

## **On Concessions**

### *Unofficial translation*

The Law of the Republic of Kazakhstan dated 7 July 2006 No. 167.

Unofficial translation

**Footnote.** Throughout the whole text the words “authorised state body on economic planning”, “Authorised state body on economic planning”, “by an authorised state body on economic planning” are respectively substituted by the words: “authorised body on state planning”, “Authorised body on state planning”, “by authorised body on state planning” by Law of the Republic of Kazakhstan No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010).

This Law determines legal conditions of concessions, types of a state support of concessionary and regulates social relations, arising during conclusion, execution and termination of concession agreements.

**Footnote.** The Preamble as amended by Law of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement).

## **Chapter 1. GENERAL PROVISIONS**

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

The following basic definitions shall be used in this Law:

1) an authorised state body on budget performance – a central executive body, carrying out management and cross-sector coordination in the field of performance of budget, maintaining of accounting, budgetary accounting and budgetary reporting on performance of republican budget and within its competence of local budgets, National fund of the Republic of Kazakhstan on the basis of report of the National Bank of the Republic of Kazakhstan;

1-1) the authorized body on budget planning is the central executive body that exercises leadership and inter - sectoral coordination in the area of budget planning;

2) social and vital infrastructure facilities – facilities, complexes of facilities, used for satisfaction of public needs, securing of which imposed on state bodies in accordance with the legislation of the Republic of Kazakhstan;

3) private concessionary obligations – obligations on concluded concession agreement, accepted by a concessionary;

3-1) account intended for crediting of compensation of investment costs - a bank account opened to the concessionaire by the creditor with restriction of his right to perform debit

transactions thereunder before the occurrence or fulfillment of the conditions defined by the financing agreement for the assignment of the monetary claim and (or) concession agreement;

4) conessor - one or more state bodies of the Republic of Kazakhstan, acting on behalf of the Republic of Kazakhstan or the Government of the Republic of Kazakhstan, concluding a concession agreement in accordance with this Law, or a local executive body of the Republic of Kazakhstan, concluding a concession agreement in accordance with this Law on behalf of an administrative territorial unit (region, or city of republican significance, or the capital);

5) concessionaire is a individual who carries out entrepreneurial activity and (or) a legal entity, with the exception of state institutions and subjects of the quasi-public sector, who has concluded a concession agreement, fifty or more percent of voting shares (stakes in the authorized capital) of which are directly or indirectly owned by the state (- except for organizations that finance concession projects), including those that carry out their activities on the basis of a joint activity agreement (simple partnership);

6) a concession – an activity, aimed at establishment (reconstruction) and operation of concession facilities, and carried out at expense of concessionary funds or on conditions of co-funding by a concession provider;

7) an organizer of a tender (auction) for a concession (hereinafter- a tender (auction) organizer - a state body that conducts tenders (auctions) at the choice of a concessionaire;

8) concession project - a set of activities for the implementation of a concession that is realized for a limited period of time and is of a completed nature, in accordance with the budget legislation of the Republic of Kazakhstan and this Law. Concession projects can be classified as concession projects of special significance, the list of which is determined by the Government of the Republic of Kazakhstan.

The criteria for assigning concession projects to the category of concession projects of special significance are determined by the authorized body on state planning body.

8-1) compensation of investment costs for a concession project - cash payments from budgetary funds aimed at reimbursement after commissioning of the concession facility in equal shares over a period of at least five years, a certain amount of investment costs in accordance with the concession agreement. At the same time, it is prohibited to postpone the payment of compensation for investment costs established by the concession agreement to earlier periods;

9) advisory support of concession projects - services provided by legal entities for the maintenance of concession projects, including the development and (or) correction of tender (auction) documentation, projects of concession contracts, the provision of consulting services in the negotiation process of the commission with the participant of tender (auction);

10) co-financing of concessionary projects – an allocation of budget funds for financing of certain volume of expenses for establishment (reconstruction) of concession facilities;

11) feasibility study of the concessionary project (hereinafter - feasibility study) - pre-project documentation containing the results of marketing, technical and technological,

socio-economic and environmental studies, as well as institutional decisions, financial decisions that justify the feasibility and feasibility of the concession project, decisions on risk assessment and distribution between participants in the concession project, identification of types and amount of state support in the case of necessity, as well as the impact of the project on the state budget and the social and economic effect on the development of the economy as a whole and its industry in its implementation;

12) is excluded 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 the day its first official publication);

13) a specialized organization in the matters of concession – an organization, established by the Government of the Republic of Kazakhstan for rendering of services in the matters of concession;

14) concession facility – facilities of social and vital infrastructures, included into the list, which shall be established (reconstructed) and operated under a concession agreement;

15) establishment of concession facility – the establishment of new concession facility in the territory of the Republic of Kazakhstan, as well as on the basis of new technologies, mechanization and automation of production, installation of new production equipment on concession facility, performance of other types of works, securing functioning of concession facility;

16) operation of concession facility – the use of concession facility by a concessionary in accordance with intention of concession facility, as well as for the purpose of production of commodities and (or) performance of works, and (or) rendering of services, in the manner and on conditions, determined by concession agreement;

17) reconstruction of concession facility – the change of separate premises, other building parts or building in general, by carrying out of actions on reconstruction on the basis of adoption of new technologies, mechanization and automation of production, modernization and replacement of technically outdated and (or) worn equipment by more productive new equipment, as well as change of technological or functional purpose of concession facility or its particular parts, other actions on improvement of performance and operational properties of concession facility;

18) a concession agreement – a written agreement between concession provider and concessionary, determining rights, obligations and liability of the parties, conditions of realization of concession;

19) is excluded by Law of the Republic of Kazakhstan № 380-V dated 31.10.2015 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

20) the authorized body on state planning is the central executive body that exercises leadership and cross-sectoral coordination in the field of strategic and economic planning;

21) an authorised body on exercise of right of disposition of republican property – a state body, performing the special executive and control functions within its competence in the

field of management of facilities of republican property, privatization and state monitoring of the property, in the branches (spheres) of economy, having strategic importance;

22) is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014);

23) an authorised state body of the relevant branch – a central executive body that carries out management of the relevant branch (sphere) of a state administration;

24) list - the list of objects proposed for concession or for a medium-term period, approved by the authorized body on state planning body, if the objects are republican property, or maslikhats of oblasts, cities of national importance and the capital, if the objects are communal property;

25) direct agreement - a written agreement concluded between the concession provider, the concessionaire and the creditors of the concessionaire for the implementation of concession projects in accordance with the provisions of Article 26-2 of this Law.

Footnote. Article 1 is in the wording of Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by Laws of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 209-V dated 12.06.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 380-V dated 31.10.2015 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication) ; dated 04.07.2018 № 171-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 29.06.2020 No. 352-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 03.01.2022 No. 101-VII (shall be enforced upon expiry of sixty calendar days after the date of its first official publication).

## **Article 2. The legislation of the Republic of Kazakhstan on concessions**

1. Legislation of the Republic of Kazakhstan on concessions is based on the Constitution and consists of the Civil Code of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan “On Public-Private Partnership”, this Law and other normative legal acts of the Republic of Kazakhstan.

The provisions of this Law shall not apply to relations related to subsoil use operations. Relations related to subsoil use operations shall be regulated and implemented in accordance with the Code of the Republic of Kazakhstan "On Subsoil and Subsoil Use".

Concession with application of project financing shall be regulated and carried out in accordance with this Law and in compliance with requirements, provided by the Law of the Republic of Kazakhstan On Project Financing and Securitization.

The concession in the healthcare area is regulated and carried out in accordance with this Law, taking into account the specifics provided for by the Code of the Republic of Kazakhstan "On public health and healthcare system".

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.

Footnote. Article 2 as amended by Law of the Republic of Kazakhstan No. 539-IV dated 12.01.2012 (shall be enforced upon expiry of ten calendar days after its first official publication). № 380-V dated 31.10.2015 (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 27.12.2017 No. 126-VI (shall be enforced upon the expiration of six months after the date of its first official publication); dated 26.12.2019 No. 287-VI (shall be enforced from 01.01.2020).

### **Article 3. Basic principles of concession**

An activity, related to concession shall be based on the following basic principles:

- 1) publicity and accountability of activity of concession provider and concessionary;
- 2) securing a balance of interests and risks of concession provider and concessionary;
- 3) securing rights and legal interests of consumers of commodities (works, services), provided by a concessionary, according to concession agreement;
- 4) perfect competition;
- 5) equality of all the potential concessionaries and non-admission of discrimination.
- 6) carrying out investments by the concessionaire for the implementation of the concession project;
- 7) values of the concession project for the population.

Footnote. Article 3 as amended by Law of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 4. Scope of application of the concession**

Objects of tourist activity, social and public infrastructure and life support in all sectors (spheres) of the economy, with the exception of objects, the list of which is determined by the Government of the Republic of Kazakhstan, can be transferred to the concession.

