NOTICE

This is unofficial English translation of the Law of the Republic of Kazakhstan On Concessions No.167-III 3PK dated 7 July 2006 (the Concession Law) prepared by GRATA International Law Firm. We are in the process of reviewing and improving this translation. We kindly request your comments and suggestions.

Please send them in writing to finance_securities@gratanet.com

For more information on current legal framework in Kazakhstan please refer to our legal analysis on:
http://www.gratanet.com/up_files/PPP_Kazakhstan.pdf
WHY KAZAKHSTAN?

- Kazakhstan oil, gas, coal and uranium and others commodities reserves are among the ten biggest in the world.
- Strategic geographical location (e.g. China’s Belt and Road initiative, a door to the Eurasian Economic Union, a single market of 183 million people).
- Good legal framework (special Concession Law adopted in 2006 and PPP Law adopted in 2015) - extremely broad concept of a public private partnership.
- Nearly every piece of public infrastructure (e.g., roads, hospitals, power plants, kindergartens, sewerages) in Kazakhstan requires a different degree of upgrading or expansion.
- Kazakhstan’s climbed the World Bank’s Ease of Doing Business index and is now ranked 36th.
- Strong support of Kazakhstan by MDBs (EBRD, ADB, IFC, IDB, EABR, AIIB) attracting private and international financial investment.

“PPP should be the primary mechanism for the development of infrastructure, including in social development.”

The President of Kazakhstan  
Nursultan Nazarbayev
## Concession Law v PPP Law

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<td>Legislative certainty - limited service BTO</td>
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<td>Ability to pay availability payments</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Access to tax concessions</td>
<td>✓</td>
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<td>Clear right to terminate</td>
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<td>International arbitration by Kazakh SPV</td>
<td>✓</td>
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<td>Institutionalized PPPs (mixed companies)</td>
<td>✗</td>
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<td>Direct negotiations (no tender required)</td>
<td>✗</td>
<td>✓</td>
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<tr>
<td>Ability to select foreign governing law</td>
<td>✗</td>
<td>✓</td>
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This Law determines legal conditions of concession, types of state support of concessionaire and regulates social relations arising during conclusion, execution and termination of concession agreements.

**Chapter 1. GENERAL PROVISIONS**

**Article 1. General Definitions Used in the Law**
The following definitions are used in this Law:

1) authorised state body for budget utilisation - the central executive authority that carries out management and cross-sector coordination in the area of budget utilisation, accounting, budgetary accounting and budgetary reporting on performance of the republican budget and, within its competence, of local budgets, the National Fund of the Republic of Kazakhstan on the basis of a report of the National Bank of the Republic of Kazakhstan;

1-1) authorised body on budget planning – the central executive authority that carries out management and cross-sector coordination in the area of budget planning;

2) social and vital infrastructure facilities - facilities, complexes of facilities used for satisfaction of public needs, which serving is imposed on state authorities according to the legislation of the Republic of Kazakhstan;

3) private concession obligations – obligations undertaken by a concessionaire under a concluded concession agreement;

3-1) account designated to debit compensation of investment costs – a bank account to be opened to a concessionaire by a lender with limitation of its right to withdraw from the account until conditions envisaged under a factoring agreement or concession agreement are met or occurred;

4) grantor - state bodies of the Republic of Kazakhstan entered into concession agreements according to this Law and (or) direct agreement with concessionaire's lenders;

5) concessionaire - an individual engaged in business activity and (or) a legal entity that entered into a concession agreement except for state institutions and subjects of quasi-public sector, where fifty or more percent of voting shares (participatory interests) directly or indirectly belong to the state (except for organisations on financing of concession projects), including those carrying out their activity on the basis of joint operation agreement (simple partnership);

6) concession - activities aimed at construction (reconstruction) and operation of concession facilities and performed at the expense of concessionaire or with co-financing by the grantor;

7) organiser of a concession tender (hereinafter – the ‘tender organiser’) - a state body that carries out tendering process on selection of a concessionaire;

8) concession project - a set of activities for implementation of concession performed for a limited period of time and being of a completed nature, according to the budget legislation of the Republic of Kazakhstan and this Law. Concession projects can be classified as concession projects of special importance, which list is determined by the Government of the Republic of Kazakhstan.

Criteria for classifying concession projects as concession projects of special importance shall be determined by the authorised body on state planning.

9) advisory support of concession projects - services rendered by legal entities for support of concession projects as determined by the Government of the Republic of Kazakhstan or local executive bodies, which include developing tender documents, drafting concession agreements, advising in negotiations between a tender committee and a participant of a tender;

10) co-financing of concession projects - allocation of budget funds for financing of certain volume of expenses for construction (reconstruction) of concession facilities;

11) feasibility study of a concession project (hereinafter - the ‘feasibility study’) - a preliminary project documentation containing results of marketing, design and engineering, social and economic and ecological researches, as well as institutional solutions, financing decisions that justify expediency and possibility to implement a concession project, decisions on evaluation and allocation of risks between participants of a concession project, determination of types and sizes
of state support, where required, as well as the impact of a project on the state budget and its social and economic effect on development of economy in total and its industry where the project will be implemented;

12) removed by the Law of the Republic of Kazakhstan No. 112-VI, dated 30 November 2017;
13) special organisation on concession matters - an organisation established by the Government of the Republic of Kazakhstan for rendering services on concession matters;
14) concession facility - facilities of social and vital infrastructure included into a list, which shall be constructed (reconstructed) and operated under a concession agreement;
15) construction of a concession facility - establishment of a new concession facility in the territory of the Republic of Kazakhstan, including those based on new technologies, mechanisation and automation of production, as well as installation of new production equipment, and performance of other types of works that ensure functioning of the concession facility;
16) operation of a concession facility - use of a concession facility by a concessionaire according to a concession facility purpose, including for producing goods and (or) performing works, and (or) rendering services, according to procedure and under conditions specified in a concession agreement;
17) reconstruction of a concession facility - change of separate premises, other building parts or entire building by reconstruction actions based on adoption of new technologies, mechanisation and automation of production, modernisation and replacement of technically outdated and (or) worn equipment with new, more efficient equipment, as well as on change of a technological or functional purpose of a concession facility or its certain parts, and other actions on improvement of performance and operational properties of a concession facility;
18) concession agreement - a written agreement between a grantor and a concessionaire, which determines rights, obligations and liability of parties, and conditions for concession implementation;
19) removed by the Law of the Republic of Kazakhstan No. 380-V, dated 31/10/2015;
20) authorised state body on state planning - the central executive body that carries out management and cross-sector coordination in the area of strategic and economic planning;
21) authorised state body on execution of the right of disposal of republican property - the state body, which performs special executive and control functions within its competence in the area of management of republican property facilities, privatisation and state monitoring of property in sectors of economy of strategic importance;
22) removed by the Law of the Republic of Kazakhstan No. 150-V, dated 3 December 2013;
23) authorised state body of a relevant sector - a central executive body that manages corresponding field (sector) of public administration;
24) list – a list of facilities offered for concession for a medium period approved by the authorised state body on state planning, if facilities are in the republican ownership, or by Maslikhats of regions, cities of republican importance and the capital, if facilities are in the communal ownership;
25) direct agreement - a written agreement concluded between a grantor, concessionaire, and lenders of a concessionaire for implementation of concession projects of special importance according to the provisions of Article 26-2 of this Law.

