



## **On public-private partnership**

### *Unofficial translation*

Law of the Republic of Kazakhstan Law No. 379-V LRK dated October 31, 2015.

*Unofficial translation*

**To the attention of Users!**

**THE CONTENT was created for convenient use of RCLI.**

This Law defines the legal conditions of a public-private partnership, its methods of implementation and regulates social relations arising in the process of preparing and implementing a public-private partnership project, conclusions, enforcing and terminating of a public-private partnership agreement.

## **Chapter 1. GENERAL PROVISIONS**

### **Article 1. Basic definitions used in this Law**

The following basic definitions are used in the present Law:

1) a potential private partner - a private partner applying for participation in a competition or in direct negotiations to determine a private partner;

2) a private partner - an individual entrepreneur, a simple partnership, a consortium or a legal entity, with the exception of persons acting as state partners in accordance with this Law who have entered into a public-private partnership agreement;

2-1) the account intended for transfer of compensation of investment costs – the Bank account opened to the private partner by the creditor with restriction of its right to perform expenditure transactions on it before the occurrence or fulfillment of the conditions specified by the financing agreement under the assignment of a monetary claim and / or agreement public-private partnerships;

3) the tender organizer or direct negotiations organizer - a public partner that organizes and conducts a tender or direct negotiations to determine a private partner, except for cases involving the provision of state support measures and (or) making payments from the state budget when the organizer of the competition or direct negotiations is central state body or local executive bodies of oblasts, cities of republican significance and the capital in accordance with the competence established by this Law;

4) availability payment - a cash payment made at the expense of budget funds in accordance with a public-private partnership agreement for ensuring the operational and quality characteristics of a public-private partnership object, as well as the availability of the specified object to consumers based on individual technical and economic parameters of the public private partnership;

5) a public partner - the Republic of Kazakhstan, on behalf of which state bodies, state institutions, state enterprises and limited partnerships, joint stock companies, fifty or more percent of shares in the authorized capital or voting shares stand for of which are directly or indirectly owned by the state, concluded a public-private partnership agreement;

6) public-private partnership - a form of cooperation between a public partner and a private partner, corresponding to the characteristics defined by this Law;

7) consulting support of public-private partnership projects - services provided by legal entities to support public-private partnership projects defined by the Government of the Republic of Kazakhstan or local executive bodies of oblasts, cities of republican significance and the capital, including the development of competitive documentation for a public-private partnership project, draft public-private partnership agreement, including consulting services in the negotiation process between the subjects of public-private partnership;

8) public-private partnership project - a set of consecutive measures for the implementation of public-private partnership, implemented for a limited period of time and of a completed nature, in accordance with this Law and budget legislation of the Republic of Kazakhstan;

9) compensation of investment costs of a public-private partnership project - cash payments out of budget funds, aimed at compensation a certain amount of investment costs, in accordance with a public-private partnership agreement;

10) compensation of the operating costs of the public-private partnership project - cash payments from the budget, aimed at compensation of the private partner's expenses related to the operation of the public-private partnership object in accordance with the public-private partnership agreement;

11) a business plan for a public-private partnership project - a document developed by a potential private partner in direct negotiations, providing a description of the aims and objectives of a public-private partnership project, sources of cost recovery and income generation and benefits from the public-private partnership project, state support measures, including a description of the public-private partnership object;

12) a public-private partnership company - a legal entity whose sole purpose is the implementation of a public-private partnership project, established jointly by a public partner and a private partner or a valid legal entity that only members are a public partner and (or) a private partner;

13) the objects of public-private partnership - property, property complexes, design, construction, creation, reconstruction, modernization and operation of which are carried out as part of a public-private partnership project. The objects of public-private partnership also include works (services) and innovations to be introduced during the implementation of a public-private partnership project;

14) the subjects of a public-private partnership - the public partner and the private partner, as well as other persons participating in the implementation of the public-private partnership project, as provided for by the present Law;

15) Center for the development of public-private partnership - a legal entity established by the decision of the Government of the Republic of Kazakhstan to carry out activities in the field of public-private partnership;

16) a public-private partnership agreement - a written agreement defining the rights, duties and responsibilities of the parties to a public-private partnership agreement, other conditions of a public-private partnership agreement in the framework of a public-private partnership project;

17) operator - a legal entity, if necessary, determined by a private partner as agreed with a state partner, not a party to a public-private partnership agreement, carrying out activities related to the execution of a public-private partnership agreement;

18) life cycle contract - a public-private partnership contract providing a full cycle of design, construction, creation, reconstruction, modernization and operation (including repair and maintenance) of a public-private partnership object, sale of goods, works and services, as well as obligations to ensure compliance of the public-private partnership with the established technical and operational indicators throughout the term of the public-private contract;

19) industry operator - system operator, national subsoil use company, National Infrastructure Operator, National Railway Company, National Freight Carrier, National Passenger Carrier, National Highway Road Operator, other legal entities acting as national operator or operator in a particular industry (sphere) of the economy in accordance with the laws of the Republic of Kazakhstan;

20) service contract - a public-private partnership agreement providing the provision of services as part of a public-private partnership project, including taking into account the features established by the legislation of the Republic of Kazakhstan;

21) direct agreement - a written agreement concluded between a public partner, a private partner and a private partner lender, for the implementation of a public-private partnership project of particular importance.

**Footnote. Article 1 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be effective upon the expiry of ten calendar days after its first official publication); No. 128-VI dated 28.12.2017 (shall be effective upon the expiry of ten calendar days after the day of its first official publication); No. 171-VI 04.07.2018 (shall be effective upon the expiry of ten calendar days after the day of its first official publication).**

## **Article 2. The legislation of the Republic of Kazakhstan in the field of public-private partnership**

1. The legislation of the Republic of Kazakhstan in the field 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 acts of the Republic of Kazakhstan

2. If an international treaty, ratified by the Republic of Kazakhstan establishes the other rules, than those, contained in this Law, the rules of an international treaty shall be applied.

3. The features of legal regulation of public-private partnership in certain sectors (spheres) of the economy are established by the laws of the Republic of Kazakhstan.

4. The procedures for determining the private partner, conclusion, execution and termination of the public-private partnership agreement, as well as the state consumption of a certain amount of goods, works and services are carried out in accordance with this Law and other regulatory legal acts regulating certain types of public-private partnership, without the application of the law of the Republic of Kazakhstan "On public procurement".

5. The taxation of public-private partnerships is carried out in accordance with the provisions of the tax legislation of the Republic of Kazakhstan.

6. The relations related to the implementation of public-private partnership projects in the field of subsoil use are regulated by this Law and the Code of the Republic of Kazakhstan " On subsoil and subsoil use".

**Footnote. Article 2 as amended by the Law of the Republic of Kazakhstan dated 27.12. 2017 No.126-VI (effective upon expiry of six months after its first official publication).**

### **Article 3. Main objectives and principles of public-private partnership**

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

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

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

3) increasing the level of availability and quality of goods, works and services, taking into account the interests and needs of the population, as well as other interested parties;

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

2. The principles of public-private partnership are:

1) the principle of consistency - the phased construction of relations between the subjects of public-private partnership;

2) the principle of tenderness - the definition of a private partner on a competitive basis, with the exception of cases established by this Law;

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

4) the principle of effectiveness - the establishment of criteria and indicators to assess the achievement of the results of public-private partnerships.

#### **Article 4. Features of public-private partnership**

The exclusive features of a public-private partnership include:

1) building a relationship between a public partner and a private partner by entering into a public-private partnership agreement;

2) a medium-term or long-term period for the implementation of a public-private partnership project (from three to thirty years, depending on the specifics of a public-private partnership project);

3) joint participation of a public partner and a private partner in the implementation of a public-private partnership project;

4) pooling the resources of a public partner and a private partner for the implementation of a public-private partnership project.