Footnote. Article 4 - as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 5. Property right under concession agreement**

1. Immovable and movable property that is a state property, exclusive rights related to carrying out of activity on concession facilities shall be provided for a temporary use and possession of concessionary in the manner, prescribed by concession agreement.

2. Improvements, carried out on concession facilities, as well as facilities of incomplete construction and property right on the results of intellectual creative activity arising during execution of terms of concession agreement shall be transferred into state property, unless otherwise provided by concession agreement.

3. Concession facilities, created in the result of execution of terms of concession agreement shall be transferred into state property after their establishment, unless otherwise provided by concession agreement.

4. Production and other incomes, gained by a concessionary in the result of operation of concession facilities, shall be his (her) property, unless otherwise provided by concession agreement.

5. Concession facilities may not act in the capacity of a pledge within validity period of concession agreement.

6. Concession facilities shall not be subject to alienation within validity period of concession agreement.

7. A concessionary shall bear a risk of accidental loss or accidental injury of a state property, transferred to him (her) in possession and use under concession agreement, as well as a property, originated in the result of execution of concession agreement, unless otherwise provided by concession agreement.

8. During the co-funding of concessionary project and (or) payment of recovery of expenses by concession provider to concessionary, a concession facility shall be transferred into state property.

**Footnote. Article 5 is in the wording of Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 5-1. Legal regime of the account intended for crediting of compensation of investment costs**

1. The account intended for crediting the compensation of investment costs is opened in case the concessionaire attracts borrowed financing secured by the right of claim on cash receipts in the form of compensation of investment costs.

2. The account intended for crediting the compensation of investment costs is used to protect the creditor's right to finance concession projects against the right of claim for cash receipts in the form of compensation of investment costs. The use of the account intended for crediting the compensation of investment costs for other purposes is not permitted.

The use of the account intended for crediting compensation of investment costs shall be carried out in accordance with the legislation of the Republic of Kazakhstan on concessions.

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

3. Recovery from the account intended for crediting the compensation of investment costs may be made only within the framework of the obligations of the concessionaire to the creditor, secured by the right of claim under the concession agreement.

The Concessionaire has the right to transfer a part of the funds from the account intended to be used to transfer the compensation of investment costs to its current account specified in the concession contract, upon agreement with the Lender.

**Footnote. Chapter 1 is supplemented by Article 5-1 in accordance with the Law of the Republic of Kazakhstan dated 04.07.2018 № 171-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 6. Transfer of rights to land plots to concessionary**

In accordance with the land legislation of the Republic of Kazakhstan, the land use rights may be transferred to concessionary in order to realize concession agreement.

#### **Article 7. Sources of compensation for expenses and acquisition of incomes of concessionary**

1. The sources of compensation for expenses and acquisition of income of concessionary shall be:

1) sales of manufactured commodities (works, services) during operation of concession facility;

2) subsidy from the state in cases, established by the Laws of the Republic of Kazakhstan;

3) compensation for investment expenses of concessionary in accordance with the budget legislation of the Republic of Kazakhstan;

4) compensation for operating expenses of concessionary within volumes of expenses on maintaining of social and vital infrastructure facilities in the relevant branch (sphere) of economy;

5) fee for carrying out of management of concession facility being in state property, as well as lease payment for use of concession facility, being in property of concessionary, in accordance with the budget legislation of the Republic of Kazakhstan;

6) payment for accessibility of concession facility.

2. The payment for the availability of the concession object is carried out in accordance with the procedure determined by the authorized body on budget performance, and includes payments at the expense of budgetary funds provided for by subparagraphs 3), 4) and 5) of paragraph 1 of this article, made in the form of unified payments by certain shares of the total amount of payments during the entire term of the concession project, taking into account the concessionaire's technical and operational characteristics of the concession object.

3. The payment for accessibility of concession facility may be applied only in relation to concessionary projects, related to the category of socially important projects.

4. The sources of reimbursement of expenses and receipt of income of the concessionaire shall be determined on the basis of the results of the tender (auction) for the selection of a concessionaire.

Footnote. Article 7 is in the wording of the Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 ( shall be enforced upon expiry of ten calendar days after the day of its first official publication ); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Chapter 1-1. PUBLIC PRIVATE PARTNERSHIP**

Footnote. Article 1-1 is excluded by Law of the Republic of Kazakhstan № 380-V dated 31.10.2015 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

#### **Chapter 2. GOVERNMENT REGULATION IN THE FIELD OF CONCESSION**

##### **Article 8. Powers of the Government of the Republic of Kazakhstan**

The Government of the Republic of Kazakhstan in the field of concession shall:

1) is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014);

2) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

3) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

4) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

4-1) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

4-2) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

5) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

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

6-1) Excluded by the Law of the Republic of Kazakhstan dated 03.01.2022 No. 101-VII (



shall be enforced upon expiry of sixty calendar days after the date of its first official publication);

6-2) defines the organizations for financing concession projects;

6-3) approves the list of concession projects of special significance;

7) establish a specialized organization on the issues of concession;

7-1) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

7-2) is excluded by Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);

7-3) approves the rules for payment of rent for the use of the concession object;

8) excluded by Law of the Republic of Kazakhstan No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010);

9) carry out other functions, provided by the Constitution, this Law, other Laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

Footnote. Article 8 as amended by Laws of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 539-IV dated 12.01.2012 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 209-V dated 12.06.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 29.06.2020 No. 352-VI ( shall be enforced upon expiry of ten calendar days after its first official publication); dated 03.01.2022 No. 101-VII ( shall be enforced upon expiry of sixty calendar days after the date of its first official publication ).

## **Article 9. Powers of an authorised body on state planning**

An authorised body on state planning shall:

1) involves a specialized organization on concession matters, with the exception of cases specified in sub-item 3-2) of Article 13 of this Law, for the conduct of:

examination of tender (auction) documentation, including when making changes and additions to it;

examination of concession applications submitted by tender participants in the course of a tender for the selection of a concessionaire;

examination of concession applications submitted by the participants of the tender ( auction) during the tender for the selection of a concessionaire;

- examination of the proposals of the concessionaire for obtaining the guarantee of the state ;
- evaluation of the implementation of concession projects;
- 2) form and approve the list of objects offered for the concession, related to the republican property;
- 3) coordinate the tender (auction) documentation and concession agreements, including when making changes and additions to them, except for the cases established by subparagraph 3-3) of Article 13 of this Law;
- 4) excluded by Law of the Republic of Kazakhstan No. 495-IV dated 24.11.2011 (shall be enforced upon expiry of ten calendar days after its first official publication);
- 5) approves the methodology for determining the cost of the concession object and the total cost of state support for concessionaire activities and sources of cost recovery;
- 6) is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014);
- 7) determine the requirements for the examination of tender (auction) documentation, including when making changes and additions to it, concession applications submitted by tender participants during the tender (auction) for the selection of a concessionaire;
- 7-1) carry out cross-sector coordination and technical guidance in the field of organizing concessional projects;
- 7-2) direct the results of evaluation of concessional projects to an authorised state body on carrying out of the right of disposition of republican property for entering data into register of concession agreements on concession facilities, related to republican property;
- 7-3) forms limits of state concession obligations of the Government of the Republic of Kazakhstan and local executive bodies;
- 7-4) maintains a register of concession agreements;
- 7-5) approve the rules for holding a tender (auction) for the selection of a concessionaire;
- 7-6) approves the rules for the submission, consideration and selection of concession projects;
- 7-7) is excluded by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication);
- 7-8) approves the rules for monitoring the concession agreements, monitoring and evaluation of the implementation of concession projects;
- 7-9) approves the criteria for classifying concessionary projects as socially significant;
- 7-10) approves the criteria for assigning concessionary projects to the category of concession projects of special significance;
- 8) carry out the other functions, provided by this Law, other Laws, acts of the President of the Republic of Kazakhstan and Government of the Republic of Kazakhstan.

Footnote. Article 9 is in the wording of the Republic of Kazakhstan No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); as amended by Law of the Republic of

Kazakhstan No. 495-IV dated 24.11.2011 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 10. Powers of an authorised state body on budget performance**

An authorised body on budget performance shall:

- 1) approves the list of objects offered in the concession for the medium-term period, related to the republican property;
- 2) coordinate the tender (auction) documentation and the draft concession agreement, including when making changes and additions to them, in relation to the objects belonging to republican property;
- 3) conclude agreements of state guarantees and sureties of the state on concession agreements, as well as keep a register of issued state guarantees and sureties of the state on concession agreements;
- 4) is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014);
- 5) register state concessional obligations;
- 6) excluded by Law of the Republic of Kazakhstan No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010);
- 7) determine the procedure for transfer of concession facilities in possession and use of concessionary, being in state property;
  - 7-1) is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014);
  - 7-2) approves the rules for maintaining the register of concession agreements , state guarantees and warrant provided by the state in consultation with the authorized state planning body;
  - 7-3) approves the rules for payment of compensation for operating costs in coordination with the authorized body on state planning;
  - 7-4) approves the rules for providing compensation for investment costs for concession projects in agreement with the authorized body on state planning;
  - 7-5) approves the rules for payment of remuneration for the management of the concession object in agreement with the authorized body for state planning;

8) carry out the other functions provided by this Law, other Laws, acts of the President of the Republic of Kazakhstan and Government of the Republic of Kazakhstan.

