



## On approval of the Rules for changing the methods of organizing equity participation in housing construction

### *Unofficial translation*

Order of the Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan dated August 8, 2019 no. 629. Registered with the Ministry of Justice of the Republic of Kazakhstan on August 13, 2019 no. 19233.

### *Unofficial translation*

In accordance with sub-clause 11-1) of article 5 of the Law of the Republic of Kazakhstan "On equity participation in housing construction" **I HEREBY ORDER:**

1. To approve the attached Rules changing the methods of organizing equity participation in housing construction.

2. The Construction and Housing-Communal Services Affairs Committee of the Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan, in accordance with the procedure, established by the law shall ensure:

1) state registration of this order with the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days from the date of state registration of this order, its direction in Kazakh and Russian languages to the Republican State Enterprise on the right of economic management "Institute of Legislation and Legal Information of the Republic of Kazakhstan" of the Ministry of Justice of the Republic of Kazakhstan for official publication and placement in the Reference Control Bank of the Regulatory Legal Acts of the Republic of Kazakhstan;

3) Posting this order on the Internet resource of the Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan.

3. Control over execution of this order shall be entrusted to the supervising vice-minister of Industry and Infrastructural Development of the Republic of Kazakhstan.

4. This order shall come into force upon expiry of ten calendar days from the date of its official publication.

*Minister*

"AGREED"

Ministry of National Economy  
of the Republic of Kazakhstan

*R. Sklyar*

Approved by the order of the  
Minister of Industry and  
Infrastructural Development  
of the Republic of Kazakhstan  
dated August 8, 2019 no. 629

## **Rules for changing the methods of organizing equity participation in housing construction**

Footnote. The Rules are in the wording of the order of the acting Minister of Industry and Infrastructural Development of the Republic of Kazakhstan dated October 16, 2020 No. 538 ( shall be enforced upon expiry of ten calendar days after the day of its first official publication ).

### **Chapter 1. General provisions**

1. These Rules for changing the methods of organizing equity participation in housing construction (hereinafter- the Rules) have been developed in accordance with the Law of the Republic of Kazakhstan "On equity participation in housing construction" (hereinafter- the Law) and shall determine the procedure for changing the methods of organizing equity participation in housing construction.

2. Confirmation of changing the method of organizing equity participation in housing construction shall be a concluded contract on provision of a guarantee or permission to raise money from equity holders (depending on the method of organizing equity participation in housing construction).

3. When changing the organization of equity participation in housing construction to the method of obtaining a guarantee from the Single operator of housing construction (hereinafter - the Single operator), participation in a second-tier bank project, the choice of an engineering company shall be carried out by the Single operator or a second-tier bank and a contract shall be concluded on provision of engineering services within the framework of civil legislation.

4. When changing the organization of equity participation in housing construction to the method of raising money from equity holders after carcassing of a multi-apartment residential building, the authorized company shall have the right to reconsider an engineering company, taking into account the requirements established by the Law.

### **Chapter 2. Conditions for changing the organization of equity participation in housing construction by obtaining a guarantee from a Single operator for permission from the local executive body to raise money from equity holders**

5. The developer and the authorized company that meet the conditions established in this Chapter shall have the right to change the organization of equity participation in housing construction by the method of obtaining a guarantee from the Single operator, to another method provided for by the Law, by terminating the contract on provision of a guarantee.

6. Termination of the contract on provision of a guarantee shall be carried out in accordance with the civil legislation of the Republic of Kazakhstan.

7. Conditions preceding the change in the method of organizing equity participation in housing construction at the date of applying to the Single operator for termination of the contract on provision of a guarantee shall be:

1) absence of delay in construction and installation works on the project for construction of a multi-apartment residential building for a period of more than 60 (sixty) calendar days from the approved work schedule;

2) absence of an unfulfilled notification (if any) of the Single operator about the need for compensation by the developer and (or) an authorized company, a contractor (general contractor) to the bank account of an authorized company within 15 (fifteen) working days from the date the engineering company establishes the use of money in violation of requirements of Article 20 of the Law;

3) notarized consents for changing the method of organizing equity participation in housing construction of least three fourths of equity holders who have entered into a contract with an authorized company on equity participation in housing construction;

4) absence of equity holders who paid (in whole or in part) a share in a multi- apartment residential building at the expense of a loan issued by the joint-stock company “Housing Construction Savings Bank of Kazakhstan” or a second-tier bank guaranteed by the Single operator.