#### **Article 5. Parties to a public-private partnership agreement**

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

In a public-private partnership agreement parties shall be several public partners and private partners.

2. The parties to a public-private partnership agreement shall also be:

1) financial and other organizations that provide funding for a public-private partnership project;

2) industry operators.

#### **Article 6. Fields of application of public-private partnership**

Public-private partnership is carried out in all sectors (fields) of the economy. At the same time, the objects, the list of which is determined by the Government of the Republic of Kazakhstan, cannot be transferred for the implementation of a public-private partnership.

**Footnote. Article 6 as amended by the Law of the Republic of Kazakhstan dated 03.07.2017 No. 86-VI (shall be effective upon the expiry of ten calendar days after its first official publication).**

#### **Article 7. Methods of implementation of the public-private partnership**

1. Public-private partnership in the method of implementation is divided into institutional and contractual.

2. An institutional public-private partnership is implemented by a public-private partnership company in accordance with a public-private partnership agreement.

3. In other cases, public-private partnership is carried out according to the method of contractual public-private partnership.

A contractual public-private partnership is implemented through the conclusion of a public-private partnership agreement, including in the following forms:

1) concessions;

- 2) trust management of state property;
- 3) property rental (lease) of state property;
- 4) leasing;
- 5) contracts concluded for the development of technology, prototyping, pilot testing and small-scale production;
- 6) life cycle contract;
- 7) service contract;
- 8) other contracts corresponding to the features of public-private partnership.

When implementing certain types of contractual public-private partnerships in the part not regulated by this Law, the provisions of the relevant laws of the Republic of Kazakhstan, including the features stipulated by the Law of the Republic of Kazakhstan "On Concessions" shall be applied.

4. For the implementation of public-private partnerships in state and government programs, basic parameters of public-private partnership projects may be envisaged, including the aims and objectives, an institutional scheme, expected payments from budget funds, government support measures and beneficiaries of the project -private partnership.

The decision on the necessity to develop a procedure for determining a private partner and concluding a public-private partnership agreement within the framework of state and government programs is determined in the relevant program

**Footnote. Article 7 as amended by the Law of the Republic of Kazakhstan dated 30.11.2017 No. 112-VI (shall be effective upon the expiry of ten calendar days after its first official publication).**

#### **Article 8. Republican and local public-private partnership projects**

1. Public-private partnership projects are divided into national and local.
2. The criteria for determining the national and local projects of public-private partnership shall be:

1) on the type of ownership as Republican or local, depending on the emerging ownership right (Republican or municipal) to the property obtained as a result of the implementation of public-private partnership projects;

2) on the beneficiaries as Republican, if the beneficiaries are subjects of two or more oblasts, cities of Republican significance and the capital, and as local, if the beneficiaries are subjects of one oblast, the city of Republican significance and the capital.

#### **Article 9. Sources of financing a public-private partnership project, compensation of expenses of public-private partnerships and income generation by public-private partnerships**

1. The financing of a public-private partnership project shall be carried out by:
  - 1) private partner's own funds;
  - 2) funds borrowed in accordance with the procedure established by the legislation of the Republic of Kazakhstan;
  - 3) state budget funds;

- 4) funds of quasi-public sector entities;
- 5) other funds not prohibited by the legislation of the Republic of Kazakhstan.

2. The sources of compensation of expenses of subjects of public-private partnerships and income generation entities public-private partnerships are:

- 1) sale of goods, works and services during operation of the public-private partnership facility;
- 2) subsidies from the state in cases established by the laws of the Republic of Kazakhstan;
- 3) compensation of investment costs for the public-private partnership project;
- 4) compensation of the operating costs of the public-private partnership project;
- 5) compensation for the management of the object of public-private partnership, which is in state ownership, as well as rent for the use of the object of public-private partnership;
- 6) availability payment

3. The financing of the project of public-private partnership with the use of project financing is carried out in accordance with the legislation of the Republic of Kazakhstan on project financing and securitization with account of the provisions of this Law.

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

#### **Article 10. Implementation of the public-private partnership project**

1. The implementation of the public-private partnership project includes the following successive stages:

- 1) development of an investment proposal by a public partner or a business plan for a public-private partnership project by a private partner in direct negotiations on the definition 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) fulfillment by the parties of the terms of the public-private partnership agreement.

1-1. The implementation of the public-private partnership project on the service model of informatization is carried out in accordance with the legislation of the Republic of Kazakhstan on Informatization.

2. The public-private partnership project is considered to be completed after the parties to the public-private partnership agreement have fulfilled all their obligations.

**Footnote. Article 10 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be effective upon the expiry of ten calendar days after its first official publication); No. 128-VI dated 28.12.2017 (shall be effective upon the expiry of ten calendar days after its first official publication).**

#### **Article 11. Operator of the project of public-private partnerships**

1. The private partner as agreed in coordination with the public partner has the right to determine, if necessary, one or more operators of the public-private partnership project, information about which is included in the public-private partnership agreement.

2. The operator of the public-private partnership project is determined by the public-private partnership company when implementing an institutional public-private partnership.

3. The private partner shall be liable for the actions of the operator of the public-private partnership project to the public partner as provided by the law.

**Article 12. Legal regime of the object of public-private partnership and other property necessary for the implementation of the project of public-private partnership**

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

2. A party to the public-private partnership agreement has the right to transfer, with the consent of the other party in the manner prescribed by the legislation of the Republic of Kazakhstan and (or) the public-private partnership agreement, the object of public-private partnership and (or) other property necessary for the implementation of the public-private partnership project to the third parties, subject to compliance by the third parties with the obligations of the transferring party under the public-private partnership agreement. At the same time, the transferring party to the public-private partnership agreement shall be liable for the actions of the third parties established by the law.

3. In cases when the object of public-private partnership and (or) other property necessary for implementation of the project of public-private partnership transferred by the public partner to the private partner under the public-private partnership agreement are subject to transfer to balance of the private partner, they are isolated from property of the private partner and are reflected in the separate accounting performed in connection with the execution of obligations under the public-private partnership agreement

Accounting and financial reporting under the public-private partnership agreement shall be carried out 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. If the object of public-private partnership is carried out remuneration of investment costs, the object of public-private partnership shall be transferred to state ownership. At the same time, the pledge of such an object of public-private partnership is not allowed.

**Article 12-1. Legal regime of the account to be used for the form of compensation of investment costs**

1. The account intended for transfer of compensation of investment costs is opened in case of attraction by the concessionary of loan financing on the security of the right of claim for cash receipts in the form of compensation of investment costs.

2. The account intended for crediting compensation of investment costs is used to protect the right of the creditor in the financing of public-private partnership projects secured by the

right to claim cash proceeds in the form of compensation of investment costs. Use of the account intended for transfer of compensation of investment costs for other purposes is not allowed.

Use of the account intended for transfer of compensation of investment costs is carried out in accordance with the legislation of the Republic of Kazakhstan in the field of public-private partnership

After repayment of obligations to the creditor, the account intended for crediting the compensation of investment costs shall be closed.

3. Recovery from the account intended for crediting compensation of investment costs can be made only within the framework of fulfilling the obligations of the private partner to the creditor secured by the right of claim under the public-private partnership agreement.

The private partner shall, as agreed with the lender, transfer part of the funds from the account intended for crediting compensation of investment costs to its current account specified in the public-private partnership agreement.

**Footnote.** The law is supplemented by Article 12-1 in accordance with the law of the Republic of Kazakhstan dated 04.07.2018 No. 171-VI (shall be effective upon the expiry of ten calendar days after the date of its first official publication).

