



On public-private partnership

Unofficial translation

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

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

Chapter 1. GENERAL PROVISIONS

Article 1. Basic definitions used in this Law

The following basic definitions are used in the present Law:

1) a potential private partner - an individual entrepreneur, simple partnership, consortium or legal entity applying for participation in a tender (auction) or in direct negotiations to determine a private partner, excluding public legal entities, as well as limited liability partnerships and joint stock companies, fifty or more percent of the equity capital or voting shares thereof are directly or indirectly owned by the state;

2) a private partner - an individual entrepreneur, a simple partnership, a consortium or a legal entity, other than public legal entities, as well as limited liability partnerships and joint stock companies, fifty percent or more of the equity or voting shares thereof are directly or indirectly owned by the state, that have entered into a public-private partnership agreement;

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

3) an organiser of the tender (auction) or direct negotiations is the public partner that organises and conducts the tender (auction) or direct negotiations to identify the private partner, except in cases involving the provision of state support measures and/or payments from the state budget, where the organiser of the tender (auction) or direct negotiations is the central public authority or the local executive bodies of the regions, cities of republican significance and the capital city in compliance with the competence established by this Law;

4) availability payment - a cash payment made at the expense of budget funds in accordance with a public-private partnership agreement for ensuring the operational and quality characteristics of a public-private partnership object, as well as the availability of the

specified object to consumers based on individual technical and economic parameters of the public private partnership;

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

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

6-1) public-private partnership web portal - information and communication platform intended for centralised gathering, processing, storage of electronic information resources in the field of public-private partnership, identifying the private partner, monitoring the implementation of public-private partnership projects, providing accessibility of information in the field of public-private partnership;

6-2) public-private partnership web portal operator - a legal entity designated by the central authority responsible for public planning;

7) advisory support for public-private partnership projects - services provided by legal entities to support public-private partnership projects, including the development of tender (auction) documentation for a public-private partnership project, a draft public-private partnership agreement, including consulting services in the negotiation process between the subjects of public-private partnership;

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

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

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

11) a business plan for a public-private partnership project - a document drafted by a potential private partner in direct negotiations, including a description of the goals and objectives of the public-private partnership project, sources of cost recovery and income generation, beneficiaries of the public-private partnership project, state support measures, including a description of the public-private partnership object and/or services to be provided under the service contract;

12) a public-private partnership company - a legal entity whose sole purpose is the implementation of a public-private partnership project, established jointly by a public partner

and a private partner or a valid legal entity that only members are a public partner and (or) a private partner;

13) public-private partnership objects - buildings, constructions and (or) equipment, property complexes, intellectual creative activity results created (including construction and, if necessary, design) and (or) reconstructed, and (or) modernised, as well as operated within the framework of the public-private partnership project implementation;

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

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

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

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

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

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

20) a service contract - a public-private partnership agreement providing for the provision of services using a public-private partnership facility owned by the private partner by right of ownership, including with due regard to the specifics established by the legislation of the Republic of Kazakhstan;

21) a direct agreement is a written agreement signed between a public partner, a private partner and a private partner's lender to implement a public-private partnership project.

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

upon the expiry of ten calendar days after the day of its first official publication); No. 399-VI of 02.01.2021 (shall enter into force ten calendar days after the date of its first official publication); dated 03.01.2022 No. 101-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication).

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

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

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

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

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

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

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

Footnote. Article 2 as amended by the Law of the Republic of Kazakhstan dated 27.12.2017 No.126-VI (effective upon expiry of six months after its first official publication).

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

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

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

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

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

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

2. The principles of public-private partnership shall be:

- 1) the principle of consistency - a step-by-step construction of the relationship between the public-private partnership entities;
- 2) the principle of competitiveness - identification of a private partner on a competitive basis, with the exception of cases established by this Law;
- 3) the principle of balance - mutually beneficial distribution of responsibilities, guarantees, risks and revenues between the public partner and the private partner in the implementation of the public-private partnership project;
- 4) the principle of efficiency - establishing criteria and parameters to evaluate the achievement of the outcomes of public-private partnerships;
- 5) the principle of significance for the population - ensuring the development of social infrastructure and life support systems, increasing the level of accessibility and quality of goods, works and services, as well as the creation of jobs within the framework of the implementation of a public-private partnership project;
- 6) the principle of transparency and accessibility of information - open access to information on the planning and implementation processes of public-private partnership projects within the limits prescribed by the laws of the Republic of Kazakhstan.

Footnote. Article 3 as amended by Law of the Republic of Kazakhstan No. 399-VI dated 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication); No. 177-VII of 30.12.2022 (shall be put into force ten calendar days after the date of its first official publication).

Article 4. Features of public-private partnership

The exclusive features of a public-private partnership include:

- 1) building a relationship between a public partner and a private partner by entering into a public-private partnership agreement;
- 2) the medium- or long-term duration of the public-private partnership project (from five to thirty years, depending on the features of the public-private partnership project);
- 3) joint participation of a public partner and a private partner in the implementation of a public-private partnership project;
- 4) pooling the resources of a public partner and a private partner for the implementation of a public-private partnership project.
- 5) making investments by a private partner to implement a public-private partnership project;
- 6) availability of investment and operational periods in the public-private partnership project.

The investment period shall cover the design (if required), construction and/or reconstruction, and/or modernisation or establishment of a public-private partnership object.

The operational period shall cover the operation of the public-private partnership object depending on its functional purpose, or the maintenance or management of the infrastructure of the public-private partnership object.

Footnote. Article 4 as amended by Law of the Republic of Kazakhstan No. 399-VI of 02.01.2021 (shall come into force ten calendar days after the date of its first official publication); No. 177-VII of 30.12.2022 (shall be enforced ten calendar days after the date of its first official publication).

Article 5. Parties to a public-private partnership agreement

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

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

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

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

2) industry operators.

Article 6. Fields of application of public-private partnership

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

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

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

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

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

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

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

1) concessions;

2) trust management of state property;

3) property rental (lease) of state property;

4) leasing;

5) contracts concluded for the development of technology, prototyping, pilot testing and small-scale production;

6) life cycle contract;

7) service contract;

8) other contracts corresponding to the features of public-private partnership.

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

Reimbursement of investment costs may be provided in the contractual public-private partnership agreements envisaged by sub-paragraph 2) of part two of this paragraph only if there is budgetary efficiency, as well as if commercial efficiency from the implementation of the public-private partnership project cannot be achieved, as evidenced by the expertise of the tender documentation of the public-private partnership project undertaken in the way established by the central authorised body for public-private partnerships.

4. Basic parameters of public-private partnership projects, including goals and objectives, expected payments from budgetary funds, measures of state support may be envisaged in the concepts of sector (sphere) development, national projects for the implementation of public-private partnerships.