8. The authorized company shall publish information about the intention to change the method of organizing equity participation in housing construction in the mass media or on its own Internet resource 15 (fifteen) calendar days before the start of collecting the consents of equity holders.

The published informational message must contain the following:

1) information on the planned organization of equity participation in housing construction in a modified method with justification of this intention;

2) stage of readiness of the project for the construction of a multi-apartment residential building;

3) the deadline date and time, as well as the address to which notarized consents or refusal of the shareholder to change the method of organizing equity participation in housing construction must be sent.

9. Upon termination of a guarantee contract, the guarantee fee paid by the authorized company in accordance with the guarantee contract shall not be refundable.

10. An agreement on termination of the guarantee contract shall be concluded in written form and shall enter into force from the date of the issue by the local executive body to the developer and the authorized company of permission to raise money from equity holders.

**Chapter 3. Conditions for changing the organization of equity participation in housing construction by methods of obtaining**

**a guarantee from a Single operator, participation in a second-tier bank project or raising money from equity holders after**

**the carcassing of a multi-apartment residential building**

11. Changing the organization of equity participation in housing construction by methods of obtaining a guarantee from a Single operator, participating in a second-tier bank project or raising equity holders' money after the carcassing of a multi-apartment residential building shall be allowed if the developer, an authorized company and the ongoing project for the construction of a multi-apartment residential building meet the following conditions:

1) requirements for the developer:

when changing the method of organizing equity participation in housing construction from raising money from equity holders after the carcassing of a multi-apartment residential building or obtaining a guarantee from a Single operator for the method of participation in the project of a second-tier bank, the developer shall be obliged to have experience in the construction of multi-apartment residential buildings, including as a customer, contractor (general contractor) in aggregate, for at least three years, with a total area of at least eighteen thousand square meters during construction in cities of republican significance, in the capital and at least nine thousand square meters during construction in other administrative-territorial units.

when changing the method of organizing equity participation in housing construction from participation in the project of a second-tier bank or obtaining a guarantee from a Single operator for the method of raising money from equity holders after the carcassing of a multi-apartment residential building, the developer shall be obliged to build and put into operation on the territory of the Republic of Kazakhstan multi-apartment residential buildings with a total area of at least sixty thousand square meters during construction in cities of republican significance, the capital and at least thirty thousand square meters during construction in other administrative-territorial units within the last five years, including as a customer, contractor (general contractor) in aggregate. In addition, the total experience of the subsidiaries of the developer should be taken into account.

when changing the method of organizing equity participation in housing construction from participation in the project of a second-level bank or raising money from equity holders after the carcassing of a multi-apartment residential building to the method of obtaining a guarantee of a Single operator, the developer shall be obliged to have experience in the construction of multi-apartment residential buildings, including as a customer, contractor (general contractor) in aggregate, for at least three years, with a total area of at least eighteen thousand square meters during construction in cities of republican significance, in the capital and at least nine thousand square meters during construction in other administrative-territorial units.

2) the authorized company shall be obliged to have:

money and (or) construction in progress, confirmed by acts of works performed, taking into account the requirements of Article 20 of the Law, in the amount of at least ten percent of the design cost if the land plot belongs to the right of ownership, or in the amount of at least fifteen percent of the design cost in if the land plot belongs to the right of temporary paid land use (lease) provided by the state (when changing to the organization of equity participation in housing construction by obtaining a guarantee from a Single operator);

completed construction of the frame of a multi-apartment residential building, confirmed by acts of works performed (when changing to the organization of equity participation in housing construction by raising money from equity holders after the carcassing of a multi-apartment residential building).

Construction and installation works on the unfinished construction specified in this subparagraph must be paid in full by the developer and (or) an authorized company before submitting an application to the Single operator and confirmed by acts of reconciliation of mutual settlements between the customer and the contractor;

1) absence of overdue payments on loans (if any) to an authorized company issued by a second-tier bank for the construction of a multi-apartment residential building;

2) availability of a written consent of a second-tier bank for termination of collateral requirements for a land plot together with an object of construction in progress (when changing to the organization of equity participation in housing construction by obtaining a guarantee from a Single operator);

12. The authorized company shall send a written notification on the change in the construction method in electronic or paper form to each equity holder who has entered into a contract on equity participation in housing construction, and also post information about the intention to change the method of organizing equity participation in housing construction in the mass media or on its own Internet -resource 15 (fifteen) calendar days before applying to the Single operator or the local executive body (depending on the method of organizing equity participation in housing construction).