### **Article 13. Main provisions and principles of operation of the object of public-private partnership**

1. The subjects of public-private partnership are obliged to comply with the following principles of operation of the object of public-private partnership in the amount that does not contradict the project of public-private partnership:

1) adjusting the parameters of the provision of goods, works and services in order to meet the demand for these goods, works and services;

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

2. A private partner, in agreement with a public partner, shall establish the procedure for operating a public-private partnership object and ensure its observance.

3. A private partner shall not have the right to give preference to one person over another in relation to the provision of services, except as provided by the legislation of the Republic of Kazakhstan.

### **Article 14. Risk allocation between public partner and private partner**

1. The list of risks arising at various stages of public-private partnership is determined by the Central authorized body for state planning.

2. The allocation of risks between the public partner and the private partner, as well as the necessary measures to reduce the likelihood of their occurrence and to eliminate the consequences of the risks are fixed in the public-private partnership agreement.

3. The allocation of risks in the public-private partnership agreement between the public partner and the private partner is carried out taking into account the peculiarities of the

public-private partnership project, provided that the risks are assigned to the party that can best manage them with minimal costs.

#### **Article 15. List of public-private partnership projects**

1. The list of public-private partnership projects planned for implementation is formed by the central authorized state planning body or local executive bodies of oblasts, cities of national importance and the capital and approved in the manner determined by the central authorized state planning body.

2. The list of public-private partnership projects planned for implementation is posted on the internet resource of the center for public-private partnership development.

## **Chapter 2. RIGHTS AND DUTIES OF SUBJECTS OF PUBLIC-PRIVATE PARTNERSHIPS**

#### **Article 16. Rights and duties of the private partner**

1. The private partner has the right to:

- 1) make suggestions to change the terms of the public-private partnership agreement;
- 2) in case of early termination of the public-private partnership agreement, demand payments and compensation in the cases and in the manner prescribed by the public-private partnership agreement;
- 3) at its discretion, use the net income received from its activities in the project of public-private partnership, after payment of taxes and other obligatory payments to the budget in accordance with the legislation of the Republic of Kazakhstan;
- 4) exercise the rights in relation to the object of public-private partnership on the terms stipulated by the agreement of public-private partnership;
- 5) to exercise other rights in accordance with the laws of the Republic of Kazakhstan and the public-private partnership agreement.

2. The private partner is obliged to:

- 1) maintain the profile of public-private partnerships, as well as in accordance with the terms of the public-private partnership agreement to ensure the transfer of the public-private partnership to a state partner in the proper technical condition;
- 2) ensure the quality and availability of goods, works and services within the framework of the concluded public-private partnership agreement;
- 3) ensure the targeted use of funds allocated for the implementation of the public-private partnership project;
- 6) comply with other requirements and terms, established by the Laws of the Republic of Kazakhstan and the public-private partnership agreement;

#### **Article 17. Rights and duties of the public partner**

1. The public partner has the right to:

1) negotiate with a private partner and other parties to a public-private partnership agreement on its terms;

2) participate in the governing bodies of a public-private partnership company when it organizes a competition or direct negotiations;

3) carry out inspections of financial and economic activities of the private partner, including through the involvement of an audit organization under the public-private partnership agreement;

4) have unimpeded access to the object of public-private partnership, as well as to the documentation related to the implementation of activities within the framework of the public-private partnership project;

5) require the elimination of violations in the framework of monitoring compliance with the legislation of the Republic of Kazakhstan and the terms of the public-private partnership agreement;

6) require compensation of losses on the object of public-private partnership, which arose due to the fault of the private partner;

7) require the termination of the public-private partnership agreement in case of violation of its terms by the private partner or other party to the public-private partnership agreement;

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

2. The public partner is obliged to:

1) transfer to the private partner the rights to the object of public-private partnership on the terms and within the terms provided by the agreement of public-private partnership;

2) comply with other requirements and conditions established by the laws of the Republic of Kazakhstan and the agreement of public-private partnership.

### **Article 18. Rights and duties of other persons involved in the implementation of the public-private partnership project**

1. The financial and other organizations interested in financing the public-private partnership project have the right to participate in the development and discussion of the tender documentation of the public-private partnership project, the draft public-private partnership agreement, including suggestions on the financing scheme of the public-private partnership project, ensuring the fulfillment of obligations under the attracted loans, the proposed payments in case of termination of the public-private partnership agreement and other issues, related to the financing of the public-private partnership project.

2. Other persons participating in the implementation of the public-private partnership project have the rights provided by the laws of the Republic of Kazakhstan and the public-private partnership agreement.

3. Other persons involved in the implementation of the public-private partnership project are obliged to comply with the requirements and conditions established by the laws of the Republic of Kazakhstan and the public-private partnership agreement.

Footnote. Article 18 as amended by the law of the Republic of Kazakhstan dated 30.11.2017 No. 112-VI (shall be effective upon the expiry of ten calendar days after the date of its first official publication).

### **Chapter 3. STATE REGULATION IN THE FIELD OF PUBLIC-PRIVATE PARTNERSHIPS**

#### **Article 19. Competence of the Government of the Republic of Kazakhstan in the field of public-private partnership**

The Government of the Republic of Kazakhstan shall:

1) develop the main directions of the state policy in the field of public-private partnership and organize their implementation;

2) approve the list of objects of public-private partnership in respect of which a closed tender is held to determine the private partner;

3) define a legal entity to support Republican projects of public-private partnership;

4) approve the list of public-private partnership projects of special importance;

5) perform other functions entrusted 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 authorized state planning body in the field of public-private partnership**

The central authorized state planning body shall:

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

2) carry out inter-sectoral coordination and methodological guidance in the field of public-private partnership;

3) form and approve the list of Republican projects of public-private partnership planned for implementation;

4) coordinate the tender documentation of the project of public-private partnership on the Republican projects of public-private partnership, including appropriate changes and (or) additions to it;

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

6) develop and approve the rules of planning and implementation of public-private partnership projects, including the planning of public-private partnership projects, holding a competition and direct negotiations on the definition of a private partner, monitoring of public-private partnership agreements, monitoring and evaluation of the implementation of public-private partnership projects;

7) approve standard tender documents of the public-private partnership project and standard contracts of public-private partnership on ways of implementation of public-private partnership in separate branches (spheres) of economy;

8) develop and approve rules of acceptance of objects of public-private partnership in the state property;

9) involve the center for public-private partnership development to assess the implementation of public-private partnership projects, expertise of the business plan to the project of public-private partnership in direct negotiations on the definition of a private partner, tender documentation of the project of public-private partnership, including the introduction of appropriate amendments and (or) additions to them;

10) maintain a list of potential unscrupulous private partners, formed on the basis of court decisions that have entered into legal force, and places this list on its Internet resource;

11) develop and approve criteria for classifying the public-private partnership project as a public-private partnership project of special importance;

13) carry out other powers provided 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.

