

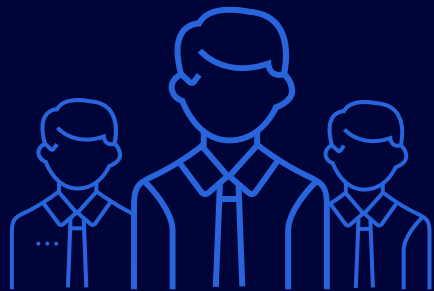
PPP in Kazakhstan: recent legal developments, major issues and opportunities

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WHY KAZAKHSTAN?

- There is lack of budget financing and high demand for investments in public infrastructure.
- Strategic geographical location (e.g. China's Belt and Road initiative, a door to the Eurasian Economic Union, a single market of 183 million people).
- Generally good legal framework (special PPP Law and Concession Law).
- Strong political will of the President and Government to support PPPs.
- Kazakhstan's climbed the World Bank's Ease of Doing Business index and is now ranked 28th.
- Strong support of Kazakhstan by MDBs (EBRD, ADB, IFC, IDB, EADB, AIIB) attracting private and international financial investment.

LESSONS LEARNED

- Absence of a clear national PPP policy strategy and chaotic PPP development;
- Continuous and piecemeal changes to the PPP legislation;
- Public partners' defaults, delayed registration of PPP agreements (i.e. delayed entering into force of the same) and unilateral termination of PPP agreements;
- Risk of reclassification of PPP agreements as public procurement agreements.

CONCESSION LAW vs PPP LAW

Bankability Requirement	Concession Law	PPP Law
Ability for a consortium to nominate SPV	✓	✓
Clear right to terminate without Kazakh court	✓	✓
International arbitration by Kazakh SPV	✓	✓
Private initiative (no tender required)	✗	✓
Access to tax concessions	✓	✗

CONCESSION LAW vs PPP LAW

Bankability Requirement	Concession Law	PPP Law
Absence of the requirement to provide feasibility study by bidders	✗	✓
Local project in one city as a project of special importance	✓	✗
Change of terms and conditions of the tender	✓	✗

LEGAL DEVELOPMENTS (2021)

PPPs and concessions:

- Payment of investment costs compensation – within at least 5 years;
- Additional qualification requirements to private partners & concessionaires;
- Auction as a new way to select an investor.

PPPs:

- Extension of minimum term of implementation of a PPP project;
- Execution of a PPP agreement with an SPV established by a successful bidder;
- Full compensation of expenses of a private partner – only for social infrastructure and life support facilities and only if operation of a PPP facility does not cover investments of the private partner;
- Termination of a PPP agreement without court decision.

Concessions:

- Republic or administrative territorial unit as a grantor;
- Tourist activities facilities as concession facilities.

COURT PRACTICE

- Parties' defaults (private partners' defaults; delays in payment by public partner; calculation of penalties, etc.);
- Claims of bidders to invalidate results of the tender / PPP agreements;
- Termination of PPP agreements;
- Claims of state audit department;
- Incorrect calculation of the PPP facility's value / payment obligations;
- Fake PPPs;
- Discrepancy between business plan and PPP agreement.

OPPORTUNITIES AND PROSPECTS

- Program PPP for construction of 101 schools for about 170,000 students, including:
 - ✓ 28 schools in Nur-Sultan,
 - ✓ 15 schools in Turkestan region,
 - ✓ 12 schools in each Almaty and Shymkent.
- Additional and nonformal education in rural schools.
- Construction of 20 large multidisciplinary hospitals, including:
 - ✓ 1,200-bed united university hospital in Almaty at KazNMU;
 - ✓ 300-bed multidisciplinary hospital in Almaty at KazNMU;
 - ✓ 300-bed multidisciplinary hospital in Karaganda at KarMU;
 - ✓ 500-bed multidisciplinary hospital in Nur-Sultan;
 - ✓ 500-bed multidisciplinary regional hospital in Petropavlovsk;
 - ✓ 600-bed multidisciplinary hospital in Turkestan.

OPPORTUNITIES AND PROSPECTS

- Program PPP in water supply and water disposal:
 - ✓ Construction and operation of wastewater treatment facilities under service agreement;
 - ✓ Trust management of water canals to private partners.
- Utilities.
- Tourism.
- Defense.



THANK YOU!

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