#### **Chapter 4. Procedure for consideration by the Single operator of documents for termination of a guarantee agreement**

13. The developer and the authorized company shall apply to the Single operator with an application to terminate the guarantee contract with the attachment of documents confirming compliance with paragraph 7 of these Rules.

14. The Single operator, in accordance with its regulatory acts shall consider an application for termination of the contract on provision of a guarantee and no later than 15 (fifteen) working days shall provide a consent for termination or a reasoned refusal.

15. If the Single operator makes a decision to terminate the guarantee contract, an agreement on termination of a guarantee contract shall be concluded between the Single operator, the developer and the authorized company.

16. The Single operator, no later than 5 (five) working days from the date of entry into force of the agreement on termination of the contract on provision of the guarantee, shall be obliged to terminate the collateral requirements for the pledged items and transfer the corresponding original documents to the developer and the authorized company.

#### **Chapter 5. The procedure for consideration by the Guarantee Fund of the documents of the developer and the authorized**

#### **company to change the method of organizing equity participation in housing construction for the method of obtaining a guarantee from the Guarantee Fund**

17. The developer and the authorized company shall apply to the Single operator with an application for changing the method of organizing equity participation in housing construction to the method of obtaining a guarantee of a Single operator with the attachment of documents established by the Rules for consideration of documents for the construction of a multi-apartment residential building project for concluding a guarantee contract, approved by the order No. 432 of the Minister of National Economy of the Republic of Kazakhstan dated September 30, 2016 (registered in the Register of state registration of regulatory legal acts No. 14312) (hereinafter-- the Rules for consideration of documents), and also shall provide the following additional documents:

1) documents confirming the written notification of all equity holders, as well as publication in the mass media or on own Internet resource about the intention to change the method of construction of a multi-apartment residential building;

2) an extract from the Register of contracts on equity participation in housing construction, issued by the local executive body;

3) information on the sold shares under agreements on equity participation in housing construction with a schematic representation of houses sold by shares in a multi-apartment residential building of the construction project;

4) documents confirming the receipt of money by equity holders contributed to the payment of shares in a multi-apartment residential building, confirmed by an authorized company and an engineering company;

5) documents confirming the targeted use of money in accordance with Article 20 of the Law, with the attachment of acts of works performed on the construction project, confirmed by an engineering company;

6) a copy of the bank loan contract (if there is a bank loan);

7) a copy of the permission to raise money from equity holders;

8) a document confirming the absence of encumbrances on the land plot together with the object of construction in progress and on voting shares (participation equities in the authorized capital) of the authorized company.

18. The Single operator shall consider an application to change the method of organizing equity participation in housing construction to the method of obtaining a guarantee from the Single operator in accordance with the Rules for consideration of documents, and within 15 (fifteen) working days shall make a decision to conclude a contract on provision of a guarantee or issues a reasoned refusal.

19. The developer and the authorized company, no later than 3 (three) working days from the date of conclusion of the contract on provision of the guarantee, shall send a notification to the local executive body about the refusal of permission to raise money from equity holders

#### **Chapter 6. The procedure for consideration by the local executive body of documents of the developer and**

#### **the authorized company to change the method of organizing equity participation in housing construction to the method of participating in a second-tier bank project or raising equity holders' money after the carcassing of a multi-apartment residential building**

20. To obtain a permission for raising money from equity holders, the developer and the authorized company shall send to the local executive body the documents established by the Rules for issuing permission to raise money from equity holders, approved by the order of the Minister of National Economy of the Republic of Kazakhstan dated July 29, 2016 No. 352 (registered in the Register of state registration of regulatory legal acts No. 14188) (hereinafter - the Rules for issuing a permit).

21. In addition to the documents specified in clause 20 of these Rules, the developer and the authorized company shall submit the following documents:

1) information on written notification of all equity holders, as well as publications in the mass media or on own Internet resource about the intention to change the method of construction of a multi-apartment residential building;

2) a document confirming the absence of encumbrances on the land plot together with the construction in progress and on the voting shares (participation stakes in the authorized capital) of the authorized company (if the organization of equity participation in housing construction is changed by participating in a second-tier bank project);

3) agreement on termination of the contract on provision of a guarantee (in case of a change in the organization of equity participation in housing construction by the method of obtaining a guarantee from a Single operator)

4) an extract on the balance of money from the bank account with confirmation of the funds used for construction, provided for in Article 20 of the Law, confirmed by an authorized company and an engineering company.

22. The local executive body, within the time limits established by the Rules for issuing a permit shall consider the submitted application and issue a permit to raise money from equity holders or shall send a motivated refusal.

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