

# PUBLIC-PRIVATE PARTNERSHIP

## THE LAW OF THE REPUBLIC OF KAZAKHSTAN



**GRATA**  
INTERNATIONAL

/as amended as of 3 July 2020/



## NOTICE

This is unofficial English translation of the Law of the Republic of Kazakhstan On Public-Private Partnerships No. 379-V 3PK dated 31 October 2015 the (the PPP Law) prepared by GRATA International Law Firm. We are in the process of reviewing and improving this translation. We kindly requests your comments and suggestions.

Please send them in writing to [finance\\_securities@gratanet.com](mailto:finance_securities@gratanet.com)

For more information on current legal framework in Kazakhstan please refer to our legal analysis on:  
[http://www.gratanet.com/up\\_files/PPP\\_Kazakhstan.pdf](http://www.gratanet.com/up_files/PPP_Kazakhstan.pdf)





## WHY KAZAKHSTAN?

- Kazakhstan oil, gas, coal and uranium and others commodities reserves are among the ten biggest in the world.
- 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).
- Good legal framework (special Concession Law adopted in 2006 and PPP Law adopted in 2015) - extremely broad concept of a public private partnership.
- Nearly every piece of public infrastructure (e.g., roads, hospitals, power plants, kindergartens, sewerages) in Kazakhstan requires a different degree of upgrading or expansion.
- 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, EABR, AIIB) attracting private and international financial investment.

*"PPP should be the primary mechanism for the development of infrastructure, including in social development."*

**The President of Kazakhstan  
Nursultan Nazarbayev**



# Concession Law v PPP Law

Bankability Requirement	Concession Law	PPP Law
Legislative certainty - limited service BTO	✗	✓
Ability to pay availability payments	✓	✗
Access to tax concessions	✓	✗
Clear right to terminate	✓	✗
International arbitration by Kazakh SPV	✓	✗
Protection against currency exchange risk	✓	✓
Direct negotiations (no tender required)	✗	✓
Ability to select foreign governing law	✗	✓





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This Law determines legal conditions of public-private partnership, ways of its implementation, and regulates social relations arising in the process of preparation and implementation of public-private partnership projects, conclusion, performance and termination of public-private partnership agreements.

## Chapter 1. General Provisions

### Article 1. General Definitions Used in the Law

The following definitions are used in this Law:

1) potential private partner – a private partner claiming to participate in a tender or direct negotiations on determining a private partner;

2) private partner – an individual entrepreneur, simple partnership, consortium or legal entity, except for entities acting as public partners under this Law, entered into a public-private partnership agreement;

2-1) account designated to debit compensation of investment costs – a bank account to be opened to a private partner by a lender with limitation of its right to withdraw from the account until conditions envisaged under a factoring agreement and (or) public-private partnership agreement are met or occurred;

3) tender organiser or direct negotiations – a public partner organising and holding a tender or direct negotiations to determine a private partner, except for cases involving provision of state support measures and (or) making payments from the state budget when a tender organiser or direct negotiations is a central state authority or local executive authorities of regions, cities of republican significance and the capital according to their competence as provided by this Law;

4) availability payment – a cash payment made at the expense of budgetary funds, in accordance with a public-private partnership agreement, for ensuring operational and quality characteristics of a public-private partnership facility, as well as availability of this facility to consumers in view of individual technical and economic parameters of a public-private partnership facility;

5) public partner – the Republic of Kazakhstan, on which behalf state authorities, state agencies, state enterprises, as well as limited liability partnerships and joint stock companies, where fifty or more percent of interests in a charter capital or voting shares are directly or indirectly owned by the state, entered into a public-private partnership agreement;

6) public-private partnership – a form of cooperation between a public partner and private partner, which meets criteria established by this Law;

7) advisory support of public-private partnership projects – services provided by legal entities engaged in provision of legal support to public-private partnership projects to be defined by the Government of the Republic of Kazakhstan or local executive authorities of regions, cities of republican importance and the capital, including the development of tender documentation of a public-private partnership project, draft public-private partnership agreement, as well as advisory services in the negotiation process between subjects of public-private partnership;

8) public-private partnership project – a set of successive activities for implementation of public-private partnership performed for a limited period of time and being of a completed nature, in accordance with this Law and the budget legislation of the Republic of Kazakhstan;

9) recovery of investment costs under a public-private partnership project – cash payments made at the expense of budget funds aimed at recovering a certain amount of investment costs, in accordance with a public-private partnership agreement;

10) recovery of operating costs under a public-private partnership project – cash payments made at the expense of budget funds aimed at recovering costs of a private partner related to operation of a public-private partnership facility, in accordance with a public-private partnership agreement;

11) business plan to a public-private partnership project – a document to be developed by a potential private partner in case of direct negotiations, which describes goals, objectives of a public-private partnership project, sources of cost recovery and revenue generation, beneficiaries of a public-private partnership project, state support measures, including description of a public-private partnership facility;

12) public-private partnership company – a legal entity whose sole goal is to implement a public-private partnership project established jointly by a public partner and private partner, or an operating legal entity whose sole participants are a public partner and/or a private partner;

13) public-private partnership facilities – property, property complexes, design, construction, creation, reconstruction, modernisation and operation of which are performed under a public-private partnership project. Public-private partnership facilities also include works (services) and innovations to be implemented in the course of implementation of a public-private partnership project;

14) subjects of public-private partnership – public partner and private partner, and other persons involved in the implementation of a public-private partnership project and specified by this Law;

15) public-private partnership development centre – a legal entity established by a decision of the Government of the Republic of Kazakhstan to perform activities in the area of public-private partnership;

16) public-private partnership agreement – written agreement defining rights, obligations and liabilities of parties thereto, as well as other terms and conditions of public-private partnership agreement within implementation of a public-private partnership project;

17) operator – a legal entity determined, where required, by a private partner upon agreement with a public partner and being not a party to a public-private partnership agreement which performs activities related to performance of a public-private partnership agreement;

18) life cycle contract – a public-private partnership agreement that provides for a full cycle of works on design, construction, creation, reconstruction, modernisation and operation (including repair and maintenance) of a public-private partnership facility, sale of goods, works and services provided, as well as obligations to ensure compliance of a public-private partnership facility with established technical and operational indicators during the entire term of a public-private partnership agreement;

19) industry operator – a system operator, national subsoil use company, National Infrastructure Operator, National Railway Company, National Cargo Carrier, National Passenger Carrier, National Road Operator, other legal entities performing functions of a national operator or operator in a particular industry (area) of economy in accordance with laws of the Republic of Kazakhstan;

20) service contract – a public-private partnership agreement that provides for rendering services within implementation of a public-private partnership project, including in view of features established in laws of the Republic of Kazakhstan;

21) direct agreement – a written agreement between a public partner, a private partner and a lender of the private partner for implementation of a public-private partnership project of special significance.



## Article 2. Legislation of the Republic of Kazakhstan on Public-Private Partnership

1. Legislation of the Republic of Kazakhstan in the area of public-private partnership is based on the Constitution of the Republic of Kazakhstan and consists of the Civil Code of the Republic of Kazakhstan, this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If an international treaty ratified by the Republic of Kazakhstan stipulates rules other than those provided by this Law, rules of the international treaty shall apply.

3. Specific features of legal regulation of public-private partnership in certain industries (sectors) of economy shall be established by laws of the Republic of Kazakhstan.

4. Procedures for determination of a private partner, conclusion, execution and termination of a public-private partnership agreement, as well as consumption by the state of a certain volume of goods, works and services shall be implemented in accordance with this Law and other regulatory legal acts governing certain types of public-private partnership, without application of the Law of the Republic of Kazakhstan 'On Public Procurement'.

5. Public-private partnership shall be taxed in accordance with provisions of the tax legislation of the Republic of Kazakhstan.

6. Relations connected to implementation of public-private partnership projects in the area of subsoil use shall be regulated by this Law and the Code of the Republic of Kazakhstan 'On Subsoil and Subsoil Use'.

## Article 3. Main Objectives and Principles of the Public-Private Partnership

1. The main objectives of public-private partnership are:

1) creation of conditions for effective interaction of a public partner and private partner in order to ensure sustainable social and economic development of the Republic of Kazakhstan;

2) attracting investments into economy of the state by pooling resources of a public partner and private partner for development of infrastructure and life support systems;

3) increasing the level of accessibility and quality of goods, works and services in view of interests and needs of the population, as well as other concerned parties;

4) increasing general innovation activity in the Republic of Kazakhstan, including assistance to development of high-tech and knowledge intensive industries.

2. The principles of public-private partnership are:

1) principle of consistency - gradual construction of relationships between subjects of public-private partnership;

2) principle of competition - determination of a private partner on a competitive basis, except for cases established by this Law;

3) principle of balance - a mutually beneficial distribution of responsibilities, guarantees, risks and revenues between a public partner and private partner in the course of implementation of a public-private partnership project;

4) principle of effectiveness - establishment of criteria and indicators to assess achievements of public-private partnership.

#### Article 4. Features of Public-Private Partnership

The exclusive features of public-private partnership include:

- 1) establishment of relationships between a public partner and private partner through conclusion of a public-private partnership agreement;
- 2) medium or long-term public-private partnership project (three to thirty years, depending on specific features of a public-private partnership project);
- 3) joint participation of a public partner and private partner in a public-private partnership project;
- 4) pooling resources of a public partner and private partner to implement a public-private partnership project.

#### Article 5. Parties to Public-Private Partnership Agreement

1. Parties to a public-private partnership agreement are a public partner and a private partner.

Parties to a public-private partnership agreement may be several public partners and private partners.

2. Parties to a public-private partnership agreement may also be:

- 1) financial and other organisations providing financing for a public-private partnership project;
- 2) industry operators.

#### Article 6. Public-Private Partnership Implementation Areas

Public-private partnership is implemented in all industries (areas) of economy. Thereat, facilities as per the list to be determined by the Government of the Republic of Kazakhstan cannot be provided for the implementation of public-private partnership.

#### Article 7. Ways to Implement the Public-Private Partnership

1. Based on the way of implementation, public-private partnership shall be divided into institutional and contractual.

2. Institutional public-private partnership shall be implemented by a public-private partnership company in accordance with a public-private partnership agreement.

3. In other cases, public-private partnership shall be implemented by way of contractual public-private partnership.

Contractual public-private partnership shall be implemented through conclusion of a public-private partnership agreement, including the following types:

- 1) concession agreement;
- 2) trust management agreement for state property;
- 3) property lease agreement for state property;
- 4) leasing agreement;
- 5) contracts concluded for the development of technology, prototype production, pilot-industrial testing and small-scale production;

- 6) life cycle contract;
- 7) service contract;
- 8) other contracts and agreements that meet the features of public-private partnership.

In the implementation of certain types of contractual public-private partnership, to the extent not regulated by this Law, provisions of relevant laws of the Republic of Kazakhstan, including specific features provided by the Law of the Republic of Kazakhstan 'On Concessions', shall apply.

4. For the purpose of implementation of public-private partnership, state and government programs may provide for basic parameters of public-private partnership projects, including goals and objectives, institutional arrangements, anticipated payments from the budget, state support measures, beneficiaries of public-private project partnership.

The decision on the need to develop procedures for determining a private partner and entering into a public-private partnership agreement within state and government programs shall be determined in the corresponding program.

#### Article 8. National (Republican) and Local Public-Private Partnership Projects

1. Public-private partnership projects shall be divided into national (republican) and local.

2. The criteria for determining national (republican) and local public-private partnership projects shall include:

1) by type of ownership - as national (republican) or local, depending on the emerging ownership right (national or communal) in respect of property obtained as a result of the implementation of public-private partnership projects;

2) by beneficiaries - as national (republican), if beneficiaries are subjects of two or more regions, cities of republican importance and the capital; - as local, if beneficiaries are subjects of one region, city of republican importance and the capital.

#### Article 9. Sources of Financing a Public-Private Partnership Project, Recovery of Costs of Subjects of Public-Private Partnership, and Income Earning by Subjects of Public-Private Partnership

1. A public-private partnership project can be financed at the expense of:

1) own funds of a private partner;

2) funds borrowed in the procedure established by the legislation of the Republic of Kazakhstan;

3) state budget funds;

4) funds of entities of quasi-public sector;

5) other funds not prohibited by the legislation of the Republic of Kazakhstan.

2. Sources for recovery of costs incurred by subjects of public-private partnership and earning income by the same shall be as follows:

1) sale of goods, works and services in the course of operation of a public-private partnership facility;

2) state subsidies granted in cases specified by laws of the Republic of Kazakhstan;

3) recovery of investment costs under a public-private partnership project;

4) recovery of operating costs under a public-private partnership project;



5) remuneration for management of a public-private partnership facility in public ownership, as well as lease payment for use of a public-private partnership facility;

6) availability payment.

3. Financing a public-private partnership project using project financing mechanism shall be performed in accordance with the legislation of the Republic of Kazakhstan on project financing and securitisation, taking into account provisions of this Law.

4. The procedure for recovery of costs to subjects of public-private partnership shall be determined by the budget legislation of the Republic of Kazakhstan.

#### **Article 10. Implementation of a Public-Private Partnership Project**

1. Implementation of a public-private partnership project shall include the following consecutive stages:

1) development of an investment proposal by a state partner or a business plan to a public-private partnership project by a private partner in case of direct negotiations for determination of a private partner;

2) determination of a private partner in accordance with Article 31 of this Law;

3) conclusion of a public-private partnership agreement;

4) performance by parties of terms and conditions of a public-private partnership agreement.

1-1. Implementation of a public-private partnership project under a service model of informatisation shall be in accordance with the legislation of the Republic of Kazakhstan on information.

2. A public-private partnership project shall be considered completed when parties to a public-private partnership agreement have performed all their obligations thereunder.

#### **Article 11. Operator of a Public-Private Partnership Project**

1. A private partner upon agreement with a public partner may, where required, define one or more operators of a public-private partnership project, whose details shall be included in a public-private partnership agreement.

2. When implementing an institutional public-private partnership, an operator of a public-private partnership project shall be determined by a public-private partnership company.

3. A private partner shall be legally liable to a public partner for actions of an operator of a public-private partnership project.

#### **Article 12. Legal Regime of a Public-Private Partnership Facility and Other Property Required for Implementation of a Public-Private Partnership Project**

1. Parties to a public-private partnership agreement shall use a public-private partnership facility and (or) other property required for implementation of a public-private partnership project in accordance with the legislation of the Republic of Kazakhstan and a public-private partnership agreement, unless otherwise provided for by this Law.

2. A party to a public-private partnership agreement may, with consent of the other party, transfer a public-private partnership facility and (or) other property required for implementation of a public-private partnership project in accordance with a procedure established by the legislation of the Republic of Kazakhstan and (or) a public-private

partnership agreement to third parties provided that such third parties comply with obligations of the transferring party under the public-private partnership agreement. In this case, the transferring party to the public-private partnership agreement shall be legally liable for actions of third parties.

3. In cases, when a public-private partnership facility and (or) other property required for implementation of the public-private partnership project transferred by a public partner to a private partner under a public-private partnership agreement are to be transferred to balance of a private partner, then such a facility and property shall be separated from property of the private partner and shall be subject to a separate accounting maintained in connection with performance of obligations under a public-private partnership agreement.

Accounting and financial reporting under a public-private partnership agreement shall be maintained in accordance with the budget legislation of the Republic of Kazakhstan and the legislation of the Republic of Kazakhstan on accounting and financial reporting.

4. When investment costs are recovered for a public-private partnership facility, such a facility shall be transferred to the state ownership. In this case, pledge of a public-private partnership facility shall not be allowed.

#### Article 12-1. Legal Regime of an Account Designated to Debit Compensation of Investment Costs

1. An account designated to debit compensation of investment costs shall be opened in case of attraction of debt financing by a private partner secured by pledge of receivables in the form of compensation of investment costs.

2. An account designated to debit compensation of investment costs shall be used to the benefit of protection of right of a lender in case of financing of public-private partnership projects secured by pledge of receivables in the form of compensation of investment costs. Use of an account designated to debit compensation of investment costs for other purposes is not allowed.

Use of an account designated to debit compensation of investment costs shall be conducted according to the legislation of the Republic of Kazakhstan on public-private partnership.

Following satisfaction of obligations to a lender, an account designated to debit compensation of investment costs shall be closed.

3. Execution on an account designated to debit compensation of investment costs can be levied only within performance of obligations of a private partner to a lender secured by receivables under a public-private partnership agreement.

A private partner if agreed with a public partner can transfer certain funds from an account designated to debit compensation of investment costs to its current account specified in a public-private partnership agreement.

#### Article 13. Main Regulations and Principles for Operation of a Public-Private Partnership Facility

1. Subjects of public-private partnership shall be obliged to adhere to the following principles of operation of a public-private partnership facility to the extent not contradicting a public-private partnership project:

1) adjustment of parameters for provision of goods, work and services to meet the demand for these goods, work and services;

2) ensuring continuity of provision of goods, works and services.

2. A private partner upon agreement with a public partner shall establish a procedure for operation of a public-private partnership facility and ensure observance thereof.

3. A private partner may not prefer one person to another in relation to provision of services, except for cases stipulated by the legislation of the Republic of Kazakhstan.

#### Article 14. Risk Allocation between a Public Partner and a Private Partner

1. A list of risks, arising at various stages of public-private partnership shall be determined by the Central State Planning Authority.

2. Risk allocation between a public partner and a private partner, as well as measures required to reduce likelihood of their occurrence and eliminate consequences thereof shall be established in a public-private partnership agreement.

3. Risk allocation between a public partner and a private partner shall be specified in a public-private partnership agreement in view of specifics of a public-private partnership project, subject to imposition of risks on a party that can best manage them with minimal costs.

#### Article 15. List of Public-Private Partnership Projects

1. A list of public-private partnership projects proposed for implementation shall be formed by the Central State Planning Authority or by local executive authorities of the regions, cities of republican importance and the capital and approved in the procedure, determined by the Central State Planning Authority.

2. The list of public-private partnership projects proposed for implementation shall be posted on the Internet resource of the Public-Private Partnership Development Centre.

### Chapter 2. Rights and Obligations of Subjects of Public-Private Partnership

#### Article 16. Rights and Obligations of a Private Partner

1. A private partner may:

1) propose changes to terms of a public-private partnership agreement;

2) in case of early termination of a public-private partnership agreement, demand payments and compensation in cases and in the procedure established by a public-private partnership agreement;

3) at own discretion, use net income gained from its activities under a public-private partnership project after paying taxes and other obligatory payments to the budget, in accordance with the legislation of the Republic of Kazakhstan;

4) exercise rights with respect to a public-private partnership facility under terms of a public-private partnership agreement;

5) exercise other rights in accordance with the legislation of the Republic of Kazakhstan and a public-private partnership agreement.

2. A private partner shall:

1) maintain a purpose of public-private partnership facility and, in accordance with terms of a public-private partnership agreement, ensure transfer of a public-private partnership facility to a public partner in a proper technical condition;



2) ensure quality and availability of goods, works and services according to a public-private partnership agreement;

3) ensure proper use of funds allotted for implementation of a public-private partnership project;

4) meet other requirements and conditions established by the legislation of the Republic of Kazakhstan and a public-private partnership agreement.

#### Article 17. Rights and Obligations of a Public Partner

1. A public partner may:

1) negotiate with a private partner and other parties to a public-private partnership agreement in respect of terms and conditions thereof;

2) participate in management bodies of a public-private partnership company when acts as a tender organiser or direct negotiations;

3) conduct inspections of financial and economic activities of a private partner, including by engaging an audit company under a public-private partnership agreement;

4) have unhindered access to a public-private partnership facility, as well as to documentation related to the implementation of activities under a public-private partnership project;

5) demand elimination of violations committed in the course of control over compliance with the legislation of the Republic of Kazakhstan and terms of a public-private partnership agreement;

6) claim damages on a public-private partnership facility that arose due to a fault of a private partner;

7) demand termination of a public-private partnership agreement in case of violation of terms and conditions thereof by a private partner or other party to a public-private partnership agreement;

8) exercise other rights in accordance with the legislation of the Republic of Kazakhstan and a public-private partnership agreement.

2. A public partner shall:

1) transfer to a private partner rights to a public-private partnership facility under terms and within a period provided for by a public-private partnership agreement;

2) meet other requirements and conditions established by the legislation of the Republic of Kazakhstan and a public-private partnership agreement.

#### Article 18. Rights and Obligations of Other Parties Involved in the Implementation of a Public-Private Partnership Project

1. Financial and other organisations interested in financing a public-private partnership project shall be entitled to participate in development and discussion of tender documentation of a public-private partnership project, draft public-private partnership agreement, as well as make proposals for scheme of financing a public-private partnership project, ensuring performance of obligations on borrowed loans, anticipated payments in cases of termination of a public-private partnership agreement and other issues related to financing of a public-private partnership project.

2. Other parties involved in implementation of a public-private partnership project shall have rights provided for by laws of the Republic of Kazakhstan and a public-private partnership agreement.

3. Other parties involved in implementation of a public-private partnership project shall meet requirements and conditions established by laws of the Republic of Kazakhstan and a public-private partnership agreement.

### Chapter 3. State Regulation in the Area of Public-Private Partnership

#### Article 19. Competence of the Government of the Republic of Kazakhstan in the Area of Public-Private Partnership

The Government of the Republic of Kazakhstan shall:

1) develop the main directions of the state policy in the area of public-private partnership and ensures implementation thereof;

2) approve a list of public-private partnership facilities, in which respect a closed tender shall be held to determine a private partner;

3) determine a legal entity to provide support of national (republican) public-private partnership projects;

4) approve a list of public-private partnership projects of special significance;

5) perform other functions assigned to it by the Constitution, laws of the Republic of Kazakhstan, and acts of the President of the Republic of Kazakhstan.

#### Article 20. Competence of the Central State Planning Authority in the Area of Public-Private Partnership

The Central State Planning Authority shall:

1) implement within its competence the state policy in the area of public-private partnership;

2) perform inter-sectoral coordination and methodological management in the area of public-private partnership;

3) develop and approve a list of national (republican) public-private partnership projects of special significance proposed for implementation;

4) agree on tender documentation of a public-private partnership project for national (republican) public-private partnership projects, including when making amendments thereto;

5) develop and approve an approximate list of risks, arising at various stages of public-private partnership;

6) develop and approve the Rules for planning and implementing public-private partnership projects, including issues of planning public-private partnership projects, holding a tender and direct negotiations on determination of a private partner, monitoring public-private partnership agreements, monitoring and evaluating implementation of public-private partnership projects;

7) agree on template tender documentation for public-private partnership project and template public-private partnership agreements depending on ways of implementation of public-private partnership in certain industries (areas) of economy;

8) develop and approve the Rules for accepting public-private partnership facilities in state ownership;

9) engage the Public-Private Development Centre to evaluate implementation of public-private partnership, examination of a business plan of a public-private partnership project in case of direct negotiations for determination of a private partner, tender documentation of a public-private partnership project, including when making amendments thereto;

10) maintain a list of unconscientious potential private partners based on court decisions that have entered into force, and post the list on its Internet resource;

11) develop and approve criteria for classifying a public-private partnership project as a public-private partnership project of specific significance;

12) perform other powers provided for by laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

#### Article 21. Competence of the Central Budget Utilisation Authority in the Area of Public-Private Partnership

The Central Budget Utilisation Authority shall:

1) within its competence implement the state policy in the area of public-private partnership;

2) agree on a list of national (republican) public-private partnership projects proposed for implementation;

3) agree on tender documentation of a public-private partnership project and a draft public-private partnership agreement, including when making amendments thereto under national (republican) public-private partnership projects;

4) enter into state surety and guarantee agreements in relation to public-private partnership agreements;

5) keep a register of state sureties and guarantees in relation to public-private partnership agreements;

6) maintain accounting of undertaking and performance of financial obligations of the state under public-private partnership agreements;

7) perform other powers provided for by this Law, laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

#### Article 22. Competence of the State Property Administration Authority in the Area of Public-Private Partnership

The State Property Administration Authority shall:

1) keep a register of concluded public-private partnership agreements in relation to facilities related to republican property;

2) monitor public-private partnership facilities related to the republican property within its competence and report monitoring results to the Central State Planning Authority;

3) accept facilities created on the basis of public-private partnership agreements in the republican ownership;

4) perform other powers provided for by this Law, laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

### Article 23. Competence of a State Authority of Respective Industry in the Area of Public-Private Partnership

A State Authority of respective industry shall:

1) within its competence implement the state policy in the area of public-private partnership;

2) develop and approve template tender documentation of a public-private partnership project as well as template public-private partnership agreements according to ways of implementation of public-private partnership in the respective industry (area) of economy;

2-1) develop and approve a procedure for determination of a private partner and entering into a public-private partnership agreement within state and government programs;

3) organise a tender and direct negotiations on determination of a private partner in relation to national (republican) public-private partnership projects;

4) enter into a public-private partnership agreement on national (republican) public-private partnership project in the relevant industry;

5) monitor implementation of national (republican) public-private partnership projects and report the monitoring results to the Central State Planning Authority;

6) provide information to the State Property Administration Authority on private-public partnership agreements concluded under national (republican) public-private partnership projects and post this information on its official Internet resource;

7) organise transfer of public-private partnership facilities created on the basis of public-private partnership agreements to the republican ownership;

8) organise attraction of new private partners in case of early termination of a previously concluded public-private partnership agreement for public-private partnership facilities being in the republican ownership;

9) agree with the competent authority for management of natural monopolies a business plan of a public-private partnership project, a feasibility study of a public-private partnership project, tender documentation of a public-private partnership project, draft public-private partnership agreements, including when making amendments thereto, in terms of procedure of formation and approval of tariffs (prices, fee, rates) for goods, works and services related to the area of natural monopolies;

10) prepare an industry opinion on tender documentation of a public-private partnership project, business plan of a public-private partnership project in case of direct negotiations for determination of a private partner in accordance with rules approved by the Central State Planning Authority;

11) perform other powers provided for by this Law, laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

#### Article 24. Competence of Maslikhats of Regions, Cities of Republican Significance and the Capital in the Area of Public-Private Partnership

Maslikhats of regions, cities of republican significance and the capital shall:

- 1) agree on a list of local public-private partnership projects proposed for implementation;
- 2) hear annually a report of local executive authorities on the implementation of local public-private partnership projects;
- 3) perform other functions provided for by this Law, other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

#### Article 25. Competence of Local Executive Authorities of Regions, Cities of Republican Significance and the Capital in the Area of Public-Private Partnership

Local executive authorities of regions, cities of republican significance and the capital shall:

- 1) within its competence implement the state policy in the area of public-private partnership;
- 2) make proposals to a tender organiser or direct negotiations with regard to national (republican) public-private partnership projects for resolving issues related to observance of socio-economic and environmental interests of the population of the respective region, when concluding public-private partnership agreements;
- 3) *deleted in accordance with Law No. 112-VI, dated 30 November 2017*
- 4) organise a tender and direct negotiations on determination of a private partner in relation to local public-private partnership projects;
- 5) enter into a public-private partnership agreement on a local public-private partnership project;
- 6) monitor public-private partnership agreements and implement local public-private partnership projects;
- 7) determine a legal entity to provide support of local public-private partnership projects;
- 8) determine a legal entity to conduct an expert examination of business plans of local public-private partnership projects in case of direct negotiations for determination of a private partner, tender documentation of local public-private partnership projects under local public-private partnership projects;
- 9) *deleted in accordance with Law No. 112-VI, dated 30 December 2017*
- 10) keep a register of concluded public-private partnership agreements for local public-private partnership projects;
- 11) accept facilities created on the basis of public-private partnership agreements in the communal ownership;
- 12) form a list of local public-private partnership projects proposed for implementation;
- 13) report monitoring results on the implementation of local projects to the Central State Planning Authority;
- 14) perform other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

## Article 26. The Centre for the Development of Public-Private Partnership

1. The goals, challenges and type of activity of the Centre for the Development of Public-Private Partnership shall be established by the Government of the Republic of Kazakhstan.

2. The Centre for the Development of Public-Private Partnership shall perform the following functions:

- 1) making researches and developing recommendations on public-private partnership;
- 2) examining business plans of local public-private partnership projects in case of direct negotiations for determination of a private partner, including when making amendments thereto;
- 3) examining tender documentation of national (republican) public-private partnership projects, including when making amendments thereto;
- 4) *deleted in accordance with Law No. 112-VI, dated 30 December 2017*
- 5) evaluating implementation of public-private partnership projects;
- 6) training experts in the area of public-private partnership;
- 7) keeping a list of local public-private partnership projects proposed for implementation.

## Chapter 4. Forms of Participation of the State Authorities, Business Entities and Entities of Quasi-Public Sector in Projects of the Public-Private Partnership

### Article 27. Forms of Participation of State Authorities in Public-Private Partnership

1. State authorities may participate in public-private partnership in the following forms:

- 1) granting land plots in accordance with the land legislation of the Republic of Kazakhstan;
- 2) granting rights to use state property facilities;
- 3) participating in the establishment and operation of a public-private partnership company;
- 4) providing a public-private partnership facility with engineering and transport communications;
- 5) other forms not contradicting the legislation of the Republic of Kazakhstan.

2. Participation of state authorities through granting state support measures in accordance with the legislation of the Republic of Kazakhstan shall be implemented through, inter alia:

- 1) state guarantees on infrastructure bonds;
- 2) state guarantees for loans raised to finance public-private partnership projects;
- 3) transfer of exclusive rights to IP facility owned by the state;
- 4) in-kind grants provided in accordance with laws of the Republic of Kazakhstan;
- 5) co-financing of public-private partnership projects;
- 6) guarantee of consumption by the state of a certain amount of goods, works and services produced in the course of implementation of a public-private partnership project.

Total volume of co-financing of public-private partnership projects and compensation of investment costs aimed at recovery of expenses associated with establishment (reconstruction) of a public-private partnership facility cannot exceed cost of establishment and (or) reconstruction of a public-private partnership facility.



Cost of establishment and (or) reconstruction of a public-private partnership facility, as well as total cost of state support and sources of expenses recovery of public-private partnership subjects shall be determined in accordance with techniques approved by the Central State Planning Authority.

Terms for guaranteed consumption by the state of a certain amount of goods, works and services produced in the course of implementation of a public-private partnership project shall be not less than three years with an extension option under a public-private partnership agreement.

State support for public-private partnership shall be provided in accordance with the legislation of the Republic of Kazakhstan and provisions of a public-private partnership agreement.

#### Article 28. Forms of Participation of the National Chamber of Entrepreneurs in the Public-Private Partnership

The National Chamber of Entrepreneurs shall perform the following functions:

- 1) *deleted in accordance with Law No. 112-VI, dated 30 December 2017*
- 2) *deleted in accordance with Law No. 112-VI, dated 30 December 2017*
- 3) participating in a tender committee on determination of a private partner;
- 4) participating in monitoring implementation of public-private partnership projects.

#### Article 29. Forms of Participation of Business Entities in the Public-Private Partnership

Business entities may participate in the public-private partnership in the following forms:

- 1) financing public-private partnership projects;
- 2) designing, construction, establishment, reconstruction, modernisation and (or) operation of public-private partnership facilities;
- 3) management of public-private partnership projects;
- 4) transferring property and property rights for implementation of a public-private partnership project;
- 5) transfer of exclusive rights to IP facility;
- 6) participating in establishment and operation of a public-private partnership company;
- 7) other forms not contradicting the legislation of the Republic of Kazakhstan.

#### Article 30. Forms of Participation of Entities of Quasi-Public Sector in the Public-Private Partnership

Entities of quasi-public sector may participate in public-private partnership projects in the following forms:

- 1) participating in establishment and (or) operations of legal entities or alienation (transfer) of shares (participation interests in charter capital) of legal entities that implement public-private partnership projects;
- 2) participating in establishment and (or) activities of scientific and production zones, venture funds, research centres for implementation of public-private partnership projects;

- 3) transferring property and property rights for implementation of a public-private partnership project;
- 4) transfer of exclusive rights to IP facility;
- 5) attracting investment in public-private partnership projects;
- 6) service support, including services for technology transfer, support of innovation, consulting, engineering, training and skills development;
- 7) rendering services of technology parks, business incubators, special economic and industrial zones;
- 8) export promotion;
- 9) construction, establishment, reconstruction, modernisation and (or) operation of public-private partnership facilities;
- 10) other forms not contradicting the legislation of the Republic of Kazakhstan.

## Chapter 5. General Provisions on Private Partner Determination

### Article 31. Determination of a Private Partner

1. A private partner shall be determined in the following ways:

1) through a tender, including in a simplified procedure and using two-stage procedures. A tender on determination of a private partner may be closed for facilities, a list of which shall be specified by the Government of the Republic of Kazakhstan;

2) through direct negotiations.

2. Determination of a private partner through a tender process in a simplified procedure shall be conducted exclusively for local projects in accordance with the provisions of this Law.

Determination of a private partner and conclusion of a public-private partnership agreement under a service model of informatisation shall be performed in accordance with the legislation of the Republic of Kazakhstan on informatisation without applying the provisions of this Law.

The provisions of this Article shall not apply to public-private partnership projects planned within state and government programs, if they provide for:

1) basic parameters of public-private partnership projects, including goals and objectives, institutional arrangements, anticipated payments from the budget, state support measures, beneficiaries of a public-private partnership project;

2) indication of application of a different procedure for determination of a private partner and entering into a public-private partnership agreement for certain industries (areas) of economy.

### Article 32. Qualification Requirements to a Potential Private Partner

1. To enter a tender or direct negotiations a potential private partner shall meet the following general qualification requirements:

1) have the legal capacity (for legal entities) and civil capacity (for an individual entrepreneur);

2) be solvent and have no tax debt;

3) have sufficient funds and (or) material and (or) labour resources to perform obligations under a public-private partnership agreement;

4) be not under bankruptcy or liquidation, with property, which balance sheet value is over ten percent of the cost of respective fixed assets, free from any seizure, and engage in activities not suspended in accordance with the legislation of the Republic of Kazakhstan;

5) be not held liable for failure and (or) improper performance of its obligations under public-private partnership agreements concluded in the last three years on the basis of a court decision entered into force.

2. Additional (special) qualification requirements for potential private partners can be established in accordance with laws of the Republic of Kazakhstan.

3. A tender organiser or direct negotiations shall not be entitled to impose a potential private partner with qualification requirements not covered by this Law or laws of the Republic of Kazakhstan. A potential private partner shall have the right not to provide information not related to the qualification requirements.

4. A potential private partner to confirm its compliance with the qualification requirements shall present to a tender organiser or direct negotiations supporting documentation, a list of which shall be provided under the rules of planning and implementation of public-private partnership projects approved by the Central State Planning Authority.

5. A non-resident potential private partner to confirm its compliance with the qualification requirements established by this Article shall submit the same documents as residents of the Republic of Kazakhstan, or documents that contain similar information on the qualification of the non-resident potential private partner.

6. When a potential private partner submits false information on the compliance with the qualification requirements, such a potential private partner shall not be allowed to participate in a tender or direct negotiations for the determination of a private partner for the next three years from the court recognition thereof as an unfair potential private partner.

Adequacy of information on the qualification requirements submitted by a potential private partner can be verified by a tender committee, tender organiser or direct negotiations, competent state authorities at any stage of the tender or direct negotiations for the determination of a private partner.

7. Persons, who have established the facts of submission by a potential private partner of false information on the qualification requirements, shall within three business days after the establishment of such a fact notify the organiser of the tender or direct negotiations and the Central State Planning Authority in writing with attachment of a copy of documents confirming the fact of providing false information.

The organiser of the tender or direct negotiations shall no later than thirty calendar days after the establishment of such a fact file a claim with a court for recognition of the potential private partner, which have submitted false information on the qualification requirements, as an unfair potential private partner.

8. A tender organiser or direct negotiations shall send to the Central State Planning Authority court decisions entered into force on the recognition of a potential private partner as an unfair potential private partner within five business days after receipt of such decisions.

### Article 33. Limitations on Participation in a Tender or Direct Negotiations on Determination of a Private Partner

1. A potential private partner cannot participate in the tender or direct negotiations on determination of a private partner, if:

1) close relatives, spouse or relatives-in-law of management of a potential private partner and (or) an authorised representative of a potential private partner have the right to determine a private partner or are representatives of a tender organiser or direct negotiations;

2) property of a potential private partner, which balance sheet value exceeds ten percent of the value of relevant fixed assets, is seized;

3) a potential private partner has outstanding commitments under executive documents and is included by the competent authority in the area of enforcement of execution orders in the Integrated Register of Debtors;

4) financial and economic activities of a potential private partner are suspended in accordance with the legislation of the Republic of Kazakhstan or legislation of the state of the non-resident potential private partner.

2. A potential private partner and its affiliate cannot participate in the same tender on determination of a private partner.

#### Article 34. Qualification-Based Selection

1. Qualification-based selection shall be conducted to determine whether a potential private partner comply with the established qualification requirements.

2. Qualification-based selection shall be conducted by a tender organiser or direct negotiations in accordance with rules of planning and implementation of public-private partnership approved by the Central State Planning Authority.

3. A potential private partner, who has passed qualification-based selection, shall be recognised as a participant of a tender or direct negotiations on determination of a private partner.

#### Article 35. Determination of the Private Partner through the Tender

1. A tender on determination of a private partner shall be conducted in the procedure determined by the Central State Planning Authority.

2. A tender organiser shall establish a tender committee to determine a private partner.

3. Information on tender results on determination of a private partner, except for information constituting state secrecy or other secrecy protected by law, as well as results of a closed tender on determination of a private partner shall be posted by a tender organiser on its official Internet resource and in the printed media in Kazakh and Russian languages.

#### Article 36. Announcement of a Tender

Information on a tender on determination of a private partner shall be posted on the official Internet resource of a tender organiser and printed media in Kazakh and Russian. Information on a tender on determination of a private partner shall include information about a public-private partnership project, as well as date, place and time of a tender.

#### Article 37. Tender Documentation of a Public-Private Partnership Project

1. Tender documentation of a public-private partnership project shall be approved by a tender organiser.

2. A tender organiser shall provide all potential private partners with tender documentation of a public-private partnership project as agreed with the Central State

Planning Authority in cases provided for in Article 20.4 of this Law, and with the Central Budget Utilisation Authority in cases provided for in Article 21.3 of this Law, containing the following information:

1) requirements for documents confirming compliance of potential private partners with the qualification requirements;

1-1) datasheet containing description of a public-private partnership project;

2) location of a public-private partnership facility;

3) expected types and scope of state support, as well as sources of cost recovery and income generation under a public-private partnership project;

4) draft public-private partnership agreement;

5) description of criteria for determination of the best tender bid;

6) currency or currencies, in which parameters of a public-private partnership project shall be expressed, as well as an exchange rate to be applied to bring to the single currency for the purpose of comparison and evaluation;

7) requirements for a language of a tender bid;

8) reference to the right of a potential private partner to modify or withdraw its tender bid before a deadline for bids submission;

9) content of a tender bid, manner, place, and deadline for submission of tender bids, as well as conditions for securing a tender bid;

10) methods of obtaining clarification on contents of tender documentation of a public-private partnership project;

11) procedures, place, date and time of opening envelopes with tender bids.

3. A tender organiser shall have the right to charge a fee for provided tender documentation of a public-private partnership project, which shall not exceed the actual cost of copying thereof.

4. A potential private partner may apply to a tender organiser with a request for clarification of tender documentation of a public-private partnership project, but not later than thirty calendar days before the deadline for submission of tender bids; and case of a repeated tender - not later than fifteen calendar days before the deadline for submission of tender bids.

Within three days after a request registration, a tender organiser shall give an explanation to potential private partners.

5. A tender organiser shall have the right on its own initiative or in response to a request of a potential private partner to make amendments to tender documentation of a public-private partnership project, within twenty calendar days prior to the deadline for tender bids submission; and in case of a repeated tender - within ten calendar days.

A tender organiser shall no later than one business day after a decision to make amendments to the tender documentation of a public-private partnership project provide the text of amendments made to the tender documentation of a public-private partnership project. Thereat, a deadline for submission of tender bids shall be extended by the tender organiser for no less than thirty calendar days to enable potential private partners to reflect these amendments in the tender bids; and in case of a repeated tender - for at least fifteen calendar days.

6. A tender organiser shall hold a meeting with potential private partners for clarification of provisions of tender documentation of a project.

### Article 38. Tender Bid

1. A tender bid shall be the way of expressing a consent of a potential private partner with requirements and conditions provided for by tender documentation of a public-private partnership project.

2. A tender bid shall be submitted by a potential private partner to a tender organiser before expiry of a submission deadline specified in tender documentation of a public-private partnership project.

3. A tender bid of a potential private partner shall be rejected in the following cases:

1) a potential private partner has earlier submitted a bid to participate in a tender for determination of a private partner;

2) a tender bid has been received upon expiry of a deadline established for submission of tender bids;

4. A potential private partner prior to expiry of a deadline for submission of tender bids shall be entitled to:

1) make changes to its tender bid;

2) withdraw its tender bid without losing the right to get back security of a tender bid.

5. Term of validity of a tender bid shall comply with the required term set by tender documentation of a public-private partnership project.

### Article 39. Tender Bid Security

1. A tender bid shall be secured by a potential private partner as a guarantee that it:

1) will not withdraw or change, and (or) amend its tender bid after a deadline for submission thereof;

2) will enter into a public-private partnership agreement if determined as the winner of the tender on determination of a private partner.

2. A tender bid for participation in a tender on determination of a private partner shall be secured with one tenth of a percent of a cost of proposed investments under a public-private partnership agreement.

3. A potential private partner may not secure a tender bid, if it is involved in a first stage of a tender on determination of a private partner using two-stage procedures.

4. A potential private partner shall have the right to choose one of the following types of security of a tender bid:

1) guaranteed financial contribution made to an account provided by the legislation of the Republic of Kazakhstan for tender organisers;

2) bank guarantee.

A potential private partner shall not be allowed to make actions that lead to emergence of a third party's right to claim for a guaranteed financial contribution in whole or in part before expiry of its tender bid.

A tender organiser shall not be allowed to use a guaranteed financial contribution made by a potential private partner, except for the actions specified in paragraph 5 of this Article.

5. Security of a tender bid shall not be returned by a tender organiser in case of one of the following:



1) a potential private partner has withdrawn or changed a tender bid after expiry of a deadline for bids submission;

2) a potential private partner determined as the winner refused to sign a public-private partnership agreement.

6. In the event of one of the cases provided for in paragraph 5 of this Article, an amount of security of a tender bid shall be entered in an income of a relevant budget.

7. A tender organiser shall return security of a tender bid to a potential private partner within three business days of occurrence of one of the following cases:

1) a potential private partner has withdrawn a tender bid prior to expiry of a deadline for bids submission;

2) signing minutes on the admission to participate in a tender on determination of a private partner. This case does not apply to potential private partners recognised as participants of a tender on determination of a private partner;

3) signing minutes on results of a tender on determination of a private partner. This case does not apply to potential private partners recognised as the winner of a tender on determination of a private partner;

4) entry into force of a public-private partnership agreement;

5) expiry of term of validity of a potential private partner's tender bid.

#### Article 40. Consideration of Tender Bids

1. Tender bids shall be considered and selected by a tender committee.

A working body of a tender committee is a tender organiser.

2. A tender committee shall open envelopes with tender bids within a period specified in tender documentation of a public-private partnership project.

3. A tender organiser shall procure necessary expert examination of tender bids.

4. All tender bids shall be considered by a tender committee.

Where only one tender bid has been submitted, such a bid shall be considered by a tender committee in accordance with the first part of this paragraph.

5. A tender committee shall negotiate with a potential private partner, which tender bid has been recognised as the best, or a sole potential private partner, in order to clarify a public-private partnership project and terms and conditions of a public-private partnership agreement.

6. At a pre-negotiation stage, comments and suggestions on a project and public-private partnership agreement shall be directed by a tender committee to a potential private partner in writing.

As a result of the negotiations, a tender committee shall take a decision.

No changes can be made to conditions of a tender on determination of a private partner during negotiations.

7. If a potential private partner, which tender bid has been recognised as the best, refuses to discuss and clarify the tender bid and the terms and conditions of the public-private partnership agreement in view of recommendations of the tender committee, or such recommendations are unacceptable in terms of the conditions of the tender on determination of a private partner, the tender committee shall not consider this tender bid and shall re-select the best tender bid.

8. Following results of a tender on determination of a private partner, a tender committee shall make a decision on the best tender bid, and the respective applicant shall be recognised the winner of the tender.

9. Based on a decision of a tender committee, a tender organiser shall enter into a private partnership agreement with the winner of the tender.

10. A period provided for conclusion of a public-private partnership agreement shall not exceed ninety calendar days after the date of results of a tender on determination of a private partner.

#### Article 41. Features of a Closed Tender on Determination of a Private Partner

A closed tender on determination of a private partner shall be held in the procedure determined by the Central State Planning Authority in view of this Law.

Information about conditions, date, time and place of a closed tender on determination of a private partner, as well as information on results thereof shall be submitted by a tender organiser to potential private partners in writing.

#### Article 42. Features of a Tender on Determination of a Private Partner using Two-Stage Procedures

1. A tender on determination of a private partner using two-stage procedures shall be held in cases where a tender organiser has established that scope of application and (or) a public-private partnership facility is technically complex and (or) unique. A tender organiser shall ensure formation of feasibility and performance characteristics of a public-private partnership facility based on technical proposals from potential private partners that have passed the qualification-based selection.

2. A tender on determination of a private partner using two-stage procedures shall include two stages.

The first stage shall cover the following:

- 1) drafting of technical specification;
- 2) publication of an announcement of a tender for determination of a private partner using two-stage procedures;
- 3) submission of a technical specification by a tender organiser to potential private partners;
- 4) submission by potential private partners of technical proposals developed in accordance with the technical specification;
- 5) consideration of technical proposals by a tender organiser and discussions with potential private partners of issues related to feasibility and performance characteristics of a public-private partnership facility and terms and conditions of a public-private partnership agreement;
- 6) development and approval by a tender organiser of tender documentation of a public-private partnership project;
- 7) sending by a tender organiser invitations to potential private partners that have submitted technical proposals at the first stage to participate in the second stage.

The second stage shall include activities specified for a tender on determination of a private partner in accordance with Article 40 of this Law.

#### Article 43. Features of a Tender on Determination of a Private Partner Using Simplified Tender Procedures

1. A tender on determination of a private partner using simplified procedures shall be held subject to all of the following conditions:

- 1) local public-private partnership project is being implemented;
- 2) template tender documentation of a public-private partnership project is used;
- 3) template public-private partnership agreement is used;
- 4) a public-private partnership project does not belong to the area of natural monopolies;
- 5) cost of public-private partnership does not exceed four millions of monthly calculation index.

2. *deleted in accordance with Law No. 112-VI, dated 30 November 2017*

3. Approval of tender documentation of a public-private partnership project, signing of a public-private partnership agreement in case of a tender on determination of a private partner using simplified procedures shall be held without conducting examinations stipulated in this Law.

#### Article 44. Determination of a Private Partner through Direct Negotiations

1. Determination of a private partner through direct negotiations shall be conducted in a manner determined by the Central State Planning Authority and shall be used in cases where:

- 1) a public-private partnership project was initiated by a potential private partner in relation to a facility being in its possession on the basis of the right of ownership or long-term lease;
- 2) a public-private partnership project is inextricably linked with implementation of exclusive rights to results of intellectual creative activities which belong to a potential private partner.

2. Determination of a private partner through direct negotiations shall be performed using the following successive stages:

- 1) initiation of a public-private partnership project by a potential private partner;
- 2) notification of initiation of a public-private partnership project indicating main technical and economic parameters of the project and requested payments from the budget and (or) state support measures;
- 3) examination of a business plan of a public-private partnership project;
- 4) negotiations between potential parties to a public-private partnership agreement on terms and conditions thereof;
- 5) conclusion of a public-private partnership agreement.

3. In case of exceeding a number of proposals from potential private partners over the need for goods, works and services under a proposed public-private partnership project, a private partner shall be determined by way of a tender on determination of a private partner.

## Article 45. Public-Private Partnership Agreement

1. A public-private partnership agreement shall be concluded on the basis of results of a tender on determination of a private partner, or direct negotiations in the cases established by this Law.

2. In the cases provided for in Article 43 of this Law, a public-private partnership agreement shall be concluded on the basis of a template public-private partnership agreement approved by the Central State Planning Authority.

3. A public-private partnership agreement shall be concluded in writing. Failure to comply with written form of a public-private partnership agreement shall entail the invalidity thereof.

4. A public-private partnership agreement shall be an agreement containing elements of different contracts provided by the legislation of the Republic of Kazakhstan. Relations of parties to a public-private partnership agreement shall be in the relevant parts subject to laws on agreements which elements are contained in the public-private partnership agreement, unless otherwise provided by an agreement between the parties or the essence of the public-private partnership agreement itself.

## Article 46. Contents of a Public-Private Partnership Agreement

1. A public-private partnership agreement shall contain the following provisions:

1) details of a public-private partnership facility and property rights (including the right of ownership) to the facility for a term of a public-private partnership project;

2) conditions and volumes of construction, establishment, reconstruction, modernisation and (or) operation of a public-private partnership facility;

3) size, terms and conditions of financing of a public-private partnership project, as well as size, terms and conditions of investments;

4) sources of cost recovery and income generation, types, amounts, terms and conditions for granting state support, if any;

5) types of activities to be performed under a public-private partnership agreement;

6) scope and types of goods, works and services under a public-private partnership agreement;

7) quality requirements to goods, works and services;

8) procedure for formation and approval of tariffs (prices, rates, fees) for goods, works and services produced under a public-private partnership project;

9) term of implementation of a public-private partnership project;

10) procedure for appointment of an operator(s);

11) information on authorised persons representing parties to a public-private partnership agreement;

12) rights and obligations of parties involved in performance of a public-private partnership agreement;

13) requirements for environmental protection and work safety;

14) rights and obligations of parties to a public-private partnership agreement;

15) allocation of risks between parties to a public-private partnership agreement and description of risk management activities;

15-1) mechanism for settlement of currency risks in implementation of public-private partnership projects by currency component;

16) liability of parties to a public-private partnership agreement;

17) conditions for modification and termination of a public-private partnership agreement;

17-1) procedure for compensation of parties' expenses in case of early termination of a public-private partnership agreement;

18) procedure for disputes settlement under a public-private partnership agreement;

19) criteria for evaluation of performance of obligations by parties to a public-private partnership agreement, payment of a penalty in cases of default or improper performance;

20) exceptional cases of unilateral refusal to perform a public-private partnership agreement;

21) terms and procedure for compensation for damages in case of early termination of a public-private partnership agreement;

22) terms and conditions of transfer of burden of maintaining a property to be transferred under a public-private partnership agreement, as well as risks of accidental loss or damage to such property;

23) procedure for monitoring performance of a public-private partnership agreement;

24) full name of parties to a public-private partnership agreement;

25) location (legal address) and bank details of parties to a public-private partnership agreement;

26) validity period of a public-private partnership agreement;

27) other conditions of implementation of a public-private partnership project.

2. An agreement of institutional public-private partnership shall also contain, in addition to the conditions provided for in paragraph 1 of this Article, the following:

1) procedure for establishment of bodies of a public-private partnership company;

2) procedure for formation and replenishment of a charter capital of a public-private partnership company;

3) relationships between shareholders (participants) of a public-private partnership company;

4) procedure for settlement of corporate disputes.

3. Applicable law to a public-private partnership agreement, where a private partner is a non-resident, shall be determined by parties to a public-private partnership agreement.

4. A public-private partnership agreement shall be concluded in the Kazakh, Russian and other languages as defined by parties to a public-private partnership agreement.

5. In certain types of public-private partnership, requirements to contents of public-private partnership agreements shall be determined by relevant laws of the Republic of Kazakhstan.

#### Article 47. Direct Agreement with a Creditor of a Private Partner

Direct agreement with a creditor of a private partner shall provide for the following conditions:

1) obligation of a public partner to inform creditors of a private partner on material breach of obligations under a public-private partnership agreement that could lead to default under a public-private partnership agreement;

2) pledge of rights under a public-private partnership agreement and (or) assignment of claims, or transfer of debt of a private partner shall be upon consent of a public partner;

3) right of creditors of a private partner to request replacement of a private partner in case of material breach of its obligations under a public-private partnership agreement, which may lead to default under terms of a public-private partnership agreement, as well as to nominate a new private partner;

4) procedure for replacement of a private partner in the cases stipulated by subparagraph 3 of this paragraph;

5) other conditions not contradicting the legislation of the Republic of Kazakhstan.

#### Article 48. Validity Period of a Public-Private Partnership Agreement

1. A period of validity of a public-private partnership agreement cannot exceed a term of implementation of a public-private partnership project established by Article 4.2 of this Law.

2. As agreed by parties to a public-private partnership agreement, a validity period thereof may be extended within the period specified in Article 4.2 of this Law.

3. A validity period of a public-private partnership agreement may be extended by court in a procedure determined by a public-private partnership agreement in the following cases:

1) delay or suspension of a public-private partnership project because of circumstances beyond control of parties to a public-private partnership agreement;

2) suspension of a public-private partnership project as a result of actions or omission of a public partner and (or) state authorities;

3) increase in expenses related to implementation of a public-private partnership project because of bringing requirements by a public partner not stipulated in a public-private partnership agreement.

#### Article 49. Grounds for Termination of a Public-Private Partnership Agreement

1. A public-private partnership agreement can be modified or terminated upon agreement of parties thereto.

2. At request of a public partner, a public-private partnership agreement can be terminated by court order only:

1) in case of material breach of a public-private partnership agreement by a private partner;

2) if a private partner is not able to implement a public-private partnership project due to its insolvency (bankruptcy);

3) in the interests of society and the state, including where such actions are committed to ensure national security, public health and morality.



3. At request of a private partner, a public-private partnership agreement can be terminated by court order only in case of material breach of a agreement by a public partner and (or) state authority.

#### Article 50. Assignment of Claims and Transfer of a Private Partner's Debt under a Public-Private Partnership Agreement

Assignment of claims and transfer of debt of a private partner under a public-private partnership agreement shall be allowed only upon written consent of a public partner and subject to compliance of a person, to whom rights and obligations of a private partner are being transferred, with general and additional (special) qualification requirements, unless otherwise provided by laws of the Republic of Kazakhstan.

#### Article 51. Subject of Pledge under a Public-Private Partnership Agreement

1. A private partner can pledge its rights under a public-private partnership agreement only upon a written consent of a public partner, unless otherwise provided by laws of the Republic of Kazakhstan.

2. Pledge of its receivables in the form of compensation of investment costs under a public-private partnership agreement can be made only for the purposes of attraction of debt financing for implementation of a public-private partnership project according to terms and conditions of a public-private partnership agreement.

3. Pledge of its rights under a public-private partnership agreement by a private partner to a creditor and recording of value of such rights shall be conducted according to the legislation of the Republic of Kazakhstan on public-private partnership.

4. In relation to commissioned public-private partnership facilities compensation of investment costs shall be made in full volume and within amounts and timing provided under terms and conditions of a public-private partnership agreement.

#### Article 51-1. Replacement of a Private Partner

1. In case of failure to perform or improper performance by a private partner of its obligations to a creditor and (or) under a public-private partnership agreement, upon agreement with a public partner and lender, replacement of a private partner by way of conducting a tender by a public partner is allowed.

2. In case of replacement of a private partner, from the moment of conclusion of an agreement on replacement of a private partner, rights and obligations under a public-private partnership agreement shall be transferred to a new private partner.

3. Replacement of a private partner under a public-private partnership agreement shall be conducted according to the legislation of the Republic of Kazakhstan on concessions.

### Chapter 6. Features of Legal Regulation of Institutional Public-Private Partnership

#### Article 52. General Provisions on Institutional Public-Private Partnership

1. To implement the institutional public-private partnership, a public partner and private partner shall establish a public-private partnership company.

2. A public-private partnership company shall operate as a joint stock company or limited liability partnership, where a public partner and private partner, taken together, shall hold a hundred percent of voting shares (participatory interest in a charter capital).

If a public partner and private partner intend to establish a public-private partnership company in the form of a limited liability partnership, they may conclude a public-private partnership agreement under a constitutional agreement of a limited liability company.

If a public partner and private partner intend to establish a public-private partnership company in the form of a joint-stock company, relationships between a public partner and private partner shall be governed by a public-private partnership agreement.

To the extent not regulated by this Law, activities of a public-private partnership company shall be governed by the laws of the Republic of Kazakhstan on joint stock companies and partnerships with limited and additional liability.

3. Money from the state budget to participate in a charter capital of a public-private partnership company shall be allocated in accordance with the budget legislation of the Republic of Kazakhstan.

4. A public-private partnership agreement can provide for transfer (compensated or free) by a private partner to a public partner or by a public partner to a private partner of the right of ownership to voting shares (interests) of a public-private partnership company held thereby.

### Article 53. Charter of a Public-Private Partnership Company

1. Charter of a public-private partnership company shall contain the information that a legal entity acts in order to implement a public-private partnership project, indicating the name of the project.

Provisions of a charter of a public-private partnership company shall not contradict a public-private partnership agreement.

2. In case of conflict between a public-private partnership agreement and a charter of a public-private partnership company, shall apply conditions of either:

1) a public-private partnership agreement, if they relate to internal relations between a public partner and private partner;

2) a charter, if their application can be important for the relationships of a public-private partnership company with a third party.

### Article 54. Legal Regulation of a Public-Private Partnership Company

1. Conditions and procedure for termination of participation of a public partner or private partner in a public-private partnership company shall be determined by a public-private partnership agreement.

2. Alienation, pledging or otherwise burden by a public partner on its own voting shares (interests) of a public-private partnership company for the benefit of third parties shall be allowed only upon consent of a private partner.

Alienation, pledging or otherwise burden by a private partner on its own voting shares (interests) of a public-private partnership company for the benefit of third parties shall be allowed only upon consent of a public partner.

3. The following shall not be permitted without consent of a public partner and a private partner:

1) increase in a charter capital of a public-private partnership company or making amendments to its charter, except for amendments that are obligatory under the legislation of the Republic of Kazakhstan;

2) issue by a public-private partnership company of bonds and other paper securities;

3) reorganisation and liquidation of a public-private partnership company;

4) make other actions that require consent of a public partner and private partner under a public-private partnership agreement or a charter of a public-private partnership company.

4. The procedure for granting consent in cases specified in this Article shall be determined by a public-private partnership agreement or a charter of a public-private partnership company.

## Chapter 7. Features of Legal Regulation of Public-Private Partnership in Innovations, Special Economic and Industrial Zones

### Article 55. Public-Private Partnership in Innovations

1. Public-private partnership in innovations is aimed at achieving the following objectives:

1) development of new technologies, processes, technical regulations and improvement thereof;

2) making prototype, experimental design installation, testing (including pilot tests), researches (including laboratory tests);

3) organisation of small-scale production (pilot production) and implementation of scientific and technical projects (including creation of start-up companies).

2. Public-private partnership in innovations must necessarily include issues of assessment (re-assessment) of exclusive rights to results of intellectual activities related to a public-private partnership project.

3. A tender committee, officials of state authorities and other interested persons shall consider documents related to a public-private partnership project in innovations taking into account protection of commercial and other secrecy protected by law.

### Article 56. Public-Private Partnership in Special Economic and Industrial Zones

1. Public-private partnership in special economic zones shall be implemented in accordance with the provisions of this Law and shall be aimed at design, construction, development, reconstruction, modernisation and maintenance of infrastructure facilities of a special economic or industrial zone and other public-private partnership facilities in a special economic zone.

2. In implementation of a public-private partnership project in relation to infrastructure facilities in a special economic or industrial zone, a management company of a special economic or industrial zone shall act as a public partner except for infrastructure facilities of a private industrial zone.

At the same time, a management company of a special economic or industrial zone shall agree its decision to participate in a public-private partnership project with the Central Executive Authority engaged in state regulation in the area of establishment, functioning and abolition of special economic and industrial zones, and an authority that holds a controlling stock.

3. A management company of a special economic or industrial zone shall act as a tender organiser.

4. Conclusion of a public-private partnership agreement shall be the basis for activities of a private partner in a special economic or industrial zone on design, construction, development, reconstruction, modernization and maintenance of infrastructure of a special economic or industrial zone.

## Chapter 8. Final Provisions

### Article 57. Settlement of Disputes

1. Disputes relating to execution and termination of a public-private partnership agreement shall be settled in a procedure, established by the legislation of the Republic of Kazakhstan and a public-private partnership agreement.

2. If disputes relating to execution and termination of a public-private partnership agreement cannot be settled in accordance with paragraph 1 of this Article, parties to a public-private partnership agreement shall have the right to settle a dispute in accordance with laws of the Republic of Kazakhstan in courts, and also by referring to arbitration in accordance with the Law of the Republic of Kazakhstan 'On Arbitration'.

If a private partner or at least one shareholder (participant) of a private partner who owns 25 and more per cent of voting shares (participatory interest in a charter capital) is a non-resident of the Republic of Kazakhstan, parties to a public-private partnership agreement shall be entitled to agree on arbitration according to the Law of the Republic of Kazakhstan "On Arbitration" or international arbitration to settle disputes between them for public-private partnership projects which value exceeds four million monthly calculation indices set up for the relevant financial year by the law on republican budget.

3. Disputes relating to a procedure for determination of a private partner shall be settled in courts of the Republic of Kazakhstan.

### Article 58. Liability for Violation of Legislation of the Republic of Kazakhstan on Public-Private Partnership

Violation of the legislation of the Republic of Kazakhstan on public-private partnership shall be punishable under laws of the Republic of Kazakhstan.

### Article 59. Procedure for Entry of this Law into Force

This Law shall come into force ten calendar days after its first official publication.

President  
of the Republic of Kazakhstan

N. NAZARBAYEV

Astana, Akorda, 31 October 2015

No. 379-V 3PK

*Notice:*

*This is an unofficial English translation of the Law, prepared by GRATA International Law Firm. We are in the process of reviewing and improving this translation. We kindly request your comments and suggestions. Please send them in writing to Mr. Shaimerden Chikanayev at [Schikanayev@gratanet.com](mailto:Schikanayev@gratanet.com)*

*For more information on current legal framework in Kazakhstan please refer to our legal analysis on: [http://www.gratanet.com/up\\_files/PPP\\_Kazakhstan.pdf](http://www.gratanet.com/up_files/PPP_Kazakhstan.pdf)*