

On Concessions

Unofficial translation

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

Footnote. Throughout the whole text the words “authorized state body on economic planning”, “Authorized state body on economic planning”, “by an authorized state body on economic planning” are respectively substituted by the words: “authorized body on state planning”, “Authorized body on state planning”, “by authorized body on state planning” by the Law of the RK № 263-IV dated 02.04.2010 (shall be effective 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 the Law of the RK № 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2).

Chapter 1. GENERAL PROVISIONS

Article 1. Basic Definitions Used in this Law

The following basic definitions are used in this Law:

1) the authorized state body for budget execution is the central executive body that manages and intersectoral coordination in the area of budget execution, accounting, budget accounting and budget reporting on the execution of the republican budget and within its competence of local budgets, the 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 budget planning authority - the central executive body that provides leadership and inter-sectoral coordination in the field of budget planning;

2) facilities of social infrastructure and life support - objects, complexes of objects used to meet social needs, the provision of which is entrusted to state bodies in accordance with the legislation of the Republic of Kazakhstan;

3) private concession obligations - the obligations assumed by the concessionary under the concluded concession agreement;

3-1) an account intended for crediting investment costs, a bank account opened by the lender to the concessionary with restriction of his right to perform expenditure transactions on it before the occurrence or fulfillment of the conditions specified by the financing agreement under the concession of money claim and (or) the concession agreement ;

4) concessor - the state bodies of the Republic of Kazakhstan that have entered into concession agreements in accordance with this Law and (or) a direct agreement with the creditors of the concessionary;

5) concessionary - a physical person engaged in entrepreneurial activity and (or) a legal entity, with the exception of state institutions and subjects of the quasi-public sector, who have fifty or more percent of voting shares (shares in the authorized capital) directly or indirectly owned by the state (except for organizations for financing concession projects), including those operating on the basis of a joint venture agreement (simple partnership);

6) concession - an activity aimed at the creation (reconstruction) and operation of concession facilities, carried out at the expense of the concessionary's funds or on the terms of co-financing by the concessor;

7) the organizer of the tender for the concession (hereinafter referred to as the organizer of the tender) is the state body conducting the competitions for the choice of the concessionary;

8) concession project - a set of activities for the implementation of the concession, implemented for a limited period of time and having a completed character, according to the budget legislation of the Republic of Kazakhstan and this Law. Concession projects can be classified as concession projects of special importance, 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 state planning body.

9) advisory support of concession projects - services provided by legal entities for the maintenance of concession projects defined by the Government of the Republic of Kazakhstan or local executive bodies, including the development of tender documentation, projects of concession contracts, the provision of consulting services in the negotiation process of the commission with the participant of the competition;

10) co-financing of concession projects - the allocation of budget funds to finance a certain amount of costs for the creation (reconstruction) of concession objects;

11) a feasibility study of a concession project (hereinafter referred to as a 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 substantiate the feasibility and feasibility of the concession project decisions to assess and distribute risks between the participants of a concession project, determine the types and amount of state support if necessary, as well as the impact of the project on the state budget and socio-economic effect on the development of the economy as a whole and its industry during its implementation;

12) is excluded by the Law of RK № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication);

13) specialized organization on concession issues-organization established by the Government of the Republic of Kazakhstan to provide services on concession issues;

14) a concession object - social infrastructure and life support objects included in the list, which are created (reconstructed) and operated under a concession agreement;

15) creation of a concession object - creation of a concession object that did not previously exist on the territory of the Republic of Kazakhstan, including on the basis of new technologies, mechanization and automation of production, installation of new production equipment at the concession object, production of other types of work ensuring the functioning of the concession object;

16) operation of the concession object - use of the concession object by the concessionary in accordance with the purpose of the concession object, including for the purposes of producing goods and (or) performing work, and (or) providing services, in the manner and on the terms determined by the concession agreement;

17) reconstruction of a concession object — changing individual premises, other parts of a building or a building as a whole by taking measures to restructure through the introduction of new technologies, mechanization and automation of production, modernization and replacement of technically outdated and (or) physically worn out equipment with new, more productive equipment, as well as changes in the technological or functional purpose of the concession object or its individual parts, other measures to improve the performance and operational x concession object properties;

18) concession agreement - a written agreement between the concessor and the concessionary, defining the rights, duties and responsibilities of the parties, the conditions for the implementation of the concession;

19) is excluded by the Law of RK № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication);

20) the authorized body for state planning is a central Executive body responsible for management and inter-sectoral coordination in the field of strategic and economic planning;

21) the authorized state body for the exercise of the right of disposal of Republican property - the state body exercising within its competence special Executive and control functions in the field of management of objects of Republican property, privatization and state monitoring of property, in industries (spheres) of the economy of strategic importance;

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

23) the authorized state body of the relevant industry - the central executive body that manages the relevant industry (sphere) of the government;

24) list - the list of objects offered in concession for the medium-term period approved by the authorized body on state planning if objects belong to Republican property, or maslikhats of areas, the cities of Republican value and the capital if objects belong to municipal property;

25) direct agreement - a written agreement concluded between the concessor, the concessionary and the creditors of the concessionary for the implementation of concession

projects of particular importance in accordance with the provisions of Article 26-2 of this Law.

Footnote. The article 1 as amended by the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); as amended by Laws of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 209-V dated 12.06.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication); № 171-VI dated 04.07.2018 (shall be effective upon expiry of ten calendar days after its first official publication).

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

1. The 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.

Provisions of this Law shall not extend to relations, related to concession in the field of subsoil use. Relations associated with the conduct of operations on subsoil use are 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.

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. The article 2 as amended by Laws of RK № 539-IV dated 12.01.2012 (shall be effective upon expiry of ten calendar days after its first official publication); № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication); № 126-VI dated 27.12.2017 (shall be effective upon expiry of six months after its first official publication).