Footnote. Article 10 is in the wording of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); as amended by Laws of the Republic of Kazakhstan No. 97-IV dated 04.12.2008 (see Article 2 for the order of enforcement); No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 495-IV dated 24.11.2011 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 10-1. Authorities of the authorized body on budget planning**

The powers of the authorized body on budget planning include:

- 1) submission of issues on financing of advisory support of the concession project, development of tender (auction) documentation for consideration by the Republican Budget Commission;
- 2) issues the questions on acceptance of state concession obligations of the Government of the Republic of Kazakhstan for consideration by the Republican Budget Commission;
- 3) performances of other functions 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. Chapter 2 is supplemented by article 10-1 in accordance with Law of the Republic of Kazakhstan № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 11. Powers of an authorised state body on exercise of the rights of disposal of republican property**

An authorised state body on exercise of the right of disposal of republican property shall:

- 1) is excluded by Law of the Republic of Kazakhstan No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication);
- 2) keep a register of concluded concession agreements on concession facilities, related to republican property;

3) carry out monitoring of concession agreements on concession facilities, related to republican property, within its competence and direct the results of monitoring to an authorised body on state planning;

4) coordinate concessionary projects in case, provided by the budget legislation of the Republic of Kazakhstan;

5) take facilities into republican property, established on the basis of concession agreements;

6) determine the procedure for taking concession facilities into state property;

7) carry out the other functions provided by this Law, other Laws, acts of the President of the Republic of Kazakhstan and Government of the Republic of Kazakhstan.

**Footnote. Article 11 is in the wording of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); as amended by Law of the Republic of Kazakhstan No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Article 12. Powers of an authorised state body of the relevant branch**

An authorised state body of the relevant branch shall (be):

1) carry out preparation of an industry opinion on the tender (auction) documentation of the concession project in accordance with the rules approved by the authorized body for state planning;

2) be the organizer of a tender (auction) in relation to concession objects related to republican property and provided for in paragraph 2 of Article 16 of this Law;

3) conclude concession agreement on concession facilities, related to republican property and provided in paragraph 2 of Article 16 of this Law on the basis of commission decision;

4) monitor the implementation of concession projects and sends the results of monitoring to the authorized body on state planning for the implementation of the evaluation of the implementation of the concession project;

5) provide information to an authorised state body on exercising the right of disposal of republican property on concluded concession agreements;

6) organize a transfer to republican property of facilities established on the basis of concession agreements;

7) organize engaging of new concessionaires by holding an open tender (auction) to select a concessionaire in the event of early termination of a previously concluded concession agreement on concession objects related to republican property;

8) involve, if necessary, legal entities for the consultative support of concession projects, financing of which is carried out in accordance with the budget legislation of the Republic of Kazakhstan;

9) carry the other functions provided by this Law, other Laws, acts of the President of the Republic of Kazakhstan and Government of the Republic of Kazakhstan.

Footnote. Article 12 as amended by the Laws of the Republic of Kazakhstan dated 05.07.2008 No. 66-IV (the order of enforcement see Article 2); dated 02.04.2010 No. 263-IV (shall be enforced from 01.01.2010); dated 04.07.2013 No. 131-V (shall be enforced upon expiry of ten calendar days after its first official publication); dated 03.12.2013 № 150-V ( shall be enforced from 01.01.2014); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 29.06.2020 No. 352-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 03.01.2022 No. 101-VII ( shall be enforced upon expiry of sixty calendar days after the date of its first official publication ).

**Article 13. Powers of local executive bodies of oblasts (cities of national importance, the capital)**

A footnote. Title of Article 13 with the change introduced by the Law of the Republic of Kazakhstan dated 28.12.2018 № 210-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

Local executive bodies of oblasts (cities of national importance, the capital) within their competence:

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

2) make proposals to the tender (auction) organizer in respect of concession objects belonging to the republican property in order to resolve issues related to compliance with the socio-economic and environmental interests of the population of the relevant region, when concluding a concession agreement;

3) keep a register on concluded concession agreements on concession facilities, related to municipal property;

3-1) determine the legal persons for carrying out expert examinations in the cases specified in subparagraph 3-2) of this article;

3-2) for the concession objects related to communal property, if the cost of creating (reconstructing) the concession object is up to 4,000,000 times the monthly calculation index established by the law on the republican budget and effective as of January 1 of the corresponding financial year, represented by local authorized bodies for state planning shall prepare opinions on:

tender (auction) documentation, including when making changes and additions to it;  
concession applications submitted by the participants of the tender (auction) when holding the tender (auction) to select the concessionaire;

draft concession agreements, including when making changes and additions to the concession agreements.

Local authorized bodies for state planning for conducting examination of documents provided for by this subparagraph shall involve legal entities determined by local executive bodies of regions, cities of republican significance, the capital;

3-3) for concession objects related to communal property represented by the local authorized body for state planning, shall coordinate the tender (auction) documentation and concession agreements, including when making changes and additions to them, if the cost of creation (reconstruction) of the concession object is up to 4,000,000 times the monthly calculation index established by the law on the republican budget and effective as of January 1 of the corresponding financial year;

4) establish and approve provision on commission in respect of concession facilities, related to municipal property;

5) be tender (auction) organizers in respect of concession objects related to communal property and provided for in the list;

6) conclude concession agreement on concession facilities, related to municipal property and provided in a list, on the basis of decision of commission;

7) carry out monitoring of concession agreements on concession facilities, related to municipal property, control of their execution and direct the results of monitoring and control to an authorised body on state planning;

8) take into municipal property the facilities established on the basis of concession agreements;

9) organize involving of new concessionaires by holding an open tender (auction) to select a concessionaire in the event of early termination of a previously concluded concession agreement on concession objects related to communal property;

10) carry out the other powers, assigned on local executive bodies on behalf of a local state administration by the legislation of the Republic of Kazakhstan.

**Footnote. Article 13 as amended by Laws of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication) ; dated 28.12.2018 № 210-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 29.06.2020 No. 352-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 02.01.2021 No. 399-VI ( shall be enforced upon expiry of ten calendar days after its first official publication); dated 03.01.2022 No. 101-VII ( shall be enforced upon expiry of sixty calendar days after the date of its first official publication ).**

## **Article 14. State support of activity of concessionaries**

1. One or several of the following types of state support may be provided in order to support activity of concessionaries:

- 1) sureties of the state on revenue-yielding bonds within
- 2) state guarantees on loans, engaged for financing of concessionary projects;
- 3) transfer of exclusive rights on intellectual property, owned by the state to concessionary;
- 4) provision of the grants in kind in accordance with the legislation of the Republic of Kazakhstan;
- 5) co-funding of concessionary projects;
- 6) guarantees the consumption by the state of a certain volume of goods (works, services) produced during the implementation of the concession project.

7) is excluded by the Law of the Republic of Kazakhstan dated 04.07.2013 No. 131-V ( shall be enforced upon expiry of ten calendar days after its first official publication).

2. During establishment of concession facility, that shall not be subject to transfer into state property, the measures of state support, provided by sub-paragraphs 1), 2) and 5) of paragraph 1 of this Article may not be provided to concessionary.

2-1. Legislation of the Republic of Kazakhstan on public procurement shall not extend to legal relationships, regulated by subparagraph 6) of paragraph 1 of this Article.

3. The total value of state concession obligations provided by subparagraph 3) of paragraph 1 of Article 7 and subparagraphs 1), 2), 3), 4) and 5) of paragraph 1 of this article shall not exceed the cost of the creation (reconstruction) of the concession object within the framework of concession agreement.

Footnote. Article 14 as amended by Laws of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); No. 97-IV dated 04.12.2008 (see Article 2 for the order of enforcement); No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 380-V dated 31.10.2015 (shall be enforced upon expiry of ten calendar days after the day its first official publication).

## **Chapter 3. TRANSFER OF FACILITIES INTO CONCESSION**

### **Article 15. The procedure for transferring objects into concession**

1. Provision of facilities into concession shall be carried out in three stages:
  - 1) formation of a list;
  - 2) holding a tender (auction) to select a concessionaire;
  - 3) determination of the concessionaire and conclusion of a concession agreement.



2. An obligatory condition for granting the state guarantee to the concessionaire shall be the placement of infrastructure bonds on the stock exchange of the Republic of Kazakhstan.

