2008); the United Nations Convention against Transnational Organized Crime (June 4, 2008); and the

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<sup>14</sup> The World Bank, Governance Effectiveness Index, 2016.

<sup>15</sup> The World Bank, Doing Business Survey, 2019.

<sup>16</sup> United Nations, E-Gov Development Index, 2018.

<sup>17</sup> Constitution of the Republic of Kazakhstan, August 30, 1995, with changes and amendments.



Council of Europe's Convention on Laundering, Identification, Seizure and Confiscation of the Proceeds from Crime (May 2, 2011). Kazakhstan is ranked 122<sup>nd</sup> out of 180 countries in Transparency International's 2017 Corruption Perception Index.<sup>18</sup> In alignment with the UN conventions on corruption and as part of the Kazakhstan 2050 Strategy, the country adopted the Law on Anti-Corruption in 2015, a package of legislation aimed at implementing the anti-corruption policy of the Republic of Kazakhstan through 2025.

## 2.2. The Public Procurement System and its links with the public finance management and public governance systems

20. The public procurement of goods works and services through the e-procurement system amounted to US\$6 billion, or 4 percent of GDP, in 2017. This figure does not include procurement expenditures by the National Welfare Fund SK, national asset holding companies, and other national companies such as state-owned enterprises (SOEs), which are governed by a separate set of rules and regulations. The procurement expenditures of Samruk-Kazyna alone were an estimated US\$14,6 billion in 2017, bringing the total volume of State procurement expenditures to US\$21 billion, or 13 percent of GDP. The most recent figure for its procurement volume provided by Samruk-Kazyna relates to 2016 and accounts for USD 12 billion (8% of GDP). The estimate for 2017 is based on publicly available public procurement plans). Since adoption of the first Public Procurement Law, based on the Model Law of the UN Commission on International Trade Law (UNCITRAL), in 1997, the GoK has made a continuing effort to develop the public procurement system and comply with international standards. The current PPL was adopted in 2015, primarily to comply with the requirements of the Eurasian Economic Union (EEU) Treaty on Public Procurement. As a member of the EEU, Kazakhstan had the obligation to adapt its PPL to comply with the treaty, particularly with regard to (a) ensuring optimal and efficient expenditure of funds used for procurement in the member States; (b) granting national treatment in procurement to member States; (c) ineligibility of third countries to more favourable treatment than that accorded to member States; (d) ensuring openness of information and transparency of procurement; (e) ensuring unhindered access of potential suppliers and suppliers from member States to participate in procurement conducted electronically, through the mutual recognition of electronic signature designed in accordance with the legislation of a member State.
21. **However, the current legal and regulatory framework does not cover all public procurement.** It excludes: (a) procurement expenditures by Samruk-Kazyna and by organizations in which Samruk-Kazyna has a 50 percent or more controlling interest; (b) the National Bank of Kazakhstan (the central bank) and the departments and organizations included in its organizational structure, and legal entities in which the NB has a 50 percent or more controlling interest or are under trust management of the NB, and legal entities affiliated with them; (c) national asset management holding companies, national holdings, national companies (as defined in the Property Law), and organizations in which a national company has a 50 percent or more controlling interest, either directly or indirectly; and (d) SK-Pharmacia LLP and public health care institutions that procure pharmaceuticals, medical equipment and materials for free medical treatment at public hospitals and clinics for certain segments of the population.

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<sup>18</sup> Transparency International, Corruption Perception Index, 2017.



22. Kazakhstan's public procurement system has been the subject of several assessments and diagnostic works by international organizations and international financial institutions (IFIs).<sup>19</sup> These reports highlighted the launching of the e-procurement system in 2010 and its continued development to reach the level of a mandated comprehensive and integrated national public procurement web portal on January 1, 2016. However, nearly all also emphasized the need to (a) eliminate or reduce the PPL's numerous exemptions for SOEs, or adopt separate SOE legislation that is transparent, conducive to fitness for purpose and better value for money; (b) reduce the high volume of non-competitive procurement; (c) further modernize the public procurement framework; (d) remove or reduce barriers to participation by foreign bidders; and (e) establish an independent complaints review body. The Public Expenditure and Public Accountability (PEFA) report<sup>20</sup> highlights the impact of these issues on the low performance of the PPS.
23. **The GoK is increasingly creating opportunities for linking the PPS to the PFM and governance systems** through public participation in decision-making and monitoring of budget execution. Public Councils, created as part of the Government's 100 Steps agenda,<sup>21</sup> are the main instrument for civil society organizations to influence the operations of government agencies. However, this approach falls short of specifically providing for public consultation and monitoring mechanisms related to public procurement, as mandated in the PPL. Atameken is the only non-profit organization with legal standing to influence public procurement policies and practices.

### 2.3. National policy objectives and sustainable development goals

24. GoK's Strategic Development Plan 2025 (Strategy 2025), announced in early 2018, aims at fostering better economic and social development outcomes. It focuses on the systemic reforms and priority policies needed to achieve economic transformation towards more sustainable and inclusive national development (Figure 1). Two of these pathways, Competitiveness and the Public Sector as a Champion of Change, are linked with public procurement reform.

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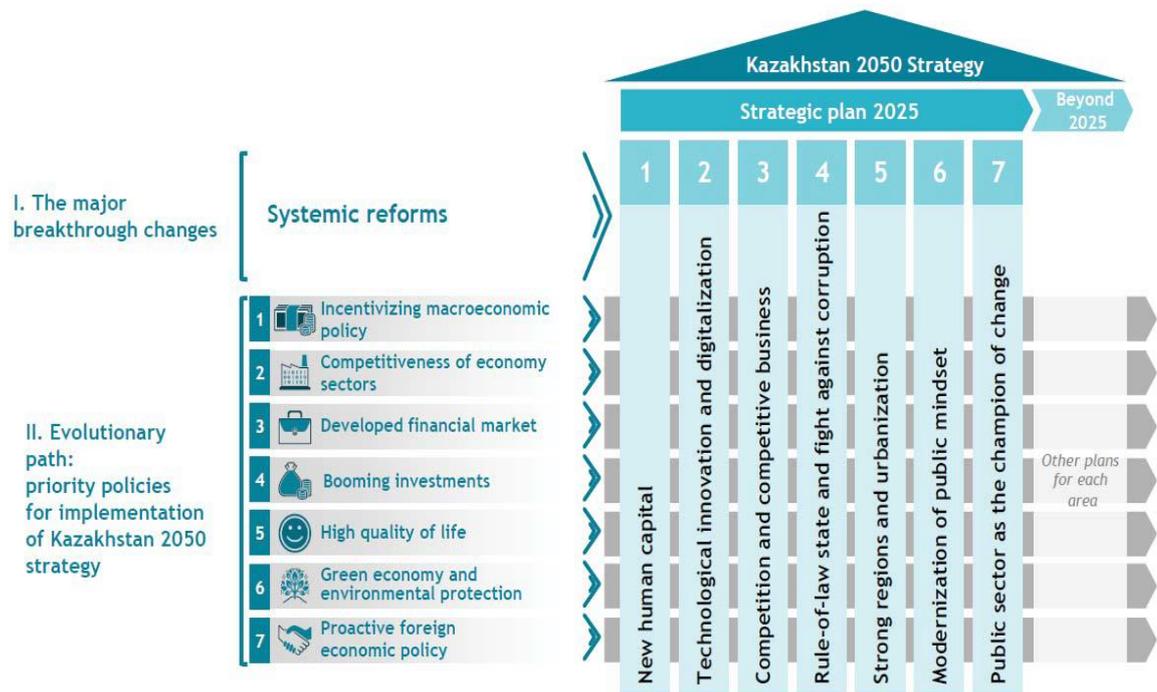
<sup>19</sup> These assessments include *Republic of Kazakhstan Country Procurement Assessment Report (World Bank 2002)*; *Public Procurement Assessment (EBRD 2010)*; *Regional Self-Assessment of Public Procurement Legislative Framework (EBRD 2012)*; *Integrated Fiduciary System Review Report (World Bank 2014)*; *Country/Sector Procurement Risk Assessment Report (ADB 2017)*; , several rounds of peer review as part of the *Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN)*, as well as a *2017 OECD Integrity Scan* and a separate review on the basis of *OECD Recommendation of the Council on Public Procurement*

<sup>20</sup> World Bank 2018.

<sup>21</sup> *100 Concrete Steps: Modern State for All*, announced by the President of the Republic of Kazakhstan in May 2015, identifies 100 steps to implement five essential institutional reforms needed for a modern state: (a) creation of a professional civil service; (b) ensuring the rule of law; (c) industrialization and economic growth; (d) development of a national identity and unified State; and (e) transparency and accountability of the State.



Figure 1 - Strategy 2025's core systematic reforms support the seven evolutionary paths of the Kazakhstan 2050 Strategy



Source: Kazakhstan Strategic Development Plan 2025

## 2.4. Public Procurement Reform

25. Public procurement reform is a key priority of the President's modernization program. In announcing that Competitiveness would be the third stage of his modernization program (after Human Capital Development and Technological Innovation),<sup>22</sup> the President stated that the modernization, which includes "institutional transformation, security and anti-corruption efforts...requires a significant optimization of the public procurement system."
26. The need to reform public procurement was recognized as early as 2005, with the President's order on strengthening public systems to fight corruption.<sup>23</sup> An Electronic Public Procurement Information System was first piloted as part of the e-government system in October 2007, and a public procurement web portal became operational on January 1, 2010. These measures aimed at strengthening the transparency of procurement processes, improving efficiency in the use of public funds, and simplifying and reducing paperwork and costs for participants, leading to fair competition, increased economic opportunities, more equitable development and greater confidence in government.
27. The 100 Steps program of 2015 also aimed to address a number of barriers to effective public procurement, including (a) the refusal of state monopolies to submit pre-project procurement estimates for examination or to undertake procurement in a competitive environment; (b) the

<sup>22</sup> Address to the Nation on the Third Modernization of Kazakhstan: Global Competitiveness, President Nazarbayev, January 31, 2017.

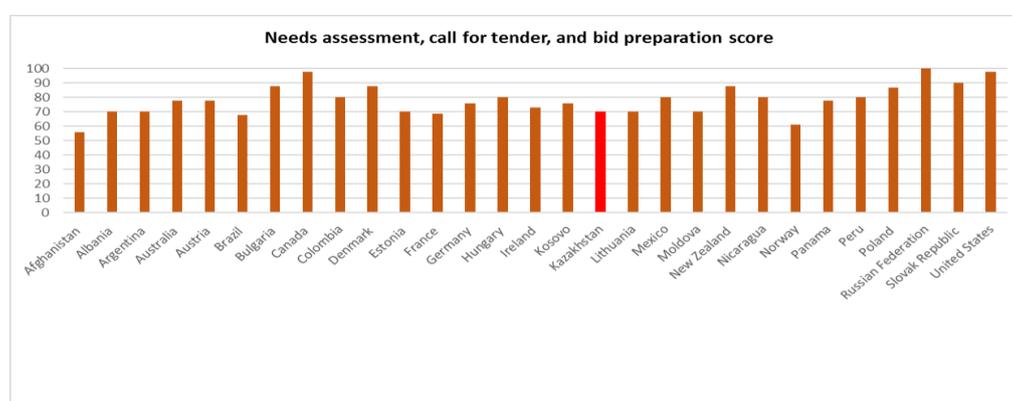
<sup>23</sup> On Measures To Strengthen the Fight against Corruption, Strengthen the Discipline and Order in the Activities of State Bodies and Officials, Order of the President No. 1551, April 14, 2005.



lack of a resource-based methodology to estimate construction costs; and (c) the lack of internationally recognized (Eurocode) construction standards and rules. The announcement of this program was followed by enactment of the Law on Public Procurement in December 2015.<sup>24</sup>

28. After passage of the PPL, Kazakhstan was admitted in October 2016 as an observer in the WTO's Government Procurement Agreement. However, the World Bank's 2017 [Benchmarking Public Procurement database \(Figure 2\)](#), which compared Kazakhstan's PPS against 180 countries, suggested further room for improvement, particularly if Kazakhstan plans to augment the development impact of its resources through the greater use of public-private partnerships (PPP). Amendments to the PPL were then drafted and reviewed by the World Bank team, which recommended some improvements to the PPL (shown in tables 1-4 above). The current Law on Public Procurement, as amended in December 2018, mandates transparency, predictability, consistency, and accountability in the use of public funds.

Figure 2 - Benchmarking public procurement, 2017



Source: Benchmarking Public Procurement Database (<http://bpp.worldbank.org/>), World Bank.

29. Public procurement in Kazakhstan has now reached a level of maturity that could potentially enable it to promote synergies among national policies on economic and market growth, innovation and sustainable development. Nevertheless, more efforts will be necessary to leverage the public procurement framework to promote socioeconomic and environmental objectives. SMEs, in particular, face barriers in benefiting from public procurement business opportunities given their limited resources and the existence of procurement rules and regulations that do not create a level playing field for their participation in government tenders. Leveraging Kazakhstan's public procurement system to benefit SMEs could be a key driver of SME-oriented reform.
30. Professional procurement expertise in Kazakhstan lags behind most countries in Europe. The E-Finance Center (EFC) within the Ministry of Finance has been providing procurement training, but it has not been able to meet the needs of procuring entities given the frequent changes in implementation guidelines and the rapid evolution of the web portal. Public and private educational institutions have yet to offer training in procurement. For these reasons, the establishment of an institutionalized procurement capacity-building program that keeps pace with changes in the system would represent a major benefit to Kazakhstan's procurement workforce and civil service and would have improve the efficiency of public sector operations. The Astana Road Map for the professionalization of the public procurement function, which was developed and agreed upon by European and Central Asian countries at

<sup>24</sup> No. 434-V.



the 12<sup>th</sup> Procurement, Integrity, Management and Openness (PRIMO) Forum in Astana in May 2016, included concrete measures that could guide GoK's efforts to strengthen capacity building and achieve effective and sustainable professionalization of public procurement.

## 2.5. Samruk-Kazyna – background and management structure

31. Joint Stock Company Sovereign Wealth Fund “Samruk-Kazyna” was founded in accordance with the Decree of President of the Republic of Kazakhstan dated October 13, 2008 № 669 “On some measures on competitiveness and sustainability of national economy” and by the Decree of the Government of the Republic of Kazakhstan dated October 17, 2008 № 962 “On measures on realization of the Decree of President of the Republic of Kazakhstan № 669” by the merger of two joint stock companies Kazakhstan Holding for the Management of State Assets SAMRUK and KAZYNA Sustainable Development Fund.<sup>25</sup> The only shareholder of Samruk-Kazyna JSC is the Government of the Republic of Kazakhstan.
32. The Government of Kazakhstan and Samruk-Kazyna have signed an agreement “taking into account the need to manage the Fund in accordance to international best practice of corporate governance as a condition for the Fund to reach its aims and fulfil the assigned tasks”.<sup>26</sup> The agreement sets out the mode of cooperation and interaction between the Government and Samruk-Kazyna. The agreement clearly states that the Government, its bodies and employees have no right to interfere with the operational activities of the Fund while the latter is obliged to report annually on its financial standing.
33. The Law N550-IV “On Fund of National Welfare” dated 01 February 2012 lays down the main aims and principles of the work of Samruk-Kazyna as well as the institutions responsible for the management of the Fund. The main aim of the Fund is “to increase the national wealth of the republic of Kazakhstan by increasing the long-term value of the organisations included into the group of Samruk-Kazyna and by effective management of assets belonging to the group of the Fund”. In accordance to Art. 5, the main principles of the work of the Fund are maintaining the interests of the state as the sole shareholder; profitability, effectiveness, transparency and accountability of the Fund and of other organisations of the Fund; consistency and efficiency of taking decisions and their realisation; social responsibility of the Fund and legality. In this respect, Samruk-Kazyna follows the approach of many sovereign wealth funds around the world, as described in the box below.

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<sup>25</sup> See JSC Samruk Kazyna (Kazakhstan), *International Forum of Sovereign Wealth Funds*, the text can be accessed here: <http://www.ifswf.org/member-profiles/jsc-samruk-kazyna>

<sup>26</sup> See Government Decree N1599 “On the Approval of the Draft Agreement on Cooperation between the Government of Kazakhstan and Joint Stock Company “Fund of National Welfare “Samruk Kazyna” and on Repealing Several Decrees of the Government of Kazakhstan”, dated 14<sup>th</sup> of December 2012.



### ***Sovereign Wealth Funds – General description***

Diverse definitions for Sovereign Wealth Funds (SWF) exist. For the purposes of the current assessment, the definition of the International Monetary Fund (IMF) has been chosen according to which SWFs are “special purpose investment funds or arrangements that are owned by the general government. Created by the general government for macroeconomic purposes, SWFs hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies that include investing in foreign financial assets”.<sup>27</sup>

The IMF classifies five types of SWF based on their goals though some SWFs might fall under several categories described below:

- i. Stabilisation Funds;
- ii. Savings Funds;
- iii. Reserve investment corporations;
- iv. Development Funds;
- v. Pension Reserve Funds.

Legal grounds of SWFs might also be diverse. Some countries may adopt special laws and regulations for SWFs while others might regulate the funds as part of budgetary laws, or even the Constitution. Countries also sometimes create SWFs under a dedicated legal status from that of the government or the central bank. Sometimes, SWFs remain part of pooled assets that belong to the government or the monetary authority. Usually, laws define the source of funds for SWFs, as well as their purpose.<sup>28</sup> Thus, countries that have created sovereign wealth funds opt for various legal and economic instruments when establishing and managing the funds. The following are considered to be the five largest SWFs in the world: 1. Government Pension Fund Global in Norway; 2. Abu Dhabi Investment Authority; 3. China Investment Corporation; 4. Kuwait Investment Authority; and 5. SAMA Foreign Holdings – Saudi Arabia.<sup>29</sup> Kazakhstan has created an SWF named “Samruk-Kazyna” which will be the focus of the rest of this assessment.

34. The management bodies of the Fund are the following: the Supreme Body – sole shareholder (Government of Kazakhstan); Governing Body - Board of Directors; Executive Body – Management Board and other bodies created in accordance to the Charter of the Fund. The Charter itself has been adopted by the Government Decree N1418 dated 8 November 2012. It is detailing the rights and obligations of the sole shareholder (i.e., Kazakhstan’s Government) and of the institutions of the Fund as well as other details related to the management of the Fund (such as the composition of the bodies, voting schemes, etc.). The Prime Minister is the head of the Board of Directors *ex officio*. It is also noteworthy that the majority of the wealth of Kazakhstan is separated from the state budget through the creation of Samruk-Kazyna, which is under the control of the executive branch of the government, while the state budget and its implementation are under the control of the Parliament.<sup>30</sup>

<sup>27</sup> Quoted in Quadrio, Curzio, Alberto. *Sovereign Wealth Funds*, Harriman House, 2010, page 19

<sup>28</sup> See Quadrio, Curzio, Alberto. *Sovereign Wealth Funds*, Harriman House, 2010, page 26

<sup>29</sup> See Mrinalini Krishna, “5 Largest Sovereign Wealth Funds”, Investopedia, September 19, 2017, the text can be accessed here: <https://www.investopedia.com/news/5-largest-sovereign-wealth-funds/>

<sup>30</sup> See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 143

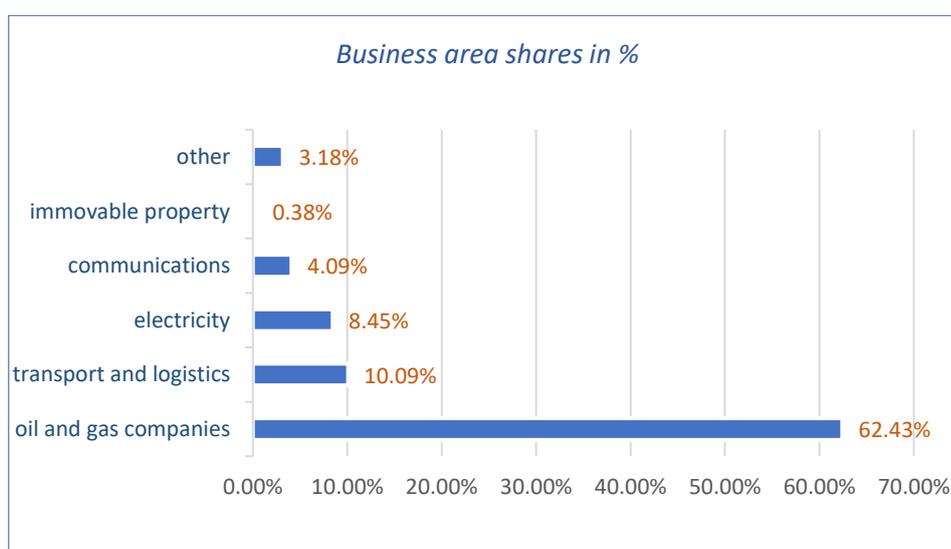


35. Overall, the assets of the Fund have been increasing, representing KZT 22 460 billion in 2016. Cash generated in 2016 was KZT 4 100 billion, a visible increase from the indicator of 2015 which was KZT 3091 billion.<sup>31</sup> Assets of Samruk-Kazyna account for about 40 percent of Kazakhstan’s GDP.<sup>32</sup> The Fund employed 327 500 people in 2016.<sup>33</sup>

## 2.6. Samruk-Kazyna’s portfolio companies and privatization plan

36. Currently, there are 404 portfolio companies within the Fund that are active in such areas as gas, oil, electricity, railway, post, etc. The table below details the share of net asset value of different areas of property in the Samruk-Kazyna in 2016:<sup>34</sup>

Figure 3 - Business area shares in %



37. Kazakhstan has a target to reduce the share of government participation in the economy to 15% by 2020.<sup>35</sup> To this end, a comprehensive privatisation programme was devised in 2014 according to which about 782 organisations would be privatised. The programme was cancelled in 2015 with the adoption of the new “Comprehensive Privatisation Plan 2016-2020”. In accordance to this plan 106 of the organisations to be privatised belonged to Samruk-Kazyna. Assets were selected for privatisation on the basis of discrepancy with the owner’s core operations; market presence of private companies engaged in similar operations; lack of strategic importance; and lack of public importance.<sup>36</sup> In 2015, the authorities have announced the Top 60 companies under privatisation; a list that grew to

<sup>31</sup> See <https://sk.kz/investors/>

<sup>32</sup> See Ambassador Robert Lighthizer, “2018 National Trade Report on Foreign Trade Barriers”, Office of the United States Trade Representative, page 282

<sup>33</sup> See Annual Report 2016: Vol.1 – Sharing Values

<sup>34</sup> See <https://sk.kz/investors/portfolio-companies/>

<sup>35</sup> See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 150

<sup>36</sup> See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 149



become the Top 65. In this list of companies 38 belonged to Samruk-Kazyna. Others were owned by the state-owned enterprises Baiterek, KazAgro or directly by the state.

38. Privatisation is directed towards the enhancement of efficiency of Kazakhstan and was stated to achieve the following benefits:
- stimulation of the development of healthy competition;
  - decreasing state regulation of the economy;
  - development of the national market of capital and financial institutions;
  - increase of business activities and enhancement of the investment climate.<sup>37</sup>
39. As a resource-dependent state, Kazakhstan also aims at diversifying its economy with the help of a catalyst investor. It is estimated that the privatisation programme will attain the investment budget of about KZT 250 billion, which will later be invested in such areas as IT, integrated systems, agriculture value chain, healthcare, the environment and green technologies.<sup>38</sup>
40. As was mentioned in media, Samruk-Kazyna's largest companies will be privatised from 2018. The first ones are planned to be Air Astana, Kazatomprom and Kazakh Telecom, as there is already a high level of foreign investment. Other big companies such as KazMunayGas will start their listing process in 2020.<sup>39</sup> To this end, they are going through a transformation process which concerns also procurement procedures described below. About 160 small companies will be privatised mainly with the usage of electronic auction. By 2020, as a result of the Transformation Programme and of privatisation, it is envisaged to decrease the number of the companies in the Holding to 300 with 4 levels of ownership (the Fund, sub-holdings, production companies and separate organisations (if needed)).
41. How much of each individual company will be privatised depends on the company. In accordance with the People's IPO Policy, it has been decided to privatise 10% minus one share which means that the government effectively retains the control over the organisation.<sup>40</sup>

## 2.7. Transformation Program in SOEs and Samruk-Kazyna

42. Aside from privatisation, all state-owned enterprises are also undergoing a major effort to restructure the companies and make them fit for the future. The main aim of the transformation programme as indicated in the "Programme for Transformation of Samruk-Kazyna JSC" dated 25 February 2018, is to reach the efficiency of companies and restructuring of the portfolio from the period from 2018 to 2028. The President of Kazakhstan has set a goal of making Kazakhstan one of the world's 30 most developed countries by 2050 and Samruk-Kazyna managing a huge portfolio of strategically important organisations can play an important role in attracting foreign investments. It is estimated that the net profit from the realisation of transformation projects will be around KZT 300 billion. Suppliers of Samruk-Kazyna (employing 600-900 thousand people) and the overall business environment of Kazakhstan are expected to benefit. Moreover, the dividends paid to the sole shareholder and

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<sup>37</sup> See Complex Plan of Privatisation for 2016-2020, page 7

<sup>38</sup> See Baljeet Kaur Grwal, "Kazakhstan's sovereign wealth fund, Samruk-Kazyna, is looking to finally privatise many of its assets, after a series of false starts", Foreign Direct Investment, London, October/November 2016

<sup>39</sup> See same above.

<sup>40</sup> See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 155



the taxes to be paid will increase accordingly. Currently, transformation is realised in six companies: KazMunayGas, Kazakhstan Temir Zholy, Kazatomprom, Samruk-Energo, KEGOC, and Kazpost.

## 2.8. Procurement Reform in Samruk-Kazyna

43. The transformation that has been ongoing in Samruk-Kazyna also concerns procurement procedures. Recent amendments to the Law “On the Fund of National Welfare” envisage that the procurement of Samruk-Kazyna is carried out in accordance with the rules approved by the Board of Directors in agreement with the Authorised Body for public procurement (i.e., the Ministry of Finance). The changes enter into force in January 2020. Currently, the Ministry of Finance has no role in Samruk-Kazyna’s procurement.
44. These amendments are part of a wider legislative package that has been adopted in December 2018. The proposed changes will alter public procurement by Samruk-Kazyna substantially. Instead of single procurement rules for the Fund and companies in the Holding, seven standards will be adopted while the organisations will be requested to draft their own procurement procedures based on the standards and taking into consideration their needs in a specific area of operation. The following standards are already drafted and made public:
45. **Warehouse Management** –The main aims of this standard are the prevention of a production deficit, organisation of an effective storage system, establishment of the unified principle of structured inventory accounting, etc. It regulates such areas as planning of logistics infrastructure, assessment and optimisation of internal infrastructure of the warehouse, management of the material flow, formation of the optimal “storage-delivery” model, establishment of a model for transportation, optimal allocation of reserve and emergency stocks, etc.
46. **Procurement Planning** – This standard defines the specificities of procurement planning for future procurement transactions by Samruk-Kazyna. A rolling plan will be drafted, which includes two types of needs – long term and annual. Specific plans are drafted based on the rolling plans after deduction of free warehouse inventory, goods already being delivered to the organisation and responsibilities within the scope of the effective procurement contracts. There are two instruments of planning described in the Standard and these are marketing prices and models for restocking.
47. **Standard for pre-qualification** – This standard prescribes six levels of pre-qualification with A1 being the simplest and C2 being the most complex. The Annex to the Standard describes questionnaires with information required from potential suppliers in order to be pre-qualified for a specific level. The suppliers for the most complex procurement should be pre-qualified in accordance to C1 or C2 level which also entails an external audit paid by the suppliers themselves.
48. **Standard for procurement rules** – Detailed rules on the procurement procedures and processes are described in this standard. It prescribes procurement methods, deadlines, information to be included in the procurement documentation and bids, cases of single sourcing, etc. This standard will harmonise practices among the companies in the holding structure, and result in less discretion of the individual companies.
49. **Standard for category management** – According to the standard, a category of procurement is a group of goods, services, works which are not identical but are summoned into one group based on similar characteristics or attributes, technical and other characteristics ensuring the implementation of similar functions. Main aims of category management, inter alia, are



technological improvement, cross-functional cooperation, maximisation of economic effect and risk management. Category management strategies are drafted by the Fund (for categories for which there are high potential synergies for procurement across the holding structure) and subsidiary companies (for less strategic items). To support implementation, a Centre of Competence is being created at the central management of the Fund.

50. **Standard for contract management** – The contract management stage is not specifically covered in current legislation. The standard defines the roles and responsibilities with regards to contract management and accepting commission. The standard also contains provisions on standardisation of contracts, acceptance of deliveries, payment and monitoring of the performance of the contract.
51. **Corporate standard on conflict of interests** – This standard mirrors the already existing Policy on the Prevention of Conflict of Interest when Engaging Consultancy Services for the procurement of other categories. It describes in detail the cases where conflict of interest can potentially arise, as well as requires the suppliers and the employees of contracting authorities to disclose in written any potential conflict of interest. It also has a section on corporate and professional ethics.
52. Procurement data is the best indicator of how the procurement system functions. Latest procurement data was not provided. The data presented below was found in older reports.

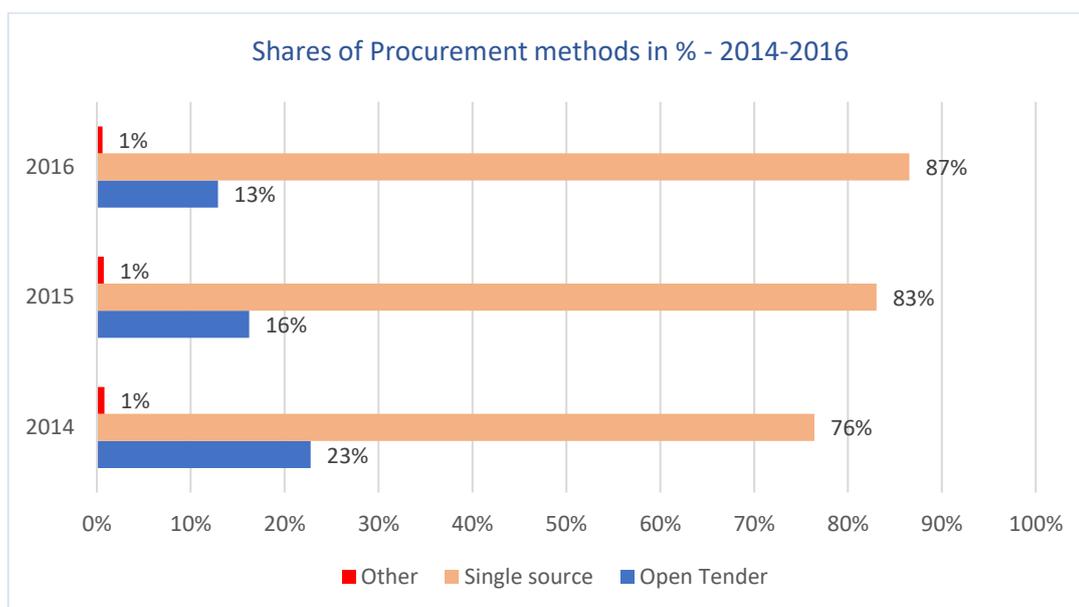
*Total volume of procurement by Samruk-Kazyna.<sup>41</sup>*

Year	2014	2015	2016
	Value (in million KZT)	Value (in million KZT)	Value (in million KZT)
<b>Total</b>	<b>3,870,073</b>	<b>3,486,110</b>	<b>4,121,927</b>
(including)			
Open tender	881,239	565,783	531,206
Centralised energy trading	1,262	2,775	2,432
Shopping	25,697	20,080	21,318
Single source	2,958,187	2,895,287	3,566,823
Commodities	3,688	2,168	147

<sup>41</sup> See Anti-Corruption Reforms in Kazakhstan, 4<sup>th</sup> Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 2017, page 113



Figure 4 - Shares of Procurement methods in % - 2014-2016



*Procurement-related complaints in Samruk-Kazyna:<sup>42</sup>*

Year	2014	2015	2016
Complaints reviewed	1,032	1,856	1,620
Complaints upheld	329	515	399
Complaints referred to relevant organisations	354	749	479
Complaints deferred	349	547	667
Number of staff subject to disciplinary actions	28	144	149

<sup>42</sup> See Anti-Corruption Reforms in Kazakhstan, 4<sup>th</sup> Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 2017, page 114



# Assessment

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## 3. Volume I: Assessment of the Government Procurement System

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53. This section discusses the findings of the MAPS assessment of the public procurement system for general government procurements. These findings (main strengths, gaps, recommendations and red flags for each pillar and indicator) are based on the qualitative review and quantitative analysis set out in the MAPS.
54. As noted above, this is **Volume I of the MAPS assessment**. It covers the public procurement system governed by the PPL enacted in 2015 along with related regulations, the amendment to the PPL enacted in December 26, 2018, and subsequent changes to the regulations and procedures that were put into effect between January and March 2019. It does not cover procurement governed by separate rules and regulations applied by the Sovereign Wealth Fund SK, which are entity specific. A separate assessment of the procurement framework used by Samruk-Kazyna has been carried out by OECD, supported by the EBRD and its findings and recommendations are presented in the following **Volume II of this assessment section**.