**Footnote. Article 20 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be effective upon the expiry of ten calendar days after its first official publication).**

## **Article 21. Competence of the budget execution central authorized body in the field of public-private partnership**

The budget execution central authorized body shall:

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

2) approve the list of national projects of state-private partnership planned for implementation;

3) coordinate the tender documentation of the project of public-private partnership and the draft agreement of public-private partnership, including appropriate amendments and (or) additions to the Republican projects of public-private partnership;

4) enter into contracts of state guarantees and sureties of the state under contracts of public-private partnership;

5) keep a register of state guarantees and sureties provided by the state under public-private partnership agreements;

6) record the acceptance and fulfillment of the state's financial obligations under a public-private partnership agreement;

7) carry out other powers provided by the present 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 22. Competence of the state property management authorized body in the field of public-private partnership**

State property management authorized body shall:

1) keep a register of concluded agreements on the objects of public-private partnership related to the Republican property;

2) carry out monitoring of objects of public-private partnership related to the Republican property within its competence and send the results of monitoring to the central authorized state planning body;

3) accept objects created on the basis of public-private partnership agreements into the Republican ownership;

4) carry out other powers provided 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 23. Competence of the authorized state body of the relevant industry in the field of public-private partnership**

Authorized state body of the relevant industry shall:

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

2) develop and approve standard tender documentation for a public-private partnership project and standard public-private partnership agreements on how to implement a public-private partnership in the relevant sector (sphere) of the economy;

2-1) develop and approve the procedure for determining a private partner and concluding a public-private partnership agreement within the framework of state and government programs;

3) organize both tender and direct negotiations, in order to determine a private partner for the republican projects of public-private partnership;

4) conclude a public-private partnership agreement on a republican public-private partnership project in the relevant industry;

5) monitor the implementation of national projects of public-private partnerships and forward the monitoring results to the central authorized state planning body;

6) provide information to the authorized state body on state property management under the concluded public-private partnership agreements within the framework of republican public-private partnership projects and place this information on its official Internet resource;

7) organize the transfer of public-private partnership objects, created on the basis of public-private partnership agreements, to republican ownership;

8) organize the attraction of new private partners in case of early termination of a previously concluded public-private partnership agreement on public-private partnership objects, relating to republican ownership;

9) coordinate with the authorized body in charge of natural monopolies, a business plan for the public-private partnership project, the feasibility study of the public-private partnership project, the tender documentation for the public-private partnership project, the draft public-private partnership agreements, including when making changes and (or) additions to them regarding the formation and approval of tariffs (prices, charge rates) for goods, works and services related to the field of natural monopolies;

10) prepare a sectoral conclusion on the tender documentation of a public-private partnership project, a business plan for a public-private partnership project in direct negotiations on the determination of a private partner in accordance with the rules approved by the central authorized state planning body;

11) carry out other powers provided by the present 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.

**Footnote. Article 23 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication);dated 03.04.2019 No. 243-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

#### **Article 24. Competence of maslikhats of regions, cities of republican significance and the capital in the field of public-private partnership**

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

- 1) approve the list of local public-private partnership projects planned for implementation;
- 2) annually hear the report of local executive bodies on the progress of the implementation of local public-private partnership projects;
- 3) carry out other powers provided by the present Law, other Laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

#### **Article 25. Competence of local executive bodies of regions, cities of republican significance and the capital in the field of public-private partnership**

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

- 1) implement the state policy in the field of public-private partnership within their competence;
- 2) make proposals to the organizer of the tender or direct negotiations in relation to republican projects of public-private partnerships, in order to resolve issues related to the observance of the socio-economic and environmental interests of the population of the relevant region, when concluding public-private partnership agreements;
- 3) **excluded by the law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be enforced upon the expiry of ten calendar days after the date of its first official publication);**
- 4) act as organizers of the tender or direct negotiations regarding local public-private partnership projects;

5) conclude public-private partnership agreements on local public-private partnership projects;

6) monitor public-private partnership agreements and the implementation of local public-private partnership projects;

7) determine the legal entity for advisory support of local public-private partnership projects;

8) determine the legal entity, authorized to conduct an examination of business plans for local public-private partnership projects in direct negotiations to determine a private partner, as well as tender documentation of local public-private partnership projects within the framework of local public-private partnership projects;

9) excluded by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon the expiry of ten calendar days after the date of its first official publication);

10) keep a register of concluded public-private partnership agreements on local public-private partnership projects;

11) accept the objects created on the basis of public-private partnership agreements into communal ownership;

12) form a list of local public-private partnership projects, planned for implementation;

13) send a summary report on monitoring the implementation of local projects to the central authorized state planning authority;

14) carry out other powers provided by the present 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.

Footnote. Article 25 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 26. Center for the development of public-private partnership**

1. The goals, objectives and activities of the Center for the development of public-private partnership are determined by the Government of the Republic of Kazakhstan.

2. Center for the development of public-private partnership performs the following functions:

1) conducting research and developing recommendations on issues of public-private partnership;

2) carrying out an examination of business plans for republican projects of public-private partnership in direct negotiations to determine a private partner, including when making the appropriate changes and (or) supplements;

3) examination of tender documentation of republican projects of public-private partnership, including when making the appropriate changes and (or) supplements;

4) excluded by the law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon the expiry of ten calendar days after the date of its first official publication);

- 5) evaluation of the implementation of public-private partnership projects;
- 6) training specialists in the field of public-private partnerships;
- 7) maintaining a list of public-private partnership projects planned for implementation.

**Footnote. Article 26 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Chapter 4. FORMS OF PARTICIPATION IN THE PUBLIC-PRIVATE PARTNERSHIP OF THE STATE BODIES, BUSINESS ENTITIES AND SUBJECTS OF THE QUASI-STATE SECTOR**

### **Article 27. Forms of participation of state bodies in public-private partnership**

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

- 1) the provision of land in accordance with the land legislation of the Republic of Kazakhstan;
- 2) granting the right to use objects of state ownership;
- 3) participation in the creation and activities of a public-private partnership company;
- 4) provision of engineering and transport communications of a public-private partnership object;
- 5) other forms, that do not contradict the legislation of the Republic of Kazakhstan.

2. Participation of state bodies in the form of provision of state support measures in accordance with the legislation of the Republic of Kazakhstan is carried out including through :

- 1) state guarantees for infrastructure bonds;
- 2) state guarantees for loans, aimed at financing public-private partnership projects;
- 3) transfer of exclusive rights on intellectual property objects, owned by the state;
- 4) provision of the grants-in-kind in accordance with the legislation of the Republic of Kazakhstan;
- 5) co-financing projects of public-private partnerships;
- 6) guarantees for the consumption by the state of a certain volume of goods, works, service, produced during the implementation of the public-private partnership project.

The total amount of co-financing of public-private partnership projects and compensation of investment costs aimed at compensation of expenses related to the creation (reconstruction) of a public-private partnership object cannot exceed the cost of creating and / or reconstructing a public-private partnership object.

The determination of the cost of creating and (or) reconstructing a public-private partnership object, the total cost of state support and sources of compensation of costs for

public-private partnership subjects is carried out in accordance with the methodology approved by the central authorized state planning body.

Terms for guarantees of state consumption of a certain amount of goods, works and services produced in the course of a public-private partnership project are set for at least three years with the right to extend a public-private partnership under an agreement.

State support of public-private partnership is carried out in accordance with the requirements of the legislation of the Republic of Kazakhstan and the provisions of the public-private partnership agreement.

**Footnote. Article 27 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 28. Forms of participation of the National Chamber of Entrepreneurs in public-private partnership**

The National Chamber of Entrepreneurs performs the following functions:

1) is excluded by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 ( shall be enforced upon expiry of ten calendar days after its first official publication).

2) is excluded by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 ( shall be enforced upon expiry of ten calendar days after its first official publication).

3) participation in the tender commission to determine a private partner;

4) participation in monitoring the implementation of public-private partnership projects.

**Footnote. Article 28 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 29. Forms of participation of business entities in public-private partnership**

Business entities participate in public-private partnerships in the following forms:

1) financing projects of public-private partnerships;

2) projecting, construction, creation, reconstruction, modernization and (or) operation of public-private partnerships;

3) project management of public-private partnerships;

4) transfer of property and property rights for the implementation of a public-private partnership project;

5) transfer of exclusive rights on intellectual property;

6) participation in the creation and activities of a public-private partnership company;

7) other forms, that do not contradict the legislation of the Republic of Kazakhstan.