Footnote. Article 15 - as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 15-1. Formulation of concessional proposals**

Footnote. Article 15-1 is excluded by Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

#### **Article 15-2. Development or adjustment, as well as carrying out the necessary examinations of tender (auction) documentation for concession projects**

Footnote. The heading of Article 15-2 as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

1. The development or adjustment of tender (auction) documentation for concession projects shall be carried out for concession projects approved by budgetary commissions, according to economic conclusions on investment proposals.

2. For the projects which have developed design estimates, as well as being technically simple, implemented on the basis of standard designs, typical design solutions and re-use projects, feasibility study are not required.

Binding of the available design and estimate documentation to a specific site of the concession object shall be carried out by the tender (auction) organizer as part of the development or adjustment of the tender (auction) documentation or by the concessionaire, taking into account the marketing and financial-economic parameters of the concession project in accordance with the terms of the tender (auction) documentation.

3. Development of a feasibility study for a concession project for the projects that are technically complex and (or) unique shall be carried out by a potential concessionaire in the event of holding a tender (auction) to select a concessionaire using two-stage procedures, or by an authorized body of the relevant industry or local executive body in the event of holding a tender (auction) to select a concessionaire without the use of two-stage procedures.

4. The feasibility study contains the results of the realizability and the effectiveness of the concession project, based on an economic analysis of benefits and costs.

In the event of a change in the established technical and economic parameters of the concession project entailing a change in technical solutions and additional costs, the

authorized state body of the relevant industry and local executive bodies shall carry out the adjustment of the feasibility study, followed by the necessary expertise in accordance with the legislation of the Republic of Kazakhstan.

5. After conducting the necessary examinations of the developed or corrected tender (auction) documentation of the concession project, the authorized state body of the relevant industry shall send it to the authorized state planning body for examination, except for the cases established by subparagraph 3-2) of Article 13 of this Law.

6. The authorized body for state planning shall engage a specialized organization on the issues of concession to conduct an examination of the developed or corrected tender (auction) documentation for a concession project, except for the cases established by subparagraph 3-2) of Article 13 of this Law.

7. The specialized organization on concession matters and legal entities specified in subparagraph 3-2) of Article 13 of this Law shall be liable in accordance with the laws of the Republic of Kazakhstan for the quality of expertise of the proposed solutions for the implementation of the concession project.

8. The authorized body on state planning sends the judgment, the present article specified in point 6, to authorized public authority of the relevant branch if the project republican and also to local executive bodies of areas, cities of republican value, the capital if the project local.

9. The authorized body for budget planning, based on the application of the authorized state body of the relevant industry, agreed with the authorized body for budget execution, and the positive opinion of the examination specified in paragraph 6 of this Article, containing recommendations on the possibility of accepting state concession obligations, shall form conclusions on tender (auction) documentation of concession projects and submit them for consideration by the Republican Budget Commission.

10. The local authorized body for state planning, on the basis of a positive opinion of the examination specified in paragraph 6 of this Article, containing recommendations on the possibility of accepting state concession obligations shall form conclusions on the tender (auction) documentation of concession projects and submit them to the relevant budget commission for consideration.

11. Conclusions of examinations of the developed or adjusted tender (auction) documentation of a concession project, for which a concession agreement has not been concluded within three years after its approval, shall be considered invalid.

**Footnote. Chapter 3 is supplemented by Article 15-2 in accordance with Law of the Republic of Kazakhstan No 263-IV dated 02.04.2010 (shall be enforced since 01.01.2010); in the new wording of Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); as amended by Laws of the Republic of Kazakhstan № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 239-V dated 29.09.2014 (shall be enforced upon expiry of ten**

calendar days after the day of its first official publication); № 380-V dated 31.10.2015 (shall be enforced upon expiry of ten calendar days after the day its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 16. Formation of a list**

1. The list shall be formed by the central authorized body for state planning for the objects belonging to republican property, and by the authorized bodies of the region, city of republican significance, the capital for state planning on the concession objects related to communal property, on the basis of a positive opinion of the examination of tender (auction) documentation of concession projects and in accordance with the strategic and program documents of the Republic of Kazakhstan, with investment opportunities of the republican and (or) local budgets annually for a period of three years on a rolling basis.

2. A list shall consist of two chapters:

1) existing facilities of the state property, the reconstruction and operation of which will be carried out on the basis of concession agreement;

2) facilities, the establishment and operation of which will be carried out on the basis of concession agreements.

3. Is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014).

4. In relation to facilities, that are not included into a list, the relevant notifications shall be directed to state bodies, provided the relevant proposals, with a motivated justification of their non-admittance.

5. Concession facilities, that are not transferred into concession shall be included into the relevant list, formed on the next medium-term period.

Footnote. Article 16 is in the wording of Law of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); as amended by Law of the Republic of Kazakhstan No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 17. Content of the tender (auction) documentation**

Footnote. The title of Article 17 as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

1. The organizer of the tender (auction) shall be obliged to submit to all potential concessionaires the tender (auction) documentation agreed with the authorized body for state planning in the cases provided for in subparagraph 3) of Article 9 of this Law, and with the authorized state body for budget execution in the cases provided for in subparagraph 2 ) Article 10 of this Law containing the following information:

1) requirements for the documents that must be submitted to potential concessionaires to confirm their compliance with the qualification requirements, and the procedure for their assessment;

2) the feasibility study, except for the cases established by subparagraphs 2-1) and 2-2) of the present point;

2-1) the design, an estimate documentation and the concession offer in the cases specified in paragraph 2 of article 15-2 of the present Law;

2-2) the concession offer in case of holding a competition in the choice of the concessionaire with use of two-stage procedures;

3) location of facility, suggested for a transfer into concession;

3-1) possible types and volumes of the state support of activity of concessionaires and also sources of compensation of expenses and income generation of the concessionaire for this concession project;

4) draft concession agreement;

5) description of all criteria, including obligations on the in-country value, on the basis of which a winning concessional application will be determined, as well as specific value of each of these criteria, description of criterion and comparison of concessional applications;

6) currency or currencies, in which the cost of concession facility shall be expressed, and the rate, which will be applied for adjusting the cost of concession facility to a common currency for the purpose of their comparison and evaluation;

7) requirements for the language of preparation and submission of concession (auction) applications in accordance with the legislation of the Republic of Kazakhstan on languages;

8) an appropriate indication of the potential concessionaire's right to change or withdraw its tender (auction) application before the deadline for submission of tender (auction) applications expires;

9) the method, place and deadline for submitting tender (auction) applications (but not later than fifteen hours local time on a working day) and their validity period;

10) an appropriate indication of the potential concessionaire's right to submit a part of the tender (auction) application, which indicates the cost of the concession object, immediately at the time of opening the envelopes with tender (auction) applications;

11) ways by which potential concessionaires can request clarifications on the content of the tender documentation, and a message about the intention of the organizer of the tender (auction) at this stage to hold a meeting with potential concessionaires, which is held in an open form and recorded;

12) the conditions for submission and content of the tender (auction) application, including the conditions for making the security of the tender (auction) application;

13) the place, date and time of opening envelopes with tender (auction) applications (but not later than two hours after the deadline for submission of tender (auction) applications);

14) procedures used to open envelopes with tender (auction) applications and their consideration.

**15) is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014).**

2. The organizer of the tender (auction) shall charge a fee for the submitted tender (auction) documentation, not exceeding the actual cost of copying the tender (auction) documentation.

3. A potential concessionary shall have the right to address a request on explanation of provisions of tender documentation, but not later than thirty calendar days until the deadline of the tender applications' submission. A tender organizer shall be reply to a request within three days from the moment of request registration and inform this explanation to all potential concessionaries, to whom a tender organizer provided a tender documentation, without specifying from whom request has come.

In case of repeated tendering process, a potential concessionary shall have the right to address a request on explanation of provisions of a tender documentation, but not later than fifteen calendar days until the deadline of the tender applications' submission.

3. A potential concessionaire shall have the right to request clarification of the provisions of the tender (auction) documentation, but no later than thirty calendar days before the deadline for submitting tender (auction) applications. The organizer of the tender (auction) shall be obliged, within three calendar days from the date of registration of the request, to respond to it and, without indicating from whom the request was received, to provide such an explanation to all potential concessionaires to whom the organizer of the tender (auction) submitted the tender (auction) documentation.

When holding a repeated tender (auction), a potential concessionaire shall have the right to request clarification of the provisions of the tender (auction) documentation, but no later than fifteen calendar days before the deadline for submitting tender (auction) applications.

4. The organizer of the tender (auction) shall have the right, no later than twenty calendar days before the deadline for submitting tender (auction) applications, on its own initiative or in response to a request from a potential concessionaire, to make changes and (or) additions to

the tender (auction) documentation by issuing protocol, and in the case of a repeated tender (auction) - no later than ten calendar days. The changes and (or) additions made shall be binding.