### 3.1. Pillar I - Legal, Regulatory and Policy Framework

55. This pillar assesses the existing legal, regulatory and policy framework for public procurement in Kazakhstan. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The indicators under Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also consider international obligations and national policy objectives to ensure that the public procurement system lives up to its important strategic role and contributes to sustainability.

#### Summary for Pillar I - Legal, Regulatory and Policy Framework

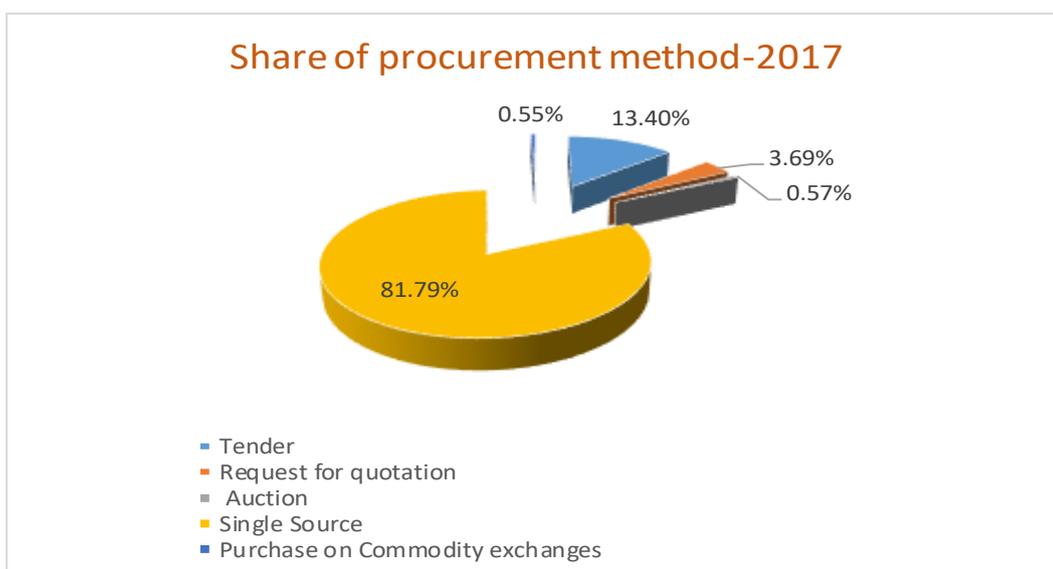
56. The legal framework consists of the PPL, as the primary legal act, and the main secondary legislation in the form of Public Procurement Regulations (PPR). Other documents forming the framework include manuals, technical instructions, user guides and contracting documents. Once a procurement contract is signed, it is governed by the Civil Code. The framework is organized in adequate hierarchical order and is comprehensive in identifying formal procurement rules and procedures. All laws, regulations and relevant documents are freely accessible on the web portal [www.goszakup.gov.kz](http://www.goszakup.gov.kz). Annex III include a list of public procurement and procurement-related laws and regulations currently in force in Kazakhstan.
57. The procurement methods stipulated in the PPL as amended on December 26, 2018 provide a limited range of competitive and non-competitive procurement approaches; i.e., tender (open tender, prequalification tender, two-stage tender), auction, budget enquiry, Single Source procurement and commodity exchanges. However, the Law does not appropriately define the hierarchical order for their use. More importantly, the PPL authorizes the contracting authorities to decide on the most appropriate method of procurement and does not mandate open tender as the default method. The lack of a requirement for open tender, combined with lack of clarity on conditions for the use of other procurement methods, allows



for the frequent use of non-competitive contracting methods, which may not yield the desired value for money.<sup>43</sup>

58. Despite a slight reduction (five in number) of the grounds for the use of single source procurement, the amended PPL, effective January 1, 2019, continues to include an unusually high number (50) of circumstances for Single- Source (SS) and direct contracting procurement. Before its recent amendment, PPL allowed for more possibilities to use SS method in case of failed open tenders or request for quotations. Because of this flexibility in the Law, the Single Source method was used in the re-procurement of about 68 percent of the failed and cancelled open tenders in 2017. *In aggregate for 2017, 82.8 percent of procurement transactions by number and 81.8 percent by value were carried out following Single Source or direct contracting (see Figure 5).* These percentages far exceed the norms established by the Framework for Assessing Public Financial Management, Public Expenditure and Financial Accountability,<sup>44</sup> which requires, for an “A” rating, that 80 percent or more of the total value of contracts be decided through competitive methods; and gives a “D” rating to scores lower than 60. The Kazakhstan’s “D” rating was recently confirmed by the Kazakhstan 2018 PEFA assessment.

Figure 5 - Share of procurement methods by value- 2017



59. Furthermore, the range of permissible procurement methods is limited. Aside from competitive bidding, the PPL does not provide for or enable the use of other fit-for-purpose procurement methods or approaches, such as the method of Framework Agreement for procurement of common use Items by the centralized procurement body or the Quality-based Selection Method for consultancy and advisory services. The application of these methods/techniques/approaches can help Kazakhstan to achieve better value for money and increase efficiency in service delivery.

60. Kazakhstan achieved significant results in transferring the public procurement system from manual to full-fledged electronic system especially over the last three years. The legal and institutional framework requires all procurement to be conducted effectively through the Procurement Web Portal, an e-government procurement system (eGP), relaunched by MOF

<sup>43</sup> The 2015 Public Procurement Law states that Single Source shall apply if: (i) as per Article 39(2), public procurement by tender or request for quotation is declared void; and (ii) circumstances exist as set forth under Article 39(3).

<sup>44</sup> PEFA Framework, 2016 version, Dimension PI-24.2 on Procurement Methods.



in January 2016. The adoption of this single, fully functioning web portal and its mandated use for public procurement has—despite remaining issues with Single Source and direct contracting and two-stage tender—contributed to improvements in transparency and efficiency. However, the Procurement Web Portal may benefit from some enhancement, for instance, eliminating **the requirements for foreign bidders that in order to obtain a digital certificate they need to register with Tax authorities in Kazakhstan which in turn requires the bidder to be physically present in Kazakhstan, and obtaining an e-bid security issued by a local commercial bank only. These requirements contradict the PPL’s provisions on eligibility, which professes open eligibility for all bidders,** and thereby depriving the procuring entities of the benefits of greater competition and a better chance for achieving value for money. This qualitative finding is supported by the quantitative assessment under Pillar III, which shows that in 2017, fewer than one (1) percent of total contracts procured through open tenders were awarded to foreign bidders.<sup>45</sup>

61. Furthermore, to supplement the assessment of the eGP system described under this report, a security and compliance review (independent audits) is undergoing, with ADB support, to assess, validate and ensure that the eGP system conform to international standards for IT system security and quality requirements for open competitive procurement.
62. All public procurement opportunities are published and available through the web portal, providing detailed information to better inform potential bidders about tender opportunities.
63. Another aspect of the PPS that does not fully meet the assessment criteria under this indicator is the confidentiality of bidders’ procurement information. The Public Procurement Regulations establish the right of potential suppliers who have submitted tenders to view the tender applications of other potential bidders, except for the price quotations. In absence of clear instructions on the marking of sensitive and confidential information, this rule implies that the procuring entity cannot withhold access to any part of a bid, including technical information. Although the recent amendment of the PPL has tried to limit the access to this information to the bidders that have passed the preliminary examination, this practice is not consistent with international standards, including the obligation to safeguard the confidentiality of bids’ information and protect confidentiality of bid’s content throughout the tender process and avoid allowing for the disclosure of sensitive information.
64. The negative impacts of this practice have been already observed. For example, some of the competitive elements of a bid appear to have been copied and pasted in a competitor’s bid in a subsequent procurement process.
65. The legal framework for the PPS meets the conditions for defining a minimum and exhaustive list of tender documents. These documents include a description of technical specifications, including the required functional, technical, qualitative and operational characteristics of the required goods, works and services; as well as evaluation criteria for the bid, based on price and non-price items. **The legal framework also provides for mandatory public discussion, by way of the web portal, of the draft tender documents.** In addition to allowing potential bidders to request clarifications of the tender documents, the practice serves as an early engagement with potential market stakeholders, to seek their feedback on the proposed scope, technical specifications, qualification requirements and evaluation criteria for the tender. **Though this is good practice, the fact that it is mandatory in all open tendering cases raises questions about efficiency and fitness-to-purposes, as well as about the potential risk**

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<sup>45</sup> It is worth noting that the SK e-Procurement System allows foreign bidders to receive a digital signature remotely, without having to be physically present in Kazakhstan.



**for more forthcoming bidders to shape the final design, technical specifications or qualification criteria of the tender.**

66. The evaluation method based on discounting bid prices, the application of anti-dumping measures, although limited by the recent amendment of PPL to services, is not consistent with international evaluation practices, which consider value for money, relevant costs and benefits, risks, and non-price attributes and/or life cycle costs in determining the most advantageous bid. For example, keeping the application of anti-dumping measures to services could lead to the selection of a high-risk bidder that has offered an abnormally low bid without due examination, as long as it pays an extra performance security fee.
67. The legal framework provides for the right of bidders to challenge procuring entities' decisions or actions, but the framework has gaps pertaining to the core procedural aspects of complaints review and institutional set-up for the review. As per the provisions of the PPL, the Internal Audit Committee (IAC) is responsible for complaints review as part of the Authorized Body (through MoF), including those complaints that might be lodged against procurement decisions made by the Single Procurement Organizer which is under the same administrative authority (MOF) as IAC or by the procuring unit of the MoF when the latter acts as procuring entity. Furthermore, IAC is in charge of reviewing/auditing compliance with legal and regulatory framework. That means that IAC may be asked to review complaints related to procurement processes which may have benefited from IAC's financial advice and control. The amended PPL, effective January 1, 2019 created a new unit of Complaint Decision Appeal within MOF, which will allow complaining bidders to challenge the IAC's decision. While this offers an additional forum for bidders to file their grievances and appeal IAC's decision, yet, its subordination and constitution under MoF do not provide adequate independence.
68. The legal framework covers contract management and stipulates the minimum requirements of the draft contract in terms of form, conditions, amendments, and provisions for dispute resolution in connection with contract performance. However, the legal framework lacks clarity regarding the organization of contract management function. It does not provide a direct definition of contract management, or clearly define the roles of the procuring unit and the end user/beneficiary in contract management. The legal framework could benefit from more detailed instructions under the regulations and implementing rules. This could include strengthening the regulatory requirements for measuring contract implementation performance and setting requirements for disclosing information on contracts management through the web portal.
69. The GoK has committed to implementing the Sustainable Development Goals (SDGs), which are part of the Kazakhstan 2050 Strategy. However, the PPL, as amended in December 26, 2018, does not consider the social, economic and environmental aspects of procurement, as per SDG 12.7, except for certain sustainability evaluation criteria included in the PPR related to some limited environmental and economic aspects of procurement.
70. Finally, the procurement-related obligations deriving from binding international agreements such as the Eurasian Economic Union Treaty (EEUT) are clearly and consistently reflected in the PPL and PPR.



**Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.**

71. The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree) to detailed regulations, procedures and tender documents formally in use.

**Strengths:**

72. The legal framework for public procurement is relatively well established, with an adequate hierarchy and corresponding precedence levels (PPL, PPR, instructions, standards templates). All are freely available to the public at the web portal [www.goszakup.gov.kz](http://www.goszakup.gov.kz). This open public platform and free access to the latest public procurement rules and regulations make a significant contribution towards achieving the PPL's principle of transparency of the public procurement process.
73. The PPL provides for the application of the rules of international treaties ratified by the Republic of Kazakhstan which stipulate the use of procurement rules other than those in the PPL.
74. The legal framework provides for a description of the permissible procurement methods and their procedural requirements. It provides for competitive and non-competitive procurement methods for goods and works, which are: tender (open tender, prequalification tender, two-stage tender), auctions, budget enquiry, Single Source procurement and commodity exchanges. The conditions for the use of these procurement methods are described, to a limited extent, in the PPL.
75. The standards for open tender procedures are described in the PPL and are broadly in accordance with international standards.
76. The PPL prohibits fractioning of contracts to circumvent open competition.
77. Use of the web portal as mandated is largely consistent with the PPL, with some exceptions. Both bidders and contracting entities reported that use of the portal has significantly increased the transparency of public procurement practices.
78. All open tenders are published through the portal and available to all potential bidders free of charge. The legal framework adequately describes rules on advertisement of tender notices, minutes of bid opening and evaluation, and notification of contract awards, along with respective timelines. Similarly, the requirements for bid submission, receipt and opening, and the content of procurement documents (tender documents, templates of minutes of bid opening, evaluation and decision on contract award, standard contract conditions) are clearly defined and allow suppliers to understand what is required of them and how the procurement process is to be carried out. These procurement documents are available on the portal and available to all interested parties.
79. Another key feature of the legal framework is the mandatory public discussion of the draft tender documents, to seek feedback from potential bidders and give them an opportunity to request clarifications. This process may result in the draft tender documents being revised. As a matter of good practice, the early engagement with potential suppliers ensures the relevance of tender documents to the potential market, the neutrality of the technical specifications, and the objectivity and proportionality of the qualification requirements and evaluation. However, if not handled with care and consideration for the risks and fitness-for-purpose, this provision may be inefficient and/or may impair the fairness of the procurement process.



80. The legal framework establishes the potential bidders' right to challenge the decisions or actions of a procuring entity. According to Article 47 of the PPL, a "potential supplier" has the right to appeal to the Authorized Body (IAC) a decision, action or inaction of the procuring entity, public procurement organizer or operator, committee or expert, "if their actions (inactions) or decisions infringe the potential supplier's rights and lawful interests." The complainant need not refer to any violation of PPL itself. The appeals mechanism is managed through the portal, including publication of decisions and supporting documents, and real-time status of the review of complaints. The Authorized Body is required to respond to the complaint within 10 working days from the day it is received. There is a period between the notification of results and conclusion of the contract, similar to a "standstill" period, although the purpose of the standstill and its length are not properly described in the PPL.

**Substantial gaps:**

81. The Substantial gaps are presented with reference to the corresponding sub-indicators and related assessment criteria. For presentation purposes of the identified major gaps throughout the report, the reference to the related sub-indicator/assessment criteria is followed, after a dash, by a short title summarizing these gaps.

*Sub-indicators 1(a)(a) and (b) - Coverage and exclusions.*

82. The scope of the public procurement legal framework does not cover all procurement of goods, works and services, including consulting services, using public funds. The framework does not apply to procurement under : (i) the National Welfare Fund Samruk-Kazyna and by organizations in which Samruk-Kazyna holds 50 percent or more of the voting shares, directly or indirectly; (ii) the National Bank (NB) and the departments and organizations included in the organizational structure of the NB, and the legal entities in which NB holds 50 percent or more of the voting shares or are in trust management of the NB, and legal entities affiliated with them; (iii) national management companies, national holdings, national companies (as defined in the State Property Law) and organizations of which 50 percent or more of the shares belong, directly or indirectly, to the respective national companies; and (iv) SK-Pharmacia LLP and public health care institutions in charge of procurement of pharmaceuticals, medical equipment and materials distributed to public hospitals and polyclinics for provision of guaranteed free medical treatment to the population by the State. The PPL amendment, effective January 1, 2019, has added a new exclusion to the scope and which relates to procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member. This includes procurement of goods, works, services as part of the implementation of investment projects, fully or partially funded by other foreign banks, and which will follow to the rules of these banks. However, the Law "On State Property" dated March 1, 2011 as amended in December 26, 2018, has introduced an obligation for all SOEs, except SK, which are excluded from the PPL coverage, to have their public procurement better regulated by GOK and mandated MOF

**Good international standards on state-owned enterprises in public procurement**

As part of good international standards ([OECD Guidelines on Corporate Governance of State-Owned Enterprises](#)), SOEs engaged in public procurement should use procedures that are competitive, non-discriminatory and safeguarded by appropriate standards of transparency. In general, the activities of SOEs can be divided into two parts: activities that are for commercial sale or resale; and activities to fulfill a governmental purpose. In cases where an SOE is fulfilling a governmental purpose, or to the extent that an activity allows an SOE to fulfill such a purpose, the SOE should adopt government procurement guidelines that ensure a level playing field for all competitors, state owned or otherwise. State-owned monopolies should follow the same procurement rules applicable to the general government sector.



to develop and approve the unified procurement rules for such SOEs. This unified procurement rules will come into force on January 1, 2020 only.

83. In addition, the Public Private Partnership (PPP) Law of October 2015 states that the PPL shall not apply to matters covered by the PPP Law, including off-take by the State of goods, services and works.

*Sub-indicator 1(d)(a) to (d) - Restrictive requirements for foreign bidders' participation*

84. The procedure for obtaining a digital certificate to participate in a tender through the Procurement Web Portal requires from a foreign bidder to authenticate in Kazakhstan in person. For more, the amended PPL, effective January 1, 2019, mandates submission of an electronic bid security as well as payment of the web portal access fee by potential bidders through a Kazakhstan commercial bank only. These requirements contradict the PPL's provisions on open eligibility and constitute barriers to foreign bidders' participation and thereby deprive the procuring entities of the benefits of greater competition and a better chance for achieving value for money. This qualitative finding is supported by the quantitative assessment under Pillar III, which shows that in 2017, fewer than one percent of total contracts procured through open tenders were awarded to foreign bidders.<sup>46</sup>
85. The amended PPL introduces a new provision on the concept of e-wallet, to be effective January 1, 2020, and which consists of a personal account that any potential bidder will be obliged to open and place under a local bank account of the Procurement Web Portal single operator (e-Finance Center) in Kazakhstan. The e-wallet will serve the purpose of processing payment by the potential bidder for the Web Portal access fee and payment for issuance of the electronic bid securities. The implementation of the e-wallet and its associated requirements would increase further the above-mentioned restrictions for foreign bidders' participation.
86. Furthermore, the PPL grants an exception to the requirement for digital signature for bidders from EEUT countries under the overall provision of "National Regime," allowing them to use digital signatures obtained from their countries. Since this is not yet technically possible on Kazakhstan's public procurement web portal, however, bidders from EEU countries still need to physically be in Kazakhstan to obtain a digital signature.

*Sub-indicator 1(b)(b) - Limited range of procurement methods*

87. The PPL provides for only one fully competitive method, open tender, which can be organized in one or two stages. The PPL also provides for Single Source contracting, and for requests for quotations for procurement below certain thresholds. In terms of procurement techniques, the PPL provides for use of auction. The PPL does not provide for restricted tendering or framework agreements even though there is a single public procurement organizer within the MoF in charge of centralized purchasing of a list of approved items. The amended PPL, effective January 1, 2019, has extended centralized procurement to the regional level through regional Single organizers that includes local governments. Equally important, the permissible procurement methods do not differentiate between procurement of services in general and procurement of consulting and advisory services. The latter are predominately based on quality considerations, with price as a secondary consideration. Therefore, procurement of consulting and advisory services should preferably be governed by separate methods and

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<sup>46</sup> It is worth noting that the SK e-Procurement System allows foreign bidders to receive a digital signature remotely, through a local third party, without having to be physically present in Kazakhstan.



procedures that consider the quality dimension and other specificities of this category of public procurement.

88. The hierarchical order for the use of procurement methods is not appropriately defined in the legal framework, and there is no mandated default method (such as open tender). Furthermore, the criteria for using each method are not sufficiently defined. For example, the permitted prequalification is mainly based on a form of qualification and registration of potential qualified bidders to participate in procurement for a sector and category of goods, works, and service. The recently amended PPL has assigned the mandate of keeping register of qualified potential bidders to Samruk-Kazyna instead of MOF.

89. Furthermore, the amended PPL has slightly reduced the number of grounds for the use of Single Source. It has also abolished the possibility to use SS method in case a failed tender process or request for quotation as per the conditions of Article 39(2) of the 2015 PPL. The key rationale behind this abolishment is to address the high incidence of use of SS whenever a failed open and request for quotation procedure. **The assessment of the quantitative sub-criterion 9(b) under Pillar III has revealed that in 2017 only 32 percent of all procurement processes under open tender lead to contract award. 68 percent of failed and cancelled processes were then repeated following Single Source procurement.**

*Key circumstances under which the use of Single Source would be justified:*

*(a) the subject matter of the procurement is available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights with respect to the subject matter of the procurement;*

*(b) in response to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in any other methods of procurement would be impractical because of the time involved in using those methods;*

*(c) for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services;*

*(d) use of any other method of procurement is not appropriate for the protection of essential security interests of the State; and*

*(e) to implement socio-economic policies of the country.*

90. The PPL as amended continues to include an unusually high number (50 of circumstances under which Single Source (SS) and direct contracting may be used. Reducing further the number of SS and direct contracting grounds would improve the country procurement system towards greater competition and a better chance for achieving value for money.

91. For efficient application of the amended PPL provision regarding unsuccessful or voided tendering process, the re-tendering should take place after identifying and addressing the causes for the failure and revising the tender documents accordingly.<sup>47</sup>

**Sub-indicators 1(f) to 1(g) - Disclosure of bidders' confidential information.**

92. The confidentiality of procurement information and the procurement process is not adequately dealt with in the PPL. Paragraph 9(123) of the PPR specifies that "potential suppliers who have submitted their tender applications shall be provided with access to view the tender applications of other potential suppliers, except for the quotations, upon publication of the evaluation protocol." This practice is not consistent with international standards for the confidentiality of information submitted by bidders. Although disclosure of

<sup>47</sup> The amended PPL mandates re-tendering after a failed tender, hence SS will not be allowed as first recourse after a failed tender.



information is limited to the participating bidders, and the amended PPL has tried to limit further the access to this information to participating bidders that have passed some preliminary examination requirements, the assessment was able to confirm the associated risk and learnt that some of the competitive elements of a qualified bidder's bid have been used by other bidders in subsequent procurement processes. The lack of safeguards for confidential and proprietary information may cause bidders to refrain from providing complete information in their bids.

*Sub-indicator 1(f)(b) to (d) - Inappropriate use of price and non-price attributes in evaluation.*

93. The stipulated evaluation criteria provide for some limited and inadequate form of use of price and non-price attributes for bids evaluation. The evaluation method based on discount on the bid prices for additional non-price requirements/qualifications, etc., and the way the evaluation of bids is carried out do not appear to be consistent with international best practice regarding the use of non-price criteria as award criteria. Also, the legal and regulatory framework do not provide for the use life-cycle costing principles (consideration of net present value with a combination of initial and operating cost) for objective and value-for-money decisions. Furthermore, there are no specific provisions, procedures or criteria in the PPR to evaluate the quality and technical capacity of consultancy and advisory services.
94. The amended PPL, effective January 1, 2019, has abolished the provisions, concerning anti-dumping measures, which explicitly allowed a potential bidder to propose a dumping price in procurement by tender, provided additional performance security over the limit of the dumping price is part of the bid. However, it has kept this practice for procurement of some advisory services. This approach, which is commonly known as "Abnormally Low Tender/Bid," does not reflect international good practice, which seeks to balance the needs of procuring entities to calculate and manage the risk of non-performance with fair treatment of bidders. Good practice instead requires bidders to substantiate abnormally low prices and provide relevant clarifications. Based on such clarifications, the contracting authorities could decide either to accept or reject a bid. The additional performance security provides some protection to the procuring entity; however, it puts a financial burden on the bidders, and does not deal with any performance risks that may arise from offering such low price.
95. Overall, the stipulated evaluation criteria do not use life-cycle costing principles (consideration of net present value with a combination of initial and operating cost) for objective and value-for-money decisions. In addition, there are no specific provisions, procedures or criteria in the PPL and PPR to evaluate the quality and technical capacity of consultancy services.

*Sub-indicator 1(h)(b) and (c) - Lack of fair and transparent complaints review mechanism.*

96. The legal framework establishes the right of tenderers to appeal a decision, action or inaction of the procuring entity, public procurement organizer, single public procurement operator, single public procurement organizer, committee or expert, "if their actions (inaction) or decisions infringe the potential supplier's rights and lawful interests." Tenderers may appeal a decision without reference to any violation of PPL itself.
97. There are, however, several gaps in the PPL pertaining to core requirements and procedural aspects of the appeals system:
98. The matters that can be appealed are not explicitly stated in PPL;



99. While Article 47(2) provides a timeline for filing complaints from the date the tendering results are reported, it is not clear when complaints against tender documents can be filed, especially in connection with the preliminary discussions of the draft tender documents;
100. The PPL does not provide details on the process for review of complaints by the Authorized Body; for example, whether the review is based on available evidence or the parties are permitted to provide additional information or testimony;
101. Furthermore, the PPL does not describe sufficiently and with clarity the institutional arrangements for the review of complaints:
102. The PPL is silent as to whether the complaints can be filed with the contracting authority;
103. The PPL uses the term “Authorized Body” for the body which will administer complaints, without identifying such authority, where it is hosted or its independence from the contracting authority. As further elaborated under Indicator 5 of the Assessment, since the Ministry of Finance, through its Internal Audit Committee (IAC), is in practice the Authorized Body referred to in the PPL, the question arises as to whether the review function of the Authorized Body provides independence and impartiality, and whether it is compatible with the IAC’s other functions, such as monitoring compliance with regulations, centralized procurement, and other functions prescribed under Article 16 of PPL.
104. Based on international good practice, the complaints review body should be independent of the procuring entity, which has the authority to suspend the award decision and grant remedies and hence should not engage in activities that by nature conflict with its other functions. In the case of Kazakhstan, the involvement of the Internal Audit Committee in the review of appeals creates two main issues:
105. The IAC is under the same entity (MoF) as the Single Procurement Organizer, and as such, it may be required to review appeals arising from procurement conducted by the Organizer and/or procuring unit under the MoF. This lack of independence may impact the trust among bidders in the review system; and
106. The non-appeal functions of IAC may conflict with its appeal function. Specifically, if IAC oversees the ongoing financial control (or compliance audit) of specific procurement transactions, which to some extent makes them part of procurement decisions. Hence, the IAC could not be asked to objectively and impartially review a complaint that may relate to a procurement process which benefitted before from IAC’s financial advice and control.

**Sub-indicator 1(i)(a) to (c) - Insufficient organization of contract management function.**

107. The legal framework provides for procedures and responsibilities throughout the entire procurement cycle, including contract management. However, there is lack of specific and clear definition of the role of the procuring unit and the end user/beneficiary in contract management. Detailed instructions on the organization of the contract management function also are not addressed in the regulations and implementing rules, and no written procedures on the subject are available. In addition, not all contract management milestones and documents are available on the portal, which may make the contract management process less effective. For example, despite some integration between the e-procurement system and the treasury system, information on the time between the submission of an invoice and the issuance of payment is not available on the portal.



Overview of Substantive gaps with risk and recommendations

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	Sub-indicator 1(a) Limited coverage and wide ranging exclusions from the legal framework.	H	Uniformity and universality of the legal framework coverage contribute to predictability and savings in the operation of the procurement system. In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible. In this respect, consideration should be given to international practices which show that entities like National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework. To better inform such future reforms, the Government should undertake a comprehensive study <sup>48</sup> taking stock of the existing procurement rules applied by each of the excluded entity, the performance of these entities and whether they actually achieve value for money while ensuring transparency and fair competition.
	Sub-indicator 1(d)(a) to (d) Restrictive requirements for foreign bidders' participation		Consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential international bidders to obtain

<sup>48</sup> As part of the study, the Government should assess experience and practices in other countries with transparent procurement systems on how they deal with procurement under Sovereign Wealth Funds. One such example is the Norwegian Government Pension Fund, whose management company follows the procurement rules and procedures as set out in the Norwegian Public Procurement Law. See link: <https://www.nbim.no/en/> and <https://www.nbim.no/no/organiseringen/styringsmodellen/retningslinjer/anskaffelser/>.



			digital signature certificates and submit the electronic bid security and pay for the web portal access fee from wherever they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.
	Sub-indicator 1(b)(b)  Limited range of procurement methods		Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better value for money and substantial gains in service delivery. Amendments could include (i) making open tender a default method; (ii) more clearly specifying the conditions for the use of each procurement method; (iii) reducing further the circumstances for the use of single source procurement; (iv) including separate provisions of PPR and/or instruction manual to clarify the procedures for the selection of consultancy and advisory services; and (v) introducing framework agreements.
	Sub-indicator 1(f)(e) Disclosure of bidders' confidential information		Amend the related provisions in the legal framework and tender documents/ contracts to ensure greater protection of the confidential, proprietary and commercially sensitive information in the bids. The framework should provide detailed instructions/guidance for proper marking by the bidder of the information to be protected.
	Sub-indicator 1(f)(b) to (d) Inappropriate use and application of price and non-price attributes in evaluation		Introduce evaluation methodologies based on price and non-price criteria and on quality and price combination; (i) reconsider the mandatory nature and the timing of preliminary discussions by adopting a more fit-for-purpose and/or risk-based approach; (ii) revise the relevant provisions of the PPL and the PPR to bring clarity on various aspects of bid evaluation; (iii) introduce amendments to the PPR on alternative approaches to identification and treatment of abnormally low bids.
	Sub-indicator 1(h)(b) and (c) Lack of fair and transparent complaints review mechanism		The existence of an independent complaints review mechanism confers confidence in the procurement process by increasing the likelihood that procurement will be carried out in a fair,



			impartial and transparent manner. Based on international good practice, the complaint review body should not engage in activities which conflict with its other review functions. Therefore, the current arrangements for review of complaints by IAC needs to be revised to ensure a clear level of independence from the MoF. Furthermore, the gaps identified by the assessment in terms of complaints review process should be more clearly addressed, possibly in the PPL, but at a minimum, in the procurement regulations.
	Sub-indicator 1(i)(a) to (c) Insufficient organization of contracts management function		Contract management is the most critical phase of the procurement cycle and should be a key feature of the organizational and institutional arrangement of the public procurement function. Consider introducing guidance to clarify the contract management function and responsibilities and make all contracts management information available on web portal.