### **Article 30. Forms of participation of quasi-state sector subjects in public-private partnership**

Quasi-state sector entities participate in public-private partnership projects in the following forms:

- 1) participation in the creation and (or) activities of legal entities or the disposal (transfer) of shares (shares in the authorized capital) of legal entities, implementing public-private partnership projects;
- 2) participation in the creation and (or) activities of research and production areas, venture funds, research centers for the implementation of a public-private partnership project;
- 3) transfer of property and property rights for the implementation of a public-private partnership project;
- 4) transfer of exclusive rights on intellectual property;
- 5) attracting investments to the public private partnership projects;
- 6) service support, including technology transfer services, innovation support, consulting, engineering, staff training and development;
- 7) provision of technology parks, business incubators, special economic and industrial zones services;
- 8) export promotion;
- 9) construction, creation, reconstruction, modernization and (or) operation of public-private partnerships;
- 10) other forms, that do not contradict the legislation of the Republic of Kazakhstan.

## **Chapter 5. GENERAL PROVISIONS FOR DETERMINING A PRIVATE PARTNER**

### **Article 31. Determination of a private partner**

1. The determination of a private partner is carried out in the following ways:
  - 1) tenders, including those in a simplified manner with the use of two-step procedures. Tender for the determination of a private partner may be closed for objects, the list of which is defined by the Government of the Republic of Kazakhstan;
  - 2) direct negotiations.
2. The determination of a private partner through holding a tender in a simplified procedure is carried out exclusively for local projects of a public-private partnership in accordance with the provisions of this Law.

The determination of a private partner and the conclusion of a public-private partnership agreement on the service model of informatization are carried out in accordance with the legislation of the Republic of Kazakhstan on informatization without applying the norms of this Law.

The provisions of this Article do not apply to public-private partnership projects, planned as part of state and government programs, if they include:

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

2) an indication of the use of a different procedure for determining a private partner and the conclusion of a public-private partnership agreement in individual branches (spheres) of the economy.

**Footnote. Article 31 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 128-VI dated 28.12.2017 (shall be enforced upon the expiry of ten calendar days after the day of its first official publication).**

### **Article 32. Qualification requirements to a potential private partner**

1. To enter a tender or direct negotiations to determine a private partner, a potential private partner must meet the following general qualification requirements:

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

2) be solvent, have no tax debt;

3) have financial and (or) material and (or) labor resources necessary for fulfilling obligations under a public-private partnership agreement;

4) not be subject to bankruptcy or liquidation, with the property, the book value of which exceeds ten percent of the value of the corresponding fixed assets, that should not be seized, its financial and economic activities should not be suspended in accordance with the legislation of the Republic of Kazakhstan;

5) not be held accountable for non-fulfillment and (or) improper fulfillment of obligations under public-private partnership agreements concluded over the past three years on the basis of a decision of a court, about be recognized as an unfair potential private partner, that entered into legal force.

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

3. The organizer of the tender or direct negotiations shall not have the right to make qualification requirements to the potential private partner not provided for by this Law or the laws of the Republic of Kazakhstan. Potential private partner shall have the right not to provide information that is not relevant to the qualification requirements.

4. A potential private partner, in confirmation of compliance with its qualification requirements, provides the organizer of the tender or direct negotiations with supporting documents, the list of which is provided for by the rules of planning and implementing public-private partnership projects approved by the central authorized state planning body.

5. A potential private partner nonresident of the Republic of Kazakhstan, in confirmation of compliance with the qualification requirements established by this article, submits the same documents as residents of the Republic of Kazakhstan or documents, containing similar information about the qualifications of a potential private partner nonresident of the Republic of Kazakhstan.

6. A potential private partner in the case of providing false information on compliance with qualification requirements is not allowed to participate in the tender or in direct negotiations to determine a private partner over the next three years from the date it was recognized as an unfair potential private partner by the court.

Reliability of information on qualification requirements provided by a potential private partner can be established by the tender committee, the organizer of the tender or direct negotiations by authorized state bodies at any stage of the tender or direct negotiations on the determination of a private partner.

7. Persons who have established that a potential private partner has provided false information on qualification requirements, must notify the organizer of the tender or direct negotiations and the central authorized state planning authority in writing with attachment of copies of the documents, confirming these facts, no later than three working days from the date of establishment of such facts.

The organizer of the tender or direct negotiations, no later than thirty calendar days from the date of the establishment of such a fact, sues the court for recognition of a potential private partner who provided false information on qualification requirements as an unfair potential private partner.

8. The organizer of the tender or direct negotiations sends to the central authorized body for state planning the decisions of the courts that have entered into legal force, recognizing a potential private partner as an unfair potential private partner within five working days from the receipt of such decisions.

**Footnote. Article 32 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 33. Restrictions related to participation in the tender or in direct negotiations to determine a private partner**

1. A potential private partner is not entitled to participate in a tender or in direct negotiations to determine a private partner if:

1) close relatives, husband (wife) or in-laws of heads of this potential private partner and (or) of authorized representative of this potential private partner hold the right to decide on a choice of a private partner or are a representative of the organizer of the tender or direct negotiations;

2) property of potential private partner, balance value of which is more than ten percent of the value of relevant basic funds, is seized;

3) potential private partner has unfulfilled obligations on executive documents and is included to the relevant register of debtors by an authorized body in the sphere of securing of execution of executive documents;

4) finance and economic activity of potential private partner is suspended in accordance with the legislation of the Republic of Kazakhstan or legislation of the state of potential private partner that is non-resident of the Republic of Kazakhstan.

2. A potential private partner and an affiliate of a potential private partner are not allowed to participate in the same tender to determine a private partner.

#### **Article 34. Qualifications-based selection**

1. Qualifications-based selection is carried out to determine the compliance of a potential private partner with the established qualification requirements.

2. Qualifications-based selection is carried out by the organizer of the tender or direct negotiations in accordance with the rules of planning and implementation of projects of public-private partnership, approved by the central authorized body for state planning.

3. A potential private partner that has passed the qualifying selection is recognized as a participant in the tender or direct negotiations to determine a private partner.

#### **Article 35. Determination of the private partner by way of competition**

1. Tender for determining of a private partner is carried out in the manner, established by the central authorized state planning body.

2. The tender organizer creates a tender commission to determine a private partner.

3. Information about the results of the tender to determine a private partner, with the exception of information constituting state secrets or other secrets protected by law, as well as the results of a closed tender to determine a private partner, are placed by the organizer of the tender on its official Internet resource and published in periodicals in Kazakh and Russian.

#### **Article 36. Announcement of the tender**

Information about the tender to determine a private partner is posted on the official Internet resource of the tender organizer and is published in periodicals in the Kazakh and Russian languages. Information about the tender to determine a private partner includes information about the public-private partnership project, the date, place and time of the tender to determine a private partner.

#### **Article 37. Tender documentation of a public-private partnership project**

1. The tender documentation for a public-private partnership project is approved by the tender organizer.

A tender organizer shall provide all potential private partners with tender documentation, agreed with an authorized body on state planning in the case prescribed by subparagraph 4) of Article 20 of this Law, and an authorized state body on a budget performance in the cases, prescribed by subparagraph 3) of Article 121 of this Law, and containing the following information:

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

1-1) information sheet, containing a description of a public-private partnership project;

2) location of the object of public-private partnership;

- 3) expected types and amounts of state support, as well as sources of compensation of costs and income generation for the public-private partnership project;
- 4) draft agreement of public-private partnerships;
- 5) description of the criteria for determining the best application;
- 6) indication of the currency (currencies) in which the parameters of a public-private partnership project should be stated, and the exchange rate (currencies) that will be applied to a single currency for the purpose of their comparison and evaluation;
- 7) requirements for the language of the application;
- 8) relevant notice on the right of potential private partner to change or withdraw an application prior to expiration of deadline for submission of applications;
- 9) content of the application, the method, place, deadline for submission and validity of the applications, as well as the conditions for making security for the tender application;
- 10) ways of obtaining explanations on the content of the tender documentation of a public-private partnership project;
- 11) procedures, place, date and time of opening of envelopes with applications.