The tender (auction) organizer, no later than one working day from the date of the decision to make changes and (or) additions to the tender (auction) documentation, shall submit free of charge the text of the made changes and (or) additions to all potential concessionaires who have been presented with the tender (auction) documentation. At the same time, the deadline for submission of tender (auction) applications shall be extended by the organizer of the tender (auction) for a period of at least thirty calendar days for potential concessionaires to take into account these changes and (or) additions in tender (auction) applications, and in case of a repeated tender (auction) for a period of at least fifteen calendar days.

5. The organizer of the tender (auction) shall have the right to hold a meeting with potential concessionaires to clarify the provisions of the tender (auction) documentation at a certain place and at the appropriate time specified in the tender (auction) documentation. At the same time, the organizer of the tender (auction) shall draw up a protocol containing requests submitted during this meeting for clarification of the tender (auction) documentation without indicating their source, as well as responses to these requests. The protocol shall be immediately sent to the commission and to all potential concessionaires to whom the tender (auction) organizer has submitted tender (auction) documentation.

6. The tender (auction) documentation shall be approved by the tender (auction) organizer

**Footnote.** Article 17 as amended by Laws of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); No. 97-IV dated 04.12.2008 (see Article 2 for the order of enforcement); No. 233-IV dated 29.12.2009 (see Article 2 for the order of enforcement); No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 535-IV dated 09.01.2012 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 29.06.2020 No. 352-VI ( shall be enforced upon expiry of ten calendar days after its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 27.12.2021 No. 87-VII ( shall be enforced upon expiry of ten calendar days after the date of its first official publication ).

#### **Article 18. Specified qualification requirements to potential concessionary**

1. For participation in a tender (auction) to select a concessionaire, a potential concessionaire must meet the following qualification requirements:

1) have the necessary financial and (or) material and (or) labor resources to fulfill obligations under the concession agreement;

2) be solvent, not have a tax debt exceeding six times the amount of the monthly calculation index, established for the corresponding financial year by the law on the republican budget and effective as of January 1 of the corresponding financial year, not be subject to bankruptcy or liquidation proceedings on his property, the book value of which exceeds ten percent of the value of the relevant fixed assets, must not be seized, its financial and economic activities should not be suspended in accordance with the legislation of the Republic of Kazakhstan;

3) not be held liable for non-fulfillment or improper fulfillment of obligations under public-private partnership or concession agreements concluded over the past three years on the basis of a court decision that has entered into legal force on recognition as an unscrupulous potential private partner or concessionaire;

4) have their own funds amounting to at least ten percent of the cost of creation ( reconstruction) of the concession object.

Own funds means own capital, money and other assets belonging to a potential concessionaire, which are directly involved in the implementation of the concession project;

5) founders, managers of a potential concessionaire should not be included in the list of organizations and persons associated with the financing of terrorism and extremism in the manner prescribed by the legislation of the Republic of Kazakhstan;

6) should not be included in the register of unscrupulous participants in public procurement;

7) have civil capacity (for an individual entrepreneur) and legal capacity (for legal entities ).

1-1. If a potential concessionary is a new legal entity, established in order to realize concessionary projects by individuals and (or) legal entities, then:

1) a potential concessionary shall conform to qualification requirements, provided by subparagraph 1) of paragraph 1 of this Article;

2) the legal entities, acting as founders of a new legal entity, shall conform to requirements of subparagraphs 2), 3) and 5) of paragraph 1 of this Article;

3) total equity capital of individuals and (or) legal entities that established new legal entity , shall conform to conditions of subparagraph 4) of paragraph 1 of this Article.

2. A potential concessionaire, in confirmation of its compliance with the qualification requirements provided for in paragraph 1 of this Article, shall submit to the organizer of the tender (auction) the documents, the list of which is provided for by the rules approved by the authorized body for state planning.

Legal entities, for which a mandatory conduct of an audit is established by the legislative acts of the Republic of Kazakhstan, shall also provide an auditor's report for the last financial year.

In case, if the receipt of state guarantee and (or) sureties of the state shall be provided, a potential concessionaire shall have a net profit for the last finished financial year or any two of last three finished financial years, according to a financial statement confirmed by auditor's report, with the exception of cases, when a potential concessionaire is a new legal entity, established in order to realize a concessionaire project by several individuals or legal entities.

3. A potential concessionaire, in the event of submission of false information on qualification requirements shall not be allowed to participate in the tender (auction) to determine a private partner for all types of public-private partnership within three years from the date of establishing such a fact.

The reliability of information on qualification requirements submitted by a potential concessionaire can be established by the commission, the organizer of the tender (auction), authorized state bodies at any stage of holding the tender (auction) to select the concessionaire.

3-1. The commission, the organizer of the tender (auction), authorized state bodies that have established the fact that a potential concessionaire has submitted false information on qualification requirements shall be obliged to notify the authorized body for state planning in writing about this fact no later than three working days from the date of establishing such a fact, attaching copies of documents to the notification, confirming these facts.

3-2. In case of participation in a tender (auction) for the selection of a concessionaire by associations of individuals and (or) legal entities in the form of a simple partnership, each of these persons must meet the qualification requirements provided for in subparagraphs 1), 2), 3) and 4) of paragraph 1 of this Article, by the totality of financial and material resources of all participants in a simple partnership.

4. The organizer of the tender (auction) shall not be entitled to present qualification requirements to a potential concessionaire that are not provided for by this Law. A potential concessionaire shall have the right not to submit information that is not related to the qualification requirements imposed on him/her.

5. Compliance of a potential concessionaire with the qualification requirements specified in paragraph 1 of this Article shall be determined by the organizer of the tender (auction) during the tender (auction) for the selection of the concessionaire through qualification selection.

If a potential concessionaire does not meet the qualification requirements specified in paragraph 1 of this Article, he shall not be allowed to participate in the tender (auction), and his tender (auction) application shall be rejected.

**Footnote. Article 18 as amended by Laws of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); No. 97-IV (dated 04.12.2008 see Article 2 for the order of enforcement); No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 150-V (dated 03.12.2013 shall be enforced from**



01.01.2014); № 380-V dated 31.10.2015 (shall be enforced upon expiry of ten calendar days after the day its first official publication); No 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 07.07.2020 No. 361-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 18-1. Securing of tender (auction) applications**

**Footnote.** The heading of Article 18-1 as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

1. Securing of the tender (auction) application shall be made by a potential concessionaire as a guarantee that he/she:

1) does not withdraw or change and (or) supplement his/her tender (auction) application after the expiration of deadline for submission of such tender (auction) applications;

2) is excluded by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014).

3) if he/she is determined as the winner of the tender (auction), will conclude a concession agreement.

2. Securing of a tender (auction) application for participation in a tender (auction) shall be paid in the amount of one tenth of a percent of the cost of the proposed investments under the concession agreement.

The cost of the proposed investments under the concession agreement shall be determined in the tender (auction) documentation.

3. A potential concessionaire shall not provide security for a tender (auction) application if it participates in the first stage of a tender (auction) to select a concessionaire using two-stage procedures.

4. A potential concessionaire shall have the right to choose one of the following types of security for a tender (auction) application:

1) a guarantee monetary contribution, which is paid to the account provided for by the budgetary legislation of the Republic of Kazakhstan for the organizers of tenders (auctions) that are state bodies;

2) bank guaranty.

It is not allowed for a potential concessionaire to take actions leading to the emergence of third parties' right to claim, in whole or in part, for the deposited guarantee monetary contribution before the expiration of his/her tender (auction) application.

It is not allowed for the organizer of the tender (auction) to use the guarantee monetary contribution made by the potential concessionaire, except for the actions specified in paragraphs 6 and 7 of this Article.

5. Securing of the tender (auction) application shall not be returned by the organizer of the tender (auction) in the event of one of the following cases:

1) a potential concessionaire withdrew or changed and (or) supplemented the tender (auction) application after expiration of the deadline for submission of tender (auction) applications;

2) a potential concessionaire determined as the winner of the tender (auction) evaded concluding the concession agreement.

6. In the event of one of the cases provided for in paragraph 5 of this Article, the amount of security for the tender (auction) application shall be credited to the income of the relevant budget.

7. The organizer of the tender (auction) shall return to the potential concessionaire the security of the tender (auction) application submitted by him/her within three working days from the date of occurrence of one of the following cases:

1) withdrawal by this potential concessionaire of his/her tender (auction) application before expiration of the deadline for submission of tender (auction) applications;

2) signing the protocol on admission to participate in the tender (auction). This case does not apply to potential concessionaires recognized as participants in the tender (auction);

3) signing a protocol on the results of the tender (auction) for the selection of the concessionaire. This case does not apply to the participant of the tender (auction), determined as the winner of the tender (auction);

4) entry into force of the concession agreement;

5) expiration of the tender (auction) application of a potential concessionaire.