The decision on the necessity to elaborate a procedure for selecting a private partner and concluding a public-private partnership agreement within sector development concepts (areas) , national projects shall be specified in the respective concept or national project.

Footnote. Article 7 as amended by the Law of the Republic of Kazakhstan dated 30.11.2017 No. 112-VI (shall be effective upon the expiry of ten calendar days after its first official publication); No. 177-VII of 30.12.2022 (shall be enacted ten calendar days after the date of its first official publication).

Article 8. Republican and local public-private partnership projects

1. Public-private partnership projects are divided into national and local.

2. The criteria for determining the national and local projects of public-private partnership shall be:

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

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

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

1. The financing of a public-private partnership project shall be carried out by:

1) private partner's own funds;

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

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

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

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

2-1. The private partner shall be fully reimbursed only under public-private partnership projects, if the operation of the social infrastructure and livelihood facility does not provide a return on the private partner's investment, such projects are public-private partnership projects of social infrastructure and livelihoods.

Social infrastructure and life support facilities shall refer to facilities, complexes of facilities used to meet public needs, the provision whereof is entrusted to public authorities under the legislation of the Republic of Kazakhstan, including healthcare, education, culture, sports, telecommunications, communications, public safety, transport infrastructure, gas, electricity, heat and water supply and disposal, and waste management facilities.

2-2. No compensation for investment costs shall be available under service contracts.

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

4. The procedure of cost recovery for public-private partnership entities shall be determined by the budgetary legislation of the Republic of Kazakhstan.

Payment of reimbursement of the investment costs of a public-private partnership project shall be made after the launch of the public-private partnership facility in equal instalments over a period of at least five years in line with the public-private partnership agreement.

However, it shall be prohibited to reschedule the terms of payment of compensation for investment costs established by the public-private partnership agreement to earlier periods, except in cases of early launch of the public-private partnership facility, without reducing the overall term of payment of compensation for investment costs and while maintaining the uniformity of payment of compensation for investment costs, provided that the conditions of paragraph 1-1 of Article 46 of this Act are met.

Footnote. Article 9 as amended by Law No. 399-VI of the RK dated 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication); No. 72-VII of

15.11.2021 (shall take effect on 01.01.2022); No. 177-VII of 30.12.2022 (shall be enacted ten calendar days after the date of its first official publication).

Article 10. Planning and implementation of a public-private partnership project

Footnote. The title of Article 10 as reworded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication).

1. A public-private partnership project may be implemented under a public or private initiative by going through the following successive stages:

1) planning, including:

within the framework of the state initiative - development of an investment proposal and tender (auction) documentation; or

within the framework of the implementation of a private initiative - elaboration of an information sheet of tender (auction) documentation for projects intended to solve social and economic objectives based on the needs included in the list formed and published by the central authorised state body of the respective sector or local executive body in the order laid down herein; or

in the private direct negotiation initiative to identify a private partner, the development of a business plan;

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

3) conclusion of a public-private partnership agreement;

4) fulfillment by the parties of the terms of the public-private partnership agreement.

1-1. Excluded by Law of the Republic of Kazakhstan No. 141-VII of 14.07.2022 (shall be enacted on 01.01.2023).

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

Footnote. Article 10 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be effective upon the expiry of ten calendar days after its first official publication); No. 128-VI dated 28.12.2017 (shall be effective upon the expiry of ten calendar days after its first official publication); No. 141-VII of 14.07.2022 (shall take effect on 01.01.2023); No. 177-VII of 30.12.2022 (shall enter into force ten calendar days after the date of its first official publication).

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

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

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

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

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

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

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

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

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

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

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

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

2. The account intended for crediting compensation of investment costs is used to protect the right of the creditor in the financing of public-private partnership projects secured by the right to claim cash proceeds in the form of compensation of investment costs. Use of the account intended for transfer of compensation of investment costs for other purposes is not allowed.

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

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

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

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

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

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

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

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

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

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

4. The period of operating the public-private partnership facility shall be established for a period of at least five years, depending on the specific features of the public-private partnership project.

Footnote. Article 13 as amended by Law No. 399-VI of the RK dated 02.01.2021 (shall go into effect ten calendar days after the date of its first official publication).

Article 14. Risk allocation between public partner and private partner

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

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

3. The allocation of risks in the public-private partnership agreement between the public partner and the private partner is carried out taking into account the peculiarities of the public-private partnership project, provided that the risks are assigned to the party that can best manage them with minimal costs.

Article 15. Procedures for information provision in the area of public-private partnerships

1. Based on the documents of the State Planning System within their competence, as well as considering the proposals of individuals and legal entities and the needs of the population, the central authorised state bodies of the respective branches, local executive bodies of oblasts, cities of republican significance and the capital city shall annually compile and publish a list of social and economic objectives to draw up proposals for the implementation of the public-private partnership projects under the procedure set by the central authority responsible for public planning

2. Information on the planned and implemented public-private partnership projects shall be ensured by the central authorised state bodies of the respective sector, local executive bodies of regions, cities of republican significance and the capital, public partners and the Public-Private Partnership Development Centre following the order established by the central authorised body for public planning, including by using the public-private partnership web-portal.

Footnote. Article 15 as reworded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall be enacted ten calendar days after the date of its first official publication).

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

Article 16. Rights and duties of the private partner

1. The private partner has the right to:

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

2. The private partner is obliged to:

- 1) maintain the profile of public-private partnerships, as well as in accordance with the terms of the public-private partnership agreement to ensure the transfer of the public-private partnership to a state partner in the proper technical condition;

2) ensure the quality and availability of goods, works and services within the framework of the concluded public-private partnership agreement;

3) ensure the targeted use of funds allocated for the implementation of the public-private partnership project;

6) comply with other requirements and terms, established by the Laws of the Republic of Kazakhstan and the public-private partnership agreement;

Article 17. Rights and duties of the public partner

1. The public partner has the right to:

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

2) take part in the management bodies of a public-private partnership company when it organises a tender (auction) or direct negotiations;

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

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

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

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

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

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

2. The public partner is obliged to:

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

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

Footnote. Article 17 as amended by Law No. 399-VI of the RK dated 02.01.2021 (shall be put into effect ten calendar days after the date of its first official publication).

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

1. Finance and other organisations interested in financing a public-private partnership project shall be entitled to take part in the development and discussion of the tender (auction) documentation of the public-private partnership project, draft public-private partnership

agreement, as well as to make proposals on the scheme for financing a public-private partnership project, collateral for loans, expected payments in cases of termination of the public-private partnership agreement and other issues related to the financing of the public-private partnership project.

2. Other persons engaged in the implementation of a public-private partnership project, including those rendering advisory services to support public-private partnership projects, shall enjoy the rights envisaged by the laws of the Republic of Kazakhstan and the public-private partnership agreement.

