PUBLIC-PRIVATE PARTNERSHIP IN KAZAKHSTAN

First Meeting of the Public-Private Partnership and Infrastructure Financing Network of Asia and the Pacific

City of Guiyang, Guizhou Province, PRC
12-13th of September 2018
ABOUT KAZAKHSTAN PPP CENTER

Established by the Government of Kazakhstan in July 17, 2008
Shareholder: Ministry of National Economy of Kazakhstan

Main responsibilities:
- Development of PPP in Kazakhstan using global best practices
- Permanent improvement of PPP and sectoral legislation
- Training and professional development of central and local government organizations, private companies
- Motivating government and private sectors to enter into PPP

Our services:
- Research and Analysis
  Research in the field of PPP, legislation and project implementation issues
- Expertise and Evaluation
  Expertise and evaluation of PPP and budget projects for the Government
- Methodology & Consulting
  Methodological and consulting support both for public and private sector organization

One of the best think tanks in Central Asia according to Top 100 Global Go-To Think Tank Index Report of the University of Pennsylvania
<table>
<thead>
<tr>
<th>Searching the PPP model</th>
<th>Formation of Concession Legislation</th>
<th>Formation &amp; Improvement of PPP Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>•1991-1993.</td>
<td>•2006</td>
<td>•2012-2014</td>
</tr>
<tr>
<td>The First Law of the Republic of Kazakhstan &quot;On Concessions&quot; Regulated the organizational, economic and legal conditions for granting concessions, in the form of property, land and natural resources to foreign investors</td>
<td>The Law of the Republic of Kazakhstan &quot;On Concessions&quot; - the necessary legislative framework has been created in the field of concession</td>
<td>Amendments to the legislation on introduction of new forms of PPP and expansion of their applications</td>
</tr>
<tr>
<td>•2005 year</td>
<td>•2008, 2010</td>
<td>•2015</td>
</tr>
<tr>
<td>The beginning of implementation of pilot concession projects (railway Shar - Ust-Kamenogorsk, power transmission line North Kazakhstan - Aktobe region) based on Civil Code</td>
<td>Amendments to the concession legislation, based on experience in the implementation of concession projects</td>
<td>The Law of the Republic of Kazakhstan &quot;On public-private partnership&quot;</td>
</tr>
<tr>
<td></td>
<td>•2008 year</td>
<td>• Adoption of subordinate legislation in the field of PPP</td>
</tr>
<tr>
<td></td>
<td>Creation of a specialized organization on concession issues (Kaz Center of PPP)</td>
<td>•2017</td>
</tr>
<tr>
<td></td>
<td>•2011</td>
<td>Amendments to the Law &quot;On public-private partnership&quot;</td>
</tr>
<tr>
<td></td>
<td>PPP Development Program in the Republic of Kazakhstan for 2011-2015</td>
<td>•2017</td>
</tr>
</tbody>
</table>
PPP LEGAL FRAMEWORK

PPP Law

Adopted in 31st of October 2015

Goal:
formation and strengthening of long-term cooperation between the state and private sector by pooling resources to improve the level of accessibility and quality of public goods and services

Tasks:
- involvement of the private sector in the management of state assets
- reducing the burden on the budget
- attraction of investments
- extension of cooperation models between government and business

✓ Framework Law
✓ All sectors of National Economy
✓ Projects from regional to huge infrastructural

Concession Law

Adopted in 7th of July 2006

The law defines the legal terms of the concession and concessionaire, types of state support and regulates public relations arising in the process of conclusion, execution and termination of concession agreements

✓ Current concession projects
✓ Social infrastructure objects
✓ Road, railway construction
✓ Objects of natural monopoly

The PPP legislation have been developed with the assistance of IFIs (EBRD, IBRD, IFC, ADB) and of Kazakhstan and agreed by the National Chamber of Entrepreneurs and other organizations

Budget Code

Civil Code

Land Code

Natural Monopoly & Regulated Markets Law

Sectoral Laws (Transport, Energy, Healthcare, Education, etc.)