**Footnote. Chapter 3 is supplemented by Article 18-1 in accordance with Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 18-2. Restrictions related to participation in a tender (auction) to select a concessionaire**

1. A potential concessionaire shall not be entitled to participate in the ongoing tender (auction) if:

1) close relatives, spouse (wife) or relatives of the leaders of this potential concessionaire and (or) an authorized representative of this potential concessionaire have the right to make a decision on the selection of a concessionaire or are a representative of the tender (auction) organizer;

2) the potential concessionaire and (or) his/her employee provided the organizer of the tender (auction) with expert, consulting and (or) other services in the preparation of ongoing tenders (auctions), including participating as a general designer or sub -designer in the

development of a feasibility study and (or) design (design and estimate) documentation for the creation of an object that is the subject of a tender (auction);

3) the property of a potential concessionaire, the book value of which exceeds ten percent of the value of the relevant fixed assets, is seized;

4) the potential concessionaire has unfulfilled obligations under executive documents and is included in the unified register of debtors by the authorized body in the field of ensuring the execution of executive documents;

5) financial and economic activities of the potential concessionaire are suspended in accordance with the laws of the Republic of Kazakhstan or the legislation of the state of the potential concessionaire-non-resident of the Republic of Kazakhstan.

2. A potential concessionaire and an affiliate of a potential concessionaire shall not have the right to participate in the same tender (auction).

3. Violations of the requirements of this Article may be established by the tender (auction) commission, the organizer of the tender (auction), authorized state bodies at any stage of planning and implementation of the concession project.

**Footnote. Chapter 3 is supplemented by Article 18-2 in accordance with Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 19 Holding a tender (auction) for the selection of the concessionaire**

1. The selection of a concessionaire shall be carried out by holding a tender (auction) for concession projects.

2. The organizer of the tender (auction) in respect of concession objects related to republican property and provided for in paragraph 2 of Article 16 of this Law shall be the authorized state body of the relevant industry.

The organizer of the tender (auction) in respect of concession objects related to communal property and provided for in the list shall be the relevant local executive body of the region (city of republican significance, the capital).

3. The organizer of the tender (auction) shall publish without fail the information about the tender (auction) in periodicals distributed throughout the territory of the Republic of Kazakhstan, in Kazakh and Russian languages at least sixty calendar days before the day of the tender (auction), and when holding a repeated tender (auction) - at least thirty calendar days in advance. Information on holding a tender (auction) should include information about the objects of the concession, a list of necessary documents to be submitted to the organizer of the tender (auction), requirements for potential participants depending on the nature of the object for which the tender (auction) is announced; about the place, time and date of the tender (auction).

4. Consideration and selection of concession (auction) applications shall be carried out by the commission created by the order of the Prime Minister for concession projects of special significance, or the organizer of the tender (auction) for other projects.

The working body of the commission shall be the relevant organizer of the tender (auction).

When making changes and additions to the conditions of the tender (auction), as well as to the initial parameters and characteristics of the concession (auction) application for the projects of special significance in accordance with paragraph 5 of Article 20 of this Law, the relevant decisions shall be formalized by the protocol decision of the commission.

**Footnote. Article 19 - as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 20. Determination of the concessionaire and conclusion of the concession agreement**

1. The Commission shall open envelopes with tender (auction) applications on time, at the time and at the place indicated in the tender (auction) documentation.

The organizer of the tender (auction) shall send the concession applications contained in the relevant tender (auction) applications to the authorized body for state planning for conducting their examination.

A tender (auction) organizer shall involve legal entities on advisory support of the concessionary projects for development of the tender (auction) documentation, the draft concession agreement, independent assessment of the submitted concession requests which are contained in the corresponding tender (auction) application and also for participation in negotiations with potential concessionaries.

In order to attract legal entities for advisory support of concession projects the tender (auction) organizer sends to the authorized state planning agency an application for financing the services for advisory support of the concession project.

The authorized body for budget planning or the local authorized body for budget planning shall submit an opinion on the provision of services for advisory support of concession projects for consideration by the relevant budget commission.

According to the volume of financing of services for advisory support of each concession project approved by the budget commissions, the authorized body for state planning shall form a list of services for advisory support for concession projects, which is carried out at the expense of the appropriate distributed budget program of the authorized body for state planning.

Advisory support for concession projects shall be carried out in the manner determined by the authorized body for state planning in agreement with the authorized body for budget execution.

2. The commission shall consider all tender (auction) applications submitted by participants in the tender (auction), taking into account compliance with the requirements of the tender (auction) documentation, conclusions on the concession (auction) application and assessment of compliance of potential concessionaires with qualification requirements.

If the organizer of the tender (auction) did not receive tender (auction) applications within the established time limits, or if all submitted tender (auction) applications do not meet the requirements of the tender (auction) documentation, then the tender (auction) shall be considered not to have taken place.

If only one tender (auction) application is submitted, this application shall be considered by the commission in accordance with part one of this paragraph.

3. The commission shall conduct negotiations with the participant of the tender (auction), whose concession application is recognized as the best on the basis of criteria established by the authorized body for state planning, to clarify the concession project and the terms of the concession agreement.

4. As part of the preparation of negotiations, comments and proposals on the concession project and the concession agreement must be sent by the commission to the applicant in writing.

Based on the results of negotiations, an appropriate decision of the commission on their results shall be made.

In the course of negotiations, it shall not be allowed to make changes to the conditions of the tender (auction), as well as to the initial parameters and characteristics of the concession (auction) application, except for the case provided for in paragraph 5 of this Article.

5. For the projects of particular importance, it shall be allowed to make changes and additions to the conditions of the tender (auction), as well as to the initial parameters and characteristics of the concession (auction) application in the event of a significant change in the exchange rate of the national currency during the tender (auction).

The decision to make changes and additions to the conditions of the tender (auction), including the cost of construction and installation works and state payments, as well as to the initial parameters and characteristics of the concession (auction) application shall be made on the basis of the protocol of negotiations and the decision of the commission and shall be submitted for consideration to the Republican budget commission.

6. If the participant of the tender (auction), whose concession application is recognized as the best, refuses to discuss and clarify the concession application and the terms of the concession agreement in accordance with the comments and suggestions of the commission, or if his/her proposals are unacceptable in terms of the conditions of the tender (auction), then this concession application shall not be considered by the commission and the best concession application shall be re-selected.

7. Based on the results of the tender (auction) for the selection of the concessionaire, the commission shall determine the best concession application, and the applicant shall be recognized as the winner of the tender (auction).

8. The organizer of the tender (auction), on the basis of the decision of the commission shall conclude a concession agreement with the winner of the tender (auction).

For the implementation of concession projects of special significance, the organizer of a tender (auction), on the basis of a decision of the commission shall conclude a concession agreement with a legal entity, the creation of which is declared by the winner of the tender (auction) in the tender (auction) application, established by the winner of the tender (auction), in order to implement the concession project (on condition that the concessor will be provided with bank guarantees for the fulfillment of obligations of such a legal entity in the amount and on the terms determined by the concession agreement).

9. The term for concluding a concession agreement cannot be more than ninety calendar days from the date of summing up the results of the tender (auction).

10. Information about the results of tenders (auctions) for the selection of a concessionaire, with the exception of information constituting state secrets or other secrets protected by law shall be published by the organizer of the tender (auction) in periodicals distributed throughout the territory of the Republic of Kazakhstan, in Kazakh and Russian languages.

**Footnote. Article 20 - as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication); As amended by the Law of the Republic of Kazakhstan dated 03.01.2022 No. 101-VII ( shall be enforced upon expiry of sixty calendar days after the date of its first official publication ).**

#### **Article 20-1. Special aspects of tendering process on a choice of concessionary with the use of two-stage procedures**

1. A tender on a choice of concessionary with the use of two-stage procedures shall be held in cases, when:

1) it is necessary to collect and conduct a study of different innovative, creative, architectonical and planning, organizational and technological treatments, inventions and negotiations with potential concessionaries on arising issues for realization of concessionary project;

2) it is necessary to perform experiments, investigations or developments.