3. Other persons participating in the implementation of a public-private partnership project including those performing advisory services to support public-private partnership projects, shall comply with the requirements and conditions established by the laws of the Republic of Kazakhstan and the public-private partnership agreement.

Footnote. Article 18 as amended by the law of the Republic of Kazakhstan dated 30.11.2017 No. 112-VI (shall be effective upon the expiry of ten calendar days after the date of its first official publication); No. 399-VI of 02.01.2021 (shall enter into force ten calendar days after the date of its first official publication)); No. 177-VII of 30.12.2022 (shall be put into force ten calendar days after the date of its first official publication).

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

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

The Government of the Republic of Kazakhstan shall:

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

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

3) excluded by the Law of the Republic of Kazakhstan dated 03.01.2022 No. 101-VII (shall be enforced upon expiration of sixty calendar days after the day of its first official publication);

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

4-1) decide to implement a public-private partnership project designed to create and operate unique objects involving technology transfer, based on a private initiative, with direct negotiation to select a private partner;

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

Footnote. Article 19 as amended by the Laws of the Republic of Kazakhstan dated 03.01.2022 No. 101-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); No. 177-VII of 30.12.2022 (shall be enacted ten calendar days after the date of its first official publication).

Article 20. Competence of the central authorized state planning body in the field of public-private partnership

The central authorized state planning body shall:

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

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

3) excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication);

4) approve the tender (auction) documentation of public-private partnership projects for republican public-private partnership projects, as well as when relevant amendments and (or) additions are made thereto;

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

6) develop and approve the rules for scheduling and implementing public-private partnership projects, including the planning of public-private partnership projects, conducting a tender (auction) and direct negotiations to identify a private partner, monitoring public-private partnership agreements, and monitoring and evaluating the implementation of public-private partnership projects;

7) excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall be enforced ten calendar days after the date of its first official publication);

7-1) approve the procedure for selecting a private partner and entering into a public-private partnership agreement within the framework of sector (area) development concepts, national projects, including standardised tender documents and standardised public-private partnership agreements;

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

9) involve the Public-Private Partnership Development Centre to evaluate the implementation of public-private partnership projects, expertise of the business plan for a public-private partnership project in direct negotiations to identify a private partner, tender (auction) documentation of a public-private partnership project, including when relevant amendments and (or) additions are made thereto;

The evaluation results of the implementation of public-private partnership projects shall be published by the central authorised body for public planning on the public-private partnership web portal, with due regard to the restrictions imposed by the laws of the Republic of Kazakhstan on the protection of information;

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

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

11-1) draft and approve the methodology for evaluating the socio-economic efficiency of public-private partnership projects;

11-2) elaborate and adopt a methodology for allocating and assessing the risks of public-private partnership projects;

11-3) draft and adopt a methodology for accounting for contingent public liabilities in public-private partnership projects;

12) carry out other powers provided by this Law, other Laws of the Republic of Kazakhstan, Acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Footnote. Article 20 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be effective upon the expiry of ten calendar days after its first official publication); No. 399-VI of 02.01.2021 (shall enter into force ten calendar days after the date of its first official publication); No. 177-VII of 30.12.2022 (shall enter into force ten calendar days after the date of its first official publication).

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

The budget execution central authorized body shall:

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

2) excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall apply ten calendar days after the date of its first official publication);

3) agree on the tender (auction) documentation of a public-private partnership project and the draft public-private partnership agreement, including when relevant amendments and/or additions are made thereto for republican public-private partnership projects;

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

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

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

6-1) submit data on financial obligations of the state under public-private partnership agreements to the central authorised body for state planning in the field of public-private partnerships under the procedure laid down by the legislation of the Republic of Kazakhstan;

7) carry out other powers provided by the present Law, other Laws of the Republic of Kazakhstan, Acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Footnote. Article 21 as amended by Law No. 399-VI of the RK dated 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication); No. 177-VII of 30.12.2022 (shall become effective ten calendar days after the date of its first official publication).

Article 22. Competence of the state property management authorized body in the field of public-private partnership

State property management authorized body shall:

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

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

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

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

Article 23. Competence of the authorized state body of the relevant industry in the field of public-private partnership

Authorized state body of the relevant industry shall:

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

2) excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall be put into effect ten calendar days after the date of its first official publication);

2-1) elaborate and approve a procedure for selecting a private partner and concluding a public-private partnership agreement within the framework of sector (area) development concepts, national projects, including standard tender documents and standard public-private partnership agreements;

3) organise a tender (auction) and direct negotiations to identify a private partner for national public-private partnership projects;

3-1) draw up and adopt a list of socio-economic objectives for the formation of proposals for public-private partnership projects;

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

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

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

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

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

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

9-1) under the procedure stipulated by the legislation of the Republic of Kazakhstan, coordinate with the anti-monopoly authority the business plan for the republican public-private partnership project, the tender (auction) documentation of the republican public-private partnership project, including when amending and (or) adding thereto in terms relating to the protection of tender and limiting monopolistic activities, on projects involving the provision by private partners of the implementation of public functions;

10) prepare an industry opinion on the tender (auction) documentation of a public-private partnership project, a business plan for a public-private partnership project in direct negotiations to identify a private partner (for domestic projects with a value exceeding 400, 000 times the monthly calculation index established by the law on the national budget and in force as of 1 January of the respective financial year and for national projects) pursuant to the rules approved by the central authorised body for state planning;

11) carry out other powers provided by the present Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Footnote. Article 23 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication);dated 03.04.2019 No. 243-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 399-VI of 02.01.2021 (shall come into force ten calendar days after the date of its first official publication); No. 177-VII of 30.12.2022 (shall be brought into force ten calendar days after the date of its first official publication).

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

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

1) excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication);

2) annually hear the report of local executive bodies on the progress of the implementation of local public-private partnership projects;

3) carry out other powers provided by the present Law, other Laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

Footnote. Article 24 as amended by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication).

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

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

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

2) submit proposals to the organiser of the tender (auction) or direct negotiations for public-private partnership projects to address issues related to the socio-economic and environmental concerns of the population of the respective region, when concluding public-private partnership agreements;

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

4-1) draw up and approve a list of socio-economic objectives for the formation of proposals for public-private partnership projects;

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

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

7) excluded by the Law of the Republic of Kazakhstan dated 03.01.2022 No. 101-VII (shall be enforced upon expiration of sixty calendar days after the day of its first official publication);

8) identify the legal entity responsible for the examination of business plans for local public-private partnership projects in direct negotiations to identify a private partner, tender (auction) documentation for local public-private partnership projects under local public-private partnership projects;

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

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

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

12) excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication);

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

14) carry out other powers provided by the present Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Footnote. Article 25 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 399-VI of 02.01.2021 (shall enter into force ten calendar days after the date of its first official publication); dated 03.01.2022 No. 101-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); No. 177-VII of 30.12.2022 (shall be promulgated ten calendar days after the date of its first official publication).