## Indicator 2. Implementing regulations and tools to support the legal framework

108. This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard contract conditions. The higher-level legislation should provide the framework, principles and policies that govern public procurement. Lower-level regulations and more detailed instruments should supplement the law, make it operational and indicate how to apply the law to specific circumstances.

### Strengths:

109. Procurement regulations and manuals are updated regularly by the Public Procurement Legislation Department (PPLD). User instructions and manuals are available for procuring entities (procurement units), suppliers (tender participants), and procurement organizers at: <https://wiki.goszakup.gov.kz>
110. Technical instructions on the use of web portal are well maintained by the e-Finance Center of Kazakhstan.
111. Model procurement documents and contracts are included as part of tender documentation on the portal, except for consulting services. Standard and mandatory clauses and templates for goods and works and services are included in the tender documentation. The documents are kept up to date. All standard tender documents include a draft contract with standard contract conditions.
112. The PPL states that “if a public procurement contract is concluded with a non-resident of the Republic of Kazakhstan, [the contract may be executed] in the form proposed by the non-resident with due consideration of the requirements of Republic of Kazakhstan legislation.”



As currently written, the PPL implies that different forms of contracts can be used if the winner is a foreign bidder.

113. In addition to the regulations (PPR) that expand on the provisions of the PPL,<sup>49</sup> supplementary details are provided by several orders of the MoF, including:
- i. The definition of a single operator in the field of electronic public procurement (No. 668, December 21, 2015);
  - ii. A list of goods, works, services for which the organization and conduct of public procurement is carried out by a single organizer (No. 669, December 21, 2015);
  - iii. A list of goods, works, services of daily and/or weekly needs (No. 677, December 23, 2015);
  - iv. Rules for preparation of the annual report on public procurement (No. 688, December 25, 2015);
  - v. Rules for using the public procurement web portal and for operation of the web portal in the event of technical malfunction (No. 692, December 28, 2015);
  - vi. Rules for collecting, summarizing and analyzing reports based on the information on purchases from domestic producers (No. 693, December 28, 2015);
  - vii. Rules for the formation and maintenance of registers in public procurement (No. 694, December 28, 2015);
  - viii. Rules for retraining and advanced training of employees engaged in public procurement (No. 697, December 28, 2015); and
  - ix. A list of goods, works, services for which public procurement is carried out in a competitive tender with prequalification (No. 91, February 29, 2016).

### Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

114. This indicator assesses whether horizontal policy objectives such as increased sustainability, support for certain groups, and obligations deriving from international agreements are consistently and coherently reflected in the legal framework; i.e. whether the legal framework is coherent with the higher policy objectives of the country.

#### Strengths:

- i. The PPL provides for certain and very limited sustainability evaluation criteria ( e.g. certified system of quality management; a document confirming voluntary certification of goods made of secondary raw materials obtained from waste products on the territory of the Republic of Kazakhstan; a certified system of management of the environmental management) that allows procurement processes to consider some limited environmental and economic aspects.
- ii. The PPL clearly states that if an international treaty ratified by the Republic of Kazakhstan stipulates rules other than those stipulated in the PPL, the procurement rules of the international treaty shall be applied.

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<sup>49</sup> *On approval of the Rules for Public Procurement, Order of the Minister of Finance of the Republic of Kazakhstan No. 648, December 11, 2015 with changes and amendments.*



## Substantive gaps:

### Sub-indicator 3(a)(a) - Absence of the sustainable public procurement policy

115. The country has not yet adopted any standalone Sustainable Public Procurement (SSP) policy. Social, economic and environmental aspects as laid out in SDG 12.7 are not clearly addressed in any legal or policy document.
116. As reported for Indicator 9(a) under Pillar III, SSP considerations, such as the use of life-cycle costing principles in evaluation; or incorporation of environmental, social, health and safety standards, are not properly and systematically applied for complex procurement, either as part of the procuring entity's requirements or a factor in evaluation of responsiveness of the bids.

### Overview of substantive gaps with risk and recommendations

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<i>Sub-indicator 3(a)(a)</i>  Absence of the sustainable public procurement concepts or policy.	M	GoK should consider introducing and gradually implementing a comprehensive sustainable procurement policy. Focus could initially be in implementing life cycle costing principles, with the ultimate objective of developing a comprehensive policy.

## 3.2. Pillar II - Institutional Framework and Management Capacity

117. Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.
118. This pillar evaluates the procurement system's effectiveness in discharging the obligations prescribed in the Public Procurement Law, without gaps or overlaps. It assesses whether: (i) the PPS is adequately linked with the country's public finance management system; (ii) the institutions in charge of necessary functions are in place; and (iii) the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

### Summary for Pillar II - Institutional Framework and Management Capacity

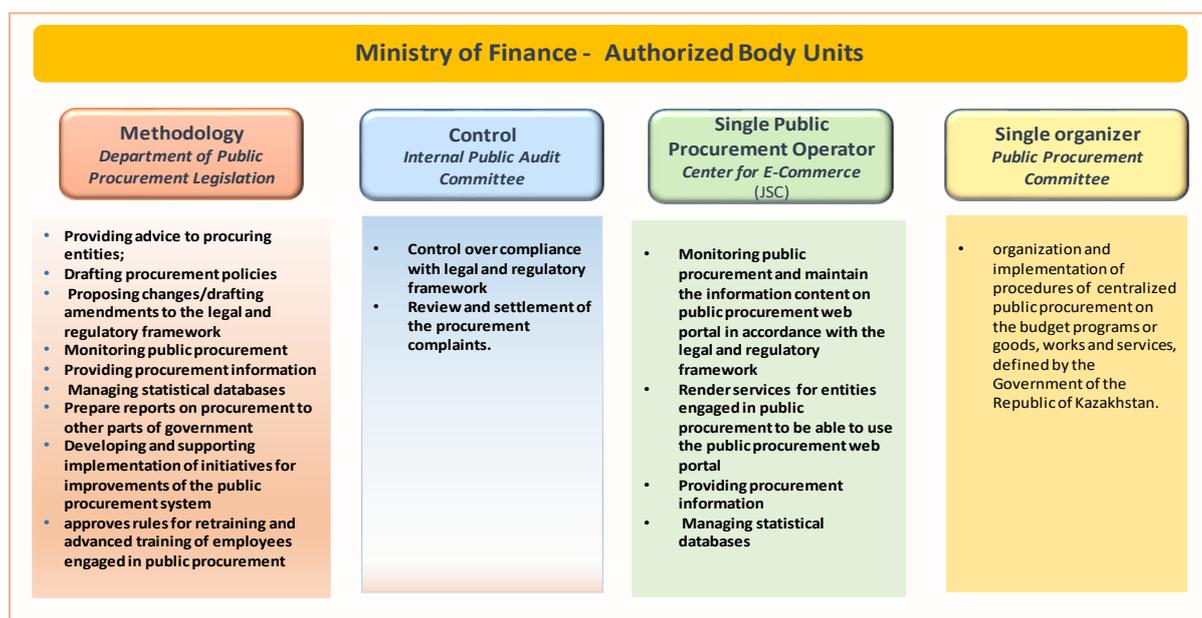
119. The legal procurement framework provides a reasonable approach to the preparation of annual procurement plans, with adequate linkage to budget planning, approval and release of funds. Procurement not provided for in the procurement plan is prohibited, except for certain Single Source cases and special procedures. The portal has a built-in mechanism to ensure the availability of funds prior to initiation of a procurement process.
120. Many aspects of public financial management (PFM) are regulated by the Budget Code, as revised in 2017. The Code sets out how the budgets of both central government and all local governments are to be planned, prepared and executed, including the timing of different stages and the responsibilities of different institutions, including the two houses of Parliament.



Socio-economic and medium-term fiscal planning are the responsibility of the Ministry of the National Economy (MNE), while MoF is responsible for the preparation and execution of the annual budget. The overall profile of the budget, and the expenditure ceilings for each Ministry, are supervised by the Republican Budget Commission appointed by Resolution of the Government. The Budget Commission includes, in addition to the Ministers, representatives of Parliament and the business community.

121. A feedback mechanism to report on budget execution is in place. The Government and the Accounts Committee are responsible for planning and preparing reports on budget execution, to be presented to and approved by the Parliament. However, this mechanism falls short in that it does not include reporting on the completion of major contracts, including details on payments.
122. The PPL identifies the entity in charge of the normative and regulatory functions of public procurement as the “Authorized Body”. Its mandate is to develop the main policy directions on public procurement and put in place the framework for its implementation. The functions of the Authorized Body are clearly specified by the legal and regulatory framework and are assigned to the following units within MoF (Figure 6): (i) Methodology – the Public Procurement Legislation Department, with functions specifically defined in the PPL; (ii) Control – Internal Audit Committee (IAC), with functions defined by the PPL as control over compliance with the legislation<sup>50</sup> as well as responsibility for handling complaints; (iii) Single Public Procurement Operator – e-Finance Center JSC, with assigned functions defined by the PPL; and (iv) Single Public Procurement Organizer (SPPO) – the Committee for Public Procurement, which carries out unified public procurement as per specific assigned functions defined in the PPL. The Structure of the Central Administrative Office of the Ministry of Finance of Kazakhstan is represented at Annex IV.

Figure 6 - Roles and Responsibilities



123. The functions of the Department of Public Procurement Legislation (PPLD) and the Single Public Procurement Operator (e-Finance Center) appear to meet the key assessment criteria for the responsibilities of the normative/regulatory function, except for the function of

<sup>50</sup> In conjunction with the powers established by the Law of the Republic of Kazakhstan, “On State Audit and Financial Control.”



providing tools and documents, including integrity training programs and supporting professionalization of the procurement function, which are not assigned to either unit.

124. Figure 6 and Annex IV present a pictorial analysis of roles and responsibilities of the four units of the Authorized Body, including the level of organization, funding, staffing, and level of independence and authority. The PPLD unit, which has the core responsibility for the normative and regulatory function, is part of MoF and its financing comes through the republican budget. The Director of the Department of Public Procurement Legislation (DPPL) is appointed by and reports to the Minister of Finance through a Vice Minister of Finance.
125. The DPPL is positioned at the same level in MoF organigram as the other three units of the Authorized Body (IAC, e-Finance Center and the SPPO). The Director of DPPL reports to one of the Deputy Ministers of Finance. Accordingly, the unit's level of independence and hierarchy compared to the overall governance structure of the GoK raises concerns about impartiality and transparency in discharging the procurement normative and regulatory functions. From the viewpoint of some stakeholders (private sector, CSOs and international organizations) and based on the results of the survey carried out for this assessment, 72 percent of respondents do not perceive that the unit has a situation of conflict. However, 40 percent of respondents believe that a conflict of interest exists, related to the unclear separation of duties between Authorized Body units. In terms of what constitutes conflict of interest, 18 percent of respondents believe that it is due to unclear competencies of officials, and 40 percent relate it to an official position being used improperly for private advantage
126. The function and responsibilities of procuring entities are adequately defined in the legal framework. Most of the ministries have a unit responsible for organization and conducting procurement activities and processes. Decision-making authority for each procurement process is delegated to the competent unit within the procuring entity. Quantitative Indicator 6(a) shows that that in 2017, about 95 percent of the procuring entities organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from a procurement unit of other procuring entity, which confirms the predominantly decentralized nature of the public procurement function in Kazakhstan. The legal framework also provides for limited centralized procurement carried out by the Single Public Procurement Organizer at the central level, and recently through the amended PPL, at regional level for a defined list of 27 items. An evaluation of the performance of SPPO could help GoK and explore better mechanism to implement centralized/consolidated procurement allowed under PPL, as amended in December 26, 2018, to ensure better efficiency and effectiveness and minimize the risk of potential conflict of interest with respect to MOF's public procurement normative and regulatory function and responsibilities.
127. The web portal, under the responsibility of the e-Finance Center, serves as a centralized and integrated public procurement information system providing up-to-date information that is easily accessible to all interested parties at no cost. It provides access to all the Government's procurement plans along with the procurement method, tender documents, technical specifications, clarifications, preliminary and final bid evaluations reports, details of the winning contract, amendments to the contract and complaints resolution decisions. The system is also integrated with many other systems for interoperability, including the tax, licensing, commercial banking, debarment and justice systems. **However, the assessment noted that the procurement web portal does not provide information on public procurement conducted outside the e-procurement system, including procurement permitted under the Single Source method (in accordance with the PPL, Article 41, paras 4 and 5) and information related to key steps of the two-stage tendering procedure.** In



addition, the system does not track or publish information on the payment process after submission of invoices by suppliers.

128. The web portal is widely used at all levels of government, down to the municipal level. The e-Finance Center is mandated to provide the required training on the use of the system for procurement staff of procurement entities. There is, however, no official certification program for using the e-procurement system. The web portal gives an opportunity to entity to identify its size and type while registering as the participating bidder. Based on information captured by web portal 98 percent of the vendors participating in web portal were SMEs in 2017.
129. There is no evidence of a substantive permanent procurement training program. One of key training providers in the country, Finance Academy, has only three modules related to public procurement out of 165 modules, mostly on audit and financial management. The procurement modules have a strong focus on technical aspects of the web portal. However, quantitative analysis of the survey data identified a lack of training on the principles of public procurement, including integrity issues. Furthermore, there is a lack of evidence that the procurement function is recognized in the civil servants' framework. Certification programs and other aspects of professionalization would enhance the efficiency of the system and improve the overall use of public resources. This will require GoK's attention to developing a comprehensive strategy on professionalization of the procurement function in the country.

#### **Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system**

130. This indicator focuses on how well the procurement system is integrated with the public financial management system, from budget preparation to planning treasury operations for payments.

##### **Strengths:**

131. The e-procurement information system is well integrated with the public financial system and the budget process. The legal and regulatory procurement framework allows for a relatively realistic preparation of annual procurement plans based on budget allocations. The procuring entities prepare their plans in two stages: a preliminary procurement plan upon receipt (by October every year) of information about their indicative annual budget allocation, and then the final procurement plan upon receipt of final budget allocation approval (by the following January). Once the budget is committed under an activity, the procuring entity may start procurement.
132. A feedback mechanism reporting on budget execution is in place. Its responsibility lies with the government and the Accounts Committee which are trusted with the mandate to plan and prepare reports on republican budget execution to be presented and approved by the Parliament.
133. The Open Contracting Data Standard (OCDS) is partially implemented on the web portal except for report visualization. Currently, with support of OECD, the e-Finance Center is developing OCDS forms of visualization. The system is also integrated with many other systems for interoperability, include the tax system, licensing system, commercial banking systems, debarment system, justice system and court decision system.



### Substantial gaps:

*Sub-indicator 4(a)(a) to (b)- Initiation of tendering process without approved budget allocation.*

134. The legal framework provides for the possibility of tenders being launched without budget allocation approval in the case of two-stage tender procedure. It is not clear when the procuring entity receives budget allocation approval for such contracts. Even if the budget is allocated after stage one has been completed, some bidders may not want to spend resources on tenders without any firm budget commitment. This practice is not in keeping with international procurement practice, which requires that no unfunded tenders be launched.

*Sub-indicator 4(a)(b) - Partial information on contract payments in the procurement web portal.*

135. The portal contains information about payments for contracts, but not enough information to determine any delays in the payment of invoices, as needed for a quantitative assessment of sub-indicator 4(b). The Treasury and other State bodies also do not monitor delays in payments. This lack of information is considered as a significant gap.

*Overview of substantive gaps with risk and recommendations*

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<i>Sub-indicator 4(a)(a) to (b)</i> Initiation of the two-stage tender procedure process without approved budget allocation.	M	Further enforce the legal and regulatory system to avoid unfunded tenders under all procurement methods and procedures.
2	Incomplete information on contract payments on the procurement web portal.  <i>sub-indicator 4(a)(b)</i>	M	Enhance the feedback mechanism to fully report on completion of major contracts, including details on timely or delayed payment of invoices, and other aspects of execution such as time and cost overruns.

### Indicator 5. The country has an institution in charge of the normative/regulatory function

136. This indicator refers to the normative/regulatory function in public procurement and its proper discharge and coordination. The assessment focuses on the existence, independence and effectiveness of these functions and the degree of coordination among responsible organizations. The normative/regulatory function should be clearly assigned, without gaps or overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-coordinated joint effort.

### Strengths:

137. The PPL clearly defines government competence on public procurement (articles 15 through 19) and the competence of the Authorized Body under the administrative and financial control of MoF.



138. The functions of the Authorized Body are clearly specified by the legal and regulatory framework and are assigned to four specialized units (Figure 4).
139. The functions of the regulatory and normative body are clearly specified by the legal and regulatory framework and are assigned to two departmental units within the Authorized body—the Department of Public Procurement Legislation (PPLD) and the e-Finance Center.
140. The functions and responsibilities of procuring entities are adequately defined in the legal framework. In general, all ministries have a procurement service/unit responsible for organizing and conducting procurement activities and processes. Decision-making authority on each procurement process is delegated to the competent unit within the procuring entity.

**Substantial gaps:**

*Sub-indicators 5(b)(i) and (j) – Responsibility for developing procurement training programs (including on integrity) and professionalization of the procurement function.*

141. The PPL and its amendment, effective January 2019, entrust the Authorized Body with the responsibility to approve rules for retraining and advanced training of employees engaged in public procurement and to develop and approve methodological recommendations on public procurement issues. However, there is no assigned responsibility for developing procurement training programs (including on integrity) and professionalization of the procurement function.

*Sub-indicator 5(c)(a) to (c) - Level of independence of the normative/regulatory units.*

142. All the functions of public procurement—regulatory and normative, advice and methodological advice, oversight and control, review of complaints and conduct of unified centralized public procurement—are under the organizational and administrative responsibility of the Ministry of Finance as Authorized Body. The Director of the Department of Public Procurement Legislation (DPPL), with core responsibility for the normative and regulatory function, is appointed by and reports to the Minister of Finance. The department is financed through the MoF allocation of the republican budget.
143. Given the positioning of the Department of Public Procurement Legislation (PPLD) as among the other three units of the Authorized Body (IAC, e-Finance Center, and Single Organizer), the level of independence of the normative and regulatory unit appears not to be adequately established. Furthermore, there is no evidence of any system to avoid conflict of interest within PPLD.

*Overview of Substantive gaps with risk and recommendations*

SI	S	Risk	Recommended improvements
1	Sub-indicators 5(b)(i) and (j) No assigned responsibility for developing procurement training programs (including on integrity) and professionalization of the procurement function.	M	Consider assigning responsibility for training programs and professionalization of the procurement function to a specific government entity.
2	<i>Sub-indicators 5(c)(a) to (c) and 5(d)(a)</i>		GoK should consider reinforcing the status and independence of the PPLD as the normative and regulatory authority and



Level of independence of the normative/regulatory units.		supporting the professionalization of the procurement function
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## Indicator 6. Procuring entities and their mandates are clearly defined

144. This indicator assesses whether (i) the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; (ii) the framework includes provisions for delegating responsibilities in the procurement process to procurement staff and other government officials; and (iii) the framework includes a centralized procuring entity.

### Strengths:

145. The function and responsibilities of procuring entities are adequately defined in the legal framework. Most line ministries have a procurement service or unit responsible for organizing and conducting procurement activities and processes.

146. Decision-making authority for each procurement process is delegated to the lowest competent unit within the procuring entity.

147. The predominantly decentralized nature of the public procurement function has been confirmed by the assessment of related quantitative indicators, which showed that in 2017, 95 percent the procuring entities organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from procurement unit of other procuring entity.

### Substantial gaps:

#### *Sub-indicator 6(b)(a) - Unoptimized approach of the Single Public Procurement Organizer.*

148. The Single Organizer (Committee for Public Procurement) is responsible for carrying out unified (centralized) public procurement on behalf of procuring entities for a limited list (currently) 27 items. The centralized procurement has been extended to regional level through regional single procurement organizers. The central procurement of commonly used items is not carried out, through a framework agreement particularly for consolidated specialized procurement.

### Overview of substantive gaps with risk and recommendations

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<p><i>Sub-indicator 6(b)(a)</i></p> <p>Unoptimized approach of centralized public procurement organizer (SPPO)</p>	M	Evaluate the SPPO's performance and explore better mechanism to implement centralized/consolidated procurement allowed under PPL, as amended in December 26, 2018, to ensure better efficiency and effectiveness and minimize the risk of potential conflict of interest with respect to MOF's public procurement normative and regulatory function and responsibilities



## Indicator 7. Public procurement is embedded in an effective information system

149. The objective of this indicator is to assess the extent to which the country or entity has systems in place to publish procurement information, efficiently support the different stages of the public procurement process through digital technologies and manage data for analysis of trends and performance of the entire public procurement system.

### **Strengths:**

150. There is an integrated information system which is centralized and provides up-to-date information and is easily accessible to all interested parties at no extra cost.<sup>51</sup> The system is also integrated with other systems for interoperability, including the tax, licensing, commercial banking, debarment system and justice systems. Based on 2018 data for 2,046,036 contracts, there was 100 percent compliance with publication on the portal of procurement plans, key procurement information and invitations to bid. Similar compliance was observed for years 2017 and 2016.
151. The Open Contracting Data Standard (OCDS) is partially implemented on the portal and the e-Finance Center is currently developing OCDS forms of visualization.
152. A relatively well-organized appeals system was launched on January 1, 2018 through which 7,600 appeals were received, all of them posted along with the decisions about their disposition.
153. The e-procurement system is widely used at all levels and for the full procurement and contract execution cycle. For the procurement cycle, the system publishes tender documents, draft contracts, preliminary evaluation reports, final minutes of evaluation reports, contract award information and details of the contract, and implementation information, including amendments and payments for the executed contract.
154. The portal provides adequate linkage to the legal and regulatory framework and related standard procurement documents and guidance /instructions.
155. The National Security Committee conducts quarterly security vulnerability tests of the e-procurement system.
156. The system has 88 terabytes of capacity and can safely store the procurement and contracts database for 75 years.

### **Substantial gaps:**

#### *Sub-indicator 7(a)(a) and (d) - Incomplete procurement information on the portal.*

157. Payment information is captured by the e-procurement system. However, the system does not publish information about the actual date of payment of invoices or provide data on time and cost overruns that may occur during contract implementation. It also does not publish procurement information for some Single Source cases and for key steps of the two-stage tendering procedure. Further, the system is unable to capture information on procurement conducted outside of the system.

#### *Sub-indicator 7(c)(a) to (c) - Need for better standardization of procurement data.*

158. The published procurement information is not in the form standardized data, which would help interested parties to track each step of the contracting process, create summary records

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<sup>51</sup> The amended PPL, effective January 1, 2019, imposes a fee for the use of the web portal by suppliers.



and determine patterns. This gap also prevents GoK from further increasing the transparency and public oversight.

*Overview of substantive gaps with risk and recommendations*

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<i>Sub-indicator 7(a)(a) and (d)</i> Incomplete procurement information published on the web portal.	M	Ensure the publication of information on all procurement methods as well as complete information on payment dates, through better integration with the information systems of Treasury and commercial banks.
2	<i>sub-indicator 7(c)(a) to (c)</i> Need for better standardization of procurement data.	M	Adopt the Open Contracting Data Standard (OCDS) for information disclosure.

**Indicator 8. The public procurement system has a strong capacity to develop and improve**

159. This indicator focuses on the strategies and ability of the public procurement system to develop and improve. Three aspects are considered: whether (i) strategies and programs are in place to develop the capacity of procurement staff and other key actors involved in public procurement; (ii) procurement is recognized as a profession in the country's public service; and (iii) systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the system.

**Strengths:**

- 160. The e-Finance Center is mandated to provide training on the use of the system for procurement staff of procuring entities.
- 161. The Authorized Body and e-Finance Center provide advisory and help desk services on use of the portal. Video instructions and manuals are also available on the portal.

**Substantive gaps:**

*Sub-indicator 8(a)(a) to (d)-Lack of overall strategy for development capacity and professionalization of the procurement function.*

162. The key gap identified under indicator 8 is the lack of an overall government strategy to develop public procurement capacity and professionalize the procurement function. Most training is on the mechanics of the web portal, with no tie-in with any institution for regular professional training or certification on procurement and contracts management. In addition, there is no mechanism to measure the quantitative or qualitative performance of the procurement system.



163. Further, the procurement function still is not recognized as a profession in the civil servants' system.

**Overview of substantive gaps with risk and recommendations**

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<p><i>Sub-indicator 8(a)(a) to (d)</i></p> <p>Strategy for capacity development and professionalization of the procurement function</p>	M	<p>GoK should consider preparing a skills gap inventory and a training need analysis and use the results to design, develop and deliver frequent and content-rich training programs for public and private stakeholders. In addition, to ensure that only qualified staff work on procurement, a testing and accreditation system is necessary.</p> <p>MoF should develop a strategy to build procurement capacity and professionalize procurement training, possibly in partnership with local higher education institutions.</p>

**3.3. Pillar III - Public Procurement Operations and Market Practices**

164. This pillar focuses on how the procurement system in a country operates and performs in practice. It looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the procuring entity responsible for managing individual procurements. It also examines the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice.

**Summary for Pillar III - Public Procurement Operations and Market Practices**

165. This part of the assessment is supported to large extent by empirical evidence on how procurement principles, rules and procedures embedded in the legal and regulatory framework are being implemented. The evidence is based on the results of quantitative analysis carried out on a representative sample of 150 contracts selected from different procuring entities. The assessment also examined the market response to public procurement solicitations and the possible factors that might influence this response. In addition, a survey was used to solicit feedback on the functioning of the system

166. While the assessment acknowledges the PPL's good practice provision for early engagement with potential market/suppliers seeking their feedback on the draft tender documentation through the portal, it concludes that the legal framework does not provide for a structured strategic and holistic approach to procurement planning. Such planning would help to identify the best approach to market tenders and procurement methods, which would support the achievement of fair competition and value for money. The assessment observed that procuring entities generally conduct some form of needs analysis, but it is not based on a proper and systematic market study or analysis. The absence of any detailed guidance on the practical application of needs assessments, or how to link them with market research and analysis, supports this conclusion. There is also an insufficient use of sustainability criteria in procurement due to the lack of a proper policy/strategy that integrates specific sustainability



criteria throughout the procurement cycle, from identification of needs, definitions of specifications to contract administration.

167. Moreover, a careful analysis of the actual practice of two-stage tendering identified a partial noncompliance with respect to the application of the method as prescribed by the PPL and PPR, particularly the mandated use of the web portal. The analysis concluded that in practice the procedure is conducted off the system, and on paper, rather than through the portal and procuring entities confirmed this practice in the interviews.
168. The quantitative analysis also identified some efficiency issues with respect to the portal. In particular, there are limited provisions and guidance of the legal and regulatory framework for contract management performance indicators and monitoring. The system does not automatically analyze the procurement data collected through the portal or feed the results to the authorities responsible for taking mid-course corrective actions in how procurement is conducted and how contracts are performing. Moving the public procurement system to the next level in terms of quality and performance will require strengthening the system's legal and regulatory framework, technical and procedural tools, and performance measurement aspects and practices, with a focus on contract management.
169. Kazakhstan's public procurement market is relatively well functioning, particularly with Government support for open dialogue and consultation with the private sector when formulating changes to the public procurement system. Furthermore, the private sector shows a high willingness to participate in public procurement opportunities, mainly due to measures such as the mandated use of e-procurement system, streamlined tender procedures and the early engagement with potential market and bidders through public discussion of draft tender documents. **However, the assessment of the quantitative indicators shows that 99.7 percent of procurement opportunities and corresponding contracts for the year 2017 went to local private sector firms only. This confirms the barrier to the participation of foreign (non-resident) tenders caused by the restrictive requirements for acquiring the digital signature certificate. These barriers will be further heightened by the additional requirements introduced by the amended PPL, effective January 1, 2019, and related to payment of Web Portal access fee and e-bid security through an account opened at a local Kazakhstan commercial bank only.**

#### Indicator 9. Public procurement practices achieve stated objectives

170. The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures embedded in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.
171. The assessment of this indicator was based on the results of a quantitative analysis carried out on a representative sample of 150 contracts from selected sectors—40 contracts from the road sector, 40 from the water sector and 70 from other sectors. The source of data was the public procurement web portal. As data on the actual implementation of contracts are not captured on the portal, these were obtained manually through desk review of contracts files.

#### Strengths:

172. The PPL provides for the procuring entities to determine and analyze their needs for goods, works and services beginning in the first half of the year and prepare their annual budget proposals as part of the planning and budgeting process for the following fiscal year. The PPL follows good practice in requiring a mandatory preliminary public discussion, by way of the



portal, of the draft tender documentation. This early engagement allows for feedback from suppliers and for preparation and publication of the minutes of these discussions on the portal. The objective is to adjust the procurement approach to the actual market and improve the chances for a level playing field and achievement of value for money.

173. The contract requirements and desired outcomes are relatively well defined by the legal framework. The annual budget proposals discuss program objectives, and identify needs in terms of goods, works and services, as well as their purpose. For high-value and complex projects, feasibility studies are carried out, which identify goods, works and services contracts and their desired outcomes. Fine tuning of these needs takes place when the procuring entity prepares a preliminary procurement plan upon receipt (tentatively by October) of information about its indicative annual budget allocation, and then the final procurement plan upon receipt of final budget allocation approval.
174. For complex procurement contracts, the PPL provides for two-stage tender and defines the situations for their use. These include projects for which it is difficult to formulate detailed specifications of the goods, works and services or determine their technical and other characteristics. Stage one is used to screen out the bidders who do not comply with the procuring entity's requirements. The PPL also provides for open tender with prequalification, as stipulated in the PPL and detailed in the Public Procurement Regulations.
175. Regarding rules and practices to ensure value for money and quality procurement outcomes, the current legal framework provides for some limited non-price criteria in evaluating bids and corresponding outcomes. These criteria include considerations for functional, quality and environmental management characteristics, in accordance with standards and related legislation of the Republic of Kazakhstan, as well as some limited consideration for the cost of operation and maintenance.
176. The procurement portal allows the procuring entity to select and document procurement methods at the planning stage, as well as to make any before bidding is opened to the public in accordance with the provisions of the PPL. Information on the procedures for bid submission, receipt and opening are provided and clearly described in the procurement documents on the portal. Bid submission, receipt and opening are done automatically/electronically, with a relatively fair level of transparency.
177. Assessment of the quantitative indicators has shown that the average time to procure goods, works and services following an open tender procedure is 56 days. The maximum lead time stipulated by the PPL and regulations for this method is 58 days. This demonstrates that a high level of efficiency has been achieved for the pre-award stages of the open tender procedure, mainly due the mandated use of the e-procurement system.
178. Except for certain cases defined by the PPL, all contract awards are announced on the portal as prescribed in the PPL and Regulations. All procurement records are maintained on the portal and are accessible to all interested parties.
179. The legal framework requires the Authorized Body to issue an annual public procurement report

**Substantial gaps:**

[Sub-indicator 9\(a\)\(a\) to \(c\) - Lack of strategic approach to procurement planning.](#)

180. The legal framework does not provide for a structured and holistic approach to procurement planning to inform the best approach to market and optimal procurement methods that would support achievement of fair level of competition and value for money. Further, no



detailed guidance or instructions are provided to the procuring entity on the practical application of needs assessments or how to link them to market research.