Include some norms on concessions and PPPs
## EFFECTIVENESS OF LAW «ON CONCESSIONS» (since 2006)

### CONSTRUCTION AND OPERATION OF THE INTERREGIONAL LINE OF ELECTRIC TRANSMISSION" NORTH KAZAKHSTAN - AKTOBE REGION

<table>
<thead>
<tr>
<th>Date of contract conclusion</th>
<th>Term of the contract</th>
<th>Concessionaire</th>
<th>The Grantor</th>
<th>Project cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>28th of December 2005</td>
<td>14 years</td>
<td>«Batys Transit» JSC</td>
<td>Ministry of Energy of the Republic of Kazakhstan</td>
<td>22,6 billion tenge</td>
</tr>
</tbody>
</table>

### CONSTRUCTION AND OPERATION OF THE PASSENGER TERMINAL OF THE INTERNATIONAL AIRPORT OF AKTAU CITY

<table>
<thead>
<tr>
<th>Term of the contract</th>
<th>Date of contract conclusion</th>
<th>Concessionaire</th>
<th>The Grantor</th>
<th>Project cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 years</td>
<td>December 2007</td>
<td>«ATM Grup» LLP</td>
<td>Akimat of Mangistau region</td>
<td>4,09 billion tenge</td>
</tr>
</tbody>
</table>

### BIG ALMATY RING ROAD (BAKAD)

<table>
<thead>
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<th>Date of contract conclusion</th>
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<th>Concessionaire</th>
<th>The Grantor</th>
<th>Project cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>7th of February 2018</td>
<td>20 years</td>
<td>Alsim Alarko – Makiyol – SK – Koreans Express Way</td>
<td>Ministry of Investment and Development of the Republic of Kazakhstan</td>
<td>512,3 billion tenge</td>
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</tbody>
</table>
EFFECTIVENESS OF LAW «ON PUBLIC-PRIVATE PARTNERSHIP» (since 2015)

SECTORS OF APPLICATION OF PPP PROJECTS

<table>
<thead>
<tr>
<th>Sector</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>66.6%</td>
</tr>
<tr>
<td>Healthcare</td>
<td>17.2%</td>
</tr>
<tr>
<td>Culture and sport</td>
<td>7.0%</td>
</tr>
<tr>
<td>Energy and Housing</td>
<td>3.0%</td>
</tr>
<tr>
<td>Agriculture</td>
<td>2.3%</td>
</tr>
<tr>
<td>Others</td>
<td>4.0%</td>
</tr>
</tbody>
</table>

Contracts signed

<table>
<thead>
<tr>
<th>Location</th>
<th>Local</th>
<th>Republican</th>
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</thead>
<tbody>
<tr>
<td>Pertopaylovsk</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Kokshetau</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Pavlodar</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Ust-Kamenogorsk</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>Astana</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Karaganda</td>
<td>28</td>
<td></td>
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<td>Taldykorgan</td>
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<tr>
<td>Kyzylorda</td>
<td>18</td>
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<tr>
<td>Taraz</td>
<td>1</td>
<td></td>
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<td>Almaty</td>
<td>4</td>
<td></td>
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<tr>
<td>Shymkent</td>
<td>22</td>
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<td>45</td>
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* Data for September 1, 2018
PPP LAW: key advantages (since 2015)

For partners:
- direct negotiations (private finance initiative)
- simplifying of PPP procedures
- competitive dialogue from idea to entering into agreement
- government support
- financial support
- international arbitration

Widening of PPP:
- all sectors of economy
- wide range of potential participants
- corporate management in PPP projects
- domination of PPP agreement

For creditors:
- shareholders agreement
- providing services and advice by PPP center
- low bureaucracy

For all:
- direct agreement
- step in right
- protection from sequestration
- currency risk mitigation
- termination payments
PPP is possible in **ALL sectors** of the economy. Before, considered as basic sectors: **EDUCATION**, **HEALTHCARE**, **TRANSPORT**, **ENERGY**, and **HOUSING**. Now, sector restrictions have been removed. New members added include **FINANCIAL AND OTHER ORGANIZATIONS**, **NATIONAL INDUSTRY OPERATOR** (KTZ, KEGOC, Kazakhtelecom, etc.), and **STATE-OWNED COMPANIES**. The state partner can now include **LAND, ENGINEERING INFRA, SUPPORT & PAYMENTS**, **CONSTRUCTION, OPERATION, MANAGEMENT, DESIGN**, and **FUNDING OF PPP PROJECTS**. The private partner can now include **SERVICE SUPPORT**.
Wide range of PPP contracts