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

1. The goals, objectives and activities of the Public-Private Partnership Development Center shall be established by the authorized state planning body.

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

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

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

3) carrying out expert evaluation of tender (auction) documentation of republican public-private partnership projects, including when relevant amendments and (or) additions are thereto;

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

5) evaluation of the implementation of public-private partnership projects;

6) training specialists in the field of public-private partnerships;

7) maintaining a list of public-private partnership projects planned for implementation.

Footnote. Article 26 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 399-VI of 02.01.2021 (shall come into force ten calendar days after the date of its first official publication); dated 19.04.2023 No. 223-VII (shall be enforced ten calendar days after the date of its first official publication).

Article 26-1. Operator of the public-private partnership web portal

Operator of the public-private partnership web portal shall:

1) develop, maintain and systematically support the public-private partnership web portal;

2) provide advisory assistance to interested parties on the operation of the public-private partnership web portal;

3) provide information security for the storage of electronic information resources hosted on the public-private partnership web portal;

4) interact with authorised actors on the integration of government information systems, government electronic information resources and information security;

5) maintain the process of deposit and return of the tender security following the procedure prescribed by law;

6) interact with public authorities and other organisations to provide information on envisaged and ongoing public-private partnership projects;

7) render e-services via a web-based public-private partnership portal.

Footnote. Chapter 3 as supplemented by Article 26-1 under Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall become effective ten calendar days after the date of its first official publication).

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

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

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

1) the provision of land in accordance with the land legislation of the Republic of Kazakhstan;

2) granting the right to use objects of state ownership;

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

4) provision of engineering and transport communications of a public-private partnership object;

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

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

1) state guarantees for infrastructure bonds;

2) state guarantees for loans, aimed at financing public-private partnership projects;

3) transfer of exclusive rights to intellectual property owned by the state exclusively for the purpose and duration of the public-private partnership project;

4) provision of the grants-in-kind in accordance with the legislation of the Republic of Kazakhstan;

5) co-financing projects of public-private partnerships;

6) guarantees for the consumption by the state of a certain volume of goods, works, service, produced during the implementation of the public-private partnership project.

Co-financing may be available for public-private partnership projects where the estimated amount of investment exceeds one and a half million times the monthly estimated amount set

out in the national budget law, whereby the amount of co-financing may not exceed thirty per cent of the estimated amount of investment.

The aggregate amount of co-financing of public-private partnership projects and reimbursement of investment costs intended to cover the costs associated with the creation (reconstruction) of a public-private partnership facility may not exceed the cost of the creation and/or reconstruction of a public-private partnership facility, to be calculated pursuant to the methodology approved by the central authorised body for public planning.

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

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

Footnote. Article 27 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 177-VII of 30.12.2022 (shall be enforced ten calendar days after the date of its first official publication).

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

The National Chamber of Entrepreneurs performs the following functions:

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

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

3) participation in the inter-ministerial project team, discussions, tender (auction) commission, commission for direct negotiations to select the private partner;

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

Footnote. Article 28 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 399-VI of 02.01.2021 (shall go into effect ten calendar days after the date of its first official publication); No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication).

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

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

1) financing projects of public-private partnerships;

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

3) project management of public-private partnerships;

- 4) transfer of property and property rights for the implementation of a public-private partnership project;
- 5) transfer of exclusive rights on intellectual property;
- 6) participation in the creation and activities of a public-private partnership company;
- 7) other forms, that do not contradict the legislation of the Republic of Kazakhstan.

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

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

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

Chapter 5. GENERAL PROVISIONS FOR DETERMINING A PRIVATE PARTNER

Article 31. Selection of a private partner

1. The private partner shall be selected through a number of methods as follows:

1) a tender.

The tender to select the private partner may be closed in respect of facilities, the list whereof is specified by the Government of the Republic of Kazakhstan;

2) direct negotiations;

3) an auction.

2. A private partner shall be selected and a public-private partnership agreement for the informatisation service model shall be concluded under the legislation of the Republic of Kazakhstan on informatisation, not applying the norms hereof.

3. The provisions of this Article may not apply to public-private partnership projects envisaged within the framework of sectoral (sphere) development concepts, national projects, if they include:

1) the basic parameters of public-private partnership projects, including goals and objectives, expected budgetary disbursements, and state support measures;

2) specification of a different procedure for selecting a private partner and concluding a public-private partnership agreement for certain sectors (spheres) of the economy.

Footnote. Article 31 - as reworded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall become effective ten calendar days after the date of its first official publication).

Article 32. Qualification requirements to a potential private partner

1. In order to compete in a tender (auction) or direct negotiations to identify a private partner, a potential private partner must meet the following general qualification requirements :

1) have legal capacity (for legal persons) and civil capacity (for self-employed persons));

2) be solvent, with no tax arrears in excess of six times the monthly calculation index set for the financial year in question by the law on the national budget and in force as of 1 January of the financial year in question;

3) possess financial and/or material and/or human resources necessary to fulfil the obligations under the public-private partnership agreement;

4) not be subject to bankruptcy or liquidation proceedings, its assets, the balance-sheet value of which exceeds ten per cent of the relevant fixed assets, shall not be seized, its financial and economic activities shall not be suspended in obedience to the legislation of the Republic of Kazakhstan;

5) not to be prosecuted for non-performance and/or improper performance of its obligations under public-private partnership or concession agreements executed within the last three years based on a legally enforceable court decision declaring the potential private partner or concessionaire to be in bad faith;

6) founders, managers of the potential private partner shall not be included in the list of organisations and individuals associated with the financing of terrorism and extremism as established by the legislation of the Republic of Kazakhstan;

7) shall not be included in the register of unfair participants in public procurement;

8) have his/her/its own or his/her/its own and loan proceeds amounting to at least twenty per cent of the value of the public-private partnership facility.

Equity shall refer to the equity, money and other assets owned by the potential private partner that are directly involved in the implementation of the public-private partnership project. This requirement shall be included in the public-private partnership agreement.

1-1. In the case where the potential private partner is a legal entity formed for the purpose of implementing a public-private partnership project:

1) a prospective private partner and its participants (shareholders) must meet the eligibility requirements set out in sub-paragraphs 1), 2), 4), 5), 6) and 7) hereof;

2) the aggregate equity or equity and debt of the prospective private partner and/or its participants (shareholders) must meet the conditions of sub-paragraph 8) of paragraph hereof.

In such a case, a participant (shareholder) of the prospective private partner shall ensure that the requirements of sub-paragraph 8) of paragraph 1 hereof are met, with such obligation reflected in the founding documents of the prospective private partner;

3) a prospective private partner and/or its participants (shareholders) must meet the qualification requirement set out in sub-paragraph 3) of paragraph 1 hereof.