181. This gap is substantial. The quantitative assessment of indicator 9(b)(j) revealed that only 32 percent of all processes under open tender lead to contract awards. The remaining 68 percent either fail or are canceled. Further, the lack of guidance has resulted in poor procurement planning and acquisition of goods, works and services that may not yield optimum competitive, efficient, and value for money outcomes.
182. While the PPL and PPR provide for the solicitation of seeking feedback on draft tender documents from potential bidders, they do not spell out whether bidders can seek further clarification once the documents are issued. Further, there are risks associated with soliciting user feedback without any consideration to procurement method, value, or nature and complexity of the procurement activity.

*Sub-indicator 9(b)(c) to (f) - Inadequacy of sustainability criteria and techniques to determine value for money.*

183. The legal and regulatory framework lacks a sustainable public procurement policy that requires specific sustainability criteria to be integrated throughout the procurement cycle, from identification of needs to definitions of specifications to contract administration. Except for some social considerations in the PPL (Article 51), few sustainability-related evaluation criteria are included in the legal framework, and these are limited and unbalanced and do not include social aspects of procurement outcomes.
184. The procurement framework provides for some use of non-price criteria in the evaluation of bids and corresponding outcomes with respect to quality and the cost of operation and maintenance. These criteria are applied based on a fixed percentage discount to be used in the evaluation for the sake of comparison (Regulations, paragraphs 153–166). The bidder that is determined to have met the requirements for qualification, experience, technical and other aspects, as specified in the tender documents, has his/her bid price discounted accordingly. However, the actual practice of applying the fixed percentage discount has been assessed as inappropriate, as some of the requirements are not product specific or specifically related to the nature of the subject procurement and its outcomes, and hence do not ensure achievement of value for money.
185. **The discount for no price criteria with additional qualification also appears inefficient compared to the technique of weighting technical and financial requirements and may not lead to value for money.** Moreover, the framework also lacks an appropriate weighting system that differentiates the qualitative criteria in terms of their importance or relevance in meeting the objectives and outcomes of each specific procurement. The absence of a proper life-cycle cost assessment technique to determine value for money is another obstacle to promoting sustainable public procurement outcomes and increasing impact by optimizing the efficiency of public service delivery in the country.

*Sub-indicator 9(b)(b) to (d) - Limitation in the use of procurement methods and tender documents.*

186. While the PPL mandates the use of the web portal for all procurement methods, including two-stage bidding, the assessment found that, in practice, two-stage bidding is not fully conducted through the web portal system, except for notice of tender and posting of contract



award<sup>52</sup>. For example, for 2 the period January 1 – September 28, 2018 there were only two procurements that followed this procedure, and which were ultimately cancelled; in 2017 there were 27 two-stage tendering processes out of which only 14 were successfully completed. This raises questions as to the relevance and understanding by the procuring entities of the conditions for use of this method. The amended PPL, effective January 2019, has brought a clarification that the two-stage tender method will be used only for a list of limited procurement. This list, as approved by MOF Order No. 156 of February 23, 2019, includes 5 types of procurement.

187. Another procurement issue relates to open tender with prequalification. However, the open tender process does not actually provide for a separate prequalification stage (notice, prequalification applications documents and their evaluation) to determine whether potential bidders have the required level of experience, staff and management capacity, and financial capacity. The absence of prequalification makes it difficult to ensure that suppliers and contractors are qualified to carry out complex and high-value contracts.
188. The third issue relates to the requirement in the PPL (Article 21) to prepare specialized tender documentation. The assessment noted that, except for furniture and light industry, there are no specific tender documents for specialized procurement such as ICT or textbooks.

*Sub-indicator 9(b)(e) - Insufficient safeguard of confidentiality of the tender information.*

189. As noted under Pillar I (indicator 1(g)), the legal framework, including tender documentation, does not provide for proper marking by bidders of confidential information. Although the disclosure of information is limited to participating bidders. It has been reported that parts of their bids have been copied in similar procurements.
190. This violates bidders' rights to safeguard their proprietary, confidential, business and commercial secrets. In the long term, this could potentially impact on the participation of qualified bidders who might fear disclosure of sensitive information to competitors. The lack of protections is a substantial gap that could cause serious reputational damage to the current public procurement system

*Sub-indicator 9(b)(j) - Insufficient use of open tender method.*

191. The assessment of quantitative indicators related to sub-indicator 9(b)(j) revealed a serious performance issue with respect to open tender procedures, as illustrated by the very high ratio (68 percent) of failed and/or cancelled processes, leading to the use of non-competitive methods such as Single Source.
192. The analysis, based on the sample of 150 contracts, found that 50 percent of the bids were non-responsive to the bidding criteria. This could be due to unclear or insufficient information in the tender documents, restrictive requirements and specifications, poor capacity of bidders to prepare and submit a quality and responsive bid, or poor professional judgment of the tender committee in accepting non-responsive bids. Generally, non-responsive bids are known to reduce competition. This finding raises questions about the practice of preliminary admission, as stipulated in the PPL (Article 27, paragraph 3), which gives bidders the

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<sup>52</sup> The PPL amendment submitted to Parliament in December 2017 and currently being deliberated aims to clarify that two-stage tenders will be held according to the list only for a list of approved procurements? approved by the Ministry of Finance.



opportunity to bring their pre-rejected bid into compliance with qualification a technical requirement within a period of three working days.

*Sub-indicator 9(c)(a) to (d)- Lack of proper practices for contract management performance measurement and monitoring.*

193. The legislative and regulatory framework does not focus sufficiently on contract management performance measurement and monitoring. The deficiency of these practical aspects of procurement has been assessed as a substantial gap, given its impact on obtaining value for money and timely achievement of procurement objectives and GoK’s corresponding goals for efficient service delivery. The absence of incentives for better contract performance limits contractors’ efforts to achieve better value for money.

*Sub-indicator 9(c)(e)- Partial monitoring of procurement statistics by the web portal.*

194. The procurement web portal is an effective means of producing and capturing government public procurement statistics. However, it does not capture statistics on procurement conducted outside the e-procurement system, such as with the Single Source method for cases under clause 4 and 5 of Article 41 , as well as statistics related to the key steps of two-stage tendering. The statistical system is therefore not put to full use for any meaningful analysis of procurement performance.
195. The absence of a proper system to regularly analyze procurement data, or to use the results of the analysis to inform those responsible for improving procurement practices, is a missed opportunity.

*Overview of substantive gaps with risk and recommendations*

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	Sub-indicator 9(a)(a) to (c)  Lack of strategic approach to procurement planning	H	Strengthening the quality and performance of the public procurement system will require the adoption of a more strategic approach, including systematic market analysis to inform optimal procurement strategies and planning. The strategy should guide the use of Single Source only in exceptional cases and not through an extensive listing of exclusions in the PPL.
2	Sub-indicator 9(b)(c) to (f)  Limited sustainability criteria and techniques unfit to determine value for money	H	Strengthening the strategic role of the public procurement system and improving its quality and performance will require embedding adequate sustainability requirements in the legal framework to obtain value for money and better outcomes throughout the procurement cycle.
3	Sub-indicator 9(b)(b) to (d)  Limitation in the use of procurement methods and tender documents	H	Better regulate the two-stage tender procedure and integrate all its steps in the e-procurement system. Introduce criteria and procedures for pre-qualification as a separate exercise before tenders are launched for complex and high-value contracts.



			Complete the regulatory framework by developing and introducing separate standard tender documents for services, as well as for specialized procurement such as consulting services, with suitable terms and conditions.
4	<i>Sub-indicator 9(b)(e)</i>  Insufficient safeguarding of confidentiality throughout the tender process	H	Strengthen general confidentiality provisions and introduce appropriate procedures to manage specific confidentiality cases. This could include elaboration of instructions/ guidance for proper marking by bidders of the confidential information contained in their bids.
5	<i>Sub-indicator 9(b)(j)</i>  Performance issues in the use of the open tender method	M	The legal framework should include additional provisions and instructions on selection of the optimal procurement method based on the market analysis and in accordance with the purpose of the procurement.
6	<i>Sub-indicator 9(c)(a) to (d)</i>  Lack of proper practice of contract management performance measurement and monitoring	H	Moving the public procurement system to the next level of quality and performance will require strengthening contract management, including through legal, regulatory, technical and procedural tools and performance measurement aspects and practices. The current legal framework should be reviewed to identify and specific causes of the system's poor performance.
7	Incomplete monitoring of procurement statistics captured by the web portal  <i>sub-indicator 9(c)(e)</i>	M	Monitor and analyze all public procurement data on a regular basis to determine the performance of the system and share results with all concerned, including citizens.

### Indicator 10. The public procurement market is fully functional

196. The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a reliable client, and the kind of goods or services being solicited.

#### Strengths:

197. The Government encourages open dialogue with the private sector, especially through the NCE "Atameken" and industry associations, IT companies and NGOs. GoK also consults with



stakeholders on proposed changes to the public procurement system, including laws and regulations. The consultations are carried out through public hearings, such as the public hearing held by MoF in early 2017 following the posting on its website of the draft amendment to the 2015 PPL. The minutes of the public hearing were then posted on the Ministry's website in October 2017. The website of the Kazakh Parliament also posted the same proposed amendment to the PPL. In the survey carried out as part of the assessment, around 83 percent of the participating private sector and civil society entities agreed that the Government consults with the private sector to varying degrees before making changes to public procurement laws and regulations.

198. The private sector in the form of small and medium companies is growing and the quality of its goods and services is improving, although not in proportion to the Government's needs, as shown by the average number of bids received. Nevertheless, the private sector plays a vital role in meeting these needs, even though the Government has very few programs to build private sector capacity to participate in public procurement. The e-Finance Center provides only limited technical training. However, Atameken through its headquarters in Astana and branches in all regions, organizes public procurement training seminars and makes its services available to its members via telephone and the internet.

**Substantive gaps:**

*Sub-indicator 10 (a)(a) to (b) - Insufficient private sector procurement capacity building.*

199. A better-informed private sector contributes to the efficiency and effectiveness of a public procurement system. The assessment noted the involvement of the Government in procurement training programs is very limited. More than 70 percent of survey respondents said they were not aware of capacity building programs being run by the government for private contractors and SMEs, while 30 percent said they were aware of such programs.
200. Procurement training for the private sector is provided mainly by the e-Finance Center and by Atameken, which organizes training seminars through its headquarters in Astana and branches in all regions.

*Sub-indicator 10(b)(b)- Systemic constraints inhibiting private sector access to public procurement market.*

201. Overall, the public procurement legal framework and the way it is implemented appears to favour the participation of local contractors, suppliers and service providers. Assessment of the quantitative criteria in Pillar I, indicator 1(d)(b) found that 99.7 percent of contract awards went to the local market. In terms of participation, however, only 2 to 3 bids per tender were received, on average. Moreover, in 2107, only 41 percent of participating suppliers were awarded contracts. This low rate of participation reduces competition and has a bearing on the prices the Government pays for goods, works and services. Such low participation may be due to the presence of more systemic constraints to greater private sector access to the public procurement market. These constraints have been identified as (i) difficulties in accessing financing, and lack of incentives to local banking system to provide financing to SMEs; (ii) the procuring entity's lack of know-how in specifying its needs, including the use of outdated technical standards; (iii) contract prices with a fixed ceiling not always consistent with prevailing market prices; (iv) excessive use of Single Source procurement; (v) inadequate capacity of the private sector to prepare quality and responsive bids; and (vi) the Government's practice of not allowing advance payments once contracts have been finalized without bank guarantee.



*Sub-indicator 10(c)((a) to (b) - Impacts on public procurement policy objectives not fully evaluated.*

202. There is no practice of conducting a risk-based procurement assessment in key sectors.

*Overview of substantive gaps with risk and recommendations*

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<i>Sub-indicator 10(a)(a) to (b)</i> Insufficient private sector procurement capacity building	H	Government, alone or jointly with NEC, to develop and launch a comprehensive program of procurement training for private sector contractors and providers of goods, works and services.
2	<i>Sub-indicator 10(b)(b)</i> Systemic constraints inhibiting private sector access to the public procurement market	M	Leverage the public procurement framework to promote increased and efficient participation of SMEs in public procurement opportunities.
3	<i>Sub-indicator 10(c)(a) to (b)</i> Impacts on public procurement policy objectives not fully evaluated	H	Assess risks and lost opportunities for the sector procurement market to inform GOK policy related to exclusion of SOE procurement from the PPL.

### 3.4. Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System

203. Pillar IV includes four indicators that are considered necessary for a system to operate with integrity, have appropriate controls that support implementation in accordance with the legal and regulatory framework; and have appropriate measures in place to address the potential for corruption in the system. This pillar also covers important aspects of the procurement system, including recognizing stakeholders and civil society as part of the control system. The pillar also assesses aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

#### **Summary of Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System**

204. Transparency and civil society engagement strengthen integrity in public procurement. However, the assessment found no evidence of an enabling environment for public consultations with CSOs in formulating legislative changes or monitoring the procurement process and contract implementation. There is a restricted and selective participation in consultations related to procurement policies, limited to representatives of Atameken.

205. The legal and regulatory framework does not provide for specific provisions on public consultation and monitoring mechanisms specifically related to public procurement. According to the Law on Public Councils, the main functions of these councils include consultations on strategic planning, budgeting, and budget execution of line ministries and



local government bodies.<sup>53</sup> Although budget execution may include discussions of procurement plans, these discussions usually do not address the next stages of the procurement process, such as bid opening, evaluation and contract award, contract management and completion. Similarly, there are no programs in place to build the capacity of civil society organizations to understand, monitor and improve public procurement. As of March 2018, there were about 14,349 non-governmental organizations (NGOs) in Kazakhstan operating mostly in areas such as youth policy, support to socially vulnerable groups, education and science, sports, healthy lifestyle, human rights, gender issues, environment, culture and arts.

206. There also is no public consultation in the planning process prior to large-scale or environmentally and socially sensitive procurement; nor are citizens officially involved in monitoring contract performance. The country's laws and regulations overall provide for a comprehensive control framework, including internal and external audits and internal controls. The Accounts Committee (AC), as the Supreme Audit Institution (SAI), is responsible for conducting procurement audits as part of compliance and performance audit, but its focus is on compliance and not on key performance indicators related to procurement. However, the State Committee on Internal Public Audit's (CIPA's) role in ex-ante review of procurement transaction puts CIPA in a conflicting role both as a true internal auditor and complaints reviewer. For certification of public auditors, there is no separate training module on public procurement. Further, Kazakhstan's control and audit system does not provide dedicated rules or guidance related to public procurement, and there is no specialized procurement audit.
207. Regarding efficiency and effectiveness of the complaints review mechanism, Article 47 of the PPL describes a mechanism of appeal against (action/inaction) decisions of the procuring entity, the Public Procurement Organizer, the Single Procurement Organizer, the Single Public Procurement Operator and others. Complaints are to be filed with the Authorized Body through the public procurement web portal using an electronic digital signature. The first review of the appeal is done by IAC. Based on limited complaints data from the portal from January 1, 2018 through June 15, 2018, the appeals system appears to function well and be balanced and unbiased. In the survey, however, 66 percent of respondents reported thinking that procurement decisions were unfair and did not believe the appeal system was sufficiently trustworthy to embark on an appeal. Almost 84 percent of respondents are not satisfied with the public procurement appeals system.
208. Regarding ethics and anti-corruption measures, the Anti-Corruption Law of 2015 defines prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties, but without specific reference to public procurement.<sup>54</sup> However, the definition of conflict of interest is not in line with international standards; nor are sanctions for violating rules on conflict of interest.
209. PPL Article 6 states that prohibited practices specified in paragraphs 1 and 2 of that article can be detected at any stage of procurement. If unlawful actions are detected during an ongoing procurement process, the concerned bidder is expelled from the tender process, while in cases when the unlawful action is detected at the contract implementation stage, the contract is subject to suspension until investigation results are issued. However, there is no system of suspension or debarment based on due process (also covered under Pillar I), and the blacklist maintained by MoF does not specifically include corruption or fraudulent practices.

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<sup>53</sup> On Public Council Law of the Republic of Kazakhstan № 383-V ЗРК, November 2, 2015.

<sup>54</sup> Anti-corruption Law of the Republic of Kazakhstan № 410-V ЗРК, November 18, 2015 with changes and amendments.



210. There are no dedicated training programs on integrity in procurement. Based on survey results regarding the effectiveness of anti-corruption measures, only 63 percent of respondents have a favourable opinion of the effectiveness of anti-corruption measures. Further, about 85 percent said they were not aware of any CSO actively providing oversight or a social audit of public procurement.

### **Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement**

211. Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improve contract performance and achieve better outcomes. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: (i) disclosure of information; and (ii) direct engagement of civil society through participation, monitoring and oversight.

#### **Strengths:**

212. The GoK is increasingly creating opportunities for the public to participate in decision making about and monitoring of budget execution, including public procurement. Public Councils created as part of the 100 Steps agenda are seen as the main instrument for CSOs to influence the operations of government agencies. In addition, the annual reporting meetings of ministers and heads of subnational/municipal governments, or akims, provide opportunities for civil society to inquire about the use of public resources.
213. The National Action Plan on Promoting Interaction between Non-Governmental Organizations and the State for 2016-2020 includes several activities that promote civil society's role in anti-corruption policy, monitoring of social projects and evaluation of social orders.<sup>55</sup> Civil society can also participate in the legislative drafting process using the Open Legal Acts policy, including by commenting on proposed changes related to the public procurement system.
214. The assessment found that Atameken participated in drafting the PPL and initiated some of its amendments. It also closely collaborated with the GoK on improving public procurement processes.
215. Kazakhstan has significantly advanced in making public procurement information available to the public. All documentation related to the public procurement legislative and regulative framework is fully and freely available on the public procurement web portal. Government procurement plans, tender opportunities, and contract awards are all published online. However, the e-procurement system covers only 23 percent of overall public procurement expenditure.
216. Although scattered, there is some evidence of citizens' participation in procurement monitoring, such as civil society reports and press items that provide a basic analysis of publicly available information on public procurement. Also, the Citizens' Control project, launched in 2016 by the Agency for Civil Service Affairs and Anti-Corruption (ACSA), provides a framework within which citizens can report local authorities who overstate procurement prices.

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<sup>55</sup> *National Action Plan on Promoting Interaction between Non-Governmental Organizations and the State for 2016-2020, Order of the Prime Minister № 159-p, December 8, 2015*



### Substantive gaps:

#### *Sub-indicator 11(a)(a) to (b)- Insufficient CSO and citizen capacity and involvement in public procurement.*

217. Despite general provisions for public participation in decision making, monitoring and oversight, there are no specific provisions related to public consultation and monitoring of public procurement. Other than training programs on “state social order”, there are no specific training programs for civil society and NGOs to understand, monitor and improve public procurement.
218. Atameken is the only non-profit organization specifically entitled by law to participate in drafting and amending public procurement legislation. Other than Atameken, there is no true public consultation and participation by civil society in the procurement planning process, even in cases of large-scale or environmentally and socially sensitive procurement.
219. The public procurement framework also does not provide for a sufficient level of civil society involvement in monitoring public procurement. The Law on Public Councils does not include specific provisions that would give the Councils a role in monitoring of public procurement. Furthermore, the Public Councils have been criticized by civil society representatives as being restrictive and non-transparent when it comes to the composition and selection of members.

#### *Overview of substantive gaps with risk and recommendations:*

SI	Substantive gap/red flag	Risk	Recommended improvements
1	Insufficient CSO and citizen capacity and involvement in public procurement <i>sub-indicator 11(a)(a) to (b)</i>	M	The procurement legal framework to be revised to promote and encourage public oversight through CSO participation in the procurement process and contract management. GoK to establish programs to build CSO capacity to understand, monitor and contribute to improving the capacity and performance of the public procurement system.

### Indicator 12. The country has effective control and audit systems

220. The objective of this indicator is to determine the quality, reliability, timeliness and effectiveness of the public procurement system’s internal and external controls. For this indicator, effectiveness means the expediency and thoroughness of the implementation of auditors’ recommendations. The assessment also relied, in addition to its own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyzes that may be available.

#### **Strengths**

221. The country’s laws and regulations overall provide for a comprehensive control framework, including internal and external audits and internal controls. The PPL establishes that compliance is controlled through the powers established by the “Law of the Republic of Kazakhstan on State Audit and Financial Control” of November 12, 2015 #392-V (hereafter the Audit Law), according to which audits and controls are carried out by responsible public external and internal audit and control bodies. In addition to the Audit Law, there are several



regulations in the area of public audit, including General Standards approved by the Decree of the President on State Audit and Financial Control; and Procedural Standards developed by the Accounts Committee of the Supreme Audit Institution and the Authorized Body of the Internal Audit. The institutions, policies and procedures as defined in the Audit Law and regulations are in place and operational.

222. The existing control framework overall adequately covers procurement operations. The internal control/audit mechanisms, including proper reporting to management on compliance, effectiveness and efficiency are in place. The overall basis for internal control over budget expenditures is established by the Budget Code, which identifies the controls during budget preparation and execution processes and in the expenditure classification framework. The Budget Code also outlines the accounting and financial reporting systems for public bodies and specifies the use of a Treasury Single Account for budget execution.
223. There are specific internal controls that relate to procurement, including those exercised via authorization and approval mechanisms as well as monitoring via the procurement web portal. The list of entities subject to audit is well coordinated among the Authorized Bodies.
224. Audit reports prepared by the Accounts Committee are subject to quarterly review by the Parliament in compliance with Article 44 of the Audit Law. Requirements of the Legislature, reflected in the Resolution of the Government on Approval of the Reports of the Government and the Accounts Committee, are mandatory for implementation and have the status of laws.
225. Fair and regular monitoring of how recommendations are implemented. The report of the Accounts Committee on the Key Results of the Accounts Committee for 2017 specifies that less than 1 percent of non-compliance cases with the PPL were identified in 2017 (compared to 4.2 percent in 2016), although the number of audited objects increased by 38 in 2017.<sup>56</sup>
226. There are well-established internal controls over budget expenditures. The Budget Code identifies the controls during budget preparation and execution processes and as part of the expenditure classification framework. Controls are also detailed in the Rules of the Ministry of Finance on Budget Execution and Cash Payments dated December 4, 2014. The PEFA 2018 praises the practice and suggests a score of “A” score for internal controls over non-payroll expenditures (PI-25).<sup>57</sup> The Audit Law clearly prescribes the reporting lines for internal and external audit. The internal audit function reports to the Government/Cabinet, while the external audit function reports to the legislature and the President. The Rules for Public Audit and Financial Control<sup>58</sup> require that recommendations provided during public audit are subject to mandatory execution for all state bodies and officials to which they are addressed. Such recommendations are communicated in the form of resolutions and orders, with specified deadlines for implementation. All recommendations are included in the so-called “control list” of the public audit bodies, for their implementation to be monitored constantly. Periodic reports of the public audit bodies are disclosed on their websites and include information on the progress of implementation of orders and recommendations. Over 96 percent of public external audit recommendations issued in 2017 were implemented in a timely manner. The PEFA for 2018 states that: “the fact that two-thirds of the financial violations found in 2017 had already been subject to recovery confirms that audit findings are respected and acted upon.”<sup>59</sup> According to the State Committee on Internal Public Audit

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<sup>56</sup> *Key Results of the Accounts Committee for 2017*, Accounts Committee for Control over Execution of the Republican Budget of the Republic of Kazakhstan.

<sup>57</sup> PEFA 2018.

<sup>58</sup> Rules for Public Audit and Financial Control, Decree of the Accounts Committee No. 17-NK, November 30, 2015, with changes and amendments.

<sup>59</sup> PEFA



(CIPA), over 92 percent of the internal audit recommendations on procurement were implemented in 2016 and 2017.

227. With the adoption of the Law on State Audit and Financial Control, the Accounts Committee as Supreme Audit Institution took a step toward development of a curriculum/program for training and certification of public auditors. This program’s modules were initially developed by the SOE Center for Research of Financial Violations, and later given to the Organization of Education, which is authorized to deliver the training and provide certificates. The training organizations are selected on a competitive basis. For 2019, it is the Financial Academy.
228. The certification of public auditors is in accordance with the Rules of Certification for Public Auditors, approved by the Regulation of the Accounts Committee #22NK of December 15, 2015.<sup>60</sup>

**Substantive gaps:**

*Sub-indicator 12 (a)(a) to (b)- Apparent conflicts of interest in the ex-ante procurement audit function.*

229. CIPA’s role in ex-ante review of procurement transactions puts the agency in a conflicting role both as a true internal auditor and as complaints reviewer. Kazakhstan’s control and audit system does not provide dedicated rules or guidance related specifically to public procurement. In practice, public procurement audits are conducted as part of compliance and performance audits, and no separate and specialized procurement audit is performed. All activities are handled as part of the general auditing framework.

*Sub-indicator 12 (a)(a) to (e) - Absence of clear notion and methodology for procurement audit.*

230. While the Accounts Committee as the Supreme Audit Institution is charged with responsibility for conducting procurement audits as part of the compliance and performance audits, procurement audits are mainly performed by the Committee of Internal Public Audit of the MoF as desk/online reviews. Decisions on whether to include procurement procedures as part of field compliance and performance audits are based on perceived risk and can be conducted less than once a year.

*Sub-indicator 12(d)(a) to (b) - Lack of training modules and training to auditors on procurement aspects.*

231. There is no regular formal training on procurement for public auditors. For certification of public auditors, there is no separate module on public procurement, but rather a set of questions on the PPL are included in the Compliance Audit module of the certification exams.

*Overview of substantive gaps with risk and recommendations*

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<p><i>Sub-indicator 12 (a)(a) to (b)</i></p> <p>Apparent conflict of interest in the ex-ante procurement audit function</p> <p>The State Committee on Internal Public Audit’s role in</p>	H	<p>The State Committee on Internal Public Audit should not be involved in review of procurement transactions. There should be proper segregation of roles and functions between the external and internal audits as well as the financial control (inspection).</p>

<sup>60</sup> On approval of the Rules of certification of persons applying for the state auditor qualification, Regulation of the Accounts Committee No. 22NK of December 15, 2015



	ex-ante review of procurement transaction puts it in a conflicting role both as a true internal auditor and for complaints review		
2	Lack of training modules and training to auditors on procurement aspects <i>sub-indicator 12(d)(a) to (b)</i>	M	Develop a targeted module on public procurement legislation, rules and procedures for public auditors and public internal auditors and ensure that the relevant staff receive training on a regular basis.

### Indicator 13. Procurement appeals mechanisms are effective and efficient

232. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

#### Strengths:

233. There is a mechanism for appealing action/inaction decisions of the procuring entity, the Public Procurement Organizer, Single Procurement Organizer, the Single Public Procurement Operator, and other procurement authorities.

234. The appeals submission is free of charge. The web portal allows for the appellant to state grounds for challenging the decision. Complaints data from January 1 through June 15, 2018 show evidence of a well-functioning appeals handling system.

#### Substantive gaps:

*Sub-indicator 13(a)(a) - Insufficient provisions on supporting evidence for complaints decisions.*

235. The PPL does not provide clear provisions regarding decisions to be rendered based on the evidence submitted by the parties. There is no time limit for Authorized Body to publish information on complaints decisions.

236. PPL does not describe sufficiently and with clarity the institutional arrangements for the review of complaints. In this respect:

- I. the PPL is silent as to whether the complaints can be filed with the procuring entity;

Complaints Data January 1, 2018 till June 15, 2018	
Status	Number
Completed with timeframe	7568
Not handled within the mandated timeframe	149
Not responded within the mandated timeframe	155

Complaints Data January 1, 2018 till June 15, 2018		
Status	Number	%
Satisfied:	3801	44.46
- fully	2191	57.64
- partially	1610	42.36
Denied unsatisfied	3957	46.29
Just submitted	176	2.06
Under consideration	615	7.19
Total	8549	100



- II. the PPL uses the term “Authorized Body” for the body which will administer complaints, without identifying such authority, where it is hosted, or its independence from the contracting authority.

**Summary of Results of Survey on Perception of the Private Sector**

Out of 37% the participants to survey who used the appeals system, 63% believe that the system is trustworthy and fair.

Almost 84% at different degree are not satisfied with the public procurement appeals system:

- The procuring entity is always “right.” All public procurement laws are against an entrepreneur;
- The authorized body does not inspire confidence, as it is guided by opinion and not by normative acts. There is no consistency in the decision-making progress, for the same situation two contradictory decisions could be made;
- The requirements are not clearly spelled out. Risks on the contract are not distributed fairly, the supplier is liable, while the customer is in more comfortable conditions;
- The authorized body does not have the competent employees to monitor the procurement procedure.

Suggestions for Improvements and areas of focus

- Efficiency and fairness of appeal system.
- Simplification of complaints submission procedure and shortening of the time for consideration of complaints.
- Provide clarifications on time.
- Reduce corruption risks.
- Professional competence of procuring entities staff.

Source: 84 responses from Monkey survey participants

**Sub-indicator 13(b)(a) - Insufficient level of independence of the Authorized Body in the review of complaints.**

237. As further elaborated under Indicator 5 of the Assessment, Ministry of Finance through its Internal Audit Committee is in practice the Authorized Body referred to in the PPL. Therefore, the question arises as to whether the review function of the Authorized Body is compatible with its other functions such as monitoring of compliance, regulatory, centralized procurement, and other functions under Article 16 of PPL.
238. Based on international good practice, the complaints review body should be independent of the procuring entity. The involvement of the Internal Audit Committee in the review of appeals creates two main issues:
239. it is under the same Ministry (MoF) as the Single Public Procurement Organizer, and consequently would be required to review appeals arising from procurement performed by that co-equal department under the MoF. That relationship may create a lack of confidence among bidders; and
240. the other non-appeal functions of the Internal Audit Committee may conflict with the appeals functions. Specifically, if the Internal Audit Committee oversees the ongoing financial control (or compliance audit) of specific procurement transactions, they are part of procurement decisions. Hence, they should not be asked to objectively review a complaint that may arise from financial advice and control that the Internal Audit Committee had previously given.



**Overview of substantive gaps with risk and recommendations:**

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<i>Sub-indicator 13 (a)</i> Insufficient provisions related to the process requirements for the review of complaints	M	Regulations to provide for clear provisions
2	<i>Sub-indicator 13 (b)</i> Lack of independence of the Authorized Body in the review of complaints	S	GoK to undertake a review of the options for the creation of an independent complaints review mechanism outside the MoF

**Indicator 14. The country has ethics and anti-corruption measures in place**

241. This indicator assesses (i) the nature and scope of anti-corruption provisions in the procurement system; and (ii) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders, and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

**Strengths:**

242. Kazakhstan has made good progress in bringing national anti-corruption legislation in conformity with basic provisions of international anti-corruption agreements. Kazakhstan has ratified the United Nations Convention against Corruption (May 4, 2008); the United Nations Convention against Transnational Organized Crime (June 4, 2008); and the Council of Europe’s Convention on Laundering, Identification, Seizure and Confiscation of the Proceeds from Crime (May 2, 2011). Kazakhstan is also part of the Istanbul Action Plan to Combat Corruption, a sub-regional mutual assessment program launched within the OECD Anti-Corruption Network in 2003.

243. Kazakhstan’s Anti-Corruption Law provides definitions of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties. In addition, the Criminal Code includes detailed descriptions of fraud and corruption offenses, and lists individual responsibilities, accountability and penalties for government employees, commercial firms and other organizations.

244. Definitions and provisions concerning conflict of interest were added to the Anti-Corruption Law and Civil Service Law in 2015. In potential or actual conflict of interest situations, civil servants are prohibited from performing their official functions and should inform their management of the conflict in writing.