2. A tender on a choice of concessionary with the use of two-stage procedures shall be represented as set of the following successive stages:

1) the following actions shall be carried out at the first stage:

formation of technical specifications by a tender organizer on the basis of expert examination of concessional proposal, development and confirmation of tender documentation by a tender organizer;

publication of information on a choice of concessionary with the use of two-stage procedures in the periodicals, distributed in the whole territory of the Republic of Kazakhstan in the Kazakh official and Russian languages;

provision of technical specifications and tender documentation by a tender organizer to persons, interested in participation at the first stage on a choice of concessionary with the use of two-stage procedures;

conduct of qualified selection of potential concessionaries;

discussion of the issues, concerning technical, qualitative and (or) other characteristics of technical specification with potential concessionaries;

submission of tender applications with technical proposals, developed in accordance with technical specification by tenderers that passed qualified selection;

expert examination of technical proposals of tenderers by an authorised state body of the relevant branch and legal entity, authorised by the Government of the Republic of Kazakhstan on carrying out of state expert examination of projects, for the purpose of determination their conformity or non-conformity to town-planning and technical regulations, conditions and requirements of the state normative standards, directed on securing the state, public and private interests, favourable and safe conditions of human activity, stable functioning of projected facilities, as well as value of technical proposal;

choice of no less than two tenderers, technical proposals of which conform to technical specification of a tender organizer;

direction by the tender organizer the invitation to tender participants who have undergone qualification selection, for participation in the second stage of a tender that use of two-stage procedures;

2) the following actions shall be carried out at the second stage:

representation by tender participants who have undergone qualification selection, tender applications with feasibility studies of the concessionary project;

direction by tender organizer to authorized body on state planning the concession applications which are contained in the corresponding tender applications for conducting their examination;

consideration by the commission all tender applications submitted by tender participants taking into account conclusions of examinations according to the concession application;

implementation of the actions provided by paragraphs 3, 4, 5, 6, 7, 8 and 9 of article 20 of this Law.

**Footnote. Chapter 3 is supplemented by Article 20-1 in accordance with Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan № 150-V dated 03.12.2013 (shall be enforced from 01.01.2014); № 112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Chapter 4. CONCESSION AGREEMENT**

### **Article 21. Content of concession agreement**

1. Concession agreement shall contain:

1) data on concession facility, its description, as well as data on property assets, technical condition, performance period, initial, residual and reinstatement value of a transferred concession facility;

2) conditions on the rights of concessionary to concession facility as well as on the rights to incomplete concession facility in case of termination of concession agreement, and (or) the rights on carrying out of a certain type of activity, conditions on property rights on the results of intellectual and creative activity, arising during execution of terms of concession agreement;

3) conditions and volumes of carrying out the reconstruction of facilities in order to provide to concessionary the required quantity and quality of services;

4) sources of compensation for expenses and acquisition of income of concessionary;

5) procedure for formation and confirmation of tariffs (prices, rate of charge) on commodities (works, services);

6) condition on sizes of investments, as well as investments to the basic funds, periods, sources and conditions of financing concessionary projects according to developed business plan (work program);

7) types of activity (works (services) performed (provided) under the terms of concession agreement);

8) standards of quality of commodities (works, services) provided by concessionary, according to concession agreement;

9) validity period of concession agreement;

10) rights and obligations of parties;

11) requirements on environmental protection and safe conduct of works;

12) procedure and terms of transfer of concession facility by parties, including persons, authorised to accept a facility, and requirements to its quality, as well as procedure and terms of transferring other property, that is not a part of concession facility, as well as specifying the right, on the basis of which mentioned property shall be transferred;

13) liability of parties;

14) conditions of modification and termination of concession agreement;

15) location (legal address) and banking details of parties;

16) procedure for carrying out the control over performance of concession agreement by concession provider;



17) criteria of evaluation on fulfilment of accepted obligations by concessionary, payment of a penalty in case of their non-performance or improper performance and procedure for reduction of the volume of the state concessional obligations;

18) types, volumes, periods and conditions of provision of the state support in case of its provision in accordance with Article 14 of this Law;

19) obligations on the in-country value;

20) obligations of a concessionary on providing the annual program of the procurement of commodities, works, services for the forthcoming year not later than 1 February of the year planning for procurement and information on purchased commodities, works, services to an authorised body in the field of regulation of commercial activity in the forms and deadlines, established by this body;

21) distribution of risks between parties;

22) conditions and periods of transfer of disutility of maintaining a property, transferred under concession agreement, as well as the risks of accidental loss or accidental injury of mentioned property;

23) data on authorised state bodies, representing the interests of concession provider;

24) deadlines for performance of works on establishment (reconstruction) of concession facility, putting into service, as well as procedure for extension of this deadline;

25) rights and obligations of other persons, engaged for execution of concession agreement, particularly for giving a consent on performance of certain actions, collection and distribution of money under concession agreement, carrying out of other payments in the volume and procedure, according to concession agreement, as well as performance of other rights and obligations;

26) exceptional cases of unilateral modification of terms of concession agreement and (or) its unilateral non-performance;

27) procedure for resolution of disputes under concession agreement;

28) procedure for reimbursement for expenses of parties in case of early termination of concession agreement.

2. Concession agreement may also provide:

1) methods of securing performance of obligations of concession agreement parties;

2) distribution of incomes between concession provider and concessionary, in connection with carrying out of activity, provided by concession agreement;

3) approval of organization, engaged by concessionary for carrying out of operation of concession facility and essential terms of agreement with it;

4) approval of contractor (general contractor), engaged by concessionary for establishment (reconstruction) of concession facility and essential terms of agreement with him (her);

4-1) procedure and terms of conclusion the direct agreement by parties with creditors of concessionary within implementation of concessionary projects of the special importance;

4-2) the mechanism of settlement of currency risks at implementation of concessionary projects of the special importance;

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

3. Terms of concession agreement shall remain in force for its whole validity period, with the exception of cases, when modification of concession agreement is executed upon agreement of parties.

4. Concession agreement shall provide a condition of concession provider to unilaterally modify terms or terminate a concession agreement for public and state interest; a concession agreement shall include the exhaustive list of these terms, that do not contradict the legislation of the Republic of Kazakhstan, as well as when these actions are committed for the purpose of securing of the national and ecological safety, health care and good morals.

4-1. Concession agreement on concessionary projects of the special importance shall provide to early cancellation conditions of concession agreement to unilaterally in the following cases:

1) at violation the essential terms of concession agreement that are defined in concession agreement by the concessionary of;

2) at violation the essential terms of the concession agreement that are defined in concession agreement by the concession provider.;

3) due to force majeure circumstances.

The order, terms and conditions of compensation to concessionary of expenditures and (or) costs and (or) the losses resulting from early cancellation of concession agreement at approach of events specified in part one of this point are defined by concession agreement.

5. In case of implementation of the right, mentioned in paragraph 4 of this Article by a concession provider, a concession provider shall compensate to a concessionary additional expenses, related to modifications of terms of concession agreement, as well as compensate for losses, incurred by a concessionary in connection with termination of concession agreement.

6. A concessionary shall have the right to pledge his (her) rights under concession agreement only with the written consent of a concession provider.

Claims for cash receipts in the form of compensation of investment costs under the concession agreement are pledged as security for their rights only for the purpose of attracting debt financing for the implementation of the concession project in accordance with the terms of the concession agreement.

The concessionaire pledging its rights under the concession agreement to the creditor and accounting for the cost of these rights are carried out in accordance with the laws of the Republic of Kazakhstan on concessions.

On the objects of concession put into operation compensation of investment costs is carried out in full within the limits of the sums and terms provided by the terms of the concession agreement.

Debt assignment and (or) transfer of a debt of concessionary under concession agreement shall be carried out without holding a tender in the order determined by the direct agreement in case if creditors of the concessionary demand the replacement of concessionary.

If the concessionaire is replaced at the request of the concessionaire's creditors, the assignment of the claim and (or) the transfer of the concessionaire's debt under the concession agreement shall be carried out without holding a tender (auction) in the manner determined by a direct agreement.

**Footnote. Article 21 is in the wording of Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by Law of the Republic of Kazakhstan № 225-V dated 02.07.2014 ( shall be enforced upon expiry of ten calendar days after the day of its first official publication ); dated 04.07.2018 No. 171-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 27.12.2021 No. 87-VII ( shall be enforced upon expiry of ten calendar days after the date of its first official publication ).**

#### **Article 21-1. Types of concession agreement**

1. A concession agreement shall be concluded in the following types:

1) concession agreement, providing establishment of concession facility by concessionary with the following transfer of concession facility into the state property;

1-1) a concession agreement in the healthcare area, providing for creation by the concessionaire of a concession facility and operation of the concession facility by the concessionaire together with a functional operator, defined in accordance with the Code of the Republic of Kazakhstan "On public health and healthcare system";

2) concession agreement, providing joint activity of concessionary and concession provider on establishment (reconstruction) and operation of concession facility;

3) concession agreement, providing transfer of concession facility, being in the state property in trust management or in property lease (lease) of concessionary for the purpose of reconstruction and operation;

4) concession agreement, providing transfer of concession facility, being in the property of concessionary, in property lease (lease) of concession provider or person, authorised by him (her), as well as with the right of redemption of concession facility by a concession provider.

2. A concession agreement may include the elements of one or several types of agreements, provided by paragraph 1 of this Article, as well as include the elements of other agreements that are not prohibited by the legislation of the Republic of Kazakhstan, aimed at establishment (reconstruction) and operation of concession facility.

3. A concession agreement may not include terms, directed on alienation in a private property of concession facility, being in the state property.

Footnote. Chapter 4 is supplemented by Article 21-1 in accordance with Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the Law of the Republic of Kazakhstan dated 26.12.2019 No. 287-VI (shall be enforced from 01.01.2020).