In cases provided for in part one of this paragraph, the information requirements of this Law as well as the responsibility for providing inaccurate information for eligibility shall also apply to the participants (shareholders) of a prospective private partner.

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

3. The organiser of tender (auction) or direct negotiations shall have no right to impose qualification requirements to the prospective private partner which are not stipulated by this Law or the laws of the Republic of Kazakhstan. A prospective private partner shall be entitled not to provide information not related to qualification requirements.

4. A prospective private partner, as proof of his/her/its eligibility, shall submit to the organiser of the tender (auction) or direct negotiations the supporting documents, a list of which shall be provided in the rules for planning and implementing public-private partnership projects approved by the central authorised body for public planning.

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

6. A prospective private partner that submits inaccurate eligibility information shall be prohibited to participate in a tender (auction) or in direct negotiations to identify a private partner for the following three years from the date of being found by a court to be an unscrupulous prospective private partner.

The credibility of the qualification information submitted by a prospective private partner may be established by the tender (auction) committee, the organiser of the tender (auction) or direct negotiations, the authorised public authorities at any stage of the tender (auction) or direct negotiations to identify the private partner.

7. Persons who have established that a prospective private partner has provided inaccurate information on eligibility requirements shall notify the organiser of the competition (auction)

or direct negotiations and the central authorised body for public planning in writing, attaching to the notification a copy of documents confirming the fact of providing inaccurate information within three working days of the establishment of such a fact.

No later than thirty calendar days from the date of revealing such fact, the organiser of the tender (auction) or direct negotiations shall file a claim in court to declare the prospective private partner who has provided inaccurate information on qualification requirements as an unfair prospective private partner.

8. The organiser of the tender (auction) or direct negotiations shall forward to the central authority responsible for public planning the enforceable court decisions declaring a prospective private partner to be an unfair private partner within five working days of receiving such decisions.

Footnote. Article 32 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 399-VI of 02.01.2021 (shall come into force ten calendar days after the date of its first official publication); No. 72-VII of 15.11.2021 (shall go into effect on 01.01.2022).

Article 33. Restrictions associated with participation in a tender (auction) or in direct negotiations to identify a private partner

1. A prospective private partner may not participate in a tender (auction) or in direct negotiations to identify a private partner if:

1) close relatives, spouse or in-laws of the management of the prospective private partner and/or the authorised representative of the prospective private partner are entitled to make decision on identifying the private partner, or are the representatives of the organiser of the tender (auction) or direct negotiations;

2) the assets of the prospective private partner, the balance sheet value of which exceeds ten per cent of the value of the underlying assets, are seized;

3) the prospective private partner has outstanding obligations under enforcement documents and is included by the competent authority for enforcement of administrative cases in the unified register of debtors;

4) the prospective private partner's financial and economic activities are suspended in compliance with the laws of the Republic of Kazakhstan or the legislation of the state of the prospective private partner-non-resident of the Republic of Kazakhstan.

2. A prospective private partner and an affiliate of a prospective private partner may not participate in the same tender (auction) to identify a private partner.

3. Infringements of the requirements hereunder may be established by the tender (auction) commission, the organiser of the tender or direct negotiations, the authorised public authorities at any stage of the planning and implementation of a public-private partnership.

Footnote. Article 33 - as reworded by Law of the RK No. 399-VI of 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication).

Article 34. Qualifications-based selection

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

2. The qualifications-based selection shall be conducted by the organiser of the tender (auction) or direct negotiations pursuant to the rules for the planning and implementation of public-private partnership projects approved by the central authority responsible for public planning.

3. A prospective private partner that has been selected shall be considered as a bidder in a competition (auction) or in direct negotiations to identify a private partner.

Footnote. Article 34 as amended by Law of the RK No. 399-VI dated 02.01.2021 (shall come into force ten calendar days after its first official publication).

Article 35. Determination of the private partner by tender (auction)

1. A tender (auction) to identify a private partner shall take place pursuant to a procedure to be determined by the central authority responsible for public planning.

2. The organiser of the tender (auction) shall set up a tender (auction) committee to determine the private partner.

3. Data on the tender (auction) results to select a private partner, except for information constituting state secrets or other secrets protected by law, as well as the results of a closed tender to select a private partner shall be posted by the organiser of the tender (auction) on its website in Kazakh and Russian and shall be sent to the Public Private Partnership Development Centre for publication in the way provided by the legislation of the Republic of Kazakhstan.

Footnote. Article 35 - as reworded by Law No. 399-VI of the RK of 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication); as amended by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall be effective ten calendar days after the date of its first official publication).

Article 36. Announcement of a tender (auction)

Details on the tender (auction) to select a private partner shall be posted in the Kazakh and Russian languages on the public-private partnership web portal under the procedures stipulated by the legislation of the Republic of Kazakhstan.

Footnote. Article 36 as reworded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall enter into force ten calendar days after the date of its first official publication).

Article 37. Tender (auction) documentation of a public-private partnership project

Footnote. Title of Article 37 as amended by Law of the Republic of Kazakhstan No. 399-VI of 02.01.2021 (shall go into effect ten calendar days after the date of its first official publication).

1. The organiser of the tender (auction) shall approve the tender (auction) documentation of a public-private partnership project.

2. The organiser of the tender (auction) shall submit to all prospective private partners the tender (auction) documentation of the public-private partnership project, coordinated with the central authorised body for state planning in the cases provided for in Article 20 sub-paragraph 4) of this Law and the central authorised body for budget execution in the cases provided for in sub-paragraph 3) of Article 21 of this Law, containing the following information:

- 1) requirements for documents confirming the eligibility of potential private partners;
- 2) an information sheet describing the public-private partnership project;
- 3) the location of the public-private partnership facility;
- 4) anticipated types and volumes of state support, as well as sources of cost recovery and revenue generation for the public-private partnership project;
- 5) draft public-private partnership agreement;
- 6) description of the criteria for determining the best tender (auction) bid;
- 7) indication of the currency(ies) in which the parameters of the public-private partnership project shall be expressed and the exchange rate(s) to be applied to convert them to a single currency for the purpose of their comparison and evaluation;
- 8) requirements for the language of the tender (auction) bid;
- 9) indication of the potential private partner's right to modify or withdraw its tender (auction) bid prior to the deadline for submission of tenders (auctions);
- 10) content of the tender (auction) bid, method, venue, deadline for submission and validity of the tender (auction) bids, as well as terms for payment of the tender (auction) bid security;
- 11) ways of obtaining explanations on the content of tender (auction) documentation of public-private partnership project;
- 12) procedures, place, date and time of opening of envelopes with competitive (auction) bids;
- 13) terms of the tender (auction) that may not be amended in the course of negotiations.