245. Kazakhstan has made important progress in enforcement of corruption cases, many involving senior governmental officials and receiving wide media coverage. Criminal statistics show



consistency in the number of registered corruption offenses—309 cases in 2016, 303 cases in 2017, and 251 in the first half of 2018.<sup>61</sup> Still, there is a certain level of mistrust among the public; many observers believe that enforcement is selective and politicized.

246. Although procurement legislation does not contain specific provisions obliging procuring entities to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, there are established procedures for dealing with such cases. Article 6 of the PPL states that prohibited practices specified in paragraphs 1 and 2 of that article can be detected at any stage of procurement: in case of detecting unlawful actions during the ongoing procurement process, the concerned bidder is expelled from the tender process, while in the cases when the unlawful action is detected at a contract implementation stage, the contract is subject to suspension until investigation results are issued. In the latter case, a report is to be submitted to the State Internal Audit Committee, while in the former scenario, the information remains within the procuring entity.
247. The Anti-Corruption Law also obliges individuals, public associations and other legal entities to report on the commission of corruption offenses known to them (Article 23). Law enforcement authorities follow up on reports received from the State Internal Audit Committee regarding offenses committed during the contract implementation stage.
248. The Ministry of Finance, through its Public Procurement Committee, maintains a list of bad faith companies and individuals who may be included based on either (i) providing fraudulent information during the procurement procedures; (ii) declining to sign the public contract upon award; or (ii) poor performance on a contract. The list of bad faith companies and individuals is available on the web portal. There is also a register of unfair suppliers, who shall not be allowed to participate in public procurement within 24 months from the date of entry into force of the court decision recognizing them as unfair participants.
249. Kazakhstan has had a comprehensive anti-corruption framework in operation since January 2016. The legal framework consists of the Anti-Corruption Law (2015), the Law on Civil Service (2015), and the Criminal Code (2014). The anti-corruption policy is based on the Anti-Corruption Strategy (2015-2025), the Action Plan on Anti-Corruption (2015-2017 and 2018-2021), and the Annual Anti-Corruption Report. The institutional anti-corruption framework includes the Agency of Civil Service Affairs and Anti-Corruption, the Anti-Corruption Bureau, the General Prosecutor's Office, and ethics officers in central and local governmental agencies.
250. The Anti-Corruption Law introduced external and internal corruption risk assessment. The Agency for Civil Service Affairs and Anti-Corruption (ASCAC) conducts external risk assessments, while government agencies conduct their own internal risk analysis. The ASCAC conducted the first external risk analysis in 2017, covering 16 areas, including tax, customs, health, education, and public procurement. Twelve risk mitigation plans were approved based on the risk analysis for different government agencies. Internal corruption risks analysis is conducted by public bodies, organizations and the quasi-state sector, and the synopses are published on ASCAC's website. In 2017, the Ministry of Education, Ministry of Culture and Sport, Emergency Committee of the Ministry of Interior and the KazAgro national management holding conducted their internal corruption risks analyzes, and their results inform these entities' three-year anti-corruption action plans.
251. The web portal Qamqor, managed by the Committee of Law Statistics and Special Accounts under the General Prosecutor's Office, provides access to monthly and annual statistics on

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<sup>61</sup> Source: Information Service of the Committee of Law Statistics and Special Accounts under the General Prosecutors Office of the Republic of Kazakhstan.



corruption-related legal proceedings and convictions. The aggregated statistics are included in the Annual National Anti-Corruption Report published on the ASCAC website.

252. There are general integrity training programs offered at the university level and by the Academy of Public Administration. There is also a two-hour session on integrity in public procurement and procurement in quasi-governmental sector offered as part of a larger course on integrity for Corp A officials entering the civil servant service. The first training specifically dedicated to integrity in procurement is planned for July 2018.
253. Business associations support integrity and ethical behaviour in public procurement. Atameken established an Anti-Corruption Council that cooperates with ASCAC and other government agencies and quasi-governmental organizations in promoting ethical behaviour and promoting public-private dialogue on anti-corruption. In June 2016, Atameken also adopted the Anti-Corruption Charter of Entrepreneurs of Kazakhstan, which advocates for corruption-free business practices, as well as voluntary commitments to implement anti-corruption mechanisms. The Charter is open for signature by all companies, business organizations and associations.
254. In addition, the Ministry of National Economy adopted a non-binding Model Corporate Governance Code for joint-stock companies with state participation—a total of about 760 companies and 600 daughter companies. According to Chapter 2 of the Model Code, corporate governance should build upon fairness, integrity, responsibility, transparency, professionalism and competency. The assessment of corporate governance is in accordance with the Methodology of Introduction of Corporate Governance Best Principles and Standards and the Annual Report to the Government on compliance results. In addition, a National Council on Corporate Governance was established to develop and implement a unified policy and further improve the system of corporate governance.
255. There are several channels for reporting cases of fraud, corruption and unethical behaviour, with varied levels of security, accessibility and confidentiality. Information on these channels is available on the Anti-Corruption Bureau's website, as well as at the signboards at the entrance to every government office. Anonymous reports, however, are not accepted, except in cases when such a report contains information about crimes being prepared or committed, or about a threat to state or public security. Every report received by the Anti-Corruption Bureau by any information channel is registered in the Bureau's information system, directed to the responsible body and followed up. Although information on whistle-blowers is protected by the Law on State Secrets, civil society organizations report that citizens do not fully believe their confidentiality will be protected and are afraid of informal punishment. To overcome their reluctance to report wrongdoing, the ASCAC provides monetary encouragement.
256. A Code of Ethics for civil servants sets out mandatory standards of behaviour; however, the consequences of any failure to comply are disciplinary, not administrative or criminal. Every civil servant has to study the Code of Ethics before commencing his or her service. At least once every three years all civil servants have to go through a training program at the Academy of Public Administration, which includes a session on ethics.
257. Civil servants must inform their management in writing of a potential or actual conflict of interest situation as per Article 51 of the Law on Civil Service. ACSAC launched a project on Prevention and Resolution of Conflict of Interest Situations, whereby seven cases were detected. However, the assessment team found no evidence that this information is systematically filed; moreover, it is not accessible by the public. Financial disclosure forms are filed by every civil servant but are not accessible. Civil servants are encouraged to publish their



declarations, but mandatory disclosure will not be effective until 2020. Beneficial ownership information is submitted to human resources (HR) units and is not accessible by the public.

**Substantive gaps:**

*Anti-corruption law pending compliance with good international practice.*

258. Kazakhstan's anti-corruption legislation needs to be brought into compliance with international standards, as recommended by 3<sup>rd</sup> and 4<sup>th</sup> rounds of monitoring of the Istanbul Anti-Corruption Plan. Definitions and provisions concerning conflict of interest need to be broadened in line with the recommendations of the 4<sup>th</sup> round of monitoring of the Istanbul Anti-corruption Plan.

*Missing anti-corruption provisions in the PPL.*

259. The public procurement legal and regulatory framework does not include provisions on anti-corruption measures, except for Article 4, which includes prevention of corrupt practices as a general principle. Neither the PPL nor the Anti-Corruption Law specifies the mandatory requirement and instructions on how to incorporate provisions on prohibited practices into procurement and contract documents. Hence, procurement and contract documents do not include provisions on fraud, corruption and other prohibited practices.
260. The definition of conflict of interest is not yet in line with international standards, and norms and sanctions for violations of rules on conflict of interest need to be strengthened.
261. There is lack of compliance by civil servants with the requirement to inform their management of a potential or actual conflict of interest, as per Article 51 of the Law on Civil Service. Financial disclosure forms filed by every civil servant are not accessible, and mandatory disclosure will not be effective until 2020 only. These are general requirements, not specific to procurement cycle.
262. There is also no mechanism to enforce post-employment restrictions or a cooling-off period. Restrictions regarding gifts are scattered among several laws and require additional clarification and awareness raising. In addition, provisions for protection of whistle-blowers need to be strengthened.
263. The Anti-Corruption Law fails to effectively counter corruption in the private sector. Criteria for bad faith suppliers do not include special provisions for corruption and prohibited practices.
264. Corruption risk analysis is a new mechanism that has not yet evolved into a systemic measure. There are no dedicated training programs on integrity in procurement except for ad-hoc events. There are no CSOs specializing in social audit and control, which may be due in part to a lack of financing for such activities, and in part to lack of an enabling environment. Moreover, the Law on Public Councils does not include provisions on the Council's role in procurement.
265. There are no provisions in the Code of Ethics for those involved in public finance management or procurement; nor does the Code specify accountability for decision-making. Criteria for inclusion in the blacklist maintained by MoF do not specify corruption offenses or fraudulent practices.
266. The grounds for including a firm or individual in the list of bad faith contractors lack clarity, leading to different interpretations. For example, Article 12(4)(1) of the PPL specifies as grounds for inclusion the early termination of a contract when a procuring entity discovers that the bidder submitted unreliable information related to his qualifications. This raises the question of whether inclusion in the list is triggered by termination of contract or by the



determination by court that bidder submitted fraudulent information. Determination of the fraudulent behaviour should be the grounds for inclusion in the list, whereas termination of the contract is a consequence of such determination. Importantly, the grounds for inclusion in the list do not include corruption, collusion and similar misconduct, which are grounds for debarment in many jurisdictions of other countries.

267. Additional grounds for including a bidder in the list of bad faith contractors is non-performance or improper performance, as established by a court. However, the non-performance is mostly decided administratively through termination of a contract for default or application of penalties and damages.
268. The PPL refers to the Authorized Body (MoF) as the body in charge of maintaining the register of bad faith firms and individuals. However, it is not clear which of the four departments involved in procurement is directly responsible for maintaining the list.

*Overview of substantive gaps with risk and recommendations*

SI	Substantive gaps/red flags	Risk	Recommended improvements
1	<i>Sub-indicator 14 (a)((a)</i> Kazakhstan’s Anti-corruption law pending compliance needs.	H	Law needs to be amended in line with international standards. PPL, regulation and tender document to be amended Consider including definitions of fraud, corruption and other prohibited practices in procurement in the Public Procurement Law.
2	<i>Sub-indicator 14 (a)((b)</i>  Lack of clarification on conflict of interest in procurement transactions	M	Regulation on procurement should clarify “conflict of interest”, “cooling-off” and definition of “close relatives” in procurement transactions to be made. Consider introducing a cooling-off period for former public officials in the Law on Civil Service and public procurement legislation.  Anti-Corruption Law to be amended Legal provisions for the protection of whistle-blowers should be further strengthened. The types of cases, where anonymous reports are accepted, could be extended.
3	<i>Sub-indicator 11 (a)((a) and (b)</i>  Lack of participation by CSOs in monitoring of procurement to contribute to improving integrity.	M	Consider introducing state social orders and special capacity building activities for CSOs and NGOs for exercising social audit and control over public procurement. Consider extending the functions of Public Councils to include procurement consultations, monitoring and oversight.
4.	<i>Sub-indicator 14 (d)((b)</i>		Also refer to Indicator 11



<p>5.</p> <p>6.</p> <p>7.</p> <p>8.</p>	<p>Lack of Corruption Risk Analysis</p> <p><i>Sub-indicator 14 (b)((b)</i> Lack of enforcement of Anti-Corruption measures in private sector</p> <p><i>Sub-indicator 14 (d)((a)</i></p> <p>Lack of trust on effectiveness of anti-corruption measures by the private sector</p> <p><i>Sub-indicator 14 (e)((d)</i></p> <p>Lack of specific code of ethics as applicable for PFM including procurement</p> <p><i>Sub-indicator 14 (e)((c)</i></p> <p>Lack of adequate grounds and due process requirements for inclusion of a firm or individual in the register of bad faith contractors</p> <p>No system of suspension and debarment based on due process</p>	<p>Corruption risk analysis and <i>mitigation</i> should gradually evolve into a systemic measure with public procurement being a regular focus.</p> <p>Encourage suppliers and business association to sign the Anti-corruption Charter, and consider increasing the Charter’s status, in cooperation with Atameken. Explore opportunities of including anti-corruption provisions into the Law on Self-Regulated Organizations</p> <p>The feedback from private sector (as in table above) based on MAPS survey to be followed up with an open and honest dialogue with them</p> <p>Code of Ethics is revised to include specific provisions on those involved in public finance management. Conflict of interest statements, financial disclosure forms and information on beneficial ownership need to be systematically filed and made available to the public.</p> <p>Further guidance and regulations should be issued by the Authorized Body on various aspects of the exclusion system including on: Grounds for exclusion. Due process requirements, including providing due notice to concerned parties. Identity of the unit within Authorized Body in charge of debarment Possibility to appeal the decision of debarment Actions to ensure independence of the unit in charge of debarment Scope of debarment, i.e. does it extend to the parent, affiliates, senior management of the concerned entity; Committing corrupt acts need to be included as ground for debarment</p>
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## 4. Volume 2: Assessment of the Public Procurement System of Samruk-Kazyna

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269. This section discusses the findings of the MAPS assessment of the public procurement system for Samruk-Kazyna. These findings (findings, substantive gaps and recommendations for each pillar and indicator) are based on the qualitative review and quantitative analysis as far as possible set out in the MAPS.
270. As noted above, this is Volume II of the MAPS assessment. It covers the public procurement system for procurement conducted by Samruk-Kazyna according to its specific procurement rules. For results of the assessment of the general public procurement system, please refer to volume I.
271. Further to the validation workshop held in Nur-Sultan on September 24, 2019, Samruk-Kazyna submitted comments on the assessment in a separate document. This final report incorporates these comments wherever they pertain to the findings before cut-off date in December 2018. Other comments related to the situation of Samruk-Kazyna's procurement system after the assessment cut-off date of 31 December 2018 and could therefore not be reflected in the assessment as such. However, the commentary is presented in annex II to this assessment in order to reflect the progress made by Samruk-Kazyna to date as part of its ongoing reform.

### 4.1. Pillar I - Legal, Regulatory and Policy Framework

272. Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.
273. The legal and regulatory framework for the procurement transactions of Samruk-Kazyna mainly complies with the assessment criteria, but substantive gaps exist specifically related to requirements for using non-price criteria, coverage of the Public-Private Partnerships and record keeping. The legislation is comprehensive in regulating different areas related to public procurement – from procurement methods to review mechanisms and blacklisting.
274. Implementing guidance exists, but due to a lack of access, the assessment team was not able to verify the existence and content of standard bidding documents and standard contracting conditions.
275. The legal and regulatory framework does not make reference to sustainable public procurement.
276. In 2018, the Government of Kazakhstan adopted a reform, revising the legal and regulatory framework applicable to procurement, including rules for Samruk-Kazyna. The changes to the law are included in the revised public procurement law, as well as the revised law on Samruk-Kazyna. The changes will enter into force in January 2020. The analysis of Pillar I (and other



Pillars requiring analysis of legislation) are based on the current legislation. In some cases reference is made to the future regulation with a clear note that it is not in force yet.

### Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

277. The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents formally in use.

#### Findings

278. The basic structures of legal framework for public procurement conducted by Samruk-Kazyna follow the legal framework for general government procurement even if the law as such does not apply to Samruk-Kazyna. Samruk-Kazyna has a specific set of rules to regulate public procurement. The main legislative act regulating procurement in Samruk-Kazyna are the *Rules on Procurement of Goods, Works and Services of the Joint Stock Company "National Wealth Fund Samruk-Kazyna"* and Organisations 50% and more Voting Shares of which Directly or Indirectly Belong to Samruk-Kazyna with the Right of Ownership or Trust Management (hereinafter referred to as Procurement Rules)<sup>62</sup> laying down the main elements of procurement procedures and phases.

279. The legal framework for public procurement in Samruk-Kazyna is comprehensive and well-defined. All normative acts including the recent amendments are accessible online and free of charge. The legislation covers the procurement of all goods, services and works, and there is a dedicated regulation for the procurement of consultancy services envisaging an attestation (pre-qualifications) of potential consultants. However, there is no clear hierarchical structure, which can be problematic in case of contradictions.

280. There is a good mix of competitive and non-competitive procurement procedures covering a broad variety of situations. Competitive procedures are not required as default option, and there is a long list of exceptions that justify the use of the least competitive method (single sourcing). As a consequence, this method is used most frequently, according to previous research.<sup>63</sup>

281. Samruk-Kazyna is a self-sufficient organization and procurement is carried out using its own funds. According to the Kazakhstan's Budget Code of Kazakhstan, funds from the state budget can be directed to Samruk-Kazyna for the realization of socio-economic programmes in the scope of the state order. Overall, Samruk-Kazyna does deliver public services in a most basic sense via public procurement, while these expenses are not regulated by the general public procurement legal and regulatory framework.

282. Rules on participation are restrictive and depend on a supplier's origin (whether he is a local supplier) or whether the supplied items have local content by favouring "in-house" suppliers (i.e., suppliers in holding structure of Samruk-Kazyna). Each 1% of local content will result in a provisional discount of 0.15% of the offer price; in specific circumstances, local goods will receive a discount of as much as 5% on the offer price. In addition, the legislation contains set-asides and discounts for organizations of disabled persons and any suppliers considered

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<sup>62</sup> The version is from the 30<sup>th</sup> of March 2018

<sup>63</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia (2017), Anti-Corruption Reforms in Kazakhstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>



reliable (“white-list”) included in a dedicated list. Procurement rules applicable to the holding’s subsoil users (i.e. the largest mining and oil and gas companies in Kazakhstan) favour domestic suppliers of goods, works and services with the highest local content (each 1% of local content will result in a provisional discount of 0.15% of the offer price for goods and 0.1% for works and services). Any companies that benefit from this advantageous treatment are also not required to provide any securities. In addition, there is a list of unreliable suppliers (“blacklist”). The lists are comprised and maintained by Samruk-Kazyna Contract LLP (a subsidiary of the Fund).

283. The grounds for including a company in the “blacklist” are stated in a dedicated regulation and relate mostly to non-performance. Corrupt practices or criminal activities are not explicitly listed as grounds for blacklisting.
284. While the legal framework clearly defines which documents have to be provided by suppliers, there is no clear differentiation between eligibility and qualification criteria (see Art. 49 of the Procurement Rules.) Information on procurement opportunities is widely disseminated through mass media and a web-based platform.
285. The procurement rules require the usage of the lowest price as the only award criterion, i.e. almost exclusively for all methods of procurement.
286. Bid submission, receipt and opening rules are clearly and comprehensively regulated. Once bids are opened, there is no specific prohibition to announce sensitive information.
287. Samruk-Kazyna does not have an independent body to review complaints. The units in charge of procurement, control and monitoring in Samruk-Kazyna’s subsidiaries are tasked with carrying out any reviews of complaints. As a second tier, suppliers can lodge a complaint with the Procurement Methodology and Control Unit of the Holding. In addition, a Commission was created to review complaints by suppliers and contracting authorities against the decisions of the Procurement Methodology and Control Unit. Disputes in the contract management phase are handled by the courts, as specified in the law.
288. The legal framework mandates that all procurement transactions of Samruk-Kazyna are carried out electronically, and participants are informed about this. While according to the legal framework there are no restrictions for access, there are practical aspects in the implementation of e-procurement that de facto restrict access (see indicator 7.)

### **Substantive gaps**

289. There are several gaps in indicator 1, the most severe of which are suggested to be highlighted as a red flag as they hinder the achievement of basic public procurement principles (sub-indicators d, f, and h).

#### *Sub-indicator 1(a)(a) - Hierarchy of norms*

290. The legislation does not set a clear hierarchy for different normative acts. This is an important provision to solve potential conflict between two sets of rules included in different normative acts. While some indication of hierarchy is provided by the law No. 550-IV of February 2012 (“On the Sovereign Wealth Fund”), article 19 of which provides the basis for the fund to develop its own public procurement rules, as well as by the institution that is responsible for the respective set of rules, the hierarchy is not indicated in the rules themselves and constitutes a gap.



#### *Sub-indicator 1(d)(a)-(c) - Access and competition*

291. Several gaps, notably with regards to sub-indicator 1(d), restrict competition, and a red flag is raised for this sub-indicator. First, there is an extensive list of exceptions that provide grounds for single sourcing and discourage use of competitive methods. Second, access of suppliers to the procurement market is complicated by the introduction of the complex rules on participation, different lists, pre-qualification, provisional discounts, set-asides and preferences. Third, there is no general prohibition on the artificial splitting of the contracts to avoid the usage of competitive methods (see sub-indicator 1(b)). Fourth, participation of suppliers is hindered by “in-house procurement”, which foresees that items in 424 categories are required to be purchased from companies within the Samruk-Kazyna holding. While this list has been reduced since February 2018, the number is still substantive. Fifth, the legal framework mandates that award decisions are based on the lowest price, which represents a gap with regards to sub-indicator 1(f). Considering the complex nature of some of the procurement conducted by the subsidiaries, the lowest prices cannot be the sole award criteria providing the necessary value for money. Life cycle costing will be introduced as part of the implementation of category management. Introduction of life cycle costing is related to the overall reform of the procurement system of Samruk-Kazyna. The standard for category management defines life cycle costing in Art. 2(8). Sixth, there are no clauses on safeguarding sensitive information included in a bid, such as trade secrets. This might discourage suppliers to submit know-how and innovative ideas.
292. Competition results in savings and increased quality goods, services and works. Increased competition can also support the development of companies and encourage them to better target their offer to the needs of Samruk-Kazyna. While the list of exceptions is currently under review as part of the ongoing reforms, according to stakeholder interviews, the list of exceptions to results in single sourcing will be left to the discretion of individual subsidiaries to be decided upon once the new procurement law enters into force

#### *Sub-indicator 1(i)(a)-(d) - Contract management*

293. Samruk-Kazyna’s legal framework does not clearly define functions and responsibilities related to contract management, as outlined by sub-indicator 1(i). There is also no provision on dispute settlement during the contract management stage, settlements and their enforceability.

#### *Sub-indicator 1(h)(b)-(f) - Integrity and accountability*

294. The legal framework does not specify an independent review process to challenge and appeal decisions by contracting authorities (sub-indicator 1(h)). As described above, the procurement entities, as well as the Procurement Methodology and Control Unit of the Samruk-Kazyna holding and the Commission fulfil review functions. However, these units are involved in procurement operations as well as policy setting for procurement. In addition, the units on the level of the holding’s management have a supervisory function over the subsidiaries with regards to general management that might render this unit biased when procedures are challenged. In addition, control and review functions are not differentiated, which is considered a substantive gap. The rules that exist with regards to challenges and appeals have gaps, such as a lack of specification of the deadline for submitting a challenge and no provision on suspension of the procurement procedure. Decisions of the contracting authority, the Procurement Methodology and Control Unit or the Commission are not required to be published.
295. Some gaps relate to rules that describe the handling of the procurement process. For example, bid opening is not required to take place right after the deadline of the bid submission has



elapsed. The usage of e-procurement mitigates most of the risks related to the late opening of bids, such as tampering with bids, but the rules do not comply with the assessment criteria of sub-indicator 1(g). In addition, rules foresee an opportunity for the bidder to amend their submission in case the bidder has some noncompliance with the requirements of tender documentation. As expressed by Samruk-Kazyna representatives, the purpose of this measure is to avoid complaints that might arise due to instances of formal non-compliance. However, the practice opens room for corrupt practices and cannot be considered good practice. The bid retention policy necessary to ensure traceability, accountability and reporting of procurement data is not described in procurement rules. The wide usage of e-procurement facilitates the retention of documents and collection of data, but legal basis for such policies should be established in either Procurement Rules or the Instructions on E-Procurement.

*Sub-indicator 1(j)(b)-(c), 1(k)(a)-(c) - IT tools and data retention.*

296. Even though the e-procurement is advanced in Samruk-Kazyna, some substantive gaps with regards to the legal framework were identified. The legislation does not contain any provision on the security of data when using the e-procurement platform. Cybersecurity, especially in such important area as budget execution should be a priority and should follow clear legal provisions. In addition, with the increase of types of technologies, interoperability should be ensured in order not to restrict the access of potential suppliers due to the problems of technical nature. The possibilities granted by e-procurement in terms of data retention are not used as they could be. There is no specific data retention policy in Samruk-Kazyna compatible with the statute of limitations in the country and prosecuting cases of fraud and corruption and compatible with the audit cycles. In addition, the policy for access and public inspection of the data are not described in the legislation. Taking into account that all of the subsidiaries and the Fund use the same e-procurement system, it would be logical to suggest a unified data retention policy and accessibility rules.

*Sub-indicator 1(l)(a)-(c) - Procurement principles in specialized legislation.*

297. Public Private Partnerships (PPPs) are not covered by Samruk-Kazyna's procurement legislation. This is a substantive gap as PPPs can be used to deliver the type of project that Samruk-Kazyna engages in. Procurement principles should apply also to the delivery of PPPs.

### **Recommendations**

298. Several additions to the legal framework should be made to comply with the gaps: The hierarchy of legal norms should be clearly established by legislation. This will help avoiding situations of conflict of norms and will ensure smooth implementation of provisions. Second, the scope of the legislation should be extended to cover PPPs by the Procurement Rules or by a separate dedicated piece of legislation. Third, legal changes should aim at increasing the use of competitive tendering to achieve the best value for money.
299. In order to enhance the access of potential suppliers, it is recommended to reduce the number of cases where single sourcing is permitted. In this regard, the list of limited tendering specified in the WTO GPA can be a good source of reference as a standard of international best practice. In addition, competition could be enhanced by clearly defining eligibility, selection and award criteria. Any criteria used should be adequate to the value and complexity of the procurement and should not be discriminatory or exclusionary. Practices like set-asides and provisional discounts favor some suppliers and hinder others, and they should therefore be eliminated. It is possible to do so gradually. One concrete measure in this context is to reduce the number of items that are to be procured in-house. While this list has been decreased recently, the aim should be to eliminate such preferential treatment as much as



possible. Access to the procurement markets of different goods, services and works should be streamlined both for the domestic and foreign suppliers.

300. Another step towards increased competition and compliance with the MAPS criteria is to prohibit contract splitting and to include measures to protect sensitive information submitted by the suppliers.
301. The legal framework could include more definite provisions to use award criteria other than price. The use of the LCC in the future requires the use of non-price criteria in the evaluation of the bids, but it is recommended to lay down in the rules that the price as well as non-price criteria can be used. In addition, Samruk-Kazyna contracting authorities should be required to define and include the way the evaluation criteria are combined and their relative weight in the tender documentation.
302. Integrity and accountability are cornerstones of procurement transactions providing the necessary tools to ensure the taxpayers' money are spent in a corruption-free environment. In order to comply with the MAPS assessment criteria in this respect, the procurement legal framework should include requirements that state an immediate bid opening once the deadline for the submission elapse. The use of e-procurement will facilitate this aspect, as the software can open the bids automatically. In addition, suppliers should not be allowed to amend their bids after the opening. This practice bears risks of corruption and is recommended to be eliminated.
303. The legal framework should establish a review function to protect the rights of suppliers. In the medium term, it is suggested to provide for an independent body created specifically to hear the complaints from aggrieved suppliers. In the short term, the current system should be amended in order to comply with the best practices in this area, such as including deadlines for the submission of complaints for each institution (subsidiary, the Fund and the Commission) should be regulated together with the rules on suspension of the procedure. Decisions of each of the tiers of review should be required to be published for a wide audience free of charge. The fora for the settlement of disputes in post-award stage should be clearly described in the legislation. In case the resolution of such disputes is entrusted to the courts (which is the case in accordance to Samruk-Kazyna authorities), this should be clearly mentioned.
304. The use of IT tools and data retention policies should be further specified in the law. Samruk-Kazyna's legal framework does not contain any provision in this regard, hence it is advised to have a clear retention policy not only for the records of bids opening but also for all documents created during the procurement procedure. Adoption of a unified data retention policy for the Fund and the subsidiaries will be important to establish norms on the policy for the access and public inspection. Documents that are required to be retained should cover the whole procurement cycle and provide controllers with meaningful information about each procurement transaction. Such instructions should be aligned with any global rules in Kazakhstan (in case those exist), and be included in the procurement legal framework. Finally, any IT tools used throughout the holding structure should be made interoperable.

## Indicator 2. Implementing regulations and tools support the legal framework

305. This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. Ideally the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed



instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

### **Findings**

306. As detailed for indicator 1 above, the legal basis of Samruk-Kazyna's procurement is well-defined and comprehensive and is supplemented by additional regulations and policies that further specify the rules in the procurement regulation. Guidance exists for both procurers and suppliers. There are video tutorials, guidelines and other materials available online that provide information on how to register and to participate in the announced procurement procedures.
307. However, it was not possible to verify the existence of model procurement documents or standard contracting conditions. Standard Bidding Documents are not part of the legal and regulatory framework. However, as stated by stakeholders, standard bidding documents are used as part of e-procurement procedures. Procurement Rules do not require using standard bidding documents. Similarly, there are no standardized terms to be included in the contracts.
308. As mentioned by stakeholders, Samruk-Kazyna has recently approved a Standard on Contract Management, which would fill some of the mentioned gaps. However, the standard remains to be implemented. The assessment team did not have access to this standard.

### **Substantive gaps**

#### *Sub-indicator 2(b) and 2(c) – Lack of provisions for bidding documents and standard conditions of Contract*

309. As of December 31, 2018, the assessment team was unable to verify that the current legal and regulatory framework includes standard bidding documents or standard contracting conditions. This is a substantive gap and a red flag should be raised for sub-indicators b and c: it is not possible for the general public to review standard bidding documents or contracting terms to prepare for participation in the procurement process. In addition, failure to clarify what are the universally accepted terms and standards creates discretion and opportunity for wrongdoing. These aspects hinder the achievement of basic procurement principles. It will be needed to see how the future standard on Contract Management is implemented.

### **Recommendations**

310. Approval of standard bidding documents as secondary or tertiary legislation is necessary in order to legitimize the information contained therein. At minimum, the most basic clauses to be included in the contracts should be included in the legislation. The new standard on the Contract Management requires subsidiaries to have standardized contracts but this piece of legislation is not in force yet.
311. It is also recommended to clearly assign the task of maintenance of the manuals to SK Contract LLP, which would affirm the current, de facto arrangements.

### **Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations**

312. This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, i.e. whether the legal framework is coherent with the higher policy objectives of the country.



## Findings

313. Samruk-Kazyna does not have a general, overarching policy or strategy for the implementation of sustainable public procurement to support broader policy objectives (protection of environment, women empowerment, etc.). As a consequence, there is no implementation plan and no tools to operationalize, facilitate and monitor the application of sustainable public procurement. The new standard for pre-qualification, which has not yet been approved, envisages a qualification criterion named “Ecology, Safety and Protection of Labour”. Sustainability might therefore be considered as a pre-qualification criterion but is not taken into account in other stages of the procurement cycle (e.g., contract award). In addition, no criteria are considered beyond environmental and labour standards.
314. The international obligations of Kazakhstan related to public procurement such as the Treaty on the Eurasian Economic Union (EAEU), the Enhanced Partnership and Cooperation Agreement (EPCA) with the European Union do not apply to Samruk-Kazyna. In case of the EAEU, the latter covers the procurement activities from the state budget and other means in case so envisaged by the national legislation of the Member States. The public procurement law of Kazakhstan explicitly excludes the procurement by Samruk-Kazyna. For the EPCA, Samruk-Kazyna is not listed as a covered entity, which effectively excludes it from the coverage of the agreement.