**Contract PPP**

- Concession Contract
  - Construction & operation of facilities (for large infrastructure projects)
- Management Contract
  - Trust management of state property (for existing social facilities)
- Lease Contract
  - Long term lease of private property
- Service Contract
  - Service & Maintenance
- Life Cycle Contract
  - From Design to Maintenance
- R&D Contract
  - New tech, scientific research
- Rent Contract
  - Rent of state/private property
- Mixed Contracts
  - Mixed contracts that correspond to PPP features

**Institutional PPP**

- Joint Venture
  - Private Partner
  - State Partner
  - Alternative for state entrepreneurship
  - Private & public partners form up equity for lenders
  - Exit mechanism for public partner
STATE SUPPORT & PAYMENTS

- SUPPORT
  - state guarantee
  - transfer of intellectual property rights
  - provision of in-kind grants
  - co-funding of projects
  - subsidies
  - guaranteed consumption of goods and services by the state

- PAYMENTS
  - availability payment
    - compensation of investment costs
    - compensation of operation costs
    - management fee

All payments from the state budget (state obligations) are protected from sequestration.
**Direct Agreement & Step-in Right**

**Goal**

Protection of creditors in case of material breach of private partner’s obligations of that could lead to the default terms of the PPP contract

**Include**

- Obligation of public partners to inform creditors about the breaches of private partners
- Pledge of rights under the PPP contract and (or) assignment of claims, or transfer of private partner’s debt
- Step-in right (the right of creditor to replace private partner)
- Procedure of replacement of private partner

Applicable for PPP projects of special significance
COMPETITIVE DIALOGUE

WHAT FOR?

✓ to accommodate the needs of potential private partners

✓ to reach optimal technical, financial and legal parameters of PPP project

WHEN?

✓ BEFORE THE TENDER PROCESS
Participation in process of tender documentation development, working under draft of PPP contract

✓ DURING THE TENDER PROCESS
Tender documents correction

PPP Contract provisions negotiations
PPP AT THE LOCAL LEVEL

- **Decentralization** of decision-making process on local PPP projects from Central Ministries to Akimats (local governments) and Maslikhats (local parliament)

- Establishing the **limits of state obligations** under PPP projects for local authorities (up to 20% of local budget revenues)

- **Simplified procedures** for small-scaled PPP projects implemented at the local level

- Development of **standard bidding documents and drafts of PPP contracts** by sectors (10 templates for PPP projects in education, healthcare, sports, local transportation, housing, waste management and agriculture)

- Approval of **local PPP projects list** by Maslikhats (local parliaments)
SMALL-SCALED PPP PROJECTS

Goal

introduction of small forms of PPPs for the implementation of PPP projects at lowest level of governance (district level)

Include

- contracts for the management of communal facilities (management of local state property)
- contracts for the lease of private property (use of ready-to-use private facilities)

Differences from other forms of PPP:

1. Use of the standard tender documentation and PPP contract (without expertise phase)
2. Simplified qualification requirements for potential participants
3. The project parameters are predetermined (differences only in the amounts of payments from the state)
4. Criterion for choosing the winner is the price (the winner is a participant, who requested the minimum amount of payments from the state).
The selection of a private partner is carried out by using the standard tender documentation. PPP contract is signed in accordance with the standard draft of PPP contract.

Small forms of PPP are the projects that meet the following conditions:

- The PPP project does not belong to the sector of natural monopolies.
- The cost of the PPP object does not exceed $30 million (projects implemented at the local level).

Advantages of Small-Scaled PPP Projects:

- Decisions on projects are made at the local level independently.
- Minimum, or lack of expertise phase.
- Use of typical and replicated projects.
- Reduced time for project preparation.
DIRECT NEGOTIATIONS PROCEDURE
(PRIVATE FINANCE INITIATIVE)

Direct negotiations can be applied when:

- PPP project is initiated by private partner (transfer of ready-to-use facility to PPP)
- PPP project is aimed at the introduction of an innovation that exclusively belongs to certain person

- PROJECT INITIATION BY POTENTIAL PRIVATE PARTNER
- ANNOUNCEMENT ABOUT INITIATION OF THE PPP PROJECT
- EXPERTISE (ANALYSIS) BUSINESS PLAN OF THE PROJECT
- NEGOTIATIONS BETWEEN THE PUBLIC AND PRIVATE PARTNERS
- SIGNING THE CONTRACT

In case of alternative offers from other private representatives, the public partner initiates tender procedures.
New amendments were adopted to the PPP legislation in November 2017

