



Developments in prosecutor law

New Prosecutor's Law

In this issue, we discuss the most interesting and important amendments and developments in prosecutor law

New Prosecutor's Law

Dear friends,

On 30 June 2017, the president signed Law № 81-VI *On the Prosecutor's Office* ("Law"), which entered into force on 14 July 2017.

Prosecutor independence and a bar on interfering in its activities remain in place in the new Law. The Law also clarifies and consolidates practices at a legislative level with respect to:

- general prosecutor objectives, specifically the coordination of the activities of the law enforcement and other state authorities to ensure law and order, and the fight against crime;
- supervision by assessing acts in effect.

The following is a brief overview of what's new in the Law.

Prosecutor reviews:

One of the main ideas behind the new Law regulating general prosecutor activities and competence, is to reduce the number of prosecutor reviews by delegating them directly to the regulators, and managing any such reviews, including by:

- 1) removing the following grounds:
 - 1.1) declarations, complaints, notifications and other details of breaches of law;
 - 1.2) the direct discovery of signs of breaches of law;
 - 1.3) semi-annual summary schedules for the review of state regulators and local executive bodies;
 - 1.4) instructions or requests from senior prosecutors.

Henceforth, the prosecutor orders and conducts *reviews of statutory compliance* at the request of the **President** or **General Prosecutor**.

The activities of *state, local representative and executive bodies, local government and their officials are reviewed* based on decisions of the General Prosecutor, oblast prosecutors and their equivalents, regional prosecutors and their equivalents. The above reviews are only ordered if regulators and their officials violate the rights, liberty and legal interests of:

- individuals who, by virtue of physical, mental and other conditions, are unable to defend themselves;

- an indefinite set of people;
- individuals, society and the state, if required to prevent irreversible consequences for life and health or the security of Kazakhstan.

Review of the law enforcement and special state bodies may only be ordered if it can be proved that authorised state bodies did not exercise their control or supervision authority or did so incorrectly.

Even though declarations of and complaints about legislative violations are no longer treated as grounds for reviews, the new Law includes a prosecutor's commitment to review complaints in cases specified by the Law and order a review.

- 2) identifying the rights and obligations of review targets, including a refusal to provide data and documents not related to the review subject or period referred to in a decision to hold a review;
- 3) limiting review extension periods to no more than 30 days and only with the consent of the General Prosecutor.

We believe that the above amendments limiting the grounds for reviews and identifying the authorisation of the President and General Prosecutor's to order reviews will have a positive effect on business activities and reduce the number of prosecutor reviews of private businesses.

Prosecutor legal acts

Certain prosecutor acts, such as declarations and applications, have been defined in the new Law as response acts, while some, such as instructions and warnings, have been withdrawn.

Both the new and old versions of the Law oblige regulators or officials to execute prosecutor *resolutions*. However, the new version has removed the prosecutor's right to issue enforceable resolutions requiring the execution of prosecutor requirements. Consequently, we believe that prosecutor resolutions will remain binding, but individual resolutions for the execution of prosecutor demands will no longer exist, and for that reason we believe that the relevant amendments will be made to regulatory legal acts dealing with court enforcement.

The Law significantly limits prosecutor authority to issue *protests*. As such, prosecutors cannot protest:

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- legislative acts, which, in turn, include laws amending and supplementing the Constitution; constitutional laws; Presidential decrees with the force of constitutional law; codes; consolidated laws; laws; Presidential decrees with the force of law; parliamentary resolutions; and Senate and Mazhilis resolutions;
- acts of the President, President's Administration and Constitutional Council;
- normative resolutions of the Supreme Court
- acts of the Higher Judicial Board;
- acts of the Accounting Committee for Budget Execution (according to reviews);
- normative acts of a technical nature

If previously, before a decision to protest was taken, any prosecutor could suspend the execution of a protested legal act or its validity, now only the General Prosecutor, Deputy General Prosecutor, oblast and equivalent prosecutors are authorised to suspend them. Protested acts or validity can only be suspended if execution resulted in or could result in irreversible consequences for the life and health or security in Kazakhstan.

The new Law does not establish deadlines for a prosecutor to issue *sanctions*, while the previous deadlines was 24 hours.

Likewise, prosecutors are now entitled to use digital signatures to sign sanctions, whereas previously sanctions for covert investigative actions related to the receipt of confidential data could not be signed electronically. Prosecutors should now provide reasons for refusing to issue sanctions.

Prosecutors are no longer entitled/obliged to *advise on the law* to a body or official accepting an act whose

draft does not meet the requirements of legislative acts (except for Parliament resolutions).

How Deloitte can help

The Deloitte Legal team in Kazakhstan will be pleased to offer you professional advice on any issues related to prosecutor reviews, prosecutor acts and other related issues.

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