Article 2. Legislation of the Republic of Kazakhstan on Concessions


Provisions of this Law shall not apply to relations on conduction of subsoil use operations. Relations connected to conduction of subsoil use operations shall be regulated and implemented by the Code of the Republic of Kazakhstan ‘On Subsoil and Subsoil Use’.
Concession using project financing shall be regulated and implemented according to this Law and in compliance with requirements provided by the Law of the Republic of Kazakhstan ‘On Project Financing and Securitisation’.

2. If an international treaty ratified by the Republic of Kazakhstan stipulates rules other than those provided by this Law, rules of the international treaty shall apply.

**Article 3. Basic Principles of Concession**

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

1) publicity and transparency of activities of a grantor and concessionaire;
2) ensuring a balance of interests and risks of a grantor and concessionaire;
3) ensuring rights and legal interests of consumers of goods (works, services) provided by a concessionaire under a concession agreement;
4) perfect competition;
5) equality of all potential concessionaires and no-discrimination.

**Article 4. Scope of Application of Concession**

Social and vital infrastructure facilities in all sectors of economy may be transferred into concession except for facilities, which list shall be determined by the President of the Republic of Kazakhstan.

**Article 5. Ownership Right under a Concession Agreement**

1. Movable and immovable property being in the state ownership, exclusive rights related to activities on concession facilities shall be provided for a temporary use and possession to concessionaire according to procedure specified by a concession agreement.

2. Improvements made to concession facilities, as well as facilities of unfinished construction and property rights over results of intellectual creative activities arising during performance of a concession agreement shall be transferred into the state ownership, unless otherwise provided by a concession agreement.

3. Concession facilities constructed as a result of performance of a concession agreement shall be transferred into the state ownership after their construction, unless otherwise provided by a concession agreement.

4. Products and other incomes gained by a concessionaire as a result of operation of concession facilities shall be its property, unless otherwise provided by a concession agreement.

5. Concession facilities shall not be pledged within validity period of a concession agreement.

6. Concession facilities shall not be alienated within validity period of a concession agreement.

7. Concessionaire shall bear a risk of accidental loss or accidental damage of state property transferred in its possession and use under a concession agreement, as well as property originated as a result of execution of a concession agreement, unless otherwise provided by a concession agreement.

8. In case of co-financing of a concession project and (or) compensation by a grantor of investment costs to concessionaire, a concession facility shall be transferred into the state ownership.

**Article 5-1. Legal Regime of an Account Designated to Debit Compensation of Investment Costs**

1. An account designated to debit compensation of investment costs shall be opened in case of attraction of debt financing by a concessionaire secured by pledge of receivables in the form of compensation of investment costs.

2. An account designated to debit compensation of investment costs shall be used to the benefit of protection of right of a lender in case of concession projects financing secured by pledge of receivables in the form of compensation of investment costs. Use of an account designated to debit compensation of investment costs for other purposes is not allowed.
Use of an account designated to debit compensation of investment costs shall be made according to the legislation of the Republic of Kazakhstan on concessions.

Following satisfaction of obligations to the lender, the account designated to debit compensation of investment costs shall be closed.

3. Execution on an account designated to debit compensation of investment costs can be levied only within performance of obligations of a concessionaire to a lender secured by receivables under a concession agreement.

A concessionaire if agreed with a lender can transfer certain funds from an account designated to debit compensation of investment costs to its current account specified in a concession agreement.

Article 6. Transfer of Land Plot Rights to a Concessionaire

For the purpose of performance of a concession agreement, land use rights may be transferred to a concessionaire according to the land legislation of the Republic of Kazakhstan.

Article 7. Sources of Costs Recovery and Income Generation of a Concessionaire

1. Sources of costs recovery and income generation by a concessionaire can be:

1) sales of manufactured goods (works, services) during operation of a concession facility;
2) state subsidies granted in cases specified by laws of the Republic of Kazakhstan;
3) compensation of investment costs of a concessionaire according to the budget legislation of the Republic of Kazakhstan;
4) compensation of operational costs of a concessionaire within scope of costs of social and vital infrastructure facilities in a respective sector of economy;
5) remuneration for management of a concession facility being in the state ownership, as well as rental fee for use of a concession facility being in concessionaire's ownership, according to the budget legislation of the Republic of Kazakhstan;
6) availability payment.

2. A payment for availability of a concession facility shall be made according to procedure as determined by the authorised state body for budget utilisation and includes payments at expense of the budget funds, provided for in subparagraphs 3), 4) and 5) of paragraph 1 of this Article disbursed as lump sums by instalments from total payment during a whole period of implementation of a concession project, subject to ensuring technical and operating characteristics of a concession facility by a concessionaire.

3. A payment for availability of a concession facility may only be applied in relation to concession projects classified as socially important projects.

4. Sources of costs recovery and income generation shall be determined on the basis of concessionaire-selection tender results.

Chapter 1-1. Removed by the Law of the Republic of Kazakhstan No. 380-V, dated 31 October 2015

Chapter 2. STATE REGULATION IN THE AREA OF CONCESSIONS


The Government of the Republic of Kazakhstan, in the area of concession, shall:

1) removed by the Law of the Republic of Kazakhstan No. 150-V, dated 3 December 2013;
2) - 5) removed by the Law of the Republic of Kazakhstan No. 239-V, dated 29 September 2014;
6) removed by the Law of the Republic of Kazakhstan No. 112-VI, dated 30 November 2017;
6-1) determine legal entities for advisory support of concession projects;
6-2) determine organisations to finance concession projects;
6-3) approve a list of concession projects of special importance;
7) establish a special organisation for concession matters;
7-1) removed by the Law of the Republic of Kazakhstan No. 239-V, dated 29 September 2014;
7-2) removed by the Law of the Republic of Kazakhstan No. 239-V, dated 29 September 2014;
7-3) approve Rules for paying rental fee for use of a concession facility;
8) removed by the Law of the Republic of Kazakhstan No. 263-IV, dated 2 April 2010;
9) perform other functions provided for by the Constitution, this Law, other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