## Substantive gaps

### *Sub-indicator 3(a) – Absence of the sustainable public procurement policy*

315. Samruk-Kazyna has no general policy or strategy for the implementation of sustainable public procurement and no implementation plan or tools to operationalize, facilitate and monitor the application of sustainable public procurement. Sustainability is not incorporated in any stage of the procurement cycle and this is a clear substantive gap considering the impact of procurement on sustainable development of the economy. This indicator requires an overarching strategy or a policy for the implementation of SPP within the broader national policy scope; such a strategy was not identified for Samruk-Kazyna. The limited use of some criteria, like ecology for the pre-qualification procedure, cannot satisfy the requirements of the current indicator.

## Recommendations

316. In the context of Samruk-Kazyna’s diverse holding structure with many subsidiaries, Samruk-Kazyna could, as a first step, draft a general strategic document describing the importance and ways of implementation of sustainable public procurement, tools for the facilitation and monitoring of the implementation, ways of incorporation into the different stages of the procurement cycle and identifying priority areas of sustainability, etc. Capacity building activities could also be offered to familiarize the contracting authorities and the suppliers with the new policies on sustainable public procurement. At a later stage, the incorporation of sustainable public procurement in technical specifications, as contract award criteria and standard contract terms should be mandated, coupled with the creation of specific tools for the monitoring and control of its implementation.

## 4.2. Pillar II - Institutional Framework and Management Capacity

317. Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.



318. Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.
319. Samruk-Kazyna's financial management systems are fairly well-integrated with the procurement function, and planning is undertaken. Gaps relate to the complex bureaucracy with regards to payments, which results in delays and burdens suppliers.
320. The normative and regulatory function, as well as procuring entities are well-defined. However, several responsibilities are not defined. The institutional arrangements raise concerns as operational, policy-related and review-related responsibilities are shared in the same unit. Centralisation is not carried out on a larger scale.
321. E-procurement is well-developed and appears to be widely used. There is no single integrated platform and public information is scarce. Some gaps with regards to data management, including archiving, remain.
322. Samruk-Kazyna currently does not have a comprehensive, strategic approach to professionalization and capacity building, and no structured performance monitoring that could provide evidence for these activities and wider reforms.

#### Indicator 4. The public procurement system is mainstreamed and well integrated with the public financial management system

323. This indicator focuses on how well integrated the procurement system is with the public financial management system given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

##### Findings

324. Samruk-Kazyna, i.e. the fund management and the subsidiaries within the holding, are required to compile annual and multi-annual procurement plans. In most cases (but not all, as would be good practice), the budget are allocated before contracting and cover the full amount of the contract. Financial procedures are specified.

##### Substantive gaps

##### *Sub-indicator 4(a) and 4(b) – Launching of tendering process without budget allocation and gaps in financial procedures*

325. There are some, exceptional cases where the authorities can start the procurement process before the budget is officially allocated. In such cases the contract is not signed until the official approval of the budget. This saves time and the necessary goods, services and works are supplied without delays. It is very rare that the budget needed for these procedures is afterwards not allocated. While there are benefits from this procedure, it also inhibits risks: In case the budget is not allocated, the resources for the organization of procedure are wasted. The potential supplier with whom the contract should have been signed is also carrying the risk as common practice appears to be that most suppliers take provisions to prepare the delivery of the good, works or service, to ensure timely delivery, albeit this being against good practice. As a result, suppliers might lose trust in the procurement system of Samruk-Kazyna and will no longer participate in procurement procedures. This, in turn, affects competition and ultimately the value for money that Samruk-Kazyna is able to realize through its



procurements. Bidders might be incentivized to increase their asking price in order to account for losses incurred to projects that do not actually materialize. It is thus important to take all the necessary measures to limit the cases where the procedure is conducted before the final allocation of funds. This should be allowed only when strictly necessary to carry out the main functions of the contracting authority.

326. The provisions for invoices are not clear enough. According to stakeholders, the payment stage is very bureaucratic. Even though the legislation requires that invoices should be paid within 30 days of signing the acceptance act, in practice this deadline is frequently missed by the contracting authorities. Due to a lack of data, it was not possible to assess the quantitative assessment criterion in this indicator, but the indications by stakeholders suggest that invoices are largely not paid on time. Timely payment is essential for the suppliers, especially SMEs that usually do not possess much financial means. In case not paid in time, the suppliers might face insolvency or just refuse to supply to the state. This will affect competition and final prices the contracting authorities can get as a result of the tender procedures.
327. Payments seem to be significantly delayed, which impacts the ability of suppliers to participate in public procurement; in addition, there is limited visibility about payments. This hinders the ability to achieve basic public procurement objectives, which means that a red flag is suggested to be raised for sub-indicator 4(b).
328. Another gap relates to the reporting stage. According to the rules, the contracting authorities are required to provide monthly reports about the contracts for the procurement of goods, services and works to the management of the Fund. However, there is no specific mechanism for the reporting on the budget execution as a whole. The specific feedback mechanism on budget execution usually takes the form of an (annual) report; this report allows to detect and remedy the mismatch between the planned and actual expenditure.

### **Recommendations**

329. Timely budget execution is important for the achievement of goals of Samruk-Kazyna. As a big holding, the Fund should monitor how the means are absorbed by the subsidiaries. Data could be gathered for individual processes and then be aggregated for a specific period (trimester, year, etc.) or category. This can provide information about any challenges with regards to budget planning and execution, allowing Samruk-Kazyna to take appropriate measures. On the basis of this analysis, the number of cases in which procurements can be launched without formal budget approval could be limited as much as possible and ultimately eliminated altogether. In addition, Samruk-Kazyna could consider allowing multi-annual procurement cycles for recurring needs. To implement these changes successfully, increased capacity in the procurement workforce is needed, which can be achieved by conducting training on planning and increasing the use of electronic tools. To realize the most benefit of electronic procedures, it is recommended to introduce e-invoicing which will automatically disburse the money once the delivery act is signed in the system or uploaded. The bureaucracy of the payment process should be reduced allowing the suppliers to receive the payment once delivery up to the agreed standard is made.

### **Indicator 5. The country has an institution in charge of the normative/ regulatory function**

330. This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organizations. Depending on the institutional set-up chosen by a country, one



institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-coordinated joint effort.

## Findings

331. The Fund and its management have a high-level standing in the government, including the units tasked with aspects of public procurement. The head of the Board of Directors of Samruk-Kazyna is the Prime Minister of Kazakhstan ex officio. The current head of the Management Board was deputy Prime Minister twice during his career. Samruk-Kazyna's financing is sourced predominantly from its own means, which in fact positions the organisation in a strong and independent position vis a vis the government.
332. With regards to its structure, previously two units of Samruk-Kazyna's management structure were merged to form the Procurement Methodology and Control department, in the beginning of 2018. This newly created department is entrusted with regulatory, review and control functions over subsidiaries. As has been reported during the interviews, there is a shortage of staff within the department which might affect the fulfilling of the assigned tasks.
333. De jure, the procurement rules specify the normative/regulatory function and assign appropriate authorities to enable the department to function effectively. In addition to the Procurement Methodology and Control Department, Samruk-Kazyna's subsidiary company SK Contract LLP is tasked with normative and regulatory aspects. Most of the functions required by the MAPS are specified in the Rules assigned to one of the mentioned institutions (see below for missing elements.) The Fund in this case can be considered the regulatory body while the subsidiaries are the contracting authorities.
334. Kazakhstan's government is the sole shareholder of Samruk-Kazyna, and the legal and regulatory framework governs the relationship between the Fund and the government. Interference of the Government, its employees and other officials of state bodies into the operational activities of the Fund can be allowed if prescribed by law, normative acts and orders of the President of Kazakhstan.
335. Certification rules for procurement specialists in Samruk-Kazyna have been recently approved. This decision is currently being implemented. Overall, there is an increasing emphasis on professionalizing the procurement workforce in Samruk-Kazyna.

## Substantive gaps

### *Sub-indicator 5(a) – (d) – Lack of assigned responsibility for procurement professionalisation*

336. Qualified and capable staff is a prerequisite for well-thought and well-implemented policies. As the Procurement Methodology and Control Department is tasked with important functions of not only methodological guidance and setting procurement policies but also of control over the transactions and hearing complaints, staffing requirements are high. There is also a need for specialized knowledge to fulfil the diverse task appropriately. According to stakeholders, there are constraints, and the unit does not have a sufficient number of staff to fulfil its tasks.
337. From an institutional point of view, several aspects warrant a note. On the one hand, the independence of the normative and regulatory function (i.e., the Procurement Methodology and Control Department) is institutionally limited by the oversight of Samruk-Kazyna's management structure, but also by the political appointees in the board. However, it was not



reported by any source that there is any interference that would prevent the normative and regulatory function from achieving its aims or basic procurement goals. On the other hand, it is noteworthy that the control and review functions are within the same unit (Procurement Methodology and Control Department) of the Fund. This means that the policy making, review and control functions are carried out by the same department. This might result in a conflict of interest and is considered a red flag for sub-indicator (d) as it might affect the achievement of basic public procurement principles.

338. Several tasks are not clearly attributed, including the responsibility to advise contracting authorities and to amend and draft new legislation (though it is assumed to be part of “methodological management” mentioned in the Procurement Rules.) In addition, the powers of provision of procurement information and preparation of reports for other parts of the Fund are not prescribed at all. In relation to the latter it should be noted that in practice the Procurement Methodology and Control Department is carrying out the task as it organizes workshops, seminars, etc. (see indicator 8.)

### **Recommendations**

339. In order to avoid gaps in the policy making it is recommended to clearly define the powers to advise authorities and to amend and draft new legislation. In addition, the powers of provision of procurement information, preparation of reports for other parts of the government (Samruk-Kazyna), support of professionalization should be assigned to either the Procurement Methodology or Control Department or to SK Contract LLP.
340. All of the above-mentioned powers require adequate and capable staffing which should be ensured with the usage of certification and capacity building programmes described in indicator 8. In addition, it is recommendation to avoid cases of conflict of interest and to delineate the functions of control and review. This will make the review function more independent as is required by international standards and will ease the burden of the Procurement Methodology and Control Department.

### **Indicator 6. Procuring entities and their mandates are clearly defined**

341. This indicator assesses: *i)* whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; *ii)* whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and *iii)* whether a centralized procuring entity exists.

### **Findings**

342. The subsidiaries of Samruk-Kazyna can be considered contracting authorities. Their rights and obligations are described in detail in different articles of the Procurement Rules and cover the entire procurement cycle. The contracting authorities are required to have a separate structural unit responsible for organizing and carrying out procurement procedures. According to stakeholders, the procurement units collect requests describing needs of the requiring units and organize the procurement procedures for these requiring units. The deliveries are received by the requiring unit. Payment is done from the treasury of each subsidiary after the final check of the invoice. The requirement to have a staff with adequate capacity is not prescribed in the legislation.
343. Even though a regulation on centralized procurement exists, centralization is used only to a limited extent. Some centralization is conducted on the level of the subsidiaries in the Samruk-



Kazyna holding. Framework agreements are not used and no separate centralized purchasing body exists. Either the Fund or the organization in the Fund will carry out the centralized procurement; in practice, it is the Fund.

### **Substantive gaps**

#### *Sub-indicator 6(a) and (b) – Unoptimized approach for centralised procurement*

344. Samruk-Kazyna does not have a separate centralized purchasing body entrusted with the organization of procurement procedures for several or all subsidiaries. The range of authorized methods does not include those that would be amenable to centralized purchasing.
345. Another gap relates to the delegation of decision-making. Authority is not allocated consistent with the risks associated and the monetary sums involved as required by the MAPS assessment criteria. There is a specific unit dealing with the procurement procedures and several responsible units that are accepting the delivery depending on their needs. That said, the responsibilities for these two phases of the procurement cycle are at risk of being not aligned.

### **Recommendations**

346. In order to have a smooth procurement process from needs assessment to contract management, it is necessary to describe in the legislation the rights, responsibilities and decision-making powers of the procurement unit and responsible units. It is also recommended to adopt a risk-based approach, balance the necessity for approval with the involved risk and monetary sums. Suppliers also benefit from knowing who is responsible for a specific action and what deadlines are in force with regards to the acceptance of delivery, approval of invoices and dispatch of the payment.
347. Even though there is a separate piece of legislation related to centralized procurement,<sup>64</sup> Samruk-Kazyna's contracting authorities are not making full use of the advantages that centralization offers. It is recommended to increase the use of centralized purchasing, for example by creating a body entrusted with the procurement of standardized goods, works and services for all subsidiaries. It is also possible to enhance the use of centralized purchasing at the level of subsidiaries which will then procure for their own subsidiaries. In doing so, utilization of tools such as framework agreements, dynamic purchasing systems and e-catalogues is much advised taking into account how efficient these tools can be when used in combination with centralization. The current efforts to introduce tiered prequalification processes can be coupled with efforts to centralize those items in the more standardized categories. Considerable economies of scale could be achieved by using modern techniques combined with partial centralization, e.g. dynamic purchasing systems, e-catalogues, etc.

### **Indicator 7. Public procurement is embedded in an effective information system**

348. The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.
349. The assessors did not have access to neither the e-procurement system nor to data to verify and triangulate information retrieved elsewhere. In addition, it was not possible to

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<sup>64</sup> See The Rules on Implementing Centralized Procurement for Goods, Works and Services of the JSC "Samruk Kazyna" and Organizations 50% and more Voting Shares of which Directly or Indirectly Belong to Samruk Kazyna with the Right of Ownership or Trust Management"



substantiate the assessment through an analysis of the mandatory quantitative assessment criteria in this indicator. That means that the assessment of this indicator cannot be fully concluded. Red-flags and substantive gaps have been assigned accordingly.

### **Findings**

350. IT tools are widely used by Samruk-Kazyna, they serve the dissemination of procurement information as well as the conduct of procurement procedures. Additionally, information on the procurement platform is transmitted by television. According to the assessors' review, the platform has dedicated websites that are relevant, timely and complete to the extent specified in the legal and regulatory framework. Electronic procurement sites help interested parties to understand the procurement process and to access the results. The electronic procurement portal provides for video instructions and manuals and technical documents for purchasing personnel. There is no formal certification programme to use the e-procurement system.
351. Regarding the volume of information published on the websites, the Procurement Rules provide that unclassified (non-military) procurement plans are published in the system automatically following approval. Procurement plans are published at the beginning of the purchasing year before the bidding, and the requiring units in Samruk-Kazyna publish long-term and yearly procurement plans. In addition, according to the Procurement Rules, the e-procurement system publishes a range of documents along the procurement cycle and meets the assessment criteria. However, the system does not publish contracts and information on the implementation of the contract, amendments to contracts, final payments for completed contracts and appeals.
352. According to stakeholder interviews, e-procurement seems to be used at all levels of government; officials have the required capacity with regards to both e-procurement oversight, planning and operations. However, the assessors did not have access to quantitative information to substantiate the findings from interviews.
353. While data is not fully open, Samruk-Kazyna does use the data from the e-procurement system for analysis and monitoring. Systems from subsidiary are equipped to feed information to the central management of the holding, according to stakeholders. However, no reporting on detailed indicators was publicly available.
354. At an institutional level, SK Contracts has a clear responsibility to manage and operate the system.
355. E-procurement is one of the most highly developed areas of procurement of Samruk-Kazyna. According to the authorities, currently 100% of all the transactions are carried out using the e-procurement platform. Since July 2018, all modules (e-planning, e-tendering) are integrated into one single web-site making it easier to navigate and trace single transaction. Once the development is concluded, the platform will be connected to state registers which will speed up the process and will free the suppliers from the requirement to supply documents: checks will be automatic. In addition, Samruk-Kazyna uses data analytics to inform the ongoing reforms.

### **Substantive gaps**

#### *Sub-indicator 7(a)-(c) – Restrictive access to e-procurement and lack of performance monitoring*

356. Substantive gaps in indicator 7 relate to two areas: access and transparency of e-procurement and to performance monitoring. Due to the wider implications of the large gaps in sub-indicator 7(a), a red flag is assigned to this sub-indicator.



357. The majority of the information published on the websites is accessible only for registered users. In order to register, users must have an e-signature which they can obtain in two ways: 1.) By having a legal representation in Kazakhstan which is costly for foreign suppliers; or 2.) by applying to GAMMA technologies which will issue e-signatures for a maximum of one year with the cost of about EUR 130. These procedures create barriers for participation for foreign suppliers.
358. There is no single integrated website for the procurement information and procedures. Purchases are conducted on one site, market analysis on another, prequalification procedure on a third website. Participants need to register using e-signature in case they want to access tender documentation and/or to participate. Obtaining e-signature can be burdensome for foreign companies.
359. With regards to transparency, it is noteworthy that tender documentation, contract awards, and procurement statistics are not open for the wider public. The system is not yet integrated with other public systems, such as the taxation system, the justice system and the court decision system.
360. It remained unclear how statistics are being collected and what the frequency of any data publication is (if any). This hinders the opportunity to use the procurement data for policy decisions and hinders performance monitoring of the system as a whole. According to stakeholders, the system is used to support data collection and analysis, but no such report could be found online.
361. The assessors did not have access to neither the system nor to data to verify what kind of information is gathered and published. It was not possible to substantiate the assessment through an analysis of the mandatory quantitative assessment criteria in this indicator.

### **Recommendations**

362. In order to enhance the transparency of the procurement process, Samruk-Kazyna could give the public access to the procurement documentation, e.g. procurement plans, tender documents, evaluation reports, contract award decisions, contracts, statistics, etc. This would allow NGOs and citizens to act as watchdog and to take part in the monitoring function. In addition, increased publication can enhance competition and can prevent corruption. Wherever possible, data should be published in an open format according to internationally accepted standards on transparency, such as the Open Contracting Data Standard. Transparency requirements should not only refer to the publication of procurement documents of a single transaction but also the publication of aggregated data. This can take form of trimester, semester and/or annual reports covering the main indicators related to the efficiency and effectiveness of the procurement system (see the quantitative assessment criteria for this indicator.) Published information could include data related to the review function.
363. Access to the e-procurement system should be freed from technical and legal hurdles and instead allowing for an easy registration and participation of all potential suppliers, not only local but also foreign suppliers. In this regard, as detailed above, the usage of e-signatures can be a significant challenge for some companies and de facto works as a barrier to accessing to the market. This practice should be eliminated. Access for foreign suppliers can be facilitated also by translating at least the contract notice into English, so that foreign suppliers have an understanding of whether they are interested in the procurement procedure. Creation of a single integrated web-site with a single database for all procurement transactions is recommended in order to save suppliers and contracting authorities' time and resources spent on conducting procurement procedures on different platforms.



## Indicator 8. The public procurement system has a strong capacity to develop and improve

364. This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: *i)* whether strategies and programmes are in place to develop the capacity of procurement staff and other key actors involved in public procurement; *ii)* whether procurement is recognized as a profession in the country's public service; *iii)* whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

### Findings

365. SK Contract LLP, a subsidiary in the Samruk-Kazyna holding structure, is tasked with the training of the representatives of subsidiaries and organizes seminars related to procurement. Samruk-Kazyna also has a subsidiary called Corporate University Samruk-Kazyna, which provides training for purchasing staff of procuring entities as well as suppliers. This training is part of general training for staff from the entire holding.

366. In addition, new rules on certification have been adopted in August 2018. These rules do not contain any reference to permanent training programs but regulate the process and procedures specific to certification.

367. There is no training strategy and no permanent training programs. According to stakeholders, the existing trainings are carried out on an ad-hoc basis. Procurement is not recognized as a function. There is no specific grading system for procurement officers, but there is one for general human resource management. Procurement officers pass through the general human resources procedure in order to be appointed (testing, interviews.)

368. Key performance indicators (KPI) and data are used for decision making, but the extent of their use remained unclear. Performance evaluations are carried out based on the general human resource regulations, no specific evaluation for procurement officers exists. Newcomers are trained in a short course about the activities of the Fund, including procurement. No specific continuous professional development programme is provided for procurement officials.

### Substantive gaps

#### *Sub-indicator 8(b) and (c) – Capacity building and professionalization*

369. While the introduction of a certification mechanism greatly enhances the professionalization efforts in Samruk-Kazyna, the holding does not yet have a strategic and encompassing approach to capacity building and professionalization of public procurement. Initial efforts are undertaken that are likely to provide a considerable improvement to Samruk-Kazyna's capacity to develop and improve procurement.

370. A red-flag is assigned to sub-indicator (c) (performance monitoring), as this area presents a substantial gap that might have an impact of the achievement of basic public procurement objectives. The assessors were unable to verify to what extent a performance monitoring system exists.

371. Currently, Samruk-Kazyna does not have a capacity building program that caters to all staff involved in procurement activities in a strategic and evidence-based way. The existing initiatives, mostly trainings, have *ad hoc* character. Overall, procurement is not considered a profession. There is also no performance measurement system that could support



improvements to the system and inform capacity building efforts. The KPIs that are used are not linked to any capacity building measures or to inform merit-based promotions.

### **Recommendations**

372. Samruk-Kazyna should aim to build a comprehensive, strategic and evidence-based approach to capacity and professionalization. In doing so, the Fund can follow a step-by-step approach, building on existing efforts and expanding them gradually to fill all aspects of a strategic approach. The recently adopted certification mechanism could serve as a starting point and the momentum gained from its introduction should be used for further enhancing performance management and professionalization.
373. As a first step, Samruk-Kazyna could assess training needs for all employees involved in procurement transactions. Based on the results, a procurement training strategy should be developed which in its turn will serve as a basis for the permanent training program. The program should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions and other relevant topics. The program should be routinely evaluated and amended based on the needs of the stakeholders and the feedback received. Training programs can also be linked to more structured certificate programs with differing levels of qualification (certificate, diploma, etc.) Once the certificate program is fully established, the next step could be the recognition of procurement as a profession in Samruk-Kazyna. The routine evaluation of staff can help to find gaps in knowledge and direct people to appropriate training and certification programs.
374. Finally, to ensure that professionalization and capacity building activities are evidence-based, Samruk-Kazyna should develop and implement a performance measurement system that focuses on both quantitative and qualitative aspects of public procurement. Evaluations of procurement procedures and their effectiveness should be undertaken, as well as evaluations of procurement staff. Insights from these processes can also inform policy decisions on the future development of the procurement system of Samruk-Kazyna, and can also be instrumental in tracking the outcomes of the current transformation program that the Fund undertakes throughout its structures.

## **4.3. Pillar III - Public Procurement Operations and Market Practices**

375. This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.
376. While several good practices exist in public procurement in Samruk-Kazyna, gaps remain – limited visibility about performance exists. Available statistics indicate a disproportionate use of single source methods, and price is the only award criteria that is commonly used.
377. Overall, the public procurement market that Samruk-Kazyna interacts with is functional. However, a major gap (and red flag) relates to access. In addition, there is limited engagement of suppliers and no sector strategies.
378. The assessment presented in the following pages has to be considered in light of the fact that the assessors were not granted access to information about procurement performance and no access to sample procurement cases by Samruk-Kazyna. Therefore, the assessment was



unable to ascertain whether public procurement practices achieve the assessment criteria stated in indicator 9. The conclusions for indicators 9 and 10 are based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. Nevertheless, the assessment remains incomplete without the access to data or a meaningful sample of procurement documents.

379. Red flags are raised for indicator 9 and sub-indicator 10 (b).

### **Indicator 9. Public procurement practices achieve stated objectives.**

380. The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

381. The assessment of this indicator cannot be fully concluded due to a lack of access to information. Red-flags and substantive gaps have been assigned accordingly. Despite repeated requests by the assessors, Samruk-Kazyna did not grant access to a sample of procurement documents, data or other information on actual procurement cases that would be necessary to analyse the performance of Samruk-Kazyna's procurement system. The conclusions for indicators 9 and 10 are based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy. Nevertheless, the assessment remains incomplete without the access to data or a meaningful sample of procurement documents.

### **Findings**

382. The evaluation of the assessment criteria in indicator 9 would usually require the review of a sample of procurement cases. In this review, no such access was provided. As a consequence, the analysis of this indicator has to remain limited and is based on interviews with representatives from procuring entities, requiring units and suppliers and limited procurement documents from a second-tier subsidiary KazAutoZhol.

383. Overall, the legal and regulatory framework creates the basis for a procurement process that would comply with many of the assessment criteria in this indicator. However, the practical implementation, according to stakeholders, remains behind the possibilities outlined in the Procurement Rules.

384. One of the major findings with regards to the procurement practices is the relatively high share of single source procurement 86.5% of the entire procurement volume (2016; see section on country context for a detailed representation of procurement spending by Samruk-Kazyna).<sup>65</sup> This is due in part to the large list of exceptions that allow for single sourcing. There does not seem to be an intent to reduce this list as part of the ongoing reform. Instead, it is

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<sup>65</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia (2017), Anti-Corruption Reforms in Kazakhstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>.



envisioned to authorize all subsidiaries in the holding structure to approve their own list of exceptions, which will probably result in an increased list of exceptions, rather than a more limited list.

385. The Procurement Rules prescribe to award contracts to the bidder offering the lowest price, for all methods of procurement, including consulting services. This means in practice that the quality of procured goods, works and services is likely lower than in a situation where non-price criteria would be used. Overall, good value for money cannot be achieved under these circumstances. According to interviews, in the procurement of consulting services, an attestation (pre-qualification) is being organized to assess the technical abilities of the suppliers (experience, suggested staff). The list of pre-qualified suppliers is published and the contracting authority is asked to procure from the suppliers included in this list. This allows the usage of the lowest price as the award criterion among the attested consultants. In the future, Samruk-Kazyna is planning to use life cycle costing in accordance with category management.
386. As reported by stakeholders, e-procurement is used across the board, without exceptions. While this statement could not be verified due to a lack of access to information and the e-procurement system, it seems plausible that there is a high rate of compliance with the requirement to conduct all procedures via e-procurement. This, in turn, means that procedures are most likely also complying with aspects that can be controlled through electronic procedures, such as the quality of the documents, timelines, etc. In fact, stakeholders reported that a large part of the bid evaluation (since it is based mostly on price and pre-specified discounts) is automated. Errors are likely reduced, but there is no room for discretion on the part of the individual procurers that would allow realising value for money in other areas.
387. Stakeholders mentioned that it is practically impossible for some suppliers to participate in procurement by Samruk-Kazyna, as the holding tries to create its own pool of suppliers. Market distortion as a result of such actions is obvious, especially taking into account the importance and size of the procurement of Samruk-Kazyna.
388. In general, there are detailed rules that prescribe a plethora of advanced procurement methods and processes to increase efficiency and effectiveness. However, due to a lack of access, limited evidence could be obtained to what extent these rules are actually applied on a regular basis. The low number of competitive procurement methods used suggests a relatively lax enforcement of these rules.

### **Substantive gaps**

#### *Sub-indicator 9(a)-(c) – Inaccessibility to data and documents for performance assessment*

389. Despite repeated requests by the assessors, Samruk-Kazyna did not grant access to a sample of procurement documents, data or other information on actual procurement cases that would be necessary to analyse the performance of Samruk-Kazyna's procurement system. The conclusions for indicators 9 and 10 are based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. Nevertheless, the assessment remains incomplete without the access to data or a meaningful sample of procurement documents.
390. Only a limited analysis of procurement cases was undertaken (five published cases), given that the assessment team had no access to a sample of procedures that adequately represent Samruk-Kazyna's public procurement. The assessment team had access to cases from second-



tier subsidiary KazAutoZhol, which speak to Samruk-Kazyna's overall procurement practices only to a limited extent. The quantitative assessment criteria have not been evaluated. Based on information retrieved from the legal and regulatory framework, in stakeholder interviews, and based on the limited document review, several gaps were identified as described below.

The following tasks are not undertaken or used in practice:

- Needs analysis and adequate market research
- Inclusion of sustainability criteria or considerations thereof in contracts
- Determining best value for money
- Inclusion of incentives for better performance of suppliers in contract clauses
- Engaging civil society throughout the procurement cycle (only above a certain threshold, not involved in planning and contract management.)
- Extensive procurement statistics do not seem to be publicly available.

As stated in indicator 4, suppliers that were interviewed described hurdles with regards to receiving payments and complained that being paid required cumbersome follow up, and even then payments were often late.

391. The assessment team was unable to evaluate whether:

- Whether standard bidding documents are used (however, it is assumed that they are used because e-procurement requires their use);
- Procurement documentation include reasoning for procurement methods chosen;
- Procedures are clearly described in bidding documents;
- Actual participation of civil society in the procurement process;
- Bidders attend the bid opening;
- Awards are adequately published;
- The selection and award process is conducted with efficiency and effectiveness;
- Contracts are implemented properly;
- Contract amendments follow the rules, and
- Records are complete.

392. Taking together the limited visibility about procurement performance, as well as the indications of procedures that do not favour value for money (high number of single sourcing, no use of evaluation and award criteria beyond price), it is likely that basic principles of public procurement are jeopardized by the procurement practices in Samruk-Kazyna. Therefore, a red-flag is raised for this indicator as a whole.

### **Recommendations**

393. There are two leverage points that should be used to increase compliance with this indicator and improve procurement performance: first, data gathering and performance monitoring, and second, professionalization of the procurement workforce.



394. First, Samruk-Kazyna could increase data gathering and in parallel develop a system to monitor performance, aiming at addressing the performance indicators stated in the MAPS indicator 9. The wide use of e-procurement offers potential to analyze public procurement performance in more detail and more strategically than to date. Many of the items mentioned in indicator 9 could be easily analyzed using electronic procurement data, not only for the benefit of this assessment, but more broadly to improve the efficiency and effectiveness of Samruk-Kazyna's public procurement. Whatever the solution, data and insight should be published, so that interested citizens, potential suppliers and civil society organizations can review the information. Publishing statistics and performance indicators has several benefits, including increased oversight by civil society which can reduce corruption, and support improved preparation of the procurement market which can result in better suited offers by potential suppliers.
395. Second, Samruk-Kazyna could focus on improving the performance of public procurement in delivering value for money. As highlighted in pillar I, procurement processes should be increasingly competitive, and rules should be amended to allow for evaluation criteria beyond price. These measures would render the procurement system more competitive, which will improve value for money. As mentioned above, the implementation of e-procurement is promising with regards to efficiency gains and the elimination of errors. However, efforts should go beyond these measures, focusing on the capacity of the procurers and procurement units to deliver value for money (see also indicator 8.) Measures to increase capacity should be structured and strategic, and cover all aspects of capacity and professionalization, including hiring a sufficient number of staff, providing training and career paths, but also written and verbal guidance, and the creation of standard documents and standard contracting conditions.

#### **Indicator 10. The public procurement market is fully functional**

396. The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.

#### **Findings**

397. As mentioned in previous indicators, access to public procurement opportunities with Samruk-Kazyna is limited at times due to the set-up of the public procurement framework. The public procurement market that Samruk-Kazyna taps into is characterized by these constraints.
398. Generally, there are elements of dialogue between Samruk-Kazyna and suppliers about public procurement; the private sector is organized to an extent and some sector-specific strategies exist. An important role is played by Kazakhstan National Chamber of Commerce Atameken (see further information on Atameken in indicator 11), which acts as the mouthpiece of business in Kazakhstan. Suppliers that were contacted for this assessment seemed in general willing to participate in public procurement opportunities; however, some stated that procurement opportunities with Samruk-Kazyna and other SOEs were more difficult to attain than those in the general government sector. According to anecdotal evidence, Atameken has been included in hearings related to the current reform process. However, it remained unclear how far-reaching this engagement has been and to what extent suggestions have been taken into account.
399. As part of the general reform efforts, Samruk-Kazyna is planning to create a pool of prequalified suppliers. The system will include several tiers, depending on the complexity of



the item to be purchased. Aside from rendering the procurement process more efficient and effective, one goal in this plan is to reduce exposure to non-performing suppliers (“unreliable suppliers”). As has been reported by several procuring entities, both in Samruk-Kazyna and beyond, it has been a problem on the one hand to maintain open competition and on the other hand to ensure that the contract is awarded to a reliable supplier that will perform the task satisfactorily. As stated in indicator 1, this problem is related to the fact that qualification, evaluation and award criteria are not properly distinguished, and that price is the only criterion used to determine the winning bid.

400. Sector strategies are developed to a limited extent by the subsidiaries in the Samruk-Kazyna holding, but not on the overarching fund-level. At the fund-level, the prequalification mechanism can be considered a risk-based approach, as it groups procurements according to their complexity and also according to their vitality to Samruk-Kazyna’s mission. More important, and more complex procurements require a more thorough prequalification level.

### **Substantive gaps**

#### *Sub-indicator 10(b) – Restricted participation to the procurement market and opportunities*

401. The most problematic issue in this indicator is the status of foreign suppliers and their access to public procurement opportunities. Therefore, a red flag is assigned to sub-indicator 10 (b) because it is likely impossible to resolve this issue in the medium term, as the political strategy in Kazakhstan is to promote local content. De facto, foreign suppliers are in most cases unable to participate in public procurement opportunities: while there is no direct restriction or preference for local content, access is limited by a cascade of administrative requirements. All procurement opportunities are processed using the e-procurement system, which means that bids have to be submitted exclusively through this portal. In order to do that, a bidder has to demonstrate that he possesses an electronic signature. A supplier can obtain an electronic signature by filing a request with the provider of the e-procurement portal. One of the requirements to file this request, however, is a Kazakh tax number. This tax number is provided only to entities that have a registered presence in Kazakhstan. This, however, is a step that the majority of foreign suppliers do not want to undertake, as it is costly and bureaucratic. While foreign suppliers can register with a dedicated body to receive an electronic signature, this process as well is complicated and not transparent.
402. This hindrance of access for foreign suppliers has led to difficulties for some contracting authorities in other SOEs, which were unable to purchase security relevant spare parts that are exclusively available from foreign suppliers. While similar situations have not been reported from subsidiaries in the Samruk-Kazyna holding, these scenarios cannot be dismissed as unrealistic. In addition, and more importantly, lack of access of foreign suppliers reduces competition and will result in worse performance of public procurement processes in terms of efficiency and effectiveness.
403. Another gap relates to the lack of structured mechanisms for involvement beyond the established associations, as well as to the support suppliers receive in participating in procurement opportunities. There is no structured approach for the exchange with suppliers or to build their capacity in responding to bids; no particular consideration is given to SMEs. A number of open tenders is ultimately handled as a single sourcing procedure, which is permissible if only one or no responsive bid was received. This indicates a relatively low quality of submissions and potentially challenges on the part of suppliers to develop bids that are responsive indeed. Another reason might be that potential suppliers are unaware of procurement opportunities. Both issues could be addressed by increased dialogue with suppliers.



404. No quantitative information about Samruk-Kazyna's suppliers were made available to the assessment team.

### **Recommendations**

405. In response to the identified gaps, Samruk-Kazyna could undertake the following measures:

- a) In line with the recommendations in previous indicators, increase competition by increased access for suppliers, in particular for foreign suppliers. This includes reviewing the procedures for registration and requirements for submitting bids, and should aim at removing all systemic constraints to participation.
- b) Introduce additional and diverse avenues for supplier engagement, while maintaining a necessary neutrality and distance to ensure high standards of integrity (i.e., avoiding corruption or collusion.) A viable mechanism could be to provide additional information on the procurement process, in particular to smaller suppliers, in the form of guidance documents, trainings or helpdesks. These capacity building opportunities should be disseminated widely. As Samruk-Kazyna is undergoing its modernisation process, suppliers should be surveyed to capture their needs and suggestions.
- c) Gather statistics about suppliers and use them as part of performance monitoring, e.g. to see what share of firms in the market actually participates in procurements, what share of suppliers is successful (or not), etc.
- d) Expand the risk-based approach beyond the prequalification mechanism. That means to comprehensively identify risk areas (beyond the tiered system used in prequalification) and to make efforts in tackling these risks beyond the prequalification stage.

## **4.4. Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System**

406. Pillar IV includes four indicators that are considered necessary for a system to operate with integrity that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and that has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

407. First steps have been undertaken in engaging civil society about public procurement, notably when it comes to procurement reforms and through a cooperation with business associations. However, limited public information hinder meaningful input by civil society, be it in the procurement process or with regards to reforms.

408. Samruk-Kazyna's audit and control mechanisms appear to be working as intended and in general are able to control and audit public procurement activities. Gaps relate to a lack of independence of the audit function, which is combined with other functions in Samruk-Kazyna's Procurement Methodology and Control Department



409. While a process for challenges and appeals exists, procedures do not meet the assessment criteria outlined in the methodology. Notably, gaps relate to a lack of independence that impacts its decisions (similar with regards to the issues outlined for the audit function.)
410. Samruk-Kazyna's anti-corruption framework follows the rules for Kazakhstan as a whole and the most important legal and regulatory provisions are in place. There is evidence of some enforcements. Gaps relate to procurement-specific measures and stakeholder engagement.
411. Red flags have been assigned to indicators 11, 13 (b, c) and 14 (c, d, e).

## Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

412. Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: *i)* disclosure of information and *ii)* direct engagement of civil society through participation, monitoring and oversight.

### Findings

413. Samruk-Kazyna has taken steps to increase transparency with regards to public procurement, and to involve stakeholders in the processes, which has contributed to increased integrity. Some aspects of stakeholder engagement and transparency have been enshrined in procurement rules, but the de facto engagement and transparency remains limited. To what extent there is a meaningful contribution of civil society to the public procurement system has been difficult to assess.
414. Laws, regulations and policies are published and accessible for everybody (at least in Russian.) Any documents related to procurement procedures, such as notices about opportunities, sample documents, etc. are available on Samruk-Kazyna's e-procurement portal. However, in order to access these documents, interested parties have to be registered as a user in the portal, which is hindered by several bureaucratic requirement (see indicator 7 for additional information.)
415. As mentioned in indicator 10, an important role in terms of engagement of the public is played by Atameken, the National Chamber of Commerce. Aside from commentary on the legal reform, Atameken representatives are also participants in procurement commissions that are formed for above-the-threshold open tenders. This is a positive measure to ensure procurement is conducted with fairness. Beyond Atameken, there appear to be limited organizations with strong influence on policymaking in the area of public procurement.

### Substantive gaps

#### *Sub-indicator 11(b)-(c) – Insufficient citizen engagement in public procurement process*

416. While there are some rules that allow and encourage for the inclusion of civil society in public procurement, there does not seem to be a culture of openness and transparency, as illustrated by the gaps detailed in this section. Most of the identified gaps do not prevent the successful attainment of basic procurement principles. However, the culture within Samruk-Kazyna seems engrained in a way that does not favour transparency and openness towards stakeholder engagement, which will make action extremely difficult. In addition, there are no



civil society organizations that independently monitor public procurement. While the gaps do not seem to hinder the attainment of basic public procurement objectives, the change of culture towards engagement and exchange is likely to require significant political will. Changes are necessary beyond the leverage that policy by Samruk-Kazyna can have. Therefore, it is suggested to raise a red flag for sub-indicators 11 (a) and (b).

417. Further gaps relate to the inclusion of civil society organizations. There is no capacity building or training for CSOs on public procurement, and no evidence that the comments and feedback of civil society is sought for policy making, and that if it is, it would be taken into account. Civil society organizations that were interviewed as part of the fact finding for this assessment were not contacted to provide feedback.
418. With regards to individual procurement processes, there is limited transparency and limited opportunity for some specific representatives (such as from Atameken) to participate. Not all procurement information is accessible, albeit far-reaching rules that make the publication mandatory. De facto, access is hindered by additional rules requirement to register for the e-procurement system. There was no evidence that civil society representatives participate in procurement proceedings, such as during bid-opening or as watchdogs, or in the analysis of procurement cases ex-post.

### **Recommendations**

419. At the heart of indicator 11 is a culture of transparency and openness towards influence by the public. Samruk-Kazyna could, to the extent possible in its realm of competence and policy setting, build on existing measures to seek feedback from the public, and further increase transparency. Samruk-Kazyna can gain immensely by allowing more transparency and access to information about public procurement (and requiring the subsidiary companies in the holding to follow this approach): transparency can increase competition and in turn more effective and efficient outcomes of procurement procedures, which can translate in financial savings and can reduce corruption. From a planning perspective, early engagement of stakeholders can ensure that the purchased good, works or service delivers in the best possible way for Kazakhstan's citizens.
420. Practically, one mechanism could be to actively seek feedback to proposed changes from suppliers and the public, by sharing draft rules and gathering (anonymized) commentary. Efforts should be made to publish all documents that are not classified and provide them in a platform that is accessible to the general public without hurdles such as registration only for companies and not for users that use the system in a "watchdog" role. Civil society organizations and interest groups could be invited to participate in important public procurement processes.

### **Indicator 12. The country has effective control and audit systems**

421. The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, "effectiveness" means the expediency and thoroughness of the implementation of auditors' recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.
422. The assessment of this indicator cannot be fully concluded due to a lack of access to information about the control and audit system. Substantive gaps have been assigned accordingly. The report presents conclusions based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their



own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy.

## Findings

423. Samruk-Kazyna has a separate audit structure that largely reflects the structure of the general audit system in Kazakhstan. Overall, the main elements of an audit system are in place. However, the system does not seem to be fully independent or effective. In addition, there is no specific structure for public procurement, nor is any specific attention to public procurement made.
424. The conclusions for this indicator remain limited given that the assessors did not have sufficient access to information that would allow a full assessment of this indicator. Not all documents detailing the rules pertaining to the audit function in Samruk-Kazyna were publically available or made available to the assessment team by Samruk-Kazyna. The following presents findings from interviews with stakeholders, information provided by Samruk-Kazyna in written form and additional research.
425. Viewed top-down, the audit structure for Samruk-Kazyna is as follows: The Accounts Committee (also referred to as "Accounts Chamber", Russian Счетный Комитет по контролю за исполнением республиканского бюджета) is Kazakhstan's Supreme Audit Institution and is the top organ overseeing audit in Kazakhstan, including in Samruk-Kazyna. The Accounts Committee reports directly to president, who appoints the Accounts Committee's members.
426. The highest audit institution within Samruk-Kazyna is the Audit Committee on the level of Samruk-Kazyna's board of directors. The Audit Committee consists solely of independent directors. It is the Audit Committee that handles results of audits throughout Samruk-Kazyna.
427. In addition, Samruk-Kazyna has a Special Committee, consisting of representatives from the Holding management, the Ministry of Finance and Kazakhstan's Accounts Committee. The remit of the Special Committee is more related to follow up on the holding's operations from a general impact and efficiency perspective. That means that the Special Committee focuses more on performance monitoring for operational decision-making rather than audits to tackle violations. While being a member of the Special Committee, the full role of the Accounts Committee vis a vis Samruk-Kazyna remained unclear: whether the Accounts Committee's oversight is limited to this participation in the special committee, or whether the Accounts Committee can act independently of this Special Committee to exercise a full supervisory function that an SAI should have.
428. The Procurement Methodology and Control Department is responsible for conducting the audits. This department acts as an external audit unit to the subsidiaries within the holding.
429. Finally, each individual subsidiary in the Samruk-Kazyna holding structure has its own audit committee (similar to the Internal State Audit Committee in other governmental institutions in Kazakhstan.) These audit committees or units report to the Procurement Methodology and Control Department.
430. There are two types of audits in Samruk-Kazyna and its subsidiaries: scheduled and unscheduled audits. The schedule for scheduled audits is determined based on the level of the subsidiary within the Samruk-Kazyna holding structure, past procurement activity and results of past audits (e.g., unscheduled audits.) Unscheduled audits are generally conducted in response to tip offs. In addition, subsidiaries can ask the Procurement Methodology and Control Department to conduct an unscheduled audit.



431. As can be assessed from interviews, the frequency and type of audits seem to be overall sufficient and coordinated, they support timely and efficient decision-making while allowing for adequate risk mitigation. However, no quantitative information or case-related documents were made available to the assessment team, so that no evidence for the actual frequency, quality or enforcement of audits and their recommendation was found.
432. Based on the audits of the subsidiaries or the Procurement Methodology and Control Department, the Audit Committee issues recommendations on how to address any shortcomings that were identified during an audit. However, it remained unclear how binding these recommendations are: The subsidiaries have considerable freedoms in acting on the results of their own audit. In addition, reporting lines are unclear.
433. Manuals, standards and guidance exists, but similar to the rules and regulations these are not publically available and were not made available to the assessors.

### **Substantive gaps**

#### *Sub-indicator 12(a)-(d) – Absence of clear and effective oversight systems*

434. While the general structures of an audit system exist and interviews points towards a reasonable implementation according to standards, larger gaps remain.
435. First, a de-facto verification of the quality of audit rules and processes was not possible. The assessment team did not have access to the rules, standards, guidance and manuals or any other documents regulating audit within Samruk-Kazyna beyond publically available documents that shed only limited light on the matter. In addition, the assessment team did not have access to any quantitative information on audits, or insight into audit case files to verify outcomes, enforcement or timeframes.
436. Second, reporting lines and responsibilities in the audit structure remain unclear (mostly due to the limited insight into rules and regulations.) It cannot be established to what extent external oversight over audit within Samruk-Kazyna is exercised by the Accounts Committee (the SAI in Kazakhstan). While external audit firms are hired to conduct audits, it would be important to ensure the quality of audits, which is most effectively done through the oversight of an independent institution.
437. Third, previous research indicated that Kazakhstan’s SAI, the Accounts Committee, could not be considered fully independent.<sup>66</sup> Ideally, the SAI should be responsible only to the parliament and no other institution or actor. While this aspect is not directly related to the public procurement system nor the influence of Samruk-Kazyna’s management, the fact that the audit system overall is not fully independent represents a major obstacle to the achievement of the basic principles of public procurement, notably efficiency and effectiveness. Without an independent audit function, there cannot be a guarantee that rules are adhered to and public funds are indeed spent according to the rules.
438. Fourth, there is no specific consideration of public procurement in the audit function; no training or specific guidance is available. Auditors are selected according to standard human resource rules and no specific qualification is necessary to conduct procurement audits.

### **Recommendations**

439. In order to comply with this indicator, substantial changes to the audit structure should be undertaken. While changes to the general audit structure are out of reach for Samruk-Kazyna’s management, as detailed above, without an independent external oversight, audit

<sup>66</sup> OECD (2017), Integrity Scan of Kazakhstan.



in Samruk-Kazyna cannot be considered fully effective. With regards to their immediate reach, Samruk-Kazyna could consider further separating the audit function from the day-to-day operations of the fund, notably the public procurement function. To fully act in lieu of an external audit to the subsidiaries of the fund, a unit with this task should be fully independent and not integrated into the rest of the management structure.

440. More information about audits, associated rules and standards, as well as data about their implementation and enforcement should be made available or collected where this is not yet done. This should include quantitative information. Knowing the rules for audits can help procurers on all levels of the Samruk-Kazyna structure to comply with these rules, and implement procurement procedures with a view to documenting their decisions, which in turn will make subsequent audits easier. Analyzing the outcome of audits with a quantitative lens can highlight challenges with regards to the implementation of public procurement processes, and in turn will inform decision making and policy reform.
441. Finally, audit structures and auditors should be equipped with a “public procurement lens”, i.e., mechanisms for both compliance and performance should be introduced to the audit toolbox that take account of the specific aspects of public procurement, and auditors should receive specific training on public procurement. Part of this should be to hire auditors with knowledge of public procurement that can then disseminate their expertise among their peers.

### **Indicator 13. Procurement appeals mechanisms are effective and efficient**

442. Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.
443. The assessment of this indicator cannot be fully concluded due to a lack of access to information about the appeals mechanism. Red-flags and substantive gaps have been assigned accordingly. The report presents conclusions based on review of secondary data sources, information provided by Samruk-Kazyna after the validation workshop, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna’s public procurement system; and c) interviews with experts on Kazakhstan’s public procurement system. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy.

### **Findings**

444. The assessment of this indicator remains limited, because the assessors were not granted access to sufficient information by Samruk-Kazyna. Notably, the assessors did not have access to documents related to actual appeals cases. The following conclusions are based on desktop-research and stakeholder interviews.
445. Samruk-Kazyna has appeals and challenge procedures and institutions, and its basic elements are set. However, gaps remain for the more advanced assessment criteria, such as the deadlines and independence of the appeals body. In addition, it is not clear to what extent the appeals procedures are actually used and prove effective for the challenger and the institutions in practice.
446. The rules for appeals are set on the level of Samruk-Kazyna. In addition, it is noteworthy that the appeals mechanism and the audit function seem to largely overlap in terms of responsible institutions. Suppliers can submit appeals first directly to the subsidiary conducting the



procurement, and then – if the supplier is not satisfied with the outcome – to the Procurement Methodology and Control Department. If still not satisfied, the supplier can elevate her complaint to the Commission on Procurement complaints (internal to the fund). The courts are the ultimate forum for complaints if the Commission cannot resolve the dispute. All institutions in this hierarchy can recommend the subsidiary associated with the procurement in question to remedy the appealed situation; it remained unclear which institution has the ultimate decision making power (i.e., whether the subsidiary in the holding is obliged to observe the decision of the Special Committee or the Procurement Methodology and Control Department.) Deadlines are stated in the rules, but they remain unclear from the perspective of the suppliers. No fees are charged.

447. According to the authorities, a system of automatic suspension is currently being developed to be included in the e-procurement system.

### **Substantive gaps**

#### *Sub-indicator 13(a)-(c) – Insufficient provisions on procurement appeals mechanism*

448. Several gaps were identified in this indicator. The appeals mechanism has a crucial role in guaranteeing a public procurement system that meets basic procurement principles, as it is a key lever for establishing accountability. Therefore, this indicator is highlighted with a red flag as a whole, but notably due to gaps in sub-indicators (b) and (c).
449. First, the rules of the appeals procedure in Samruk-Kazyna are overall not clear and omit to specify several important elements. Aside from vague definitions of responsibilities, roles and decision-making authorities (see the section “findings” above), several concrete, procedural elements are not specified. For example, the time frames for submitting a challenge is not complete. As a consequence, it remains unclear for suppliers what his concrete deadlines are. In addition, more problematically, the deadline for the review by the appeals body can be extended without a final deadline – potentially unlimited. Finally, there are no clear rules with regards to suspension of procedures. It is not clear whether, how and under what circumstances the appeals body can suspend procurement procedures, and what kind of remedies are permissible. Finally, the rules do not specify whether it is mandatory for subsidiaries in the holding to act upon the decision of the appeals function and how enforcement is ensured.
450. Second, a major concern relates to the independence and capacity of the appeals body. A central role is entrusted with the Procurement Methodology and Control Department, which is the same unit that sets rules for procurement and is also deeply involved in the day-to-day activities of public procurement in Samruk-Kazyna. Having this unit in charge of appeals and challenges to the same processes they design or potentially lead, means that this unit cannot be considered an independent appeals body in line with the MAPS methodology.
451. Third, there is limited insight into the practical workings of the appeals mechanism, such as the extent to which decisions are independent, based on facts or timely, whether decisions are enforced, whether there is sufficient qualified staff, whether the proceedings follow the rules, etc. This is because no data or casefiles were public or made available to the assessment team; insight into actual proceedings was not possible. The fact that appeals decisions are not published represents in itself a gap with regards to the assessment criteria. Interestingly, appeals decisions in the government procurement framework are published. It was not possible to develop any of the quantitative assessment criteria, including the mandatory ones, due to a lack of information.

### **Recommendations**



452. Samruk-Kazyna could consider reorganizing its appeals mechanism with the goal of rendering it more independent and clearer, with increased certainty for suppliers. One of the most important measures would be to consider creating a more independent institution that is removed from the day-to-day procurement processes and policy setting, and entrust this unit with the review of challenges and appeals. This unit should be sufficiently staffed to conduct its work. While doing so, the rules for the appeals mechanism should be revised to address the above-mentioned gaps and to further specify details of the appeals mechanism. This will increase the accountability provided by the appeals body.
453. Finally, Samruk-Kazyna could consider gathering and publishing more information and data related to appeals procedures. Publishing case decisions, for example, can provide insight to procuring entities (i.e., subsidiaries in the holding) on how to decide in case they face a similar situation. Gathering quantitative information about appeals cases can allow the Procurement Methodology and Control Department to gain insights into the implementation of its policies.

#### Indicator 14. The country has ethics and anti-corruption measures in place

454. This indicator assesses *i)* the nature and scope of anti-corruption provisions in the procurement system and *ii)* how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

#### Findings

455. Samruk-Kazyna is subject to the general anti-corruption framework of the Republic of Kazakhstan. That means that the general laws and regulations apply, and these define prohibited practices, consequences for convicted public officials, as well as conflict of interest. However, no “cooling off” specifications were found. Additional administrative sanctions for the violation of procurement-specific rules are envisioned for the quasi-state sector; currently, a reform is being prepared that will focus on the seven most sensitive violations of public officials.
456. Given that no access to procurement documents, standard or individual was provided, it was not possible to verify the inclusion of prohibited practices in contract clauses. Employees of the contracting authority, as well as consultants, but not other types of suppliers, have to sign a conflict of interest disclosure.
457. The structure of the reporting system for allegations of prohibited practices remained unclear. As most basic elements, Samruk-Kazyna as an SOE is required to conduct internal risk analysis regarding prohibited practices, and has to refer cases to law enforcement institutions for follow up. More specific processes were not found, and no evidence was found the reporting is taking place. There is no debarment system, and enforcement takes place entirely outside of Samruk-Kazyna.
458. Several high-level corruption cases have been prosecuted, as reported by media, and illustrate that enforcement seems to function.
459. Dedicated measures by Samruk-Kazyna to prevent or tackle corruption remain limited. There is a general framework for corruption prevention in the public sector that is applied in Samruk-Kazyna, but the assessors did not find any publically available information to indicate that Samruk-Kazyna made any efforts to introduce preventative or analytical measures for the fund and its risk profile specifically. There are, however, risk analyses undertaken, but their



extent and effectiveness remained unclear. There is no dedicated anti-corruption training, no statistics or monitoring, and no specific considerations of public procurement and corruption.

460. Civil society organizations do not seem to be engaged with regards to corruption prevention in public procurement of Samruk-Kazyna. Civil society organizations that were interviewed about public procurement in general (i.e., with regards to the general government sector and SOEs), did not report any specific oversight activities that related to Samruk-Kazyna. In public procurement in Kazakhstan in general, the existing civil society organizations focus on corruption in general and procurement to a limited extent; their real influence is limited. In fact, some NGOs are hired by public institutions, to monitor procurement projects. However, it remains questionable to what extent these oversight efforts are really open and meaningful if the NGOs receive money from the institution they are supposed to check on.
461. Samruk-Kazyna does not have any such oversight. In comparison with the general government procurement, Samruk-Kazyna's procurement information appears to be less accessible to the public, given that documents pertaining to general government procurement are available in an electronic portal. There is no evidence that any oversight over the integrity of Samruk-Kazyna's public procurement is exercised by civil society.
462. Suppliers contribute to integrity mostly through the presence of the Chamber of Commerce (Atameken), who sends representatives to tender commissions of Samruk-Kazyna.
463. There is a mechanism to report suspicions of corruption, via a telephone hotline. However, it was not possible to ascertain to what extent it has been used. Overall, reporting lines for employees are clearly established, and such information is considered confidential and is followed up on.
464. A code of conduct exists, albeit with only limited specifications regarding corruption and public procurement. No financial disclosure requirements were found, and accountability is not established. While conflict of interest statements and financial disclosure forms are used regularly, beneficial ownership is not reported.

### **Substantive gaps**

#### *Sub-indicator 14(c)-(e) – Lack of comprehensive anticorruption framework and civil society oversight*

465. Samruk-Kazyna is lacking a comprehensive framework to tackle corruption. General rules exist and investigation and enforcement takes place via the general administration. However, the assessment team was unable to find evidence of the existence and effective use of various elements that should be part of a modern anti-corruption framework, including preventative measures and a risk-based approach. Samruk-Kazyna lacks rules about cooling-off periods, standard provisions related to fraud, corruption and prohibited practices for contract and procurement documents, clear procedures for reporting corrupt practices, debarment mechanisms, procurement-specific measures to prevent and tackle corruption related to procurement, data or statistics, or integrity training. Integrity in the public sector should be supported by a comprehensive framework utilizing a variety of tools. Considering Samruk-Kazyna as a multinational company, it is evident that many multinational companies have adopted complex and well-designed frameworks that serve to prevent and detect corruption, fraud and other prohibited practices. Without a functioning, comprehensive anti-corruption framework and a portfolio of measures aiming at preventing and reducing fraud, corruption and prohibited practices, it is likely that the basic objectives of public procurement, effectiveness and efficiency, are not met.



466. A second major gap relates to civil society oversight, for which no evidence was found. This aspect cannot be easily mitigated as it will not be possible to create a civil society watchdog that focuses on public procurement. Only the scrutiny of the public, however, establishes accountability for how public funds are spent.
467. Given the deeply rooted corruption risks and the simultaneous gaps in the anti-corruption framework, it is suggested to assign a red flag to some sub-indicators as the current situation hinders the achievement of basic public procurement objectives. The red flag is due to gaps in sub-indicators (c), (d), and (e).

### **Recommendations**

468. Samruk-Kazyna could introduce a comprehensive anti-corruption framework that considers the specific risks of public procurement. In doing so, Samruk-Kazyna could adopt not only clear rules and standards, but could also introduce tools like training, data gathering, due diligence, and others. Goal should be to work towards a culture of integrity.
469. In addition, Samruk-Kazyna could increase oversight by civil society to create accountability and ensure that procurements are conducted efficiently and effectively. In doing so, Samruk-Kazyna should create prerequisites for meaningful civil society engagement as mentioned in other indicators (see, for example, indicators 7, 9, 10, and 11). An important aspect is to make information and data on public procurement publicly available, and usable in a way that is amenable to analysis (i.e., opting for more open data formats, allowing access without any bureaucratic or technical hurdles).



## 5. Consolidated Recommendations

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### Recommendations for Improvement Priorities

The recommendations emerging from the application of the MAPS, both for the general government public procurement system as well as for Samruk-Kazyna's procurement system have identified several key areas for improvement the details of which have been highlighted in the relevant sections and volumes of this report. The present section summarizes the critical areas that need to be improved urgently given their impact on the performance of the two procurement systems. However, setting the sequencing to implement the recommended improvement activities to address key weaknesses in the two assessed systems would be left the discretion of the GOK. The validation process would offer the opportunity for the GOK and participating development partners to explore possible ways and means to support the recommended actions plan.

#### Improvement priorities for the public procurement system.

The MAPS assessment identified the following seven priorities areas for improvement:

- I. **Legal framework Coverage:** the scope of application of the PPL is limited and the lack of uniformity and universality of the legal framework coverage appear not contribute to predictability and savings in the operation of the procurement system. **In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible.** In this respect, consideration should be given to international practices which show that entities like National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework.  
**To better inform such future reforms, the Government should undertake a comprehensive study taking stock of the existing procurement rules applied by each of the excluded entity, assess the performance of these entities whether they achieve value for money while ensuring transparency and fair competition.**
- II. **Rules on participation:** Revise the current requirements for the access to e-procurement system and participation to bidding such as the requirement for electronic digital signature and the obligation to furnish a bid security only in the form of an electronic bank guarantee, through an account opened in one of the commercial banks of the Republic of Kazakhstan to ensure proper alignment with the PPL which professes open eligibility to all bidders.
- III. GOK is recommended to consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential foreign bidders to obtain digital signature certificates and submit the electronic bid security and pay for the web portal access fee from wherever they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.
- IV. **Procurement methods:** Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better



value for money and substantial gains in service delivery. Amendments could include (a) making open tender a default method; (b) more clearly specifying the conditions for the use of each procurement method; (c) reducing further the circumstances for the use of single source procurement; and (d) introducing framework agreements.

- V. Evaluation criteria and support to value for money. Improve the current approach for application of evaluation criteria based on allocating conditional discounts to bid prices for meeting additional qualifications to ensure achievement of better value for money procurement decisions.
- VI. Consider improving the use of price and non-price criteria and their evaluation methodologies including combination of weighted quality and price. Revise the relevant provisions of the PPL as recently amended and public procurement regulations (PPR) to bring clarity on various aspects of evaluating bids, including preserving confidentiality of parts of the bid that the bidder does not want to be disclosed to competitors.
- VII. Contract management and performance monitoring: Ensure moving the public procurement system to the next level in terms of quality and performance will require further strengthening of contract management performance measures and monitoring through (a) better definitions by legal framework of roles and responsibilities for contracts management, and (b) setting requirements for measuring contract implementation performance including KPIs.
- VIII. Professionalization: Preparing a public procurement skills gap inventory and a training needs analysis. This would inform capacity building and professionalization of the procurement function, possibility in partnership with local higher education institutions. The establishment of an institutionalized and sustainable procurement capacity-building program would represent a major benefit to Kazakhstan's procurement workforce and civil service in general and would have a positive impact on the overall efficiency of public sector operations.
- IX. Integrity and accountability: Consider targeted measures to address corruption risks in public procurement. Some legal changes, such as revisions to the anti-corruption law as well as revisions to the procurement legal and regulatory framework, could ensure that corruption risks in the public procurement process are adequately captured by the legal and regulatory framework. In addition, practical guidance for procurers on preventing and reporting misconduct could be expanded.

## Improvement priorities for Samruk-Kazyna's public procurement system

The MAPS assessment identified the following eight priorities areas for improvement:

- I. **Legal and Regulatory Framework:** It could be explored to what extent a unified public procurement framework for Kazakhstan would be beneficial. This could be beneficial also for Samruk-Kazyna as it could enhance competition and facilitate access for all interested companies to procurement opportunities.

Samruk-Kazyna could consider including missing aspects in its legal and regulatory framework, such as changing the rules in a way to promote sustainable and strategic procurement, clarifying the legal hierarchy of norms and evaluating the need to regulate PPPs. An important measure would also be to review and reduce the number of exceptions for open tendering currently permitted by the law, in order to enhance competition. Additional changes might be needed in the area of regulating bid opening, rules for information retention and for the review function.

- II. **Competition:** To enhance competition, Samruk-Kazyna could make efforts to eliminate preferences and set-asides. Increasing transparency is important as a prerequisite for fair



competition. Aside from increasing trust and enabling civil society to engage in public procurement, procurement information could allow potential suppliers to prepare and improve their submissions, resulting in better outcomes for the contracting authorities.

Samruk-Kazyna should make efforts to increase and diversify their supplier base to ensure access to the best value for money. As part of these efforts, Samruk-Kazyna could also devise activities to train and engage suppliers, while maintaining high integrity standards.

- III. **Strategic procurement practices:** As part of an effort to increase the performance of public procurement, Samruk-Kazyna could undertake efforts to make public procurement more strategic and sustainable, for example by devising a strategy on sustainability in its broadest sense (i.e., balancing the economic, social and environmental effects of public procurement.)

Samruk-Kazyna could conduct performance analysis, using the information from its e-procurement system, and make results publically available. The way information is stored in the e-procurement system could be amended to facilitate analysis. Monitoring of key performance indicators (KPIs) can be a useful way to identify opportunities to increase performance. This area is also amenable to capacity building initiatives.

In implementing these measures, a focus should be places on the market analysis and planning stage, as well as the contract management stage. These were areas that exhibited particular challenges.

- IV. **Contract management and performance monitoring:** Special emphasis in all measures should be given to how contracts are managed. Beyond improving performance, this relates to evidence-based monitoring of contract performance. KPIs should be used to monitor performance of all procurements; analysis should be undertaken and published. The reporting mechanism in the general public procurement framework could be expanded to cover completion of major contracts, including details on payments and other performance aspects such as time and cost overruns. As part of these efforts, attention should be paid to the links between contract implementation and budget execution, streamlining the two wherever possible and limiting cases in which procurements are launched without formal budget allocation.

- V. **Professionalization:** Samruk-Kazyna could expand its successful professionalization efforts by developing a more structured approach to professionalization, including a procurement training strategy which can serve as a basis for structured professionalization programme. The programme should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions and other relevant topics. A full-fledged certification programme for procurers with diversified and targeted offers, linked to career trajectories should be part of this programme.

- VI. **Institutions, tools and strategies:** The current efforts to introduce tiered prequalification processes can be coupled with efforts to centralise those items in the more standardised categories. Considerable economies of scale could be achieved by using modern techniques combined with partial centralisation. Two stage procedures could be more widely used. Samruk-Kazyna's public procurement system suffers from institutional arrangements that limit the institutional independence of crucial actors in the public procurement system. The responsibility for policy setting internal to the holding should be separated from the task of overseeing the appeals, review and audit functions.

- VII. **Integrity and accountability:** Samruk-Kazyna could benefit from a risk-based approach to corruption, identifying specific risks in the area of public procurement and implementing strategies to mitigate these risks. In the area of control and audit, rules need to be clarified and the institutions (see above) structured in a way to allow for effective checks and balances. A



specific debarment system could be introduced that takes into account integrity offenses (possible to link it to the supplier blacklist.)

- VIII. **Civil society & engaging the public:** This aspect is linked to other areas mentioned above and an area of concern for both procurement systems. For Samruk-Kazyna specifically, efforts should be undertaken to increase transparency of its procurement operations. In publicizing more information, Samruk-Kazyna could adopt the Open Contracting Data Standard (OCDS) to increase transparency and facilitate civil society oversight. Finally, civil society could be increasingly involved in more complex procurements.



## 6. Information regarding Validation

The assessment applied a three-step approach: (i) review of the system by applying assessment criteria expressed in qualitative terms; (ii) review of the system by applying a defined set of quantitative indicators; and (iii) identification of substantive or material gaps. The team employed various ways to collect and analyze the data, including: (i) a desk review of legal acts, regulations and other relevant documents; (ii) an in-country assessment through a mission in April and May 2018; and (iii) a survey conducted with private sector stakeholders, civil society organizations (CSOs), and non-government organizations (NGOs). For the quantitative assessment, the team examined a sample of 150 procurement transactions and contracts.

### Validation Process

*The process of validation*

#	Description	Tentative Planed dates
1.	Technical Advisory Group (TAG) AG review and comments	July 23, 2019
2.	Revised draft report incorporating TAG comments	August 23, 2019
3.	Formal sharing of the draft report (Russian version) with GOK /MOF and SK	September 12, 2019
4.	Presentation of the MAPS key findings to a broad group of stakeholders including government bodies, private sector, NOGs, and donors.	September 24, 2019
5.	Sharing the final report with GoK/MOF and SK and request for approval for the MAPS report publication.	February 28, 2020



## Annexes

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## Annex III: Source Documents

The source documents analysed for this assessment are detailed below.

### **National Development Plans, Indices, Regional and International Obligations**

Address by the President of the Republic of Kazakhstan, Leader of the Nation, Nursultan Nazarbayev, “Strategy Kazakhstan-2050: New Political Course of the Established State,” December 14, 2012.

[http://www.akorda.kz/en/addresses/addresses\\_of\\_president/address-by-the-president-of-the-republic-of-kazakhstan-leader-of-the-nation-nazarbayev-strategy-kazakhstan-2050-new-political-course-of-the-established-state](http://www.akorda.kz/en/addresses/addresses_of_president/address-by-the-president-of-the-republic-of-kazakhstan-leader-of-the-nation-nazarbayev-strategy-kazakhstan-2050-new-political-course-of-the-established-state)

The President of Kazakhstan Nursultan Nazarbayev’s Address to the Nation of Kazakhstan, “Third Modernization of Kazakhstan: Global Competitiveness,” January 31, 2017,

[http://www.akorda.kz/en/addresses/addresses\\_of\\_president/the-president-of-kazakhstan-nursultan-nazarbayevs-address-to-the-nation-of-kazakhstan-january-31-2017](http://www.akorda.kz/en/addresses/addresses_of_president/the-president-of-kazakhstan-nursultan-nazarbayevs-address-to-the-nation-of-kazakhstan-january-31-2017).

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<http://adilet.zan.kz/rus/docs/R1500000159>.

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[http://stat.gov.kz/faces/homePage?c404=1&\\_afrcLoop=914333673788433#%40%3F\\_afrcLoop%3D914333673788433%26c404%3D1%26\\_adf.ctrl-state%3Dm9e1oz7xo\\_42](http://stat.gov.kz/faces/homePage?c404=1&_afrcLoop=914333673788433#%40%3F_afrcLoop%3D914333673788433%26c404%3D1%26_adf.ctrl-state%3Dm9e1oz7xo_42).

Agency of Civil Service and Anti-Corruption of the Republic of Kazakhstan, <http://kyzmet.gov.kz/ru>.

National Chamber of Entrepreneurs "Atameken," <http://atameken.kz/>.

JSC " Fund of National Welfare "Samruk Kazyna": <https://sk.kz>



## Annex IV: Additional information on the general public procurement system (Volume 1)

Procuring Entity	Volume of procurement	
	KZT, billion	US\$, billion (at the average rate for 2017 1 \$ = KZT326)
State Public Procurement expenditures	1939 (*)	6,0
Samruk Kazyna Fund	4771 (**)	14,60
National holding company KazAgro	114 (***)	0,35
National IT holding company Zerde	27 (***)	0,08
National holding company Baiterek	1,3 (***)	0,004
National bank of the RK	22 (***)	0,07
<b>Total:</b>	<b>6,874</b>	<b>21</b>

(\*) Public procurement Web Portal-2017

(\*\*) Obtained by adding up the volumes of annual procurement plans for 222 companies that are part of the Samruk Kazyna Fund

(\*\*\*) Obtained by add up the total annual plans of holdings (national companies) and their subordinate companies (if available)

Source: <http://skm.kz/ru/plangz/holdplans/>, <https://www.kazagro.kz/> and subordinate company websites, <https://zerde.gov.kz/>, <https://www.baiterek.gov.kz/>, [www.nationalbank.kz/](http://www.nationalbank.kz/)

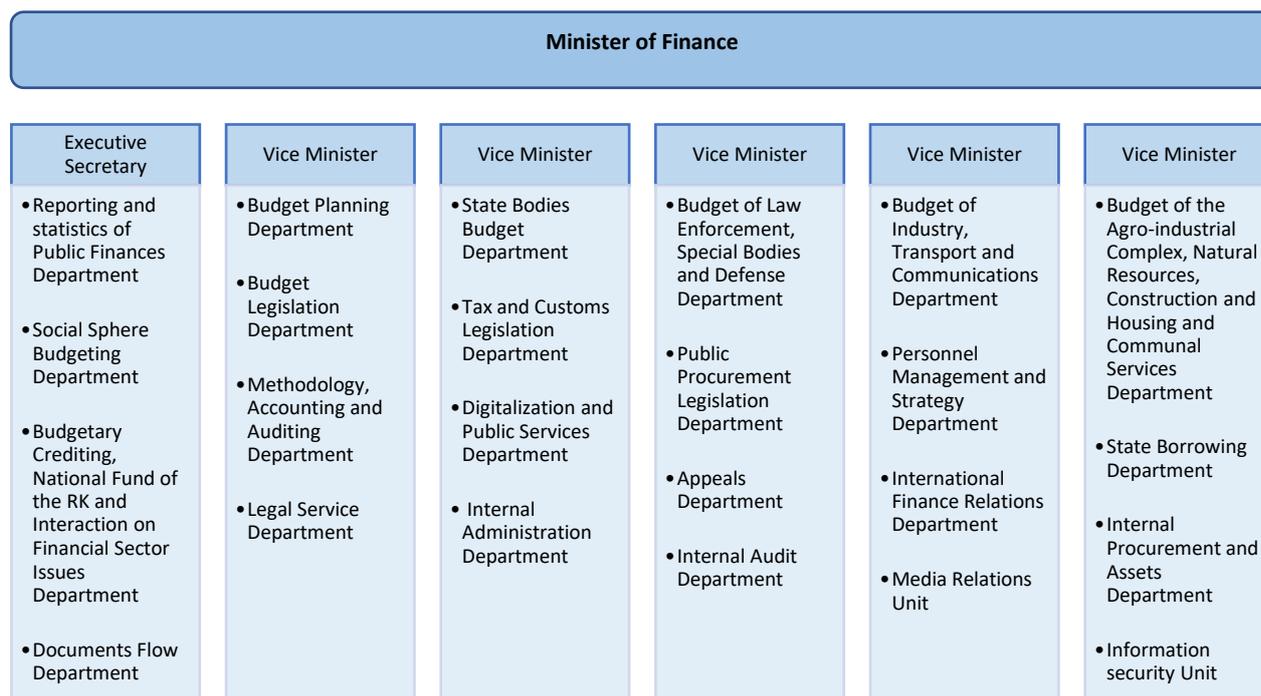
### Shares of procurement conducted through public procurement web portal, by method, 2017

Procurement method	Number of contracts	Actual procurement amount (KZT bln)	Actual procurement amount (Eq US\$ ml)	Method share in total procurement (%)
Tender	35,910	259,883	778	13.4
Auction	1,194	10,867	33	0.6
Request for quotations	337,073	71,629	214	3.7
One source	1,799,240	1,585,795	4,748	81.8
Purchases on commodity exchanges	1,366	10,588	32	0.5
<b>TOTAL:</b>	<b>2,174,783</b>	<b>1,938,761</b>	<b>5,805</b>	<b>100</b>

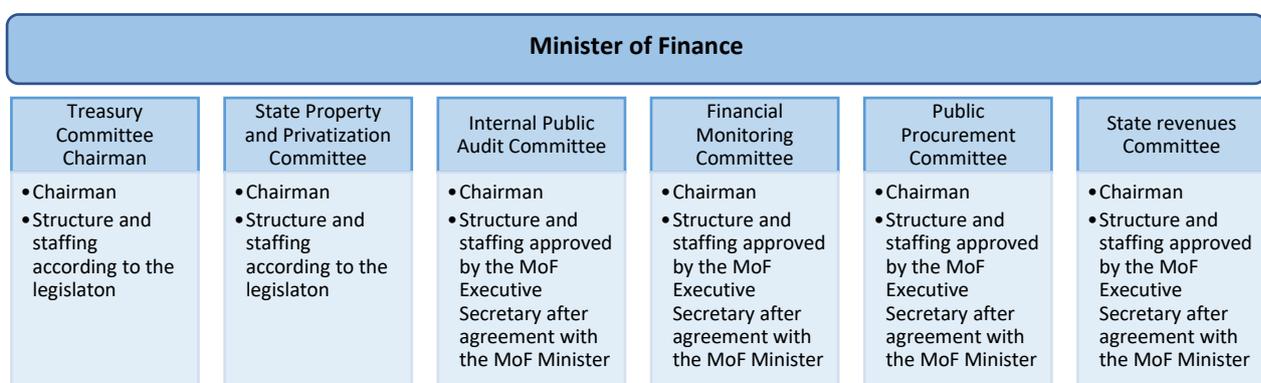
Source: <https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>.



## The Structure of the Ministry of Finance of Kazakhstan

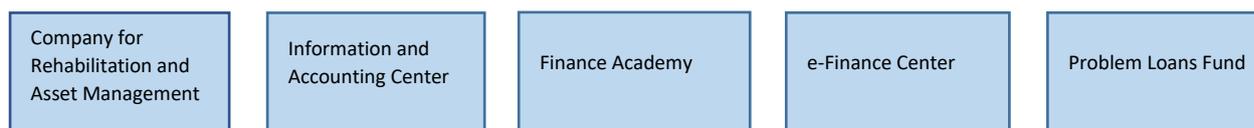


## Committees of the Ministry of Finance of Kazakhstan



Ministry of Finance plays the role of the Authorized Body through functions allocated to various entities.

## JSCs of the Ministry of Finance of Kazakhstan



Source: Structure of the Central Office of the Ministry of Finance of the Republic of Kazakhstan in the form of a graphic scheme, November 2018, at

[http://www.minfin.gov.kz/irj/portal/anonymous?NavigationTarget=ROLES://portal\\_content/mf/kz.ecc.roles/kz.ecc.anonymous/kz.ecc.anonymous/kz.ecc.anonym\\_about\\_ministry/about\\_ministry/structure\\_fldr/main\\_staff](http://www.minfin.gov.kz/irj/portal/anonymous?NavigationTarget=ROLES://portal_content/mf/kz.ecc.roles/kz.ecc.anonymous/kz.ecc.anonymous/kz.ecc.anonym_about_ministry/about_ministry/structure_fldr/main_staff)



## MoF Authorized Body – Organization Structure, Financing and Staffing

<i>Sub-indicator 5(c) Assessment Criteria</i>	<b>Methodology Public Procurement Legislation Department</b>	<b>Control Internal Audit Committee</b>	<b>Single Operator e- Commerce Center JSC</b>	<b>Single Organizer Public Procurement Committee</b>
<b>Unit authority mandate</b>	Identified under Article 16 of the PPL	Identified under Article 18 and Article 47 of the PPL	Identified under Article 17 of the PPL	Identified under Articles 6, 8 and 16 of the PPL
<b>Level/seniority of head of department  indicator 5(c)(a)</b>	<ul style="list-style-type: none"> <li>• Director under authority of Vice Minister (VM)</li> <li>• VM appointed by the MoF</li> <li>• Reports to MoF</li> </ul>	<ul style="list-style-type: none"> <li>• State entity in MoF structure</li> <li>• Chairman appointed by Minister of Finance</li> <li>• Reports to MoF</li> </ul>	<ul style="list-style-type: none"> <li>• 100% of shares of JSC under MoF</li> <li>• e-Finance Center Chairman of Board of Directors is also the VM of MoF</li> </ul>	<ul style="list-style-type: none"> <li>• State entity in MoF structure</li> <li>• Chairman appointed by Minister of Finance</li> <li>• Reports to MoF</li> </ul>
<b>Financing for each unit  indicator 5(c)(b)</b>	<ul style="list-style-type: none"> <li>• Republican budget as part of the MoF</li> </ul>	<ul style="list-style-type: none"> <li>• Republican budget according to the by-laws Article 1.11</li> </ul>	<ul style="list-style-type: none"> <li>• Republican budget under direct contracting with MoF</li> </ul>	<ul style="list-style-type: none"> <li>• Republican budget according to the by-laws Article 1.10</li> </ul>
<b>Staffing in each unit</b>	<ul style="list-style-type: none"> <li>• Total employees: 13</li> </ul>	<ul style="list-style-type: none"> <li>• Central office: 89</li> <li>• Territorial offices: 655</li> </ul>	<ul style="list-style-type: none"> <li>• Total employees: 255</li> </ul>	<ul style="list-style-type: none"> <li>• Total employees: 41</li> </ul>

Source: By-Laws of the Ministry of Finance of the Republic of Kazakhstan, Decree of the Government of the Republic of Kazakhstan No. 387, April 24, 2008; By-laws of the Internal Audit Committee of the Ministry of Finance of the Republic of Kazakhstan, Order of the Minister of Finance of the Republic of Kazakhstan No.224, May 11, 2016; By-laws of the Public Procurement Committee of the Ministry of Finance of the Republic of Kazakhstan, Order of the Minister of Finance of the Republic of Kazakhstan No. 76, June 1, 2016; e-Finance Center JSC, Financial Statement and Independent Audit Report, 2017.



## Annex V: Quantitative Assessment criteria

### Pillar II – Institutional Framework and Management Capacity

#### Sub-indicator 6(a) – Procuring entities with a designated, specialized procurement function

	Total number of procuring entities	Procuring entities with a designated, specialized procurement function	Total number of procuring entities (%)
2017	23,194	22,121	95

Source: e-Finance Center and MoF, e-mail dated April 17, 2018.

#### Sub-indicator 7(a)(c) – Publication of procurement information

	Total number of contracts	Procurement plans published (% of total)	Key procurement information published (% of total number of contracts)	Invitation to bid (% of total number of contracts)	Total number of appeals received*	Total appeals decisions posted (%)*
2017	4,645,372	100	100	100	-	-
2018	3,224,198	100	100	100	8549	100

Source: Data from web portal as of July 10, 2018,

<https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>

\* Launched in January 1, 2018.

#### Sub-indicator 7(a)(e) – Share of procurement information and data published in open data format

	Total number of contracts processed through the web portal	Contracts for which procurement information and data published (%)*
2017	4,645,372	100

Source: Data from web portal as of July 10, 2018,

<https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>

\* Supports OCDS.

#### Sub-indicator 7(b)(a) – Uptake of e-procurement

	Total number of procedures	Share of e-procurement procedures in total number of procedures (%)	Total value of procurement procedures (billion KZT)	Value of e-procurement procedures as share of total value of procedures (%)
2017	4,645,372	100	3,504	100

Source: Data from the web portal as of July 10, 2018,

<https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>.



**Sub-indicator 7(b)(d) – Use of e-procurement**

	Total number of bids submitted	No. of bids submitted online	Share of bids submitted online (%)	Total number of bids submitted online by SMEs*	Share of bids submitted online by SMEs (%)
2017	3,747,793	3,747,793	100	3,672,837	98

Source: e-Finance Center and MoF, e-mail dated April 17, 2018.

\* Most local bidders in Kazakhstan are SMEs.

**Sub indicator 7(c)(d) –Strategies to Manage Procurement Data**

	Total number of contracts	Total value of contracts in millions of KZT (VAT included)	Total number of contracts awarded through competitive methods	Total value of contracts awarded through competitive methods in millions of KZT (VAT included)	Volume of government expenditure in millions of KZT	Public procurement as share of government expenditure	Volume of GDP in millions of KZT	Public procurement as share of GDP
2017	4,179,961	2,874.9	760,136	739,100	12,485.378	23%	53,101.282	5.5%

Source: E commerce Center, <http://stat.gov.kz>

**Sub-indicator 9(b)(j) – Selection and contracting**

Average time to procure goods, works and services (days)	Share of processes conducted in full compliance with publication requirements (%)
56	100

Source: Master data table on quantitative indicator 9.



### Sub-indicator 9(b)(j) – Selection and contracting

Total number of contracts	Average time between advertisement/solicitation and contract signature (days)	Average number of responsive bids	Share of responsive bids (%)
150	56	3	50

Competitive method	Number of processes	Number of successful processes (awards)	Share of successful processes (awards) (%)	No. of failed processes failed under initial procurement method	Share of failed processes (%)	No. of processes canceled	Share of processes canceled (%)	No. of processes awarded within timeframe	Share of processes awarded within timeframe
Open tenders	206,175	66,745	32%	113,462	55	25,968	13	62,765	94
Auctions	7,667	3,464	45%	3,833	50	370	5	3447	99.5
Request for quotations	122,1783	67,1772	55%	516,272	42	33,739	3	-	-

Source: Master data table on quantitative indicators – indicator 9, e-Finance Center and MoF, e-mail dated May 18, 2018.

### Sub-indicator 10(b)(a) – Private sector access to public procurement market

	Total no. of suppliers	No. of registered suppliers	Share of registered suppliers (%)	No. of registered suppliers participated and awarded	Share of registered suppliers participated and awarded (%)
2017	416,060	204,390	50%	81 062	40

Sources: web portal <https://www.goszakup.gov.kz/ru/registry/supplierreg>,  
<https://blog.kazdata.kz/companies/organizacii-kazaxstana-678-novyx.html>.

Year	Total number of contracts awarded	Total value of contracts awarded	Number of contracts awarded to domestic firms	Value of contracts awarded to domestic firms in million KZT	Share of contracts awarded to domestic firms (%)	Value of contracts awarded to domestic firms (%)	Number of contracts awarded to foreign firms	Value of contracts awarded to foreign firms (KZT million)	Share of contracts awarded to foreign firms (%)	Value of contracts awarded to foreign firms (%)
2017	81,062	1,938,761	81,040	1,932,768	99.9	99.7	22	5,993	0.1	0.3

Source : <https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>.



## Pillar IV – Accountability, Integrity and Transparency of the Public Procurement System

### Sub-indicator 13(a)(c) – Challenges and appeals

Year	Number of appeals	Number of enforced decisions	Share of enforced decisions (%)	Number of appeals decisions posted on a central online platform	Share of appeals decisions posted on a central online platform
2018*	7,619	6,587	86	6,587	100

Source : <https://goszakup.gov.kz/ru/registry/complaint>.

\* Launched on January 1, 2018.

### Sub-indicator 13(c)(d) – Decisions of the appeals body\*

Status	Number	%
satisfied	3801	44.46
- fully	2191	57.64
- partially	1610	42.36
Denied in satisfaction	3957	46.29
Submitted	176	2.06
Under consideration	615	7.19
<b>Total:</b>	<b>8549</b>	<b>100%</b>

\* Just launched in January 1<sup>st</sup>, 2018

Source: <https://goszakup.gov.kz/ru/registry/complaint>

### Sub-indicator 14(e)(d) – Stakeholders support for strengthening integrity in procurement

Year	Total number of suppliers	Suppliers with internal compliance measures	Share of suppliers with internal compliance measures (%)
2017	198,509	-	-

Source: Normative/regulatory function.

### Sub-indicator 14(g)(a) – Code of Conduct, Code of Ethics and Financial Disclosure

	Total number of procuring entities	Number of entities with Code of Conduct or Code of Ethics	Share of entities with Code of Conduct or Code of Ethics (%)
2017	23,194	-	-

Source: Normative/regulatory function.



## Annex VI: Stakeholders Analysis

The planning of the Kazakhstan MAPS assessment included an identification of relevant stakeholders as the first step, with the objective to engage them as part of the assessment and as part of the MAPS validation process and next reform initiative.

The assessment team undertook the stakeholder's analysis through several avenues served to identify the stakeholders: The Initiation workshop held in Nur Sultan (previously: Astana) in early March 2018, visits to the country in April 2018, and additional research. The identified stakeholders include the following:

### 1. Government public procurement system

- Authority with the institutional mandate to oversee the assessment: Ministry of Finance through the public procurement legislation department for the assessment of the public procurement system
- Selected contracting entities: line ministerial procurement units: Ministry of National Economy, Ministry of Investment and Development, Ministry of Energy, Ministry of Agriculture, Ministry of Education, Ministry of Health.
- Local government procurement unit: Akimat of Astana city
- Procurement Committee: Single procurement organizer
- Government authorities responsible for budgeting/payment/internal controls: MoF Departments - Internal Control Department, Department of Methodology of Accounting and Auditing, Budget Planning Department, Treasury Committee
- Government audit authorities: Supreme Audit Committee (Accountants Committee)
- Anti-corruption agencies: Anti-Corruption and Civil Service Agency
- Mandated Single operators: E-Finance Centre (ex- E-Commerce Centre)
- Mandated bodies for PPP: PPP Center
- Training institutions: Finance Academy, Academy of Public Administration, "Atameken" business academy

### 2. "Samruk-Kazyna" procurement system

- Authority with the institutional mandate to oversee the assessment: Procurement Methodology Service for Samruk-Kazyna procurement system
- Selected contracting entities: subsidiaries in the Samruk-Kazyna structure: KazMunaiGas, KazAutoZhol, SK Contract LLP
- Central procurement unit for Samruk-Kazyna: SK Contract LLP
- Authorities responsible for budgeting/payment/internal controls: Samruk-Kazyna Risk Management and Internal Control Department, Samruk-Kazyna Internal Audit Service and Audit Committee, Samruk-Kazyna Procurement Control and Monitoring Service (Procurement Methodology Service and Procurement Monitoring Department), Samruk-Kazyna Accounting and Reporting Department / Samruk-Kazyna Budget Planning Department



- Audit authorities: Samruk-Kazyna Internal Audit Service and Audit Committee
- Anti-corruption agencies: Anti-Corruption and Civil Service Agency
- Other relevant departments in Samruk-Kazyna: Information Technologies Department, Transformation and Special Projects
- Training institutions: Samruk-Kazyna Human Resources Department, Samruk-Kazyna University

### 3. Private sector, NGO and Media

- Representatives of private sector: National Chamber of Entrepreneurs “Atameken”; Kazakhstan Association of IT Companies, individual contractors
- NGOs/CSOs: NGO “Sange”, Soros, among others
- Media/Web sites: [www.zhakon.kz](http://www.zhakon.kz), [www.qamqor.gov.kz](http://www.qamqor.gov.kz), [www.atameken.kz](http://www.atameken.kz), [www.nur.kz](http://www.nur.kz), [www.tengrinews.kz](http://www.tengrinews.kz), [www.kapital.kz](http://www.kapital.kz), [www.sk.kz](http://www.sk.kz), [www.sk.kz/ru/landing/](http://www.sk.kz/ru/landing/)

The analysis has then covered the examination of the level of interest of the mapped shareholders in the Kazakhstan MAPS exercise and their influence on the validation process and the support to the implementation of the recommended actions plan for futures reforms of the two systems (PPS and SK).

The analysis per stakeholder is as follows:

- Ministry of Finance
  - Leadership in public procurement reform agenda – Authorized body as per PPL
  - Highly interested in PPS improvement and has been engaged in leading the GOK MAPS assessment ‘s steering committee
  - High level of expertise in public procurement
  - Relatively fair level of influence on the other parties directly interested in the assessment exercise and its outcomes
  - Can ensure and provide strong and comprehensive support to the review team at all assessment stages
- Samruk - Kazyna
  - Strong level of expertise in corporate procurement system tailored for the national fund objectives
  - Focus on Samruk-Kazyna procurement system
  - Focus on recommendations and MAPS for the benefit of further improving Samruk-Kazyna’s procurement system
  - High level of influence on the procurement of other companies included in the SK system.
- Contracting entities
  - Operational Expertise in public procurement
  - Direct interest and influence on development of PPS by initiation of proposals to improve PPS



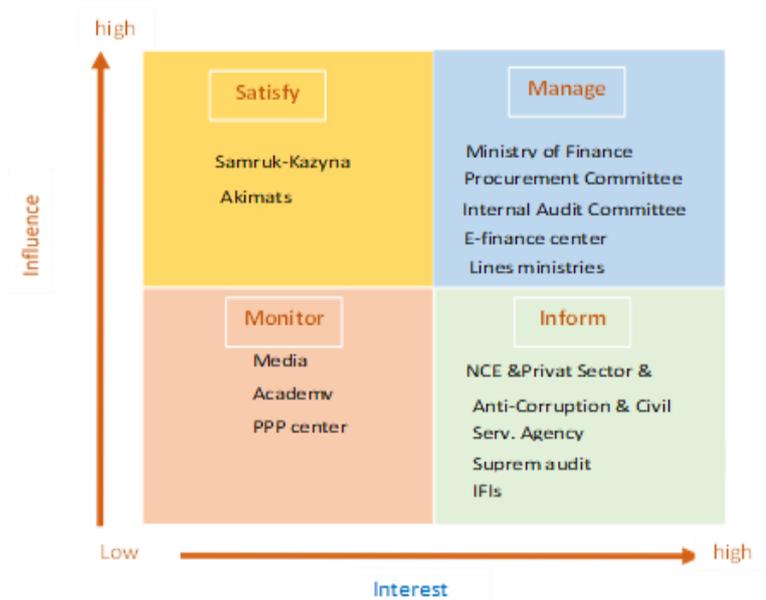
- Data and institutional memory information holders on actual implementation and performance of the PPL as procuring agencies
- Key potential partners for bringing improvements to procurement process under MoF leadership
- Influencing role in validation and implementation of MAPS findings and recommendations
  
- Akimat of Astana
  - Operational Expertise in public procurement
  - Strong interest in well-functioning and structured PPS
  - High influence on subordinate entities on procurement issues
  - Valuable partner at a local level for MAPS recommendations implementation under MoF leadership
  
- Procurement Committee
  - Strong practical expertise in PPL implementation
  - High importance for further PPS development
  - Data and information holder on actual implementation of the PPL as agency for centralized procurement
  
- E-Finance Center
  - Strong expertise in technical aspects of the procurement web portal
  - Main player in bringing improvements to the existing e-procurement system
  - Data and information holder on actual implementation of the PPL
  
- Supreme Audit Committee (Accountants Committee)
  - High interest in well-established and functioning PPS
  - High influence as audit/monitoring and enforcement body
  
- Anti-Corruption and Civil Service Agency
  - Strong expertise in general anti-corruption requirements under the legislation and qualification requirements to the civil servants
  - Can Provide good input to the assessment
  - May support developments in procurement process under MoF influence
  - High influence as oversight and accountability enforcement agency being in an inside-outside public procurement stakeholder position.
  - High importance for further PPS development terms of inside-outside public procurement stakeholder dichotomy, they are outsiders to the public procurement process
  
- Private sector
  - Provided fair opinion on PPS by Monkey survey
  - Ready for development
  - Low influence
  - High interest in a well-regulated PPS with clear rules
  
- PPP Center
  - Knowledge and expertise in practical application of PPP Law
  - Potential interest in creating the sustainable PPS



- Training institutions/Academy
  - Good academia platform with very limited focus on procurement issues
  - Have an interest in providing information to government leaders, policy makers, and procurement professionals
  - Can play a key role in development of public procurement strategy/training programs under MoF influence
  - Limited influence on reforms in PPS
  - Stronger role in Samruk-Kazyna, with a dedicated procurement focus, stronger influence
  
- NCE “Atameken”
  - Strong expertise of the PPS from the private sector angle
  - Ready for developments under MoF/GoK influence
  - Some influence on its members
  - Moderate interest in the PPS development
  - Important for the recommendations’ implementation
  
- NGO/Associations
  - High interest in well-established and transparent PPS and in how the government spends money in terms of getting the best value with integrity
  - Low to medium level of expertise in public procurement
  - Limited influence through the reports, random recommendations, comments on the draft legislation
  
- Media
  - Potential interest in public procurement oversight
  - Influence on the public opinion

The following figure summarizes the conclusions of the stakeholder’s analysis. This analysis was critical in planning the meetings, interviews, and survey with the identified stakeholders and will be very helpful in the validation process of the assessment outcomes and recommendations for the implementation of the priorities improvements of the both the government general public procurement system and SK procurement system.





	Continued Engagement; increase level of interest for MAPS exercise and its outcomes and recommendation for improvement of the procurement systems
	Manage closely; lead MAPS exercise and decisions on related recommendations for reform of the public procurement system; maintain engagement on a regular basis and strive for sustained relationship and collaboration
	Low priority focus; monitor; communicate broadly to ensure continued update
	Exploit the interest by involvement and discussion/consultation on these stakeholder's area of interest- build coalitions