Article 3. Basic principles of concession

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

- 1) publicity and accountability of activity of concessor and concessionary;
- 2) securing a balance of interests and risks of concessor and concessionary;
- 3) securing rights and legal interests of consumers of commodities (works, services), provided by a concessionary, according to concession agreement;
- 4) free competition;

5) equality of all the potential concessionaries and non-admission of discrimination.

Footnote. The article 3 as amended by the Law of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2).

Article 4. Scope of application of concession

Social infrastructure and life support facilities in all sectors (spheres) of the economy may be transferred to the concession, except for the objects, the list of which is determined by the Government of the Republic of Kazakhstan.

Footnote. The article 4 as amended by the Law of RK № 86-VI dated 03.07.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 5. Property right under concession agreement

1. State-owned real and movable property, exclusive rights related to the implementation of activities on the objects of the concession are granted for temporary possession and use to the concessionary in the manner prescribed by the concession agreement.

2. The improvements made at the concession objects, as well as the objects of unfinished construction and property rights to the results of intellectual creative activity arising from the execution of the concession agreement are transferred to the state ownership, unless otherwise provided by the concession agreement.

3. The objects of concession, created as a result of execution of the condition of the agreement of concession are transferred after their creation to the state property if other is not provided by the agreement of concession.

4. Products and other income received by the concessionary as a result of the operation of the concession objects are its property, unless otherwise provided by the concession agreement.

5. Concession objects during the term of the concession agreement may not be the subject of a pledge.

6. Concession objects are not subject to alienation for the period of validity of the concession agreement.

7. The concessionary shall bear the risk of accidental loss of or damage to state property transferred to it for possession and use under the concession agreement, as well as property arising from the execution of the concession agreement, unless otherwise specified in the concession agreement.

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

Footnote. The article 5 as amended by the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 5-1. The legal regime of the accounts to be used for the form of compensation of investment costs

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

2. The account intended for crediting investment costs is used in the interests of protecting the creditor's right when financing concession projects against the security of a claim for cash receipts in the form of compensation for investment costs. Use of the account intended for transfer of compensation of investment costs for other purposes is not allowed.

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 the compensation of investment costs shall be closed.

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

The concessionary may, in agreement with the lender, transfer part of the funds from the account intended for crediting compensation for investment costs to its current account specified in the concession agreement.

Footnote. The chapter 1 is supplemented by the article 5-1 in accordance with the Law of RK № 171-VI dated 04.07.2018 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 6. Transfer of Land Plot Rights to a concessionary

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

Article 7. Sources of compensation for expenses and acquisition of income of concessionary

1. Sources of cost recovery and concessionary revenue are:

1) the sale of the produced goods (works, services) in the process of exploitation of the object of concession;

2) subsidies from the state in cases established by the laws of the Republic of Kazakhstan;

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

4) compensation of the operating costs of the concessionary within the limits of the costs of maintaining social infrastructure and life support in the relevant industry (sphere) of the economy;

5) remuneration for the management of the state-owned concession object, as well as the rent for the use of the concession object owned by the concessionary, in accordance with the budget legislation of the Republic of Kazakhstan;

6) fee for the availability of the concession object.

2. Payment for the accessibility of a concession object is made in the manner determined by the authorized body for budget execution, and includes payments from budget funds provided for in subparagraphs 3), 4) and 5) of paragraph 1 of this article, made in the form of single payments in certain shares of the total the amount of payments during the entire duration of the concession project, taking into account the provision by the concessionary of the technical and operational characteristics of the concession object.

3. The fee for the availability of the concession object may be applied only to concession projects classified as socially significant.

4. Sources of compensation for expenses and acquisition of income of concessionary are determined based on the results of the competition for the choice of the concessionary.

Footnote. The article 7 by the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); as amended by the Law of RK № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication).

Chapter 1-1. Public-private partnership

Footnote. Is excluded by the Law of RK № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication).

Chapter 2. STATE REGULATION IN THE FIELD OF CONCESSION

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

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

1) is excluded by the Law of RK № 150-V dated 03.12.2013 (shall be effective from c 01.01.2014);

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

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

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

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

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

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

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

6-1) defines legal entities for consultative support of concession projects;

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

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

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

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

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

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

8) is excluded by the Law of RK № 263-IV dated 02.04.2010 (shall be effective 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. The article 8 as amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art. 2); № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 539-IV dated 12.01.2012 (shall be effective upon expiry of ten calendar days after its first official publication); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 209-V dated 12.06.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 9. Powers of an authorized body on state planning

An authorized 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 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 concessionary;

examination of the proposals of the concessionary for obtaining the guarantee of the state;

evaluation of the implementation of concession projects;

2) forms and approves the list of objects offered in the concession for the medium-term period, belonging to the republican property;

3) agrees on the tender 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) is excluded by the Law of RK № 495-IV dated 24.11.2011 (shall be effective 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 concessionaires activities and sources of cost recovery;

6) is excluded by the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014);

7) determines the requirements for the examination of tender documentation, including when making changes and additions to it, concession applications submitted by participants of the competition during the competition for the choice of the concessionaires;

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 authorized 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) form 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) approves the rules for holding a tender for for the choice of concessionary;

7-6) approves the rules for the submission, consideration and selection of concession projects;

7-7) approves standard concession agreements in various sectors (spheres) of the economy;

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. The article 9 as amended by the Law of RK № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); as amended by Laws of RK № 495-IV dated 24.11.2011 (shall be effective upon expiry of ten calendar days after its first official publication); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 10. Powers of an authorized state body on budget performance

An authorized 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 documentation and the draft concession agreement, including when making amendments and additions to them, with respect to objects belonging to the 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 the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014);

5) register state concessional obligations;

6) is excluded by the Law of RK № 263-IV dated 02.04.2010 (shall be effective 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 the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014);

7-2) approve the rules for maintaining the register of concluded concession contracts and provided state guarantees and sureties of the state in coordination with the authorized body on state planning;

7-3) approve the rules for payment of compensation for operating costs in coordination with the authorized body on state planning;

7-4) approve the rules for providing compensation for investment costs for concession projects in agreement with the authorized body on state planning;

7-5) approve the rules for payment of remuneration for the management of the concession object in agreement with the authorized body on 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. The article 10 as amended by the Law of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art. 2); as amended by Laws of RK N 97-IV dated 04.12.2008 (for the order of enforcement refer to the art. 2); № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 495-IV dated 24.11.2011 (shall be effective upon expiry of ten calendar days after its first official publication); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 10-1. Powers of the authorized body on budget planning

The powers of the authorized body on budget planning include:

- 1) submission of questions on the financing of the advisory support of the concession project, the development of tender documentation for consideration by the Republican budget commission;
- 2) the submission of questions on the adoption 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. The chapter 2 is supplemented by the article 10-1 in accordance with the Law of RK № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication); as amended by the Law of RK № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 11. Powers of an authorized state body on exercise of the rights of disposal of republican property

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

- 1) is excluded by the Law of RK № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after 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 authorized 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. The article 11 as amended by the Law of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art. 2); as amended by Laws of RK № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 12. Powers of the authorized state body of the relevant industry

An authorized state body of the relevant industry shall:

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

2) is the organizer of the competition in respect of concession objects related to republican ownership and provided for in paragraph 2 of Article 16 of this Law;

3) on the basis of the decision of the commission on concessions (hereinafter referred to as the commission) with respect to objects belonging to republican ownership, concludes a concession agreement on concession objects related to republican ownership and provided for in paragraph 2 of Article 16 of this Law;

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 authorized 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 concessionaries by open tendering process on a choice of concessionary in case of pre-term termination of previously concluded concession agreement on concession facilities, related to republican property;

8) involve, if necessary, legal entities for the consultative support of concession projects defined by the Government of the Republic of Kazakhstan or local executive body, 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. The article 12 was amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 13. Powers of Local Governments of regions (Cities of Republican Significance, Capitals)

Footnote. The heading of the article 13 as amended by the Law of RK № 210-VI dated 28.12.2018 (shall be effective upon expiry of ten calendar days after its first official publication).

Local executive bodies of regions (city of republican significance, capital) within their competence shall:

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

2) make proposals to tender organizer in respect of concession facilities, related to republican property, for solution of issues, related to adherence of social economic and ecological interests of population of the relevant region, during conclusion of concession agreement;

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

3-1) determine the legal persons for the consultative support of concession projects, as well as for carrying out expert examinations in the cases specified in subparagraph 3-2) of this article;

3-2) for concession objects related to communal property, in case the cost of creation (reconstruction) of the concession object is up to 4,000,000 monthly calculation indicators, in the person of local authorized body on state planning prepare opinions on:

tender documentation, including when making changes and additions to it;

concession bids submitted by tender participants in the course of a tender for the selection of a concessionary;

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

Local authorized state planning bodies, if necessary, for the examination of documents provided for by this sub-clause may involve legal entities determined by local executive bodies of regions, cities of republican significance, the capital;

3-3) on concession objects related to municipal property in the person of the local authorized state planning body, coordinate tender documentation and concession agreements, including when making changes and additions to them, in case the cost of creating (reconstructing) a concession object up to 4 000 000 monthly calculated indicators;

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

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

6) on the basis of the decision of the commission enter into a concession agreement for concession objects related to communal property and provided for in the list;

7) monitor concession contracts for concession objects related to communal property, monitor their implementation and send the results of monitoring and control to the authorized state planning authority;

8) take the objects created on the basis of concession agreements into communal ownership;

9) organize engaging of new concessionaries by open tendering process on a choice of concessionary in case of pre-term termination of previously concluded concession agreement on concession facilities, related to communal property.

10) carry out in the interests of local government other powers assigned to local executive bodies by the legislation of the Republic of Kazakhstan.

Footnote. The article 13 as amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); № 263-IV dated 02.04.2010 (shall be enforcement from 01.01.2010); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication); № 210-VI dated 28.12.2018 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 14. Article 14. State support for the activity of concessionaires

1. In order to support the activities of concessionaries, one or more of the following types of state support are provided:

- 1) state guarantees on infrastructure bonds under concession agreements;
- 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 RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication).

2. When creating a concession object that is not subject to transfer into state ownership, state support measures provided for in subparagraphs 1), 2) and 5) of paragraph 1 of this article are not granted to the concessionary.

2-1. Legal relations regulated by subparagraph 6) of paragraph 1 of this article are not subject to the legislation of the Republic of Kazakhstan on public procurement.

3. The total value of state concession obligations stipulated in 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 creating (reconstructing) a concession object within concession agreement.

Footnote. The article 14 as amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); N 97-IV dated 04.12.2008 (for the order of enforcement refer to the art.2); № 263-IV dated 02.04.2010 (shall be effective from

01.01.2010); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication).

Chapter 3. TRANSFER OF OBJECTS TO CONCESSION

Article 15. Procedure for transfer of objects to concession

1. Provision of objects in concession is carried out in three stages:

- 1) drawing up a list;
- 2) tendering process on a choice of concessionary;
- 3) determination of concessionary and conclusion of concession agreement.

2. An obligatory condition for the provision of the government's guarantee to the concessionary is the placement of infrastructure bonds on the stock exchange of the Republic of Kazakhstan.

Footnote. The article 15 as amended by the Law of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); as amended by Laws of RK № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 15-1. Preparation of concession proposals

Footnote. The article 15-1 is excluded by the Law of RK № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 15-2. Development or adjustment, as well as the necessary expertise of competitive documents of concession projects

1. For the concession projects approved by the budget commissions contained in the concession proposals, development or adjustment of the competitive documents of the concession projects is carried out.

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.

The binding of the available design and estimate documentation to a specific site of the concession object is carried out by the tender organizer within the development or adjustment of the tender documentation or the concessionary, taking into account the marketing and financial and economic parameters of the concession project in accordance with the terms of the tender documentation.

3. The development of a feasibility study for a concession project for projects that are technically complex and (or) unique is carried out by a potential concessionary in the case of

a tender for the selection of a concessionary using two-stage procedures or by the authorized body of the relevant industry or local executive body in the event of a tender of choice concessionary 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 case of changes in the established technical and economic parameters of the concession project, which entail changes in technical solutions and additional costs, the authorized state body of the relevant industry and local executive bodies carry out the adjustment of the feasibility study and then conduct the necessary examinations in accordance with the legislation of the Republic of Kazakhstan.

5. After carrying out the necessary examinations of the developed or corrected tender documentation of the concession project, the authorized body on state of the relevant industry shall send it to the authorized state planning body for examination, except for the cases specified in subparagraph 3-2) of Article 13 of this Law.

6. The authorized body on state planning shall involve a specialized organization on concession issues for examination of the developed or adjusted tender documentation of the concession project, except for cases specified in 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 state planning body sends the expert opinion specified in paragraph 6 of this article to the authorized state body of the relevant industry if the project is republican, as well as to local executive bodies of regions, cities of republican significance, the capital, if the project is local.

9. The authorized body on budget planning on the basis of the application of authorized public authority of the relevant branch coordinated with authorized body on budget implementation, and the positive judgment, specified in paragraph 6 of the present article, the adoption of the state concession obligations containing recommendations of an opportunity forms the conclusions according to competitive documentation of concession projects and submits them for consideration of the Republican budgetary commission.

10. The local authorized body on state planning on the basis of the positive judgment, the present article specified in point 6, the adoption of the state concession obligations containing recommendations of an opportunity, forms the conclusions according to competitive documentation of concession projects and submits them for consideration of the relevant budgetary commission.

11. Conclusions of expert reviews of a developed or adjusted tender documentation of a concession project, for which no concession agreement has been concluded for three years after its approval, shall be considered null and void.

Footnote. The chapter 3 is supplemented by the article 15-2 in accordance with the Law of RK № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); as amended by the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); as amended by Laws of RK № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 16. Drawing up a list

1. The list is formed by the central authorized body on state planning on the objects relating to republican property and authorized bodies of area, city of republican value, the capital on state planning on the subjects to concession relating to municipal property on the basis of the positive judgment of competitive documentation of concession projects and according to strategic and program documents of the Republic of Kazakhstan, with investment opportunities of republican and (or) local budgets annually for a period of three years on the sliding basis.

2. The list consists of two sections:

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

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

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

4. For objects that are not included in the list, relevant notifications are sent to the state bodies that submitted the relevant proposals, with a reasoned justification for their non-acceptance.

5. Concession objects that are not transferred to the concession are included in the relevant list, which is being formed for the next medium-term period.

Footnote. The article 16 as amended by the Law of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); as amended by Laws of RK № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 17. Contents of the tender documentation

1. The tender organizer is obliged to submit to all potential concessionaries the tender documentation agreed with the authorized state planning body in cases provided for by subparagraph 3) of article 9 of this Law, and by the authorized state body for budget

execution in cases provided for by subparagraph 2) of article 10 of this Law, containing the following information:

1) requirements to documents, that shall be provided by potential concessionaires in confirmation of their conformity of presented qualification requirements;

2) the feasibility study, except for the cases established by subclauses 2-1) and 2-2) of this clause;

2-1) design and estimate documentation in the cases specified in clause 2 of Article 15-2 of this Law;

2-2) an information sheet containing a description of the concession project;

3) location of the object proposed for transfer to the concession;

3-1) possible types and volumes of state support for the activities of the concessionaires, as well as sources of cost recovery and the concessionary's revenues for this concession project;

4) draft concession agreements developed on the basis of a standard form agreement;

5) description of all criteria, including obligations on a local content, 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 value of the object of the concession should be expressed, and the rate that will be used to bring the value of the object of the concession to a single currency in order to compare and evaluate them;

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

8) an appropriate indication of the right of a potential concessionary to modify or withdraw its tender before the deadline for submission of tenders;

9) method, place and deadline for submission of bids (but not later than fifteen hours local time of the working day) and their validity period;

10) an appropriate indication of the right of a potential concessionary to submit a part of the tender application, which indicates the value of the object of the concession, directly at the time of opening the envelopes with the tender applications;

11) methods, through which potential concessionaires can request clarification on the content of the tender documentation, and the message about the intention of the competition organizer at this stage to meet with potential concessionaires, which is held in an open form and is recorded;

12) the conditions for the submission and the content of the tender application, including the conditions for the payment of security for the tender application;

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

14) procedures, used for opening of envelopes with tender applications and their consideration.

15) is excluded by the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014)..

2. The tender organizer has the right to charge for the submitted tender documentation, not exceeding the actual costs of copying the tender documentation.

3. The potential concessionary is entitled to request clarification of the provisions of the tender documentation, but no later than thirty calendar days before the expiration of the deadline for submission of tender bids. The organizer of the tender is obliged to respond to it within three days from the moment of registration of the request and without specifying who sent the request, provide such an explanation to all potential concessionaires, whom the organizer of the tender has submitted the tender documentation.

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.

4. The tender organizer has the right no later than twenty calendar days before the expiration of the deadline for submission of tender bids on its own initiative or in response to a request from a potential concessionary to make changes and (or) additions to the tender documentation by issuing a protocol no later than ten calendar days. The changes and (or) additions are binding.

A tender organizer shall provide without consideration a text of introduced amendments and (or) modifications to all potential concessionaries, to whom a tender documentation is provided, not later than one business day from the date of adoption of decision on introduction of amendments and (or) modifications in a tender documentation. The deadline of submission of tender applications shall be extended by a tender organizer for the period of not less than thirty calendar days for consideration of these amendments and (or) modifications in tender applications by potential concessionaries, and in case of repeated tendering process – for the period of not less than fifteen calendar days.

5. The organizer of the tender has the right to meet with potential concessionaries to clarify the provisions of the tender documentation in a certain place and at the appropriate time specified in the tender documentation. In this case, the organizer of the tender shall draw up a protocol containing the requests for clarification of the tender documentation submitted during this meeting without specifying their source, as well as answers to these requests. The protocol is immediately sent to the commission and to all potential concessionaires, to whom the organizer of the competition submitted the tender documentation.

6. Tender documentation is approved by a tender organizer.

Footnote. The article 17 as amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); N 97-IV dated 04.12.2008 (for the order of enforcement refer to the art.2); № 233-IV dated 29.12.2009 (for the order of enforcement refer to the art.2); № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 535-IV dated 09.01.2012 (shall be effective upon expiry of ten calendar days after its first official

publication); or 04.07.2013 № 131-V (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 18. Qualification requirements to potential concessionary

1. For participation in competition on selection of the concessionary the potential concessionary should conform to the following requirements:

1) have the necessary financial and material resources for fulfilment of obligations under concession agreement;

2) be solvent, not subject to liquidation, no arrest should be imposed on his property, his financial and economic activities should not be suspended in accordance with the legislation of the Republic of Kazakhstan;

3) not be held accountable for failure to fulfill or improper fulfillment of their obligations under concession agreements concluded during the last three years on the basis of a court decision that has entered into legal force;

4) to have own funds constituting not less than ten percent from the cost of creation (reconstruction) of the concession object.

Own funds are equity, money and other assets owned by a potential concessionary, which are directly involved in the implementation of the concession project;

5) is excluded by the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014);

6) is excluded by the Law of RK N 97-IV dated 04.12.2008 (for the order of enforcement refer to the art.2).

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

1) a potential concessionary shall meet the qualification requirements stipulated in 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 concessionary shall submit the relevant documents to the organizer of the competition in order to confirm its compliance with the qualification requirements provided for in paragraph 1 of this article.

Legal entities for which statutory acts of the Republic of Kazakhstan establish mandatory audit shall also submit an audit 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 concessionary 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 concessionary is a new legal entity, established in order to realize a concessionary project by several individuals or legal entities.

3. A potential concessionary in the case of providing them with inaccurate information on qualification requirements is not allowed to participate in the competition to determine a private partner for all types of public-private partnership within three years from the moment of establishing such a fact.

Reliability of information on qualification requirements, provided by a potential concessionary may be established by the commission, the organizer of the tender, authorized state bodies at any stage of the tender for the choice of the concessionary.

3-1. The commission, the organizer of the tender, the authorized state bodies that established the fact that the potential concessionary provided false information on qualification requirements, must no later than three working days from the date of the establishment of such a fact notify the authorized state planning body with a notification to the notification of the documents confirming these facts .

3-2. In case of participation in tender on a choice of concessionary of associations of individuals and (or) legal entities in a form of simple partnership, each of mentioned persons shall conform to qualification requirements, provided by subparagraphs 1), 2), 3) and 4) of paragraph 1 of this Article on sum of finance and material resources of all participants of a simple partnership.

4. A tender organizer has the right not to specify the qualification requirements to a potential concessionary that are not provided by this Law. A potential concessionary has the right not to provide information that does not relate to the qualification requirements imposed on it.

5. The compliance of a potential concessionary with the qualification requirements specified in clause 1 of this article shall be determined by the tender organizer during the tender for the selection of the concessionary through the qualification selection.

In case of non-compliance of the potential concessionary with the qualification requirements specified in paragraph 1 of this article, he is not allowed to participate in the tender, and his tender application is rejected.

Footnote. The article 18 as amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); N 97-IV dated 04.12.2008 (for the order of enforcement refer to the art.2); № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 18-1. Securing of tender applications

1. Bid security is entered by a potential concessionary as a guarantee that it:

1) does not withdraw or change and (or) does not complement its tender application after the expiration of the final deadline for submission of such tender applications;

2) is excluded by the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014);

3) will conclude concession agreement in case of defining him (her) as a winner of tender.

2. The security of the tender application for participation in the tender shall be paid in the amount of one tenth of the cost of creation (reconstruction) the object of the concession under the concession agreement.

3. A potential concessionary shall not introduce securing of tender application, if he (she) takes participation at the first stage of tender on a choice of concessionary in connection with two-stage procedures.

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

1) guarantee cash contribution, which is paid to the account provided by the budget legislation of the Republic of Kazakhstan for the organizers of competitions, which are state bodies;

2) bank guarantee.

It is not allowed for a potential concessionary to perform actions leading to the occurrence of a third party's right of claim in whole or in part for the guarantee deposit made before the expiration of its tender bid.

The organizer of the tender shall not be allowed to use the guarantee cash contribution made by the potential concessionary, with the exception of the actions specified in paragraphs 6 and 7 of this article.

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

1) a potential concessionary recalled or changed and (or) supplemented tender application after the deadline of submission of tender applications;

2) a potential concessionary, defined as a winner of tender deviated from conclusion of a concession agreement.

6. Upon the occurrence of one of the cases provided for in paragraph 5 of this article, the amount of security of the tender shall be credited to the income of the relevant budget.

7. A tender organizer shall return to a potential concessionary a securing of tender application, contributed by him (her) within three business days from the date of occurrence of the following cases:

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

2) signing of a protocol on admission to participation in the competition. Mentioned case shall not extend to potential concessionaries, recognized as tenderers;

- 3) signing of a protocol on results of tender for the selection of the concessionary. Mentioned case shall not extend to tenderer, determined as a winner of tender;
- 4) entry into force of the concession agreement;
- 5) the expiration of the tender application of a potential concessionary.

Footnote. The chapter 3 is supplemented by the article 18-1 in accordance with the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); as amended by the Law of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014).

Article 18-2. Restrictions, related to participation in tender on a choice of concessionary

A potential concessionary shall have no right to participate in the ongoing tender, if:

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

- 2) a potential concessionary and (or) his employee provided expert, consulting and (or) other services to the organizer of the competition in preparing competitions held, including participating as a general designer or sub-designer in the development of a feasibility study and (or) project design - estimate documentation for the creation of the object that is the subject of the competition;

- 3) a property of potential concessionary, balance value of which is more than ten percent of the value of relevant basic funds is seized;

- 4) potential concessionary has unfulfilled obligations on executive documents and included by the authorized body in the field of enforcement of executive documents into the relevant register of debtors;

- 5) financial and economic activity of a potential concessionary is suspended in accordance with the legislation of the Republic of Kazakhstan or the legislation of the state of a potential non-resident concessionary of the Republic of Kazakhstan.

2. A potential concessionary and an affiliate of a potential concessionary shall not have the right to participate in a tender.

Footnote. The chapter 3 is supplemented by the article 18-2 in accordance with the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 19. Tendering process on a choice of concessionary

1. The selection of the concessionary for the objects included in the list is carried out by holding an open competition for concession projects.

2. The organizer of the competition in respect of concession objects related to the republican property and provided for in paragraph 2 of Article 16 of this Law is the authorized state body of the relevant industry.

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

3. A tender organizer shall mandatorily publish information on a tendering process in periodicals, distributed in the whole territory of the Republic of Kazakhstan in Kazakh and Russian languages not less than sixty calendar days prior to the day of tendering process, and in repeated tendering process – not less than thirty calendar days. Information on tendering process shall include data on concession facilities, list of required documents for submission to tender organizer, requirements to potential participants depending on a character of facility on which a tender is announced; on a place, time and date of tendering process.

4. Consideration and selection of concession applications are carried out by the commission created by the order of the Prime Minister on concession projects of special importance, or the organizer of the competition on other projects.

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

When making changes and additions to the conditions of the competition, as well as to the initial parameters and characteristics of the concession application for projects of special significance in accordance with paragraph 4-1 of Article 20 of this Law, the relevant decisions are drawn up by the protocol decision of the commission.

5. Is excluded by the Law of RK № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

6. Is excluded by the Law of RK № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication).

Footnote. The article 19 as amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); N 97-IV dated 04.12.2008 (for the order of enforcement refer to the art.2); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days after its first official publication); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 20. Determination of concessionary and conclusion of concession agreement.

1. Commission shall open envelopes with tender applications within a period, time and place, that mentioned in a tender documentation.

A tender organizer shall direct to an authorized body on state planning the concessional applications, contained in the relevant tender applications, for expert examination.

A tender organizer shall involve legal entities on advisory support of the concessionary projects determined by the Government of the Republic of Kazakhstan or local executive bodies for development of the tender documentation, the draft concession agreement ,

independent assessment of the submitted concession requests which are contained in the corresponding tender application and also for participation in negotiations with potential concessionaries.

In order to attract legal entities for advisory support of concession projects determined by the Government of the Republic of Kazakhstan or local executive bodies, the tender organizer sends to the authorized state planning agency an application for financing the services for advisory support of the concession project.

Authorized body on budget planning or local authorized body on budget planning shall introduce the conclusion on rendering services in advisory support of concessionary projects for consideration of the relevant budget commission.

An authorized body on state planning shall form a list of services on advisory support of concessionary projects that shall be carried out at expense of funds of the relevant allocated budget program of an authorized body on state planning, on the volumes of financing the services on advisory support of each of concessionary project, approved by budget commissions.

Consultative support of concession projects is carried out in the manner determined by the authorized body for state planning in coordination with the authorized body for budget execution.

2. The Commission shall consider all tender applications submitted by the tender participants, taking into account the compliance with the requirements of the tender documentation, the conclusions on the concession application and the assessment of the compliance of potential concessionaries with the qualification requirements.

In case if the tender organizer did not receive the bids in due time, or all the submitted bids do not meet the requirements of the tender documentation, the tender is considered not to have taken place.

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

3. The commission shall hold negotiations with the tender participant which concession application is recognized as the best on the basis according to criteria established by the central authorized body on state planning to specification of the concessionary project and terms of the concession agreement.

4. Comments and suggestions on concessionary project and concession agreement shall be directed to applicant by commission in the written form within preparation of negotiations.

The relevant decision of commission shall be adopted following the results of conduct of negotiations.

During the negotiations, no changes are allowed in the conditions of the tender, as well as in the initial parameters and characteristics of the concession application, except in the case provided for by paragraph 4-1 of this article.

4-1. For projects of special significance, it is allowed to make changes and additions to the conditions of the competition, as well as to the initial parameters and characteristics of the concession application in the event of a significant change in the exchange rate of the national currency during the competition.

The decision to make changes and additions to the conditions of the competition, including the cost of construction and installation works and state payments, as well as to the initial parameters and characteristics of the concession application is made on the basis of the protocol of negotiations and the decision of the commission and is submitted to the Republican budget commission.

5. In case if the tender participant which concession application is recognized as the best, refuses discussion and specification of the concession application and terms of the concession agreement according to remarks and offers of the commission or his offers are unacceptable from the point of view of tender conditions, then this concession application shall not be considered by the commission and anew the best concession application shall be chosen.

6. According to the results of the competition for the choice of the concessionary, the decision of the commission determines the best concession application, and the applicant is recognized as the winner of the competition.

7. A tender organizer shall conclude concession agreement with the tender winner on the basis of the decision of commission.

For the implementation of concession projects of special importance, the organizer of the competition, based on the decision of the Commission, concludes a concession agreement with a legal entity, the creation of which is announced by the winner of the tender in the tender established by the winner, in order to implement the concession project (subject to the provision of Bank guarantees to the concessor for the fulfillment of the obligations of such legal entity in the amount and on the terms specified in the concession agreement).

8. Period of conclusion of concession agreement may not exceed ninety calendar days from the date of tendering process.

9. Data on results of tenders on a choice of concessionary shall be published by an organizer in the periodicals, distributed in the whole territory of the Republic of Kazakhstan in the Kazakh official and Russian languages, with the exceptions of data that is the state secrets or other secret, protected by the Law.

Footnote. The article 20 as amended by the Law of RK № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); as amended by Laws of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 239-V dated 29.09.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 380-V dated 31.10.2015 (shall be effective upon expiry of ten calendar days

after its first official publication); № 112-VI dated 30.11.2017 (for the order of enforcement refer to the art.2).

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

1. The tender for the choice of the concessionary using two-stage procedures is held in cases where:

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;

submission by the organizer of the tender of a technical task and tender documentation to persons interested in participating in the first stage of the tender for the selection of the concessionary using two-step procedures;

conduct of qualified selection of potential concessionaries;

discussion with potential concessionaries of issues related to technical, quality and (or) other characteristics of the terms of reference;

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:

submission by bidders who have passed the qualification selection of tender applications with feasibility studies of a concession project or developed design and estimate documentation;

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. The chapter 3 supplement by the article 20-1 I accordance with the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); as amended by Laws of RK № 150-V dated 03.12.2013 (shall be effective from 01.01.2014); № 112-VI dated 30.11.2017 (shall be effective upon expiry of ten calendar days after its first official publication).

Chapter 4. CONCESSION AGREEMENT

Article 21. Content of the concession agreement

1. A concession agreement should 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 implementing necessary object improvements for the purpose of providing by a concessionary the required services quantity and quality;

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) quality standards for goods (works, services) provided by a concessionary under a concession agreement;

9) validity period of a concession agreement;

10) rights and obligations of the parties;

11) environmental and safety requirements for implementing works;

12) procedure and terms of transfer of concession facility by parties, including persons, authorized 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 the 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 conessor;
- 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 a local content;
- 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 authorized 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 authorized state bodies, representing the interests of conessor;
- 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. The concession agreement may also provide for:

- 1) methods of securing performance of obligations of concession agreement parties;
- 2) distribution of incomes between conessor 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 concessor 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) in case of violation by the concessionary of the essential terms of the concession agreement, defined in the concession agreement;

2) if the concessor violates the essential terms of the concession agreement defined in the concession agreement;

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 concessor right, mentioned in paragraph 4 of this Article by a concessor, 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 is entitled to pledge his/her rights under a concession agreement only with the written consent of the concessor.

The pledge of their rights of claims for cash receipts in the form of compensation of investment costs under a concession agreement is carried out only in order to attract debt financing for the implementation of the concession project in accordance with the terms of the concession agreement.

The transfer by the concessionary of his rights under the concession agreement to the creditor and the accounting of the value of these rights are carried out in accordance with the legislation of the Republic of Kazakhstan on concessions.

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

With the consent of the concessor, the assignment of the claim or the transfer of the concessionaire's debt under the concession agreement is allowed, subject to the compliance of the person (s) to whom the rights and obligations of the concessionaire are transferred to the requirements established by Article 18 of this Law.

If the concessionary is replaced at the request of the concessionary's creditors, the assignment of the claim and (or) the transfer of the concessionary's debt under the concession agreement shall be made without competition in the manner determined by the direct agreement.

Footnote. The article 21 as amended by the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); as amended by Laws of RK № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 171-VI dated 04.07.2018 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 21-1. Types of concession agreement

A concession agreement shall consist of the following types:

1) a concession agreement providing for the creation by the concessionary of a concession object with the subsequent transfer of the concession object to state ownership;

2) a concession agreement providing for the joint activity of the concessionary and the concessor in the creation (reconstruction) and operation of the concession object;

3) a concession agreement providing for the transfer of a concession object that is in state ownership to trust management or to property lease (rent) to the concessionary for the purposes of reconstruction and operation;

4) a concession agreement providing for transfer of the concession object which is in property of the concessionary to property lease (rent) to the concessor or his authorized representative, including with the right to purchase the concession object by the concessor.

2. A concession agreement may include elements of one or several types of contracts provided for by paragraph 1 of this article, and also include elements of other agreements not prohibited by the legislation of the Republic of Kazakhstan aimed at the creation (reconstruction) and operation of the concession object.

3. A concession agreement may not include conditions aimed at alienation of the object of concession, which is in state ownership, into private ownership.

Footnote. The chapter 4 is supplemented by the article 21-1 in accordance with the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 22. Form of concession agreement

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

Article 23. Validity period of a concession agreement

1. A concession agreement shall be concluded for the period up to thirty years.
2. A concession agreement may be extended for an additional period, determined by the agreement of the parties, within the time limit established by paragraph 1 of this article, by entering into an additional agreement subject to the fulfillment of the obligations of the parties, which were executed on the day the additional agreement was concluded.

A concessionary who has duly performed his/her duties is entitled to conclude a new agreement on a non-competitive basis.

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

Footnote. The article 23 as amended by the Law of RK № 225-V dated 02.07.2014 (shall be effective 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 the concessionary;
- 3) (excluded – by the Law of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2)).
- 4) in other cases, provided by the civil legislation of the Republic of Kazakhstan or a concession agreement.

Footnote. The article 24 as amended by the Law of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2)

Article 25. Rights and obligations of a conessor

1. A conessor shall have the right to:
 - 1) to negotiate with the concessionary on the terms of concession agreement;
 - 2) to claim the compensation from the concessionary in the event of deterioration of the concession object, which was caused by the 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. The concessor shall be obliged to:

1) transfer the right to concession facility to concessionary on conditions and within the periods, provided by a concession agreement;

2) coordinate draft concession agreements with interested state bodies;

3) transfer in due time the documents stipulated by the concession agreement and confirming the concessionary's rights to the concession object;

4) annually provide reporting information to the relevant state body that maintains the register of concluded concession agreements;

5) comply with the conditions stipulated by the concession agreement;

6) transfer concession facilities, that are free from the third party's rights or with encumbrances and restrictions, mentioned in a tender documentation, provided to potential concessionaries 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. The article 25 as amended by the Law of RK № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 26. Rights and obligations of the concessionary

1. A concessionary shall have the right to:

1) implement the rights in respect to a concession object under the conditions envisaged by a concession agreement;

2) be a subject of the investment preferences provided according to the legislation of the Republic of Kazakhstan in the field of investments;

3) get reimbursement of expenses incurred in relation to the concession agreement implementation;

4) demand cancellation of a concession agreement in case of infringement by a concessor of his/ her conditions, and reimbursement of losses caused by the liabilities infringement;

5) demand reimbursement of losses in case if a change of concession agreement conditions results in concessionary's losses;

6) implement other rights in line with the Republic of Kazakhstan laws.

2. A concessionary shall be obliged to:

1) preserve the profile of concession objects;

2) implement works (render services) envisaged by a concession agreement;

3) finance social sphere objects making part of a concession object property complex according to a procedure set by the Republic of Kazakhstan legislation;

4) observe the Republic of Kazakhstan legislation in the sphere of labor, employment and environmental protection;

5) after expiry of the concession agreement term, transfer to the concessor a concession object being in an appropriate technical status in line with agreement conditions and its being free from third parties' rights;

6) observe other requirements and conditions set by the Republic of Kazakhstan laws 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. The article 26 as amended by Laws of RK N 66-IV dated 05.07.2008 (for the order of enforcement refer to the art.2); № 263-IV dated 02.04.2010 (shall be effective from 01.01.2010); № 131-V dated 04.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 376-V dated 29.10.2015 (shall be effective 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 concessor shall carry out a control of compliance with private concessional obligations in accordance with the manner, prescribed in concession agreement.

Footnote. The chapter 4 is supplemented by the article 26-1 in accordance with the Law of RK № 131-V dated 04.07.2013 (shall be effective 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 concessor, 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 concessor 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 concessor;

3) the right of the concessionary's creditors to demand the replacement of the concessionary in the event of a substantial violation of its obligations under the concession agreement capable under the terms of the concession agreement to result in its dissolution, and (or) in case of a substantial violation by the concessionaire of its obligations under agreements with creditors making a request for the concessionary to fulfill the obligations under such contracts ahead of time, and also to propose the candidacy of a new concessionary ;

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

5) the right of the concessionary 's creditors to appoint, in the cases provided for in subparagraph 3) of this paragraph, a temporary administrator, as well as determine the procedure for the appointment, amount and term of office of the temporary administrator;

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

Footnote. The chapter 4 is supplemented by the article 26-2 in accordance with the Law of RK № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 26-3. Concessionary replacement

1. In case of default or improper performance by the concessionary of its obligations to the creditor and (or) under the concession agreement, it is allowed to substitute of the concessionary in agreement with the concessor and the creditor, which is carried out by means of a tender conducted by the concessor to replace the concessionary.

2. In the case of the replacement of the concessionary, the rights and obligations under the concession agreement from the moment of the conclusion of the agreement on the replacement of the concessionary under the concession agreement are transferred to the new concessionary.

3. Substitution of the concessionary under the concession agreement is carried out in accordance with the legislation of the Republic of Kazakhstan on concessions.

Footnote. The chapter 4 is supplemented by the article 26-3 in accordance with the Law of RK № 171-VI dated 04.07.2018 (shall be effective upon expiry of ten calendar days after its first official publication).

Chapter 5. FINAL PROVISIONS

Article 27. Dispute settlement

1. Disputes related to the transfer of state property to a concession shall be resolved in accordance with the procedure established by the legislation of the Republic of Kazakhstan and the 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 the execution and termination of a contract cannot be resolved in accordance with clause 1 of this article, then the parties have the right to resolve the dispute in accordance with the requirements of the legislation of the Republic of Kazakhstan in a judicial proceeding, as well as by applying to arbitration in accordance with the Law Republic of Kazakhstan "On Arbitration". With regard to concession projects of particular importance in the case when at least one of the shareholders (participants) of the concessionary is a non-resident of the Republic of Kazakhstan, arbitration is determined by agreement of the parties.

Footnote. The article 27 as amended by Laws of RK № 125-V dated 03.07.2013 (shall be effective upon expiry of ten calendar days after its first official publication); № 225-V dated 02.07.2014 (shall be effective upon expiry of ten calendar days after its first official publication); № 489-V dated 08.04.2016 (shall be effective upon expiry of ten calendar days after its first official publication).

Article 28. Responsibility for Violation of the Republic of Kazakhstan Legislation on Concessions

Violation of the Republic of Kazakhstan legislation on concessions shall result in bearing the responsibility set by the Republic of Kazakhstan laws.

Article 29. Putting the Law into Action

1. The Law shall come into force from the date of its official publication.

2. Concession agreements entered into before the Law comes into force shall be valid until the date of expiry of the term established in those agreements.

*President
of the Republic of Kazakhstan*

N. NAZARBAYEV