3. The tender organizer has the right to charge for the provided tender documentation of a public-private partnership project, the charge must not exceed the cost of copying tender documentation of a public-private partnership project.

4. A potential private partner has the right to contact the tender organizer with a request to clarify the tender documentation of a public-private partnership project, but no later than thirty calendar days before the deadline for submission of applications, and when holding a repeated competition to determine a private partner - no later than fifteen calendar days before the deadline for submission of applications.

Within three days from the date of registration of such a request, the organizer of the tender gives an explanation to potential private partners.

5. No later than twenty calendar days before the deadline for submission of applications, the tender organizer has the right, on its own initiative or in response to a request from a potential private partner, to make changes and / or supplements to the tender documentation of a public-private partnership project, and when holding a repeated tender to determine a private partner - no later than ten calendar days.

The tender organizer submits the text of the changes and (or) supplements to the competitive documentation of a public-private partnership project to all potential private partners no later than one business day from the date of the decision to change and (or) add the tender documentation of a public-private partnership project. The deadline of submission of applications shall be extended by a tender organizer for the period of not less than thirty calendar days for consideration of these changes and (or) supplements in applications by potential private partners, and in case of repeated tender process – for the period of not less than fifteen calendar days.

6. The competition organizer has the right to meet with potential private partners to clarify the competitive documentation of a public-private partnership project.

**Footnote. Article 37 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 38. Application**

1. Application is a form of consent expression of a potential private partner with the requirements and conditions established by the tender documentation of a public-private partnership project.

2. Application is submitted by a potential private partner to the tender organizer before the deadline for its submission specified in the tender documentation of a public-private partnership project.

3. Application of a potential private partner shall be rejected in the following cases when:

1) potential private partner previously submitted an application for participation in this tender to determine the private partner;

2) application was received after the expiration of the deadline for accepting applications for participation in this tender to determine the private partner.

4. Before the deadline for submission of applications, a potential private partner has the right to:

1) change and (or) supplement the submitted application;

2) withdraw the application, without losing the right to return the submitted collateral.

5. The validity period of the application must meet the required deadline, set by the tender documentation of a public-private partnership project.

### **Article 39. Securing of applications**

1. Securing of application shall be introduced by potential private partner in order to guarantee, that he (she):

1) will not recall or change and (or) supplement his (her) application after the expiration of deadline of submission of competition applications;

2) conclude a public-private partnership agreement in case of winning a tender to determine a private partner.

2. Securing of application for participation in a tender to determine a private partner shall be paid in the amount of one tenth of the value of the proposed investment under a public-private partnership agreement.

3. A potential private partner shall not introduce securing of application, if he (she) participates in the first stage of the tender, using two-stage procedures, to determine a private partner.

4. A potential private partner shall have the right to choose one of the following types of securing of application:

1) guarantee fee, that shall be contributed on account, provided by the budget legislation of the Republic of Kazakhstan for tender organizers;

2) bank guarantee.

It is not permitted for a potential private partner to take actions, that lead to the occurrence of a third party's right of claim in whole or in part for the guarantee deposit paid in advance of the expiration of the application.

It is not allowed for the organizer of the tender to use the guarantee deposit, made by the potential private partner, except for the actions specified in Paragraph 5 of this Article.

5. Securing of application shall not be returned by a tender organizer in occurrence of one of the following cases:

1) potential private partner recalled or changed and (or) supplemented the application after the deadline of submission of applications;

2) potential private partner, defined as the winner of the tender, refused to enter into a public-private partnership agreement.

6. Upon the occurrence of one of the cases provided for in Paragraph 5 of this Article, the amount of security of the application shall be credited to the income of the relevant budget.

7. A tender organizer shall return to a potential private partner a securing of the contributed application within three business days from the date of occurrence of the following cases:

1) recall by a potential private partner of his (her) application before the deadline of submission of tender applications;

2) signing of a protocol on admission to participation in the tender. This case does not apply to potential private partners recognized as applicants of the tender for determining a private partner;

3) signing of a protocol on results of tender for the determining a private partner. This case does not apply to the participant of the tender to determine the private partner, who won the tender to determine the private partner;

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

5) expiration of validity of the application of potential private partner.

#### **Article 40. Consideration of applications**

1. Consideration and selection of applications are carried out by the tender commission.

The working body of the commission is the corresponding organizer of the tender.

2. The tender commission opens envelopes with tender applications in time, specified in the tender documentation of the project of state-private partnership.

3. The organizer of the tender provides the necessary examination of applications.

4. The tender commission considers all applications.

In case if only one application is submitted, this application is considered by the commission according to part one of this Paragraph.

5. With a potential private partner, the application of which is recognized as the best, or the only potential private partner, the tender commission conducts negotiations to clarify the draft public-private partnership and the terms of the public-private partnership agreement.

6. During the preparation of the negotiations, all comments and proposals on the draft public-private partnership and the public-private partnership agreement should be sent by the commission to the potential private partner in writing.

The tender commission makes a decision, following the results of negotiations

During the negotiations it is not allowed to make changes to the conditions of the tender to determine the private partner.

In case if the competition participant, whose potential private partner application is recognized as the best, refuses from discussion and specification of the application and terms of the public-private partnership agreement, according to remarks and offers of the commission or his offers are unacceptable from the point of view of tender conditions, then this private partner application shall not be considered by the commission and a new the best application shall be chosen.

8. According to the results of the tender, the best application is determined by the decision of the tender commission, and the applicant is recognized as the winner of the tender to determine the private partner.

9. The organizer of the tender on the basis of the decision of the tender commission shall enter into a public-private partnership agreement with the winner of the tender for the determination of a private partner.

10. The term for concluding a public-private partnership agreement cannot be more than ninety calendar days from the date of summing up the tender for the determination of a private partner.

#### **Article 41. Features of the closed tender to determine the private partner**

A closed tender to determine a private partner is held in the manner determined by the central authorized state planning body, subject to the provisions of this Law.

Information about the conditions, date, place and time of the closed tender for determining a private partner, as well as information about its results, is sent by the organizer of the tender to potential private partners in writing.

#### **Article 42. Special characteristics of a tender process for determining a private partner using two-stage procedures**

1. A tender for determining a private partner using two-stage procedures is held in cases when the tender organizer determined the scope of application and (or) the Public-Private Partnership asset as technically challenging and (or) unique. The tender organizer defines technical, economic and operational characteristics for the Public-Private Partnership asset based on engineering proposals of potential private partners qualified.

2. A tender for determining a private partner using two-stage procedures includes two stages.

The following actions shall be carried out at the first stage:

- 1) development of technical specifications;
- 2) issuance of the announcement of the tender to determine the private partner using two-step procedures;
- 3) submission by tender organizer of technical specifications to potential private partners;
- 4) submission by potential private partners of technical proposals developed in accordance with technical specifications;
- 5) consideration by tender organizer of technical proposals and discussion of issues with potential private partners relating to the technical, economic and operational characteristics of the Public-Private Partnership asset and the terms for the draft agreement on Public-Private Partnership;
- 6) development and approval by tender organizer of tender documentation for a Public-Private Partnership project;
- 7) extending an invitation by tender organizer to potential private partners who submitted technical proposals at the first stage to take part in the second stage of the tender to determine the private partner.

The second stage involves the activities envisaged for the tender to determine a private partner in accordance with the provisions of Article 40 of this Law.

#### **Article 43. Special characteristics of a tender process for determining a private partner using simplified tendering procedures**

1. A tender for determining a private partner using simplified tendering procedures is held if all the following conditions are met:

- 1) a local public-private partnership project is being implemented;
- 2) typical tender documentation of a public-private partnership project is used;
- 3) a standard public-private partnership agreement is used;
- 4) a public-private partnership project is not related to natural monopolies; and
- 5) the value of a public-private partnership asset does not exceed a four-million monthly calculation index.