#### **Article 22. Form of concession agreement**

1. A concession agreement shall be concluded in written.
2. A concession agreement shall be subject to state registration in the manner, prescribed by the legislation of the Republic of Kazakhstan.

#### **Article 23. Validity period of concession agreement**

1. A concession agreement shall be concluded for the period up to thirty years.
2. Concessionary agreement may be prolonged in the additional period determined by parties agreement of parties within the term established by paragraph 1 this article by the conclusion of the additional agreement on condition of parties obligations which date of performance has come on the date of the conclusion of the additional agreement.

The concessionaire who duly performed his/her duties shall be granted the right to conclude a new agreement on a non-tender ( non-auction ) basis.

3. During conclusion of concession agreement for a new period, terms of agreements may be modified upon agreement of parties.

Footnote. Article 23 as amended by Law of the Republic of Kazakhstan № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 24. Termination of concession agreement**

A concession agreement, together with common grounds for termination of obligations, shall be terminated by:

- 1) dissolution or expiration of validity period of concession agreement;
- 2) liquidation of concessionary;
- 3) *(excluded by Law of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement))*;
- 4) in other cases, provided by the Civil legislation of the Republic of Kazakhstan or a concession agreement.

Footnote. Article 24 as amended by Law of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement).

#### **Article 25. Rights and obligations of a concession provider**

1. A concession provider shall have the right:

- 1) to hold negotiations with concessionary on terms of concession agreement;
- 2) to claim from concessionary the compensation for the losses in case of deterioration of concession facility, that happened due to the fault of a concessionary;
- 3) to carry out inspections of finance and economic activity of concessionary by engaging an audit organization, without intruding in operating activity of concessionary and progress of concession agreement's execution;
- 4) to carry out the control of compliance with the legislation of the Republic of Kazakhstan, terms of concession agreement and demand fixing of committed defaults;
- 5) to claim the dissolution of concession agreement in case of violation of its terms by a concessionary;
- 6) to exercise the other rights in accordance with the Laws of the Republic of Kazakhstan and a concession agreement.

2. A concession provider shall:

- 1) transfer the right to concession facility to concessionary on conditions and within the periods, provided by a concession agreement;
- 2) agree draft concession agreements with interested state bodies;
- 3) without undue delay transfer documents, provided by concession agreement and confirming the rights of concessionary to concession facility;
- 4) annually provide reporting information to the relevant state body, carrying out maintenance of register on concluded concession agreements;
- 5) observe terms, provided by concession agreement;
- 6) transfer concession objects free from the rights of third parties or with encumbrances and restrictions specified in the tender (auction) documentation submitted to potential concessionaires in accordance with paragraph 1 of Article 17 of this Law;
- 7) comply with other requirements, established by the Laws of the Republic of Kazakhstan.

**Footnote. Article 25 as amended by Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 26. Rights and obligations of a concessionary**

1. A concessionary shall have the right:

- 1) to exercise the rights in respect of concession facility on conditions, provided by concession agreement;
- 2) to be a subject of the investment preferences provided according to the legislation of the Republic of Kazakhstan in the field of investments;

3) to receive a compensation for expenses, incurred in connection with execution of concession agreement;

4) to claim dissolution of concession agreement in case of violation of its terms and compensations for losses, entailed by a violation of obligations;

5) to claim a compensation for losses in case, if modification of terms of concession agreement entails losses of concessionary;

6) to exercise other rights in accordance with the Laws of the Republic of Kazakhstan.

2. A concessionary shall:

1) preserve a profile of concession facilities;

2) conduct operations (render the services), provided by agreement;

3) finance facilities of social sphere, included in a property complex of concession facility, in the manner, prescribed by the legislation of the Republic of Kazakhstan;

4) comply with the legislation of the Republic of Kazakhstan in the field of labour, public employment and environmental protection;

5) transfer concession facility to concession provider given encumbrances and restrictions, existed for the moment of conclusion of concession agreement and in a proper technical condition, in accordance with terms of concession agreement after a termination of the period, on which concession agreement was concluded;

6) comply with other requirements and terms, established by the Laws of the Republic of Kazakhstan and a concession agreement;

7) open a special account in a bank, determined by concession agreement, in accordance with the budget legislation of the Republic of Kazakhstan for financing of concessionary project in cases of provision of surety of the state on revenue-yielding bonds within concession agreement;

8) ensure intended use of the funds, engaged for realization of concessionary project.

**Footnote. Article 26 as amended by Laws of the Republic of Kazakhstan No. 66-IV dated 05.07.2008 (see Article 2 for the order of enforcement); No. 263-IV dated 02.04.2010 (shall be enforced from 01.01.2010); No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 376-V dated 29.10.2015 (shall be enforced from 01.01.2016).**

#### **Article 26-1. Private concessional obligations**

1. Private concessional obligations shall be accepted by a concessionary upon conditions, specified in concession agreement.

2. A concession provider shall carry out a control of compliance with private concessional obligations in accordance with the manner, prescribed in concession agreement.

**Footnote. Chapter 4 is supplemented by Article 26-1 in accordance with Law of the Republic of Kazakhstan No. 131-V dated 04.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 26-2. Direct agreement with creditors of the concessionary**

1. For implementation of concessionary projects of the special importance concession provider, concessionary and creditors of the concessionary have the right to conclude the direct agreement defining conditions of interaction of the parties during the term of implementation of the concessionary project.

2. The direct agreement provides the following conditions:

1) the obligation of the concession provider to inform creditors of the concessionary on cases of essential violations of the obligations under the concession agreement capable to entail cancellation of concession agreement;

2) transfers to guarantee of his rights under concession agreement and (or) a debt assignment or transfer debt of concessionary with the consent of the concession provider;

3) the right of creditors of concessionary to demand replacement of concessionary in case of the essential violation by him of the obligations under concession agreement capable under the terms of concession agreement to entail his cancellation and (or) in case of the essential violation by the concessionary of the obligations under agreement with creditors capable under the terms of such agreements to entail presentation of the requirement about early execution by the concessionaire of obligations under such agreements and also to propose the candidacy of the new concessionary provider;

4) a replacement procedure of the concessionary in the cases provided by subparagraph 3) of this point;

5) the right of creditors of concessionary to appoint the interim manager and also to define an appointment procedure, volume and term of office of the interim manager in the cases provided by subparagraph 3) of this point:

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

**Footnote. Chapter 4 is supplemented by article 26-2 in accordance with Law of the Republic of Kazakhstan № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).**

## **Article 26-3. Replacement of the concessionaire**

1. In case of non-fulfillment or improper fulfillment by the concessionaire of its obligations to the creditor and (or) under the concession agreement, the concessionaire may be replaced upon agreement with the grantor and the creditor, which is carried out by holding a tender (auction) by the concessor in order to replace the concessionaire.

2. If the concessionaire is replaced, the rights and obligations under the concession agreement are transferred to the new concessionaire from the moment the agreement on the replacement of the concessionaire is concluded.

3. The concessionaire is replaced under the concession agreement in accordance with the laws of the Republic of Kazakhstan on concessions.

Footnote. Chapter 4 was supplemented by Article 26-3 in accordance with the Law of the Republic of Kazakhstan dated 04.07.2018 № 171-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication); as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Chapter 5. FINAL PROVISIONS**

### **Article 27. Resolution of disputes**

1. Disputes, related to a transfer of facilities of the state property into concession, shall be resolved in the manner prescribed by the legislation of the Republic of Kazakhstan and concession agreement.

Disputes, related to execution and termination of concession agreement shall be resolved by negotiations in accordance with requirements of the legislation of the Republic of Kazakhstan and procedures of disputes resolution agreed in concession agreement.

2. If disputes related to execution and termination of agreement may not be resolved according to paragraph 1 of this article, then parties shall have the right to resolve a dispute according to requirements of the legislation of the Republic of Kazakhstan in a court, as well as by applying to arbitration in accordance with the Law of the Republic of Kazakhstan “About arbitration”. Concerning concessionary projects of the special importance in case at least one of shareholders (participants) of concessionary is a nonresident of the Republic of Kazakhstan; the arbitration shall be defined by parties agreement .

Footnote. Article 27 as amended by Law of the Republic of Kazakhstan No. 125-V dated 03.07.2013 (shall be enforced upon expiry of ten calendar days after its first official publication); № 225-V dated 02.07.2014 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); № 489-V dated 08.04.2016 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

### **Article 28. Liability for violation of the legislation of the Republic of Kazakhstan on concessions**

A violation of the legislation of the Republic of Kazakhstan on concessions shall entail a liability, established by the Laws of the Republic of Kazakhstan.

### **Article 29. Enforcement of this Law**

1. This Law shall enter into force from the date of its official publication.

2. Concession agreements, concluded before enforcement of this Law shall preserve their validity prior to expiration period, established in these agreements.



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