2-1. The tender (auction) documentation shall specify the terms and conditions of the tender (auction) which may not be amended in the course of the negotiations pursuant to Article 40 of this Law, which are the essential terms and conditions of the tender (auction).

3. If the tender (auction) documentation is submitted to the prospective private partner on paper, the organiser of the tender (auction) shall be entitled to charge a fee for the submitted tender (auction) documentation of the public-private partnership project, not exceeding the fee for copying the tender (auction) documentation of the public-private partnership project.

4. A prospective private partner shall be entitled to apply to the organiser of a tender (auction) for clarification of tender (auction) documentation of a public-private partnership project within thirty calendar days prior to the deadline for submission of tender (auction) bids, and in case of a repeat tender (auction) to identify a private partner - within fifteen calendar days prior to the deadline for submission of tender (auction) bids.

Within three calendar days of the recording of such a request, the organiser of the tender (auction) shall provide clarification to potential private partners.

5. Within twenty calendar days prior to the deadline for submission of tenders (auctions), upon its own initiative or in response to a request from a prospective private partner, the organiser of the tender (auction) may amend and/or make additions to the tender (auction) documentation of a public-private partnership project.

No later than one working day after the decision to amend and/or supplement the tender (auction) documentation of a public-private partnership project, the organiser of the tender (auction) shall submit the text of the amendments and/or supplements to the tender (auction) documentation of the public-private partnership project to all prospective private partners. In this case, the deadline for submission of tender (auction) bids shall be prolonged by the organiser of the tender (auction) for a period of not less than thirty calendar days to allow prospective private partners to take these amendments and/or additions into account in the tender (auction) bids, and in case of a repeated tender (auction) for a period of not less than fifteen calendar days.

6. The organiser of the tender (auction) shall be entitled to convene a meeting with prospective private partners to clarify the tender (auction) documentation of the public-private partnership project.

Footnote. Article 37 as amended by the Law of the Republic of Kazakhstan No.112-VI dated 30.11.2017 (shall be enforced upon expiry of ten calendar days after its first official publication); No. 352-VI of 29.06.2020 (shall come into force ten calendar days after its first official publication); No. 399-VI of 02.01.2021 (shall come into force ten calendar days after its first official publication).

Article 38. Competitive (auction) bid

1. A tender (auction) bid shall be a form of expression of the consent of the prospective private partner to the requirements, and terms and conditions set forth in the tender (auction) documentation of a public-private partnership project.

2. The tender (auction) bid shall be presented by the prospective private partner to the organiser of the tender (auction) prior to the deadline indicated in the tender (auction) documentation of the public-private partnership project.

3. A potential private partner's tender (auction) bid shall be rejected in the following cases :

1) a prospective private partner and/or consortium member has previously provided a tender (auction) bid to participate in a given tender (auction) to identify a private partner and/or for the same lot;

2) the tender (auction) bid is received after the deadline for the receipt of bids for this private partner tender (auction).

4. No later than the deadline for the submission of tenders (auctions), the prospective private partner shall be entitled to:

- 1) amend and/or supplement the tender (auction) bid submitted;
- 2) withdraw its tender (auction) bid without forfeiting the right to return the tender (auction) bid security paid by it.

5. The period of validity of the tender (auction) bid shall comply with the required period of time set out in the tender (auction) documentation of the public-private partnership project.

Footnote. Article 38 as reworded by Law of the RK No. 399-VI of 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication).

Article 39. Securing a tender (auction) bid

1. The tender (auction) bid security shall be paid by the prospective private partner as a guarantee that he/she/it:

- 1) does not withdraw or modify and/or amend its tender (auction) bid after the deadline for submission of tenders (auctions);

- 2) enter into a public-private partnership agreement if it is determined to be the winner of the tender (auction) to determine the private partner.

2. The security for a tender (auction) to identify a private partner shall be paid in the amount of one-tenth of one per cent of the value of the proposed investment under the public-private partnership agreement.

The value of the proposed investments under the public-private partnership agreement shall be specified in the tender (auction) documentation.

3. A prospective private partner shall not pay a tender (auction) bid security if he/she/it participates in the first stage of a tender (auction) to identify a private partner using two-stage procedures.

4. The prospective private partner may choose one of the following types of tender (auction) bid security:

- 1) a guarantee cash deposit, which shall be paid to the account stipulated by the legislation of the Republic of Kazakhstan for the organiser of the tender (auction);

- 2) bank guarantee.

A prospective private partner shall be prohibited to act in such a way as to give rise to a third-party claim, in whole or in part, for the cash security deposit paid before the expiry of his/her/its tender (auction) bid.

The guarantee fee paid by a prospective private partner may not be used by the organiser of a tender (auction), except for the actions referred to in paragraph 5 hereof.

5. The tender (auction) bid security shall not be returned by the organiser of the tender (auction) if one of the following occurs:

- 1) a prospective private partner has withdrawn or amended and/or supplemented a tender (auction) bid after the deadline for submission of tenders (auctions);

- 2) a prospective private partner, identified as the winner of the tender (auction), has evaded the conclusion of a public-private partnership agreement.

6. If one of the cases provided for in paragraph 5 hereof occurs, the amount of the tender (auction) bid security shall be credited to the budget concerned.

7. The organiser of the tender (auction) shall return to the prospective private partner the tender (auction) bid security paid by it within three working days from the date of one of the following occurrences:

1) withdrawal by the prospective private partner of its tender (auction) bid by the deadline for submission of tenders (auctions);

2) signing a protocol on admission to the private partner selection tender (auction). This case shall not apply to potential private partners recognised as participants in the private partner selection tender (auction);

3) signing a protocol on the results of the tender (auction) to identify a private partner. The above case shall not apply to the participant of the tender (auction) to identify a private partner determined as the winner of the tender (auction) to identify a private partner;

4) beginning of the public-private partnership agreement;

5) the expiry of the potential private partner's tender (auction) bid.

Footnote. Article 39 - as amended by Law of the RK No. 399-VI of RK of 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication).

Article 40. Examination of tender bids

1. The tender (auction) commission shall examine and select tender (auction) bids.

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

2. The tender (auction) commission shall open envelopes with tender (auction) bids by the deadline stipulated in the tender documentation of the public-private partnership project.

3. The organiser of the tender (auction) shall ensure that the necessary examinations of tender (auction) bids are carried out.

4. The tender (auction) committee shall examine all tenders (auctions).

In the event that only one bid is submitted, that bid shall be examined by the tender commission pursuant to part one of this paragraph.

If less than three bids are submitted, the auction shall be deemed not to have taken place.

5. The competition (auction) commission shall negotiate with the prospective private partner, whose tender (auction) bid is recognised as the best, or the only prospective private partner (in case of a tender) to clarify the public-private partnership project and the terms of the public-private partnership agreement.