2. Excluded by the law of the Republic of Kazakhstan No. 112-VI dated November 30, 2017 (shall be enforced upon expiry of ten calendar days after its first official publication).

3. Approval of tender documentation for a public-private partnership project and signing of a public-private partnership contract when conducting a tender to determine a private partner using simplified tendering procedures are carried out without any examinations provided by this Law.

Footnote. Article 43 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 44. Determining a private partner through direct negotiations**

1. Determining a private partner through direct negotiations is carried out in accordance with the procedure defined by the central authorized state planning body, and is used in cases where:

1) a public-private partnership project is initiated by a potential private partner in relation to an asset under his ownership or a long-term lease;

2) a public-private partnership project is inextricably linked with the exercise of exclusive rights to the fruits of intellectual work or creative activity belonging to a potential private partner.

2. Determining a private partner through direct negotiations is carried out through the following successive stages:

1) initiating a public-private partnership project by a potential private partner;

2) a notice about initiation of a public-private partnership project indicating key technical and economic parameters of the public-private partnership project and payments requested from the budget and (or) state support measures;

3) examination of the business plan for the public-private partnership project;

4) conducting negotiations between potential parties to a public-private partnership agreement on the terms of a public-private partnership agreement; and

5) conclusion of a public-private partnership agreement.

3. In the event that the number of proposals from potential private partners exceeds the demand for goods, work and services within the expected public-private partnership project, the private partner is determined through the tender for determining the private partner.

**Footnote. Article 74 as amended by the Law of the Republic of Kazakhstan dated 30.11.2017 No. 112-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 45. Public-Private Partnership Agreement**

1. A public-private partnership agreement is concluded on the basis of the results of a tender for determining a private partner or through 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 is concluded on the basis of a model public-private partnership agreement approved by the central authorized state planning body.

3. A public-private partnership agreement is concluded in writing. Failure to comply with the written form of a public-private partnership agreement entails the invalidity of the public-private partnership agreement.

4. A public-private partnership contract is a contract containing elements of various contracts provided for by the legislation of the Republic of Kazakhstan. The relations of the parties to a public-private partnership contract shall be governed, in relevant parts, by the law

on contracts the elements of which are contained in this public-private partnership contract, unless it follows otherwise from the agreement of the parties or the substance of the public-private partnership contract.

#### **Article 46. Content of a public-private partnership agreement**

1. A public-private partnership contract shall contain the following provisions:
  - 1) information about the public-private partnership asset and property rights (including the right of ownership) to the specified public-private partnership asset during the period of the public-private partnership project;
  - 2) terms and conditions and volumes of construction, establishment, upgrading, modernization and (or) operation of a public-private partnership asset;
  - 3) amount, terms and conditions of financing the public-private partnership project, as well as the amount, terms and conditions of investment;
  - 4) reimbursement resources and income sources, types, volumes, terms and conditions of state support in the event of its provision;
  - 5) the types of activities carried out under a public-private partnership agreement;
  - 6) the scope and types of work and services under a public-private partnership agreement;
  - 7) requirements for the quality of goods, works and services;
  - 8) procedure for establishment and approve of tariffs (prices, charge rates) for goods, works and services produced under a public-private partnership project;
  - 9) the term of the public-private partnership project;
  - 10) procedure for the appointment of the operator (s);
  - 11) information on authorized persons representing the interests of the parties to a public-private partnership agreement;
  - 12) the rights and obligations of persons involved in the execution of a public-private partnership agreement;
  - 11) requirements on environmental protection and safe conduct of works;
  - 14) rights and obligations of the parties to a public-private partnership contract;
  - 15) distribution of risks between the parties to a public-private partnership contract and a description of risk management measures;
  - 15-1) a currency risk mechanism in the implementation of public-private partnership projects on the currency component;
  - 6) responsibility of the parties to a public-private partnership contract;
  - 17) provisions for amendment and termination of a public-private partnership contract;
  - 17-1) procedure for reimbursement of expenses of the parties in the event of early termination of a public-private partnership contract;
  - 18) procedure for resolving disputes under a public-private partnership contract;
  - 19) criteria for evaluating the fulfillment by the parties of a public-private partnership contract of the obligations undertaken, payment of a penalty in cases of non-performance or improper performance;

- 20) exceptional cases of unilateral refusal to execute a public-private partnership contract;
- 21) procedure and the period of indemnity in the event of early termination of a public-private partnership contract;
- 22) terms and conditions and dates of transferring burden of maintaining a property transferred under a public-private partnership contract, as well as the risks of accidental loss or accidental injury of mentioned property;
- 23) procedure for exercising control over the execution of a public-private partnership contract;
- 24) full name of the parties to a public-private partnership contract;
- 25) registered office (legal address) and bank details of the parties to the public-private partnership contract;
- 26) term of the public-private partnership contract; and
- 27) other terms and conditions for the implementation of a public-private partnership project.

2. The agreement of institutional public-private partnership, in addition to the conditions provided for in paragraph 1 of this article, contains:

- 1) the procedure for the formation of public-private partnership bodies;
- 2) the procedure for the formation and replenishment of the authorized capital of a public-private partnership company;
- 3) relations between shareholders (participants) of the public-private partnership company ;
- 4) the procedure for resolving corporate disputes.

3. If the private partner is a non-resident of the Republic of Kazakhstan the applicable law under a public-private partnership agreement is determined by the parties to the public-private partnership agreement.

4. The public-private partnership agreement shall be drawn up in Kazakh, Russian and other languages defined by agreement of the parties to the public-private partnership agreement.

5. The requirements for the content of public-private partnership agreements are determined by the relevant laws of the Republic of Kazakhstan for certain types of public-private partnership.

**Footnote. Article 46 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be effective upon the expiry of ten calendar days after its first official publication).**

#### **Article 47. Direct agreement with the lender of the private partner**

The direct agreement with the private partner's lender provides the following conditions:

- 1) the duty of the public partner to inform the creditors of the private partner about the cases of significant violations of obligations under the public-private partnership agreement, which may lead to non-fulfillment of the terms of the public-private partnership agreement;

2) transfer of pledged rights under a public-private partnership agreement and (or) assignment of a claim or transfer of a private partner's debt with the consent of a public partner;

3) the right of creditors of the private partner to demand replacement of the private partner in case of essential violation of the obligations by it under the agreement of the public-private partnership capable under the terms of the agreement of the public-private partnership to entail its non-performance, and also to offer the candidate of the new private partner;

4) the procedure for replacing a private partner in the cases provided for in subparagraph 3) of this Article;

5) other terms, that do not contradict the legislation of the Republic of Kazakhstan.

#### **Article 48. Term of public-private partnership agreement**

1. The term of the public-private partnership agreement shall not exceed the term of implementation of the public-private partnership project established by subparagraph 2) of Article 4 of this Law.

2. The term of the public-private partnership agreement validity shall be extended within the period established by subparagraph 2) of article 4 of this Law by agreement of the parties to it.

3. The term of the public-private partnership agreement shall be extended by a court decision in the order determined by the public-private partnership agreement in the following cases:

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

2) suspension of the public-private partnership project as a result of actions or inaction of the public partner and (or) state bodies;

3) increase in costs associated with the implementation of the public-private partnership project as a result of the presentation by the public partner of the requirements not provided for by the public-private partnership agreement.

#### **Article 49. Grounds for termination of the public-private partnership agreement**

1. The public-private partnership agreement shall be amended and terminated by agreement of the parties to the public-private partnership agreement.