Goal

1. FURTHER OPTIMIZATION OF PROCESS OF DEVELOPMENT PPP PROJECTS
2. TO MAKE PPP PROJECT IMPLEMENTATION AND MANAGEMENT MORE CLEAR FOR BUSINESS

Include

1. OPTIMIZATION OF PPP PROJECT’S PLANNING PROCEDURES
2. BUSINESS PLAN vs CONCEPTION OF PPP PROJECT
3. INTRODUCTION OF “PROGRAM PPP“
Reduction of PPP project’s planning procedures from 5 to 3 stages

Previous model

1. Development of investment proposal
   - Development of a concession proposal
   - Development of a conception of PPP project

2. Development of Tender documentation / Tender procedures
   - Expertise of the PPP contract
   - Excluded

3. Signing the PPP contract
   - 2-1. Inclusion of expenses in the budget on the basis of a positive decision on the tender documentation

Optimized model

1. DEVELOPMENT OF INVESTMENT PROPOSAL
2. DEVELOPMENT OF TENDER DOCUMENTATION / TENDER PROCEDURES
3. SIGNING THE PPP CONTRACT

The timing of PPP project preparation is reduced from 7 to 3 months
INTRODUCTION OF “PROGRAM PPP“

Goal
- Optimization of procedures of planning PPP projects
- Development of unified approach to projects taking into account the specifics of the industry

Include
- Procedures for the implementation of PPP projects are individual for each project (in simplified form for each sector taking into account industry specificity) in appropriate policy documents
- Escape of private partners and local state bodies from the preparation of bulky documentation and passing unnecessary expertise and approvals

Advantages:
- Flexibility of the project implementation scheme taking into account industry specificity
- Shorter period of project implementation
- Private and state partners are spared from the need to develop tender documentation
- The standard institutional and financial framework applicable for each sector (education, healthcare, etc.)
Potential sectors for implementation:
Education and healthcare services, physical culture and sports, housing and utilities, etc.
Ministry of Finance (Treasury) started to register all the PPP contracts (signed both on national and local levels) from June, 2017

Goal

✓ Introduction of centralized accounting of PPP contracts

✓ Legal stability of PPP contracts for investors and creditors

Provides

✓ Additional guarantee for investors and creditors

✓ Bankability of the project

✓ Accounting for the adoption and fulfillment of state obligations
The database was launched in June 30, 2017.

Goal

Collect, summarize and centralize all PPP projects implemented in Kazakhstan both at the national and local levels of governance.

Free access of all interested individuals and legal entities to the available information on all PPP projects.

Provides

Information and contacts on planned, announced and implemented PPP projects in all sectors (www.kzppp.kz/project_base)

### ADDITIONAL BENEFITS

<table>
<thead>
<tr>
<th><strong>WIDE RANGE OF TENDER</strong> types (one-stage, two-stage, closed and simplified)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The <strong>CONSUMPTION</strong> of goods and services <strong>guaranteed by the state</strong> during the PPP project is set for a period of <strong>NOT LESS THAN 3 YEARS</strong> and can be extended <em>(to plan long-term investments)</em></td>
</tr>
<tr>
<td>All the PPP contracts must contain the mechanism for covering the <strong>FOREIGN EXCHANGE RISKS</strong></td>
</tr>
<tr>
<td>For foreign PPP investors all the disputes regarding the execution and termination of PPP contracts can be resolved by <strong>INTERNATIONAL ARBITRATION</strong></td>
</tr>
<tr>
<td>In case of early <strong>TERMINATION</strong> of PPP contract private partner has a right to get <strong>PAYMENTS AND COMPENSATION</strong></td>
</tr>
</tbody>
</table>
Concept of the Lever of Archimedes aims to achieve maximum effect with minimum costs (no need to solve all the problems, focus on basic ones: shortage budget, undeveloped infrastructure, low incomes of business)
People-first PPPs: 4P = Do It Together

- Local Governments (small towns and villages)
- Local (municipal) budget
- Governmental and Sectoral Programs
- State-owned facilities
- Administrative Support

PPP project

- Financial resources
- Facility and other property
- Operations management
- Business contacts

- Initiator
- Full participant
- Consumer

- Local Citizens
Guidebook “4P Concept for Emerging market countries” was presented on Expert level meeting on People-first PPPs: Implementation challenges and actions for the United Nations Sustainable Development Goals (Geneva, March, 2018)
Thank you!

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