6. While negotiations are being prepared, comments and proposals on the public-private partnership project and the public-private partnership agreement shall be forwarded in writing by the tender (auction) commission to the potential private partner.

A decision shall be taken by the tender (auction) commission based on the results of the negotiations.

In the course of negotiations, no changes in the terms and conditions of the tender (auction) to determine a private partner shall be allowed.

7. In the event that a potential private partner, whose tender (auction) bid is declared the best, refuses to discuss and clarify the tender (auction) bid, and the terms and conditions of the public-private partnership agreement in conformity with the comments and suggestions of the tender (auction) commission, or its proposals are unacceptable from the point of view of the terms and conditions of the tender (auction) to identify a private partner, the tender (auction) commission shall not consider this tender (auction) bid and the best tender (auction) bid shall be selected anew.

8. Following a tender (auction) to select a private partner, the tender (auction) commission shall determine the best tender (auction) and the applicant shall be declared as the winner of the tender (auction) to select the private partner.

9. Other than the cases stipulated by Article 40-1 hereof, based on the decision of the tender (auction) commission, the organiser of the tender (auction) shall conclude a public-private partnership agreement with the winner of the tender (auction) to determine the private partner.

To implement public-private partnership projects of special importance, based on the decision of the tender (auction) commission, the organiser of the tender shall conclude a public-private partnership agreement with the legal entity the establishment whereof is declared by the tender winner in the tender application set by the tender winner, to implement the public-private partnership project (subject to the provision to the public partner of bank guarantees for the performance of the obligations of such a legal entity to the extent and under the conditions specified in the public-private partnership agreement).

10. The deadline for concluding a public-private partnership agreement may not exceed ninety calendar days from the day on which the results of the tender (auction) to determine the private partner are summarised.

Footnote. Article 40 – as reworded by Law of the RK No. 399-VI of 02.01.2021 (shall be enforced ten calendar days after the date of its first official publication); as amended by Law No. 177-VII of 30.12.2022 (shall take effect ten calendar days after the date of its first official publication).

Article 40-1. Specifics of the selection of a private partner under a private initiative

1. A private initiative shall be understood to be the initiation by a potential private partner of a public-private partnership project to address one or more tasks from the list of socio-economic objectives to form proposals for implementing public-private partnership projects by preparing a draft information sheet for tender (auction) documentation.

2. Tender (auction) documentation under the private initiative shall be endorsed by the central authorised state bodies of the respective sector, local executive bodies after consultation and expertise following the procedure laid down by the central authorised state planning authority.

3. The tender (auction) winner entering into a public-private partnership agreement shall reimburse to the potential private partner initiating the project its costs for the drafting of the information sheet of the tender (auction) documentation and the draft public-private partnership agreement.

If no bids are received, the project tender shall be deemed not to have taken place. However, a new tender may be organised.

Footnote. Chapter 5 as supplemented by Article 40-1 under Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall become effective ten calendar days after the date of its first official publication).

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

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

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

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

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

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

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

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

7) extending an invitation by tender organizer to potential private partners who submitted technical proposals at the first stage to take part in the second stage of the tender to determine the private partner.

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

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

Footnote. Article 43 is excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall be enacted ten calendar days after the date of its first official publication).

Article 44: Selection of a private partner by direct negotiation

A private partner may only be selected by direct negotiations by decision of the Government of the Republic of Kazakhstan for the implementation of public-private partnership projects designed to create and operate unique facilities involving technology transfer.

Footnote. Article 44 as reworded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall become effective ten calendar days after the date of its first official publication).

Article 44-1. Specifics of public-private partnership for the development of production (industrial) infrastructure

1. Public-private partnership for the development of production (industrial) infrastructure shall be implemented in line with the provisions of this Law and shall be aimed at providing engineering and communication infrastructure for projects of business entities aimed at the creation of new production facilities, modernisation and expansion of existing production facilities, both for separate projects individually (including for providing several projects) and as part of the creation of industrial zones.

2. Creation (reconstruction) and (or) operation of engineering and communication infrastructure as part of the development of production (industrial) infrastructure shall be performed by a private partner under a public-private partnership agreement.

3. Engineering and communication infrastructure resulting from the launch of a public-private partnership project shall be transferred to public ownership, except as otherwise provided by the public-private partnership agreement.

4. Recoveries of investment costs incurred by the private partner for the creation (reconstruction) of engineering and communication infrastructure shall be made consistent with the budgetary legislation of the Republic of Kazakhstan.

5. The specifics of scheduling and implementing public-private partnership projects for the development of production (industrial) infrastructure, including the procedure for identifying a private partner and concluding a public-private partnership agreement, shall be established by the central authorised body for public planning.

Footnote. The Law as supplemented by Article 44-1 in compliance with Law of the RK No. 399-VI of 02.01.2021 (shall come into force upon expiry of ten calendar days after the date of its first official publication).

Article 45. Public-Private Partnership Agreement

1. A public-private partnership agreement shall be executed based on the results of a tender (auction) to identify a private partner or following direct negotiations in the cases set out in this Law.

2. Excluded by Law of the Republic of Kazakhstan No. 177-VII of 30.12.2022 (shall come into force ten calendar days after the date of its first official publication).

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

4. A public-private partnership contract is a contract containing elements of various contracts provided for by the legislation of the Republic of Kazakhstan. The relations of the parties to a public-private partnership contract shall be governed, in relevant parts, by the law on contracts the elements of which are contained in this public-private partnership contract, unless it follows otherwise from the agreement of the parties or the substance of the public-private partnership contract.

Footnote. Article 45 as amended by Law No. 399-VI of the RK dated 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication); No. 177-VII of 30.12.2022 (shall be promulgated ten calendar days after the date of its first official publication).

Article 46. Content of a public-private partnership agreement

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

1) information about the public-private partnership asset and property rights (including the right of ownership) to the specified public-private partnership asset during the period of the public-private partnership project;

1-1) the goals, objectives, direct and final results of the public-private partnership project;

2) the conditions and scope of the creation (including construction, and if appropriate, design) or reconstruction, or modernisation and operation of a public-private partnership facility, excluding service contracts;

2-1) details of the property and requirements for the property used to render the services under the service contract;

3) amount, terms and conditions of financing the public-private partnership project, as well as the amount, terms and conditions of investment;

4) reimbursement resources and income sources, types, volumes, terms and conditions of state support in the event of its provision;

5) the types of activities carried out under a public-private partnership agreement;

6) the scope and types of work and services under a public-private partnership agreement;

7) quality requirements for goods, works and services, including the calculation of defective points for breaches of the quality indicators for services provided and the criteria for total operational readiness;

8) procedure for establishment and approve of tariffs (prices, charge rates) for goods, works and services produced under a public-private partnership project;

9) the term of the public-private partnership project;

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

11) information on authorized persons representing the interests of the parties to a public-private partnership agreement;

12) the rights and obligations of persons involved in the execution of a public-private partnership agreement;

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

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

15) distribution of risks between the parties to a public-private partnership contract and a description of risk management measures;

15-1) a currency risk mechanism in the implementation of public-private partnership projects on the currency component;

16) responsibility of the parties to a public-private partnership contract;

17) provisions for amendment and termination of a public-private partnership contract;

17-1) procedure for reimbursement of expenses of the parties in the event of early termination of a public-private partnership contract;

18) court and/or out-of-court dispute resolution procedure for a public-private partnership agreement;

19) criteria for evaluating the performance of the parties to the public-private partnership agreement, the payment of penalties (with a mandatory indication of the monetary amount or percentage of the amount) in cases of non-performance or improper performance;

20) exceptional cases of unilateral refusal to execute a public-private partnership contract;

21) procedure and the period of indemnity in the event of early termination of a public-private partnership contract;

22) terms and conditions and dates of transferring burden of maintaining a property transferred under a public-private partnership contract, as well as the risks of accidental loss or accidental injury of mentioned property;

23) procedure for supervising and monitoring the implementation of the public-private partnership agreement;

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

25) registered office (legal address) and bank details of the parties to the public-private partnership contract;

26) term of the public-private partnership contract; and

27) other terms and conditions for the implementation of a public-private partnership project.

1-1. The terms and conditions of the public-private partnership agreement referred to in paragraph 1 hereof shall be essential and may be amended by agreement of the parties, provided that the budgetary efficiency (in monetary terms) of such amendments is positive (no increase in budget expenditure, no increase in public revenue), as well as if such amendments do not reduce the quality and/or volume and/or accessibility requirements for goods, works and services stipulated by the public-private partnership agreement, and if the economic and/or social efficiency of the public-private partnership project is maintained or increased, unless such amendments have been provided for by the terms of the public-private partnership agreement at its conclusion.

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

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

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

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

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

Footnote. Article 46 as amended by the Law of the Republic of Kazakhstan No. 112-VI dated 30.11.2017 (shall be effective upon the expiry of ten calendar days after its first official publication); No. 399-VI of 02.01.2021 (shall come into force ten calendar days after the date of its first official publication); No. 72-VII of 15.11.2021 (shall be effective on 01.01.2022); No. 177-VII of 30.12.2022 (shall enter into force ten calendar days after the date of its first official publication).

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

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

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

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

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

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

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

Article 48. Term of public-private partnership agreement

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

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

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

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

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

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

Article 49. Grounds for amendment, termination, cancellation of public-private partnership agreement

1. A public-private partnership agreement may be amended and terminated by mutual agreement of the parties to the public-private partnership agreement.

A supplementary agreement to a public-private partnership agreement that provides for its amendment or termination shall be concluded following agreement with the public authorities concerned.

2. The public-private partnership agreement may not be amended to change the amount of public obligations without consideration by the relevant budget committee.

3. A public-private partnership agreement shall be terminated by:

1) cancellation or expiry of the public-private partnership agreement;

2) liquidation of private partner;

3) in other cases stipulated by the legislation of the Republic of Kazakhstan or the public-private partnership agreement.

4. Upon the request of a public partner, a public-private partnership agreement may be terminated by a court decision only:

- 1) if the public-private partnership agreement is in material breach by the private partner;
- 2) if the private partner is unable to implement the public-private partnership project due to its insolvency (bankruptcy);

3) in the public and State interests, including when such acts are committed for the purpose of national security or public health or morals.

5. Upon the request of a private partner, a public-private partnership agreement may be terminated by a court decision only if the public partner and/or the public authority has committed a material breach of the public-private partnership agreement.

Footnote. Article 49 as reworded by Law No. 399-VI of the RK of 02.01.2021 (shall be enforced ten calendar days after the date of its first official publication).

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

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

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

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

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

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

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

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

Article 51-1. Private partner replacement

1. In the event of non-performance or improper performance by the private partner of its obligations to the lender and/or under the public-private partnership agreement, the private partner may be replaced, as agreed by the public partner and the lender, by holding a public partner tender (auction) to replace the private partner.

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

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

Footnote. The law is supplemented by article 51-1 in accordance with the law of the Republic of Kazakhstan dated 04.07.2018 No. 171-VI (shall be enforced upon expiry of ten calendar days after the date of its first official publication); as amended by Law No. 399-VI of the RK of 02.01.2021 (shall be enacted ten calendar days after the date of its first official publication).

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

Article 52. General provisions on institutional public-private partnership

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

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

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

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

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

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

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

Footnote. Article 52 as amended by Law of the RK No. 399-VI of 02.01.2021 (shall come into force ten calendar days after its first official publication).

Article 53. Charter of a public-private partnership company

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 55. Public-private partnership in innovation

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

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

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

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

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

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

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

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

1. Public-private partnerships in special economic and industrial zones shall be implemented in compliance with the provisions of this Law and shall be aimed at design, construction, creation, reconstruction, modernisation and operation of infrastructure facilities of a special economic or industrial zone, as well as other public-private partnership facilities in a special economic zone.

2. The public partner in the implementation of a public-private partnership project for infrastructure facilities in a special economic or industrial zone shall be the management

company of the special economic or industrial zone, except for infrastructure facilities of a private industrial zone.

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

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

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

Footnote. Article 56 as amended by the Law of the Republic of Kazakhstan dated 03.04.2019 No. 243-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 359-VI of 03.07.2020 (shall come into force ten calendar days after the date of its first official publication).

Chapter 8. FINAL PROVISIONS

Article 57. Dispute settlement

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

2. If disputes associated with the performance and termination of the public-private partnership agreement cannot be resolved in compliance with paragraph 1 hereof, the parties to the public-private partnership agreement shall be entitled to resolve the dispute in compliance with the legislation of the Republic of Kazakhstan in court, as well as by applying to arbitration in obedience to the Law of the Republic of Kazakhstan "On Arbitration".

In the event that a private partner or at least one of the shareholders (participants) of a private partner owning 25 percent or more of voting shares (participatory interests in the authorised capital) is a non-resident of the Republic of Kazakhstan, the parties to a public-private partnership agreement may determine, by agreement between the parties, arbitration in obedience to the Law of the Republic of Kazakhstan "On Arbitration" or international arbitration to resolve disputes between them on public-private partnership projects the value of which exceeds four million times the monthly calculation index established for the relevant financial year by the law on the national budget.

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

Footnote. Article 296 as amended by the Law of the Republic of Kazakhstan No. 489-V dated 08.04.2016 (effective upon expiry of ten calendar days after the date of its first official publication); No. 359-VI of 03.07.2020 (shall come into force ten calendar days after the date of its first official publication).

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

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

Article 59. The procedure for the enactment of this Law

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

*President
of the Republic of Kazakhstan*

N. NAZARBAYEV