Article 9. Competence of the Authorised Body on State Planning
The authorised body on state planning shall:
1) engage a special organisation for concession matters, except for cases established by subparagraph 3-2) of Article 13 of this Law, for conducting:
expert review of tender documentation, including when making amendments and supplements thereto;
expert review of concession bids provided by participants of a tender during tendering process on selection of a concessionaire;
assessment of concession projects implementation;
expert review of proposals of a concessionaire for obtaining a state surety;
2) form and approve a list of facilities being in the republican ownership offered for concession for a medium term;
3) agree on tender documentation and concession agreements, including when making amendments and supplements thereto, except for the cases provided for in subparagraph 3-3) of Article 13 of this Law;
4) removed by the Law of the Republic of Kazakhstan No. 495-IV, dated 24 November 2011;
5) approve a method of evaluation of a concession facility and total costs of state support for concessionaire's activity, and sources of costs recovery;
6) removed by the Law of the Republic of Kazakhstan No. 150-V, dated 3 December 2013;
7) define requirements to expert review of tender documentation, including when making amendments and supplements thereto, concession bids provided by participants of a tender during tendering process on selection of a concessionaire;
7-1) perform cross-sector coordination and methodological management when organising concession projects;
7-2) forward results of evaluation of concession projects implementation to the authorised state body on execution of the right of disposal of republican property to enter data into the register of concession agreements on concession facilities being in the republican ownership;
7-3) form limits of state concession obligations of the Government of the Republic of Kazakhstan and local executive bodies;
7-4) keep a register of concession agreements;
7-5) approve Rules for tendering process on selection of a concessionaire;
7-6) approve Rules for submission, consideration and selection of concession projects;
7-7) approve template concession agreements in different sectors of economy;
7-8) approve Rules for review of concession agreements, supervision and assessment of implementation of concession projects;
7-9) approve criteria for classifying concession projects as socially important concession projects;
7-10) approve criteria for classifying concession projects as concession projects of special importance;
8) perform other functions provided for by this Law, other laws, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 10. Competence of the Authorised Body for Budget Utilisation
The authorised state body for budget utilisation shall:
1) coordinate the list of facilities being in the republican ownership offered for concession for a medium term;
2) agree on tender documentation and draft concession agreement, including when making amendments and supplements thereto, in respect of facilities being in the republican ownership;
3) execute agreements of state guarantees and sureties on concession agreements, as well as keep a register of issued state guarantees and sureties on concession agreements;
4) removed by the Law of the Republic of Kazakhstan No. 150-V, dated 3 December 2013;
5) register state concession obligations;
6) removed by the Law of the Republic of Kazakhstan No. 263-IV, dated 2 April 2010;
7) define procedure for transfer of concession facilities being in the state ownership to possession and use by a concessionaire;
7-1) removed by the Law of the Republic of Kazakhstan No. 150-V, dated 3 December 2013;
7-2) approve Rules for keeping the register of concluded concession agreements and issued state guarantees and sureties upon agreement with the authorised body on state planning;
7-3) approve Rules on compensation of operational costs upon agreement with the authorised body on state planning;
7-4) approve Rules on compensation of investment costs on concession projects upon agreement with the authorised body on state planning;
7-5) approve Rules on payment of remuneration for management of a concession facility upon agreement with the authorised body on state planning;
8) perform other functions provided for by this Law, other laws, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 10-1. Competence of the Authorised Body for Budget Planning
The authorised body on state planning shall:
1) submit issues of financing of advisory support of a concession project, development of tender documentation for consideration of the Republican Budget Committee;
2) submit issues of acceptance of state concession obligations by the Government of the Republic of Kazakhstan for consideration of the Republican Budget Committee;
3) perform other functions provided for by this Law, other laws, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 11. Competence of the Authorised Body on Execution of the Right of Disposal of Republican Property
The authorised state body on execution of the right of disposal of republican property shall:
1) removed by the Law of the Republic of Kazakhstan No. 112-VI, dated 30 November 2017;
2) keep a register of concluded concession agreements on concession facilities being in the republican ownership;
3) monitor concession agreements on concession facilities being in republican ownership, within its competence, and forward the monitoring results to the authorised body on state planning;
4) agree on concession projects in cases specified by laws of the Republic of Kazakhstan;
5) accept concession facilities constructed under concession agreements into the republican ownership;
6) define procedure for accepting concession facilities into state ownership;
7) perform other functions provided for by this Law, other laws, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 12. Competence of an Authorised State Body of a Relevant Sector
An authorised state body of a relevant sector shall:
1) prepare an industry opinion on tender documentation of a concession project according to rules approved by the authorised body on state planning;
2) organise a tender in case of concession facilities being in republican ownership and provided for in paragraph 2 of Article 16 of this Law;
3) execute a concession agreement on concession facilities being in republican ownership and provided for in paragraph 2 of Article 16 of this Law on the basis of a decision of a concession committee (hereinafter - the 'committee');

4) monitor implementation of concession projects and forward monitoring results to the authorised body on state planning to assess implementation of concession project;

5) provide the authorised body on execution of the right of disposal of republican property with information on concluded concession agreements;

6) organise transfer of concession facilities constructed under concession agreements into republican ownership;

7) organise engagement of new concessionaires through an open tender on selection of a concessionaire in case of pre-term termination of previously concluded concession agreement on concession facilities being in republican ownership;

8) where required, engage legal entities for advisory support of concession projects, which are determined by the Government of the Republic of Kazakhstan or a local executive body and which financing shall be performed according to the budget legislation of the Republic of Kazakhstan;

9) perform other functions provided for by this Law, other laws, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 13. Competence of Local Executive Bodies of Regions (Cities of Republican Importance, the Capital)

Local executive bodies of regions (cities of republican importance, the capital) shall within their competence:

1) removed by the Law of the Republic of Kazakhstan No. 112-VI, dated 30 November 2017;

2) make proposals to an organiser of a tender regarding concession facilities being in the republican ownership for resolving issues related to observance of socio-economic and environmental interests of population of a respective region, when concluding a concession agreement;

3) keep a register of concluded concession agreements on concession facilities being in the communal ownership;

3-1) determine legal entities for advisory support of concession projects, as well as to carry out expert reviews in the cases specified in subparagraph 3-2) of this Article;

3-2) for concession facilities being in communal ownership, where cost of construction (reconstruction) of a concession facility is up to 4,000,000 monthly calculation indexes, prepare through local authorised bodies on state planning opinions on:

tender documentation, including when making amendments and supplements thereto;
concession bids provided by tender participants during a tender on selection of a concessionaire;
draft concession agreements, including when making amendments and supplements thereto.

Local authorised bodies on state planning, where necessary, may engage legal entities as determined by local executive bodies of regions, cities of republican importance, the capital for expert review of documents envisaged under this subparagraph;

3-3) for concession facilities being in the communal ownership i.e. to local authorised body on state planning agree on tender documentation and concession agreements, including when making amendments and supplements thereto, if cost of construction (reconstruction) of a concession facility is up to 4,000,000 monthly calculation indexes;

4) establish and approve regulations on a committee in respect of concession facilities being in the communal ownership;

5) organise a tender in relation to concession facilities being in the communal ownership and provided for in the list;

6) based on a committee decision execute a concession agreement on concession facilities being in the communal ownership and provided for in the list;
7) monitor concession agreements on concession facilities being in the communal ownership, control their performance and forward monitoring results to the authorised body on state planning;
8) accept concession facilities constructed under concession agreements into the communal ownership;
9) organise engagement of new concessionaires through open tender on selection of a concessionaire in case of pre-term termination of previously concluded concession agreement on concession facilities being in communal ownership;
10) exercise, in the interests of local state management, other functions assigned to local executive bodies by the legislation of the Republic of Kazakhstan.