2. At the request of the public partner, the public-private partnership agreement shall be terminated by a court decision only:

1) in case of a significant violation of the public-private partnership agreement by a private partner;

2) if the private partner is unable to implement the public-private partnership project due to its insolvency (bankruptcy);

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

3. At the request of a private partner, a public-private partnership agreement shall be terminated by a court decision only if there is a significant violation of a public-private partnership agreement by a public partner and / or public authority.

**Article 50. Assignment of claim and transfer of debt of a private partner under a public-private partnership agreement**

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

**Article 51. Subject of pledge under the contract of public-private partnership**

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

2. The pledge of their rights to claim for cash proceeds in the form of compensation for investment costs of the public-private partnership project to the creditor is carried out only in order to attract debt financing for the implementation of the public-private partnership project under the terms of the public-private partnership agreement.

3. The transfer of the rights by the private partner as a pledge under the public-private partnership agreement to the creditor and accounting of the cost of these rights are carried out in accordance with the legislation of the Republic of Kazakhstan in the field of public-private partnership.

For commissioned objects of public-private partnership, the compensation of investment costs is carried out in full within the limits of the amounts and terms stipulated by the terms of the public-private partnership agreement.

**Footnote. Article 51 as amended by the Law of the Republic of Kazakhstan dated No.171-VI 04.07.2018 (shall be effected upon the expiry of ten calendar days after the date of its first official publication).**

**Article 51-1. Private partner replacement**

1. In case of non-performance or improper performance by a private partner of its obligations to the creditor and (or) under a public-private partnership agreement, it is allowed to replace the private partner in agreement with the public partner and the creditor, which is carried out by holding a public partner competition in order to replace the private partner.

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

3. Replacement of the private partner under the contract of public-private partnership is carried out in accordance with the legislation of the Republic of Kazakhstan in the field of public-private partnership.

**Footnote.** The law is supplemented by article 51-1 in accordance with the law of the Republic of Kazakhstan dated 04.07.2018 No. 171-VI (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

## **Chapter 6. FEATURES OF LEGAL REGULATION OF THE INSTITUTIONAL PUBLIC-PRIVATE PARTNERSHIP**

### **Article 52. General provisions on institutional public-private partnership**

1. In order to implement institutional public-private partnership, the public partner and the private partner establish a public-private partnership company.

2. The public-private partnership company operates in the legal form of a joint-stock company or limited liability partnership, in which the public partner and the private partner together have one hundred percent of the voting shares (share in the authorized capital).

If the public partner and the private partner assume creation of the company of public-private partnership in the organizational and legal form of limited liability partnership, they have the right to sign the contract of public-private partnership within the constituent agreement of limited liability partnership.

If the public partner and the private partner intend to establish a public-private partnership company in the legal form of a joint-stock company, the relations between the public partner and the private partner are regulated by the public-private partnership agreement.

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

3. Allocation of money from the state budget for participation in the authorized capital of the public-private partnership is carried out in accordance with the budget legislation of the Republic of Kazakhstan.

4. The public-private partnership agreement shall provide the transfer (paid or gratuitous) by a private partner to a public partner or a public partner to a private partner of ownership of the voting shares (participation shares) of a public-private partnership company belonging to it.

### **Article 53. Charter of a public-private partnership company**

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

The provisions of the charter of a public-private partnership company must not contradict the public-private partnership agreement.

2. In the event of a contradictions between a public-private partnership agreement and the charter of a public-private partnership company, the conditions of the following documents shall apply:

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

2) charter, if their application may be relevant for relations of a public-private partnership company with third parties.

#### **Article 54. Legal regulation of a public-private partnership company**

1. The conditions and procedure for termination of the participation of a public partner or a private partner in a public-private partnership company are determined by a public-private partnership agreement.

2. Disposal, pledge or other encumbrance by a state partner of its voting shares ( participation shares) of a public-private partnership company in favor of third parties shall be allowed only with the consent of the private partner.

Disposal, pledge or other encumbrance by a private partner of its voting shares ( participation shares) of a public-private partnership company in favor of third parties is allowed only with the consent of the public partner.

3. The following operations are not permitted without the consent of the public partner and the private partner:

1) the increase in the authorized capital of a public-private partnership company, or any changes and (or) supplements in its charter, with the exception of changes and (or) supplements, which must be made, according to the legislation of the Republic of Kazakhstan ;

2) the issuance by the company of a public-private partnership of bonds and other securities;

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

4) other actions in respect of which the agreement of a public-private partnership or the charter of a public-private partnership company demand obtaining the consent of a public partner and a private partner.

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

## **Chapter 7. FEATURES OF LEGAL REGULATION OF PUBLIC-PRIVATE PARTNERSHIP IN INNOVATIONS, SPECIAL ECONOMIC AND INDUSTRIAL ZONES**

Footnote. The title of chapter 7 as amended by the Law of the Republic of Kazakhstan dated 03.04.2019 No. 243-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

#### **Article 55. Public-private partnership in innovation**

1. Public-private partnership in innovation is aimed at the achievement of the following objectives:

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

2) production of prototypes, pilot plants, testing (including pilot tests), research (including laboratory tests);

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

2. Public-private partnership in innovations must necessarily include issues of evaluation (reassessment) of exclusive rights to the results of intellectual activity associated with the public-private partnership project.

3. The tender commission, officials of state bodies and other concerned persons consider the documents, related to the project of public-private partnership in innovation, taking into account ensuring protection of commercial and other secrets, protected by law.

#### **Article 56. Public-private partnership in special economic and industrial zones**

Footnote. The title of Article 56 as amended by the Law of the Republic of Kazakhstan dated 03.04.2019 No. 243-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

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

2. A management company of the special economic or industrial zone shall act as a state partner in implementation of the public-private partnership project in the special economic or industrial zone.

At the same time, the management company of the special economic or industrial zone shall coordinate its decision on participation in the public-private partnership project with the central executive body that exercises state regulation in the field of creation, functioning and abolition of special economic and industrial zones, and the body that owns the controlling stake.

3. The management company of a special economic or industrial zone shall act as the organizer of the competition.

4. Conclusion of a public-private partnership agreement shall be the basis for the activities of a private partner in the territory of a special economic zone for the design, construction,

creation, reconstruction, modernization and operation of infrastructure facilities of a special economic or industrial zone.

**Footnote. Article 56 as amended by the Law of the Republic of Kazakhstan dated 03.04.2019 No. 243-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Chapter 8. FINAL PROVISIONS**

### **Article 57. Dispute settlement**

1. Disputes related to the execution and termination of a public-private partnership agreement shall be resolved in accordance with the procedure established by the legislation of the Republic of Kazakhstan and the public-private partnership agreement.

2. If disputes related to the execution and termination of a contract cannot be resolved in accordance with Paragraph 1 of this Article, then the parties have the right to resolve the dispute in accordance with the requirements of the legislation of the Republic of Kazakhstan in a judicial proceeding, as well as by applying to arbitration in accordance with the Law Republic of Kazakhstan "On Arbitration".

With respect to public-private partnership projects of particular importance, in the case when the private partner is a non-resident of the Republic of Kazakhstan, arbitration is determined by agreement of the parties to the public-private partnership agreement.

3. Disputes related to the procedure for determining a private partner are resolved in the courts of the Republic of Kazakhstan.

**Footnote. Article 296 as amended by the Law of the Republic of Kazakhstan No. 489-V dated 08.04.2016 (effective upon expiry of ten calendar days after the date of its first official publication).**

### **Article 58. Responsibility for violation of the legislation of the Republic of Kazakhstan in the field of public-private partnership**

Violation of the legislation of the Republic of Kazakhstan in the field of public-private partnership shall entail liability established by the Laws of the Republic of Kazakhstan.

### **Article 59. The procedure for the enactment of this Law**

This Law shall enter into force upon expiration of ten calendar days after the day of its first official publication.

*President  
of the Republic of Kazakhstan*

*N. NAZARBAYEV*