Article 14. State Support to the Concessionaires' Activities
1. One or several of the following types of state support may be provided in order to support activities of concessionaires:
   1) state sureties on infrastructure bonds within concession agreements;
   2) state guarantees on loans raised to finance concession projects;
   3) transfer of exclusive rights over objects of intellectual property owned by the state to a concessionaire;
   4) provision of in-kind grants according to laws of the Republic of Kazakhstan;
   5) co-financing of concession projects;
   6) guaranteed consumption by the state of a certain amount of goods (works, services) produced during implementation of a concession project;
2. During construction of a concession facility that is not subject to transfer into state ownership state support measures provided for in sub-paragraphs 1), 2) and 5) of paragraph 1 of this Article may not be provided to a concessionaire.

Chapter 3. TRANSFERRING FACILITIES TO CONCESSIONS

Article 15. Procedure for Transfer of Facilities into Concession
1. Facilities shall be transferred into concession in the following four stages:
   1) developing the List;
   2) organising a tender to choose a concessionaire;
   3) determining a concessionaire and signing a concession agreement.
2. A prerequisite for providing a concessionaire with a state surety shall be placement of infrastructure bonds on a stock exchange of the Republic of Kazakhstan.

Article 15-1. Removed by the Law of the Republic of Kazakhstan No. 112-VI, dated 30 November 2017

Article 15-2. Development or Adjustment, as well as Required Expert Reviews of Tender Documentation of Concession Projects
1. On concession projects that are approved by budget committees based on economic conclusions on investment decisions, development or adjustment to tender documentation of concession projects shall be undertaken.
2. Projects that contain developed design and estimate documentation and that are technically simple, implemented based on standard design solutions and previously implemented projects do not require feasibility studies to be undertaken. Applicability of existing design and estimate
documentation to a particular concession facility site shall be examined by a tender organiser during development or adjustment to tender documentation or a concessionaire considering marketing and financial and economic parameters of a concession project according to terms and conditions of tender documentation.

3. Feasibility study of a concession project to projects that are technically challenging and (or) unique shall be developed by a potential concessionaire in case of a tender on selection of a concessionaire using two-stage procedures or by an authorised body of a relevant sector or local executive body in case of a tender on selection of a concessionaire without using two-stage procedures.

4. Feasibility study shall contain results of investigation on feasibility and effectiveness of a concession project based on economic analysis of profits and expenses.

In case of any changes to established technical and economic parameters of a concession project that entail changes to engineering decisions and additional expenses, an authorised state body of a relevant sector and local executive bodies shall adjust the feasibility study with further required expert reviews according to the legislation of the Republic of Kazakhstan.

5. After required expert reviews of developed or adjusted tender documentation of a concession project, an authorised state body of a relevant sector shall forward it to the authorised body in state planning for expert review, except for the cases provided for in subparagraph 3-2) of Article 13 of this Law.

6. The authorised body on state planning shall engage a special organisation on concession matters to conduct expert review of developed or adjusted tender documentation of a concession project, except for the cases provided for in subparagraph 3-2) of Article 13 of this Law.

7. A special organisation on concession matters as well as legal entities envisaged in subparagraph 3-2) of Article 13 of this Law shall bear liability for quality of expert review of proposed solutions on implementation of a concession project according to laws of the Republic of Kazakhstan.

8. The authorised body on state planning shall forward an expert opinion envisaged in paragraph 6 of this Article to an authorised state body of a relevant sector, if a project is republican, and to local executive bodies of regions, cities of republican importance, the capital, if a project is local.

9. Based on a request from an authorised state body of a relevant sector agreed with the authorised body on budget utilisation and positive expert opinion envisaged in paragraph 6 of this Article containing recommendations on possibility of acceptance of state concession obligations, the authorised body on budget planning shall develop opinions on tender documentation of concession projects and submit them for consideration of the Republican Budget Committee.

10. Based on the positive expert opinion envisaged in paragraph 6 of this Article containing recommendations on possibility of acceptance of the state concession obligations, the local authorised body on state planning shall develop opinions on tender documentation of concession projects and submit them for consideration of a relevant budget committee.

11. Expert opinions on developed or adjusted tender documentation of a concession project shall become ineffective if the concession agreement is not concluded within three years after the project approval.

Article 16. Developing the List

1. The List shall be developed by the central authorised body on state planning for facilities being in the republican ownership, and by authorised bodies on state planning of regions, cities of republican importance, the capital for concession facilities being in the communal ownership. The List shall be developed on the basis of a positive expert opinion on tender documentation of concession projects and according to strategic and program documents of the Republic of Kazakhstan and in view of investment opportunities of the republican and (or) local budgets annually for the period of three years on a rolling basis.

2. The List consists of three sections:
1) existing facilities of state property which reconstruction and operation will be conducted according to a concession agreement;
2) facilities which construction and operation will be conducted according to a concession agreement.

4. In relation to facilities not included into the List, relevant notices shall be sent to state bodies, which provided relevant proposals, with a motivated justification of their non-inclusion.
5. Concession facilities not transferred into concession shall be included into a relevant list to be developed on a next medium-term period.

**Article 17. Contents of Tender Documentation**

1. A tender organiser shall provide all potential concessionaires with tender documentation as agreed with the authorised body on state planning in the cases provided for in subparagraph 3) of Article 9 of this Law, and with the authorised body on budget utilisation in the cases provided for in subparagraph 2) of Article 10 of this Law, containing the following information:

1) requirements to documents that shall be provided by a potential concessionaire in confirmation that it meets qualification requirements;
2) feasibility study except for the cases provided for in subparagraphs 2-1) and 2-2) of this paragraph;
2-1) design and estimate documentation in the cases provided for in paragraph 2 of Article 15-2 of this Law;
2-2) information sheet containing description of a concession project;
3) location of a facility proposed for transfer into concession;
3-1) expected types and scope of state support for concessionaires' activities, as well as sources of cost recovery and income generation for a concession project;
4) draft concession agreement based on a template agreement;
5) description of all criteria, including local content obligations, based on which a winning concession bid will be determined, as well as specific value of each of criteria, description of way of evaluation and comparison of concession bids;
6) currency or currencies, in which cost of a concession facility shall be expressed, and exchange rate which will be applied for adjusting cost of a concession facility to a single currency for the purpose of their comparison and evaluation;
7) language requirements in respect of development and submission of concession bids according to the legislation of the Republic of Kazakhstan on languages;
8) indication of the right of a potential concessionaire to modify or withdraw its tender bid before a tender bids submission deadline;
9) method, location and deadline for tender bids submission (but not later than fifteen hours of local time of a business day) and their period of validity;
10) indication of the right of a potential concessionaire to submit a part of a tender bid specifying cost of a concession facility, directly at the moment of opening envelops with tender bids;
11) methods, which can be used by potential concessionaires to request clarifications on contents of tender documentation, and a notice on intent of a tender organiser to hold a meeting with potential concessionaires at this stage, where a meeting shall be held in an open form and shall be minuted;
12) submission conditions and contents of a tender bid, including conditions for tender bid securing;
13) location, date and time of opening the envelopes with tender bids (but not later than two hours after the deadline of tender bids submission);
14) procedures used for opening the envelopes with tender bids and consideration thereof;
2. A tender organiser shall have a right to charge a fee for provided tender documentation, which shall not exceed a cost of copying thereof.

3. A potential concessionaire may request a clarification of provisions of tender documentation from a tender organiser, but not later than thirty calendar days prior to a tender bids submission deadline. Within three days after the request registration, the tender organiser shall give a clarification and without referring to a particular potential concessionaire who requested the clarification communicate the clarification to all potential concessionaires, to which the tender organiser had provided the tender documentation.

In case of a repeated tender, a potential concessionaire may request a clarification of tender documentation from the tender organiser, but not later than fifteen calendar days prior to a tender bids submission deadline.

4. A tender organiser shall have a right on its own initiative or in response to a request from a potential concessionaire to make amendments and (or) supplements to tender documentation through execution of a protocol, within twenty calendar days prior to a tender bids submission deadline; and in case of a repeated tender - ten calendar days prior. Amendments and (or) supplements are binding.

The tender organiser shall, within one business day after taking the decision to make amendments and (or) supplements to the tender documentation, provide the text of amendments and (or) supplements made to the tender documentation free of charge to all potential concessionaires. Thereat, the tender bids submission deadline shall be extended by the tender organiser for no less than thirty calendar days to enable potential concessionaires to reflect these amendments and (or) supplements in the tender bids; and in case of a repeated tender - for no less than fifteen calendar days.

5. A tender organiser shall have the right to hold a meeting with potential concessionaires to clarify provisions of tender documentation at a particular location and time indicated in the tender documentation. Thereat, the tender organiser shall take minutes of the meeting containing requests on clarification of tender documentation raised during the meeting without referring to the source of the requests, as well as replies to these requests. The minutes shall be immediately sent to the committee and all potential concessionaires, to which the tender organiser provided the tender documentation.

6. Tender documentation shall be approved by a tender organiser.

**Article 18. Qualification Requirements to a Potential Concessionaire**

1. A potential concessionaire shall meet the following requirements in order to participate in a tender on selection of a concessionaire:

   1) have sufficient funds and material resources to perform obligations under a concession agreement;
   2) be solvent, not under liquidation, with property free from any seizure, its financial and economic activities shall not be suspended according to the legislation of the Republic of Kazakhstan;
   3) be not held liable for any failure to perform or improper performance of its obligations under concession agreements concluded in the last three years by court on basis of a court decision entered into force;
   4) have own funds of at least ten per cent of cost of construction (reconstruction) of a concession facility.

   Own funds mean own capital, money and other assets belonging to a potential concessionaire, which are directly involved in implementation of a concession project.
   5) removed by the Law of the Republic of Kazakhstan No. 150-V, dated 3 December 2013;

1-1. If a potential concessionaire is a new legal entity established in order to implement a concession project by individuals and (or) legal entities, then:
1) a potential concessionaire shall meet the qualification requirements provided under subparagraph 1) of paragraph 1 of this Article;

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

3) a total own capital of individuals and (or) legal entities that established a new legal entity shall meet conditions of subparagraph 4) of paragraph 1 of this Article.

2. A potential concessionaire shall provide relevant documents to a tender organiser in confirmation of conformity to the qualification requirements provided under paragraph 1 of this Article.

Legal entities, which are subject to obligatory audit as required by legislative acts of the Republic of Kazakhstan, shall also provide an auditor's report for the last financial year.

In case where a state guarantee and (or) surety is provided, a potential concessionaire shall have a net profit for the last completed financial year or any two of the last three completed financial years, according to a financial statement confirmed by an auditor's report, except for cases, when a potential concessionaire is a new legal entity established in order to implement a concession project by several individuals or legal entities.

3. In case of provision of false information on qualification requirements, a potential concessionaire shall not be allowed to participate in a tender on selection of a private partner of all kinds of public-private partnership within three years from the moment of establishment of this fact.

Reliability of information on qualification requirements submitted by a potential concessionaire can be verified by a committee, tender organiser, authorised state bodies at any stage of the tender on selection of a concessionaire.

3-1. A committee, tender organiser, authorised state bodies that established fact of provision of false information on qualification requirements by a potential concessionaire shall notify the authorised body on state planning thereof in writing with attachment of copies of documents confirming this fact not later than three business days after establishment of this fact.

3-2. When associations of individuals and (or) legal entities in a form of a simple partnership participate in a tender on selection of a concessionaire, each of the said persons shall meet the qualification requirements provided for in subparagraphs 1), 2), 3) and 4) of paragraph 1 of this Article regarding the total funds and material resources of all participants of the simple partnership.

4. The tender organiser shall not be entitled to impose a potential concessionaire with qualification requirements not covered by this Law. A potential concessionaire shall have the right not to provide information that is not related to the qualification requirements applicable to it.

5. Conformity by a potential concessionaire to the qualification requirements specified in paragraph 1 of this Article shall be determined by a tender organiser when holding a tender on selection of a concessionaire through the qualification selection.

If a potential concessionaire does not meet the qualification requirements specified in paragraph 1 of this Article, it shall not be allowed to participate in the tender, and its tender bid shall be rejected.

**Article 18-1. Security of a Tender Bid**

1. A tender bid security shall be provided by a potential concessionaire as a guarantee that it:

   1) will not withdraw or amend and (or) supplement its tender bid after a tender bids submission deadline;

   2) removed by the Law of the Republic of Kazakhstan No. 150-V, dated 3 December 2013;

   3) will enter into a concession agreement if it is selected as winning bidder.

2. A tender bid security shall be provided in the amount of one tenth percent of a cost of construction (reconstruction) of a concession facility under a concession agreement.

3. A potential concessionaire may not provide a tender bid security, if it is at the first stage of a tender on selection of a concessionaire using two-stage procedures.
4. A potential concessionaire shall have the right to choose one of the following types of a tender bid security:

1) guarantee fee made to the account provided by the legislation of the Republic of Kazakhstan for tender organisers being state bodies;
2) bank guarantee.

A potential concessionaire shall not be allowed to make actions that lead to emergence of a third party's right to claim a guarantee fee in whole or in part before expiry of its tender bid.

A tender organiser shall not be allowed to use a guarantee fee provided by a potential concessionaire, except for the actions specified in paragraphs 6 and 7 of this Article.

5. A tender bid security shall not be returned by a tender organiser in case of one of the following:

1) a potential concessionaire has withdrawn or amended and (or) supplemented a tender bid after a tender bids submission deadline;
2) a potential concessionaire determined as the winner declined to enter into a concession agreement.

6. In the event of one of the cases provided for in paragraph 5 of this Article, an amount of a tender bid security shall be accounted in an income of a corresponding budget.

7. A tender organiser shall return a tender bid security to a potential concessionaire within three business days of the occurrence of one of the following cases:

1) a potential concessionaire has withdrawn a tender bid before a tender bids submission deadline;
2) signing a protocol on admission to participate in a tender. This case does not apply to potential concessionaires recognised as participants of the tender;
3) signing a protocol on results of a tender on selection of a concessionaire. This case does not apply to a tender participant recognised as the tender winner;
4) entry into force of a concession agreement;
5) expiry of validity of a tender bid of a potential concessionaire.

Article 18-2. Restrictions related to Participation in a Tender on Selection of a Concessionaire

1. A potential concessionaire cannot participate in a conducted tender, if:

1) close relatives, spouse or relatives-in-law of heads of a potential concessionaire and (or) authorised representative of a potential concessionaire have the right to determine a concessionaire or are representatives of a tender organiser;
2) a potential concessionaire and (or) its employee provided expert, consulting and (or) other services for tender preparation to a tender organiser, including participation as a general developer or sub-developer in development of a feasibility study and (or) design (design and estimate) documentation for construction of a facility, which is the tender object;
3) property of a potential concessionaire, which balance sheet value exceeds ten per cent of value of relevant fixed assets, is seized;
4) a potential concessionaire has outstanding commitments under executive documents and is included by the authorised body in the area of enforcement of execution orders in a relevant register of debtors;
5) financial and economic activities of a potential concessionaire is suspended according to the legislation of the Republic of Kazakhstan or legislation of a state of a non-resident potential concessionaire.

2. A potential concessionaire and its affiliate cannot participate in the same tender.

Article 19. Tendering Process on Selection of a Concessionaire

1. Selection of a concessionaire on facilities included in the List shall be implemented through open tendering process on concession projects.
2. In respect to concession facilities being in the republic ownership and envisaged in paragraph 2 of Article 16 of this Law, a tender organiser shall be an authorised state body of a relevant sector.

In respect to concession facilities being in the communal ownership and envisaged in the List, a tender organiser shall be a relevant local executive body of a region (a city of republican status, the capital).

3. A tender organiser must publish information on a tender in periodicals distributed throughout the Republic of Kazakhstan in the Kazakh and Russian languages not less than sixty calendar days prior to the day of a tender, and in case of a repeated tender – not less than thirty calendar days prior. Information on the tender shall include data on concession facilities, list of required documents for submission to a tender organiser, requirements to potential participants depending on a character of a tendered facility, as well as on a location, time and date of the tender.

4. Concession bids shall be considered and selected by a committee established by instruction of the Prime-Minister for concession projects of special importance or tender organiser for other projects.

The working body of the committee shall be the relevant tender organiser.

When making amendments and supplements to tender terms, as well as to initial parameters and characteristics of a concession bid for projects of special importance according to paragraph 4-1 of Article 20.4-1 of this Law, relevant decisions shall be drawn in a protocol decision of the committee.


**Article 20. Determination of a Concessionaire and Conclusion of a Concession Agreement**

1. A committee shall open envelops with tender bids at the time and location specified in tender documentation.

The tender organiser shall send to the authorised body on state planning concession bids contained in relevant tender bids for their expert review.

The tender organiser shall engage legal entities for advisory support of concession projects, as determined by the Government of the Republic of Kazakhstan or local executive bodies for development of tender documentation, draft concession agreement, independent evaluation of submitted concession bids contained in a relevant tender bid, as well as for participation in negotiations with potential concessionaires.

In order to engage legal entities for advisory support of concession projects as determined by the Government of the Republic of Kazakhstan or local executive bodies, a tender organiser shall send an application on financing services on advisory support of the concession project to the authorised body on state planning.

The authorised body on state planning or a local authorised body on budget planning shall submit an opinion on rendering services on advisory support of concession projects for consideration to a relevant budget committee.

The authorised body on state planning shall develop a list of services on advisory support of concession projects that shall be performed at the expense of funds of a relevant allocated budget program of the authorised body on state planning, according to volumes of financing for services on advisory support of each concession project approved by budget committees.

Advisory support of concession projects shall be performed in the procedure specified by the authorised body on state planning as agreed with the authorised body on budget utilisation.

2. A committee shall consider all tender bids provided by tender participants, subject to conformity with tender documentation requirements, opinions on concession bids and evaluation of conformity of potential concessionaires to qualification requirements.
Where competitive bids were not received by the tender organiser by a submission deadline or all submitted tender bids do not meet the requirements of the tender documentation, the tender shall be considered failed.

Where only one tender bid has been submitted, such a bid shall be considered by the tender committee according to the first part of this paragraph.

3. A tender committee shall negotiate to clarify a concession project and terms and conditions of a concession agreement with a tender participant, which concession bid has been recognised as the best according to criteria as established by the central authorised body on state planning.

4. At the pre-negotiation stage, comments and suggestions on a concession project and concession agreement shall be directed by a committee to an applicant in writing.

As a result of the negotiations, the committee shall take a decision.

No changes are allowed to the terms and conditions of the tender and the initial parameters and features of the concession bid during negotiations, except for the case provided for in paragraph 4-1 of this Article.

4-1. For projects of special importance, changes can be made to terms and conditions of a tender, as well as to initial parameters and features of a concession bid, in case of a significant change in exchange rate of the national currency during the tender.

A decision on making changes to terms and conditions of a tender, including in terms of cost of construction and installation works and payments of the state, as well as to initial parameters and features of a concession bid, shall be based on minutes of negotiations and a decision of the committee, and shall be further submitted for consideration of the Republican Budget Committee.

5. If a tender participant, which concession bid has been recognised as the best, refuses to discuss and clarify a concession bid and terms and conditions of a concession agreement in view of comments and recommendations of the committee, or its proposals are unacceptable in terms of conditions of the tender, then the committee shall not consider this particular concession bid and shall re-select the best concession bid.

6. Following a tender on selection of a concessionaire, a tender committee shall make a decision on the best concession bid, and a respective applicant shall be recognised as the winner of the tender.

7. Based on committee's decision, a tender organiser shall enter into a concession agreement with the winner of the tender.

To implement concession projects of special importance, the tender organiser on the basis of committee's decision shall enter into the concession agreement with a legal entity, which establishment was declared by the tender winner in its tender bid, established by the tender winner in order to implement the concession project (subject to provision of the grantor with the bank guarantees for the performance of such legal entity's obligations in the amount and on terms and conditions determined by the concession agreement).

8. Timing provided to enter into a concession agreement shall not exceed ninety calendar days after the date of results of the tender.

9. Information on results of tenders on selection of a concessionaire, except for information constituting state secrecy or other secrecy protected by law, shall be published by a tender organiser in periodicals distributed throughout the Republic of Kazakhstan in the Kazakh and Russian languages.

Article 20-1. Features of a Tendering Process on Selection of a Concessionaire using Two-Stage Procedures

1. A tender on selection of a concessionaire using two-stage procedures shall be held in cases, where:

1) implementation of a concession project requires collecting and reviewing different innovative, creative, architectural and planning, organisational and technological concepts, inventions, and negotiations with potential concessionaires on arising issues;
2) implementation of a concession project requires performing tests, investigations or developments.

2. A tender on selection of a concessionaire using two-stage procedures shall include the following two consecutive stages:
   1) the first stage shall cover the following:
      developing technical specifications by a tender organiser on the basis of an expert opinion on an investment proposal of a state investment project, as well as development and approval of tender documentation by a tender organiser;
      publishing information about the tender on selection of a concessionaire using two-stage procedures in periodicals distributed throughout the territory of the Republic of Kazakhstan in the Kazakh and Russian languages;
      providing technical specifications and tender documentation by a tender organiser to individuals interested in participating at the first stage of the tender on selection of a concessionaire using two-stage procedures;
      qualifications-based selection of potential concessionaires;
      discussing issues of technical, qualitative and (or) other characteristics of technical specification with potential concessionaires;
      sending by the tender organiser invitations to potential concessionaires that have passed the qualification-based selection, to take part in the second stage of the tender using two-stage procedures;
   2) the second stage shall include the following:
      submitting tender bids with feasibility studies of a concession project or developed design and estimate documentation by tender participants, which have passed the qualification-based selection;
      sending by the tender organiser concession bids contained in relevant tender bids to the authorised body on state planning for expert review;
      consideration of all tender bids provided by tender participants, subject to expert opinions on the concession bid by the committee;
      actions specified in paragraphs 3, 4, 5, 6, 7, 8 and 9 of Article 20 of this Law.

Chapter 4. CONCESSION AGREEMENT

Article 21. Contents of a Concession Agreement
1. A concession agreement shall contain:
   1) details on a concession facility, its description, as well as information on property assets, technical condition, lifetime, initial, residual and reinstatement value of a transferred concession facility;
   2) provisions on rights of a concessionaire over a concession facility as well as on rights to incomplete concession facility in case of termination of a concession agreement, and (or) rights to perform a certain type of activity, provisions on property rights over results of intellectual and creative activity, arising during performance of a concession agreement;
   3) conditions and volumes of facility reconstruction in order to provide required quantity and quality of services by a concessionaire;
   4) sources of costs recovery and income generation of a concessionaire;
   5) procedure for formation and approval of tariffs (prices, rates) for goods (works, services);
   6) provision on sizes of investments, as well as investments into key assets, timing, sources and conditions of financing of a concession project according to a developed business plan (work program);
   7) types of activity (works (services) performed (rendered) under a concession agreement);
   8) quality standards of goods (works, services) provided by a concessionaire under a concession agreement;
9) validity period of a concession agreement;
10) rights and obligations of parties;
11) requirements for environmental protection and work safety;
12) procedure and terms of transfer of a concession facility by parties, including persons authorised to accept a facility, and requirements to its quality, as well as procedures and conditions of transfer of other property that is not a part of a concession facility, including indication of a right, on which basis mentioned property shall be transferred;
13) liability of parties;
14) conditions for amendment and termination of a concession agreement;
15) location (legal address) and bank details of the parties;
16) procedure for monitoring performance of a concession agreement by a grantor;
17) criteria of evaluation of performance by a concessionaire of accepted obligations, payment of a penalty in case of failure to perform or improper performance, and procedure for reduction of volume of state concession obligations;
18) types, volumes, timing and conditions of provision of state support if provided according to Article 14 of this Law;
19) local content obligations;
20) obligations of a concessionaire to provide an annual program of procurement of goods, works, services for the forthcoming year not later than on 1 February of the year planning for procurement, and information on purchased goods, works, services to the authorised body in the area of regulation of commercial activity in the form and timing established by this body;
21) allocation of risks between parties;
22) conditions and timing of transit of burden of maintaining property to be transferred under a concession agreement, as well as risks of accidental loss or damage to such property;
23) information on authorised state bodies that represent interests of a grantor;
24) timing for construction (reconstruction) and commissioning of a concession facility, as well as procedure for extension of this timing;
25) rights and obligations of other persons engaged in performance of a concession agreement, in particular, for giving a consent on performance of certain actions, collection and distribution of funds under a concession agreement, making other payments in the amount of and according to a procedure specified by a concession agreement, as well as performance of other rights and obligations;
26) exceptional cases of unilateral amendment of and (or) unilateral refusal to perform a concession agreement;
27) procedure for disputes settlement under a concession agreement;
28) procedure for compensation for damages in case of early termination of a concession agreement.

2. A concession agreement may also provide for:
1) ways of securing performance of obligations of parties to the concession agreement;
2) income distribution between a grantor and concessionaire for activities performed under a concession agreement;
3) approval of an organisation engaged by a concessionaire to operate a concession facility, and essential terms of an agreement with such an organisation;
4) approval of a contractor (general contractor) engaged by a concessionaire to construct (reconstruct) a concession facility, and essential terms of an agreement with such a contractor;
4-1) procedure and conditions to conclude a direct agreement by parties with concessionaire's lenders within implementation of concession projects of special importance;
4-2) mechanism for currency risks settlement in implementation of concession projects of special importance;
5) other conditions not contradicting the legislation of the Republic of Kazakhstan.
3. Terms and conditions of a concession agreement shall remain in force through its validity period, except for cases, when amendment of a concession agreement is performed upon agreement of parties.

4. A concession agreement shall provide a right of a grantor to unilaterally modify terms and conditions or terminate the concession agreement for public and state interest. Thereat, a concession agreement shall include an exhaustive list of such terms, which do not contradict the legislation of the Republic of Kazakhstan, as well as when such actions are committed to ensure national and ecological safety, health care and good morals.

4-1. A concession agreement on concession projects of special importance may provide for conditions for early termination of the concession agreement on a unilateral basis in the following cases:

1) if a concessionaire violates essential conditions of a concession agreement;
2) if a grantor violates essential conditions of a concession agreement;
3) due to occurrence of force-majeure circumstances.

Procedure, terms and conditions for compensation of a concessionaire for expenses and (or) costs, and (or) losses arising as a result of early termination of a concession agreement in case of the events specified in part one of this paragraph shall be determined by the concession agreement.

5. When a grantor exercises the right envisaged in paragraph 4 of this Article, it shall compensate a concessionaire for additional expenses related to amendment of terms and conditions of a concession agreement, as well as for losses incurred by a concessionaire in connection with termination of the concession agreement.

6. A concessionaire may transfer or pledge its rights under a concession agreement, but only with prior written consent of a grantor.

Pledge of receivables in the form of compensation of investment costs under a concession agreement can be made only for the purposes of attraction of debt financing for implementation of a concession project according to the concession agreement.

Pledge of its rights under a concession agreement by a concessionaire to a lender and recording of value of such rights shall be conducted according to the legislation of the Republic of Kazakhstan on concessions.

In relation to commissioned concession facilities compensation of investment costs shall be made in full volume and within amounts and timing provided under a concession agreement.

Assignment or transfer of a concessionaire's debt under a concession agreement shall be allowed with consent of a grantor and provided that person(s), to whom concessionaire's rights and obligations are transferred, meets the requirements established by Article 18 of this Law.

In case of replacement of a concessionaire per request of concessionaire's lenders, assignment of the claim and (or) transfer of concessionaire's debt under the concession agreement shall be made without a tender according to the procedure determined by direct agreement.

Article 21-1. Types of a Concession Agreement

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

1) a concession agreement that provides for construction of a concession facility by a concessionaire with further transfer of the concession facility into the state ownership;
2) a concession agreement that provides for joint activity of a concessionaire and grantor on construction (reconstruction) and operation of a concession facility;
3) a concession agreement that provides for transfer of a concession facility being in the state ownership into trust management or in property lease by a concessionaire for reconstruction and operation;
4) a concession agreement that provides for transfer of a concession facility being in the concessionaire ownership into property lease to a grantor or a person authorised thereby, including with right of redemption of the concession facility by the grantor.

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

3. A concession agreement shall not include provisions directed on alienation of a concession facility being in the state ownership into private ownership.

**Article 22. Forms of a Concession Agreement**
1. A concession agreement shall be concluded in a written form.
2. A concession agreement is subject to state registration in the procedure specified by the **legislation** of the Republic of Kazakhstan.

**Article 23. Validity Period of a Concession Agreement**
1. A concession agreement shall be concluded for the period up to thirty years.
2. A concession agreement can be extended for additional period to be defined by parties within the period specified in paragraph 1 of this Agreement by way of conclusion of an amendment agreement, provided that parties performed their obligations by the due date as of the day of concluding amendment agreement.

A concessionaire that properly performed its obligations shall be entitled to conclude a new agreement without conducting a tender.

3. In case of conclusion of a concession agreement for a new period, terms of an agreement can be amended upon agreement of the parties.

**Article 24. Termination of a Concession Agreement**
Along with common grounds for termination of obligations, a concession agreement shall cease to operate in case of:

1) termination or expiry of a validity period of a concession agreement;
2) liquidation of a concessionaire;
3) removed by the **Law** of the Republic of Kazakhstan No. 66-IV, dated 5 July 2008;
4) in other cases specified by the **civil legislation** of the Republic of Kazakhstan or the concession agreement.

**Article 25. Rights and Obligations of a Grantor**
1. A grantor is entitled to:
   1) negotiate with a concessionaire on terms of a concession agreement;
   2) claim from a concessionaire compensation for losses in case of deterioration of a concession facility happened due to a fault of concessionaire;
   3) inspect finance and economic activity of a concessionaire by engaging an audit organisation without interfering into operating activity of a concessionaire and progress of performance of a concession agreement;
   4) perform control over compliance with the legislation of the Republic of Kazakhstan, terms and conditions of a concession agreement and demand elimination of committed violations;
   5) claim termination of a concession agreement in case of violation of its terms by a concessionaire;
   6) exercise other rights according to the legislation of the Republic of Kazakhstan and a concession agreement.
2. A grantor shall:
   1) transfer to a concessionaire rights to the concession facility on terms and within timing provided in a concession agreement;
   2) agree on a draft concession agreement with interested state bodies;
   3) transfer documents provided by a concession agreement and confirming rights of a concessionaire to a concession facility on time and without delays;
   4) annually provide reporting information to a relevant state body that keeps a register on concluded concession agreements;
   5) follow terms and conditions of a concession agreement;
6) transfer concession facilities free from third party's rights or with encumbrances and restrictions specified in tender documentation provided to potential concessionaires according to Article 17.1 of this Law;
7) comply with other requirements established by laws of the Republic of Kazakhstan.

**Article 26. Rights and Obligations of a Concessionaire**
1. A concessionaire is entitled to:
   1) exercise rights with respect to a concession facility under terms and conditions of a concession agreement;
   2) be a subject of investment preferences provided according to the legislation of the Republic of Kazakhstan on investments;
   3) receive a compensation for costs incurred due to performance of a concession agreement;
   4) claim termination of a concession agreement in case of violation of its terms by a grantor and compensation for losses caused by such a violation;
   5) claim a compensation for losses when amendment of terms of a concession agreement entails losses of a concessionaire;
   6) exercise other rights according to laws of the Republic of Kazakhstan.
2. A concessionaire shall:
   1) preserve a profile of concession facilities;
   2) conduct operations (render services) provided under agreement;
   3) finance facilities of social area included in a property complex of a concession facility according to procedure established by the legislation of the Republic of Kazakhstan;
   4) comply with the legislation of the Republic of Kazakhstan on labour, public employment and environmental protection;
   5) transfer the concession facility to a grantor in view of encumbrances and restrictions existed for the moment of conclusion of a concession agreement and in a proper technical condition, according to terms and conditions of a concession agreement, upon expiry of a validity period of a concession agreement;
   6) meet other requirements and conditions established by laws of the Republic of Kazakhstan and a concession agreement;
   7) open a special account with a bank determined by a concession agreement, according to the budget legislation of the Republic of Kazakhstan, to finance a concession project in cases of provision of state surety on revenue-yielding bonds within a concession agreement;
   8) ensure proper use of funds allotted for implementation of a concession project.

**Article 26-1. Private Concession Obligations**
1. Private concession obligations shall be accepted by a concessionaire upon conditions specified in the concession agreement.
2. A grantor shall control compliance with private concession obligations according to procedure established in the concession agreement.

**Article 26-2. Direct Agreement with Concessionaire's Lenders**
1. To implement concession projects of special importance, a grantor, concessionaire and lenders of concessionaire may enter into a direct agreement determining terms and conditions of parties’ interaction during period of implementation of a concession project.
2. A direct agreement provides for the following conditions:
   1) obligation of a grantor to inform lenders of a concessionaire on material breach of obligations under a concession agreement that could lead to default under a concession agreement;
   2) pledge of rights under a concession agreement and (or) assignment of claim, or transfer of debt of a concessionaire with consent of a grantor;
   3) right of lenders of a concessionaire to request replacement of the concessionaire in case of a material breach of its obligations under the concession agreement that may lead to termination of the concession agreement, and (or) in case of a material breach by a concessionaire of its
obligations under agreements with lenders that may lead to the claim for early performance by the concessionaire of obligations under such agreements, as well as to propose a candidate for a new concessionaire;

4) procedure for replacement of a concessionaire in the cases provided for in sub-paragraph 3) of this paragraph;

5) right of concessionaire's lenders to appoint, in the cases provided for in subparagraph 3) of this paragraph, a temporary manager, as well as to determine an appointment procedure, scope and term of powers of the temporary manager;

6) other conditions not contradicting the legislation of the Republic of Kazakhstan.

**Article 26-3. Replacement of a Concessionaire**

1. In case of failure to perform or improper performance by a concessionaire of its obligations to a lender and (or) under a concession agreement, upon agreement with a grantor and lender, replacement of a concessionaire by way of conducting a tender by a grantor is allowed.

2. In case of replacement of a concessionaire, from the moment of conclusion of an agreement on replacement of a concessionaire, rights and obligations under a concession agreement shall be transferred to a new concessionaire.

3. Replacement of a concessionaire under a concession agreement shall be conducted according to the legislation of the Republic of Kazakhstan on concessions.

**Chapter 5. FINAL PROVISIONS**

**Article 27. Dispute Settlement**

1. Disputes related to transfer of objects of state ownership into concession shall be settled in the procedure established by the legislation of the Republic of Kazakhstan and a concession agreement.

Disputes related to performance and termination of a concession agreement shall be settled by way of negotiations according to requirements of the legislation of the Republic of Kazakhstan and dispute settlement procedures specified in a concession agreement.

2. If disputes related to performance and termination of an agreement cannot be settled according to paragraph 1 of this Article, parties shall be entitled to settle the dispute according to requirements of the legislation of the Republic of Kazakhstan in court procedure, and also by referring to arbitration according to the Law of the Republic of Kazakhstan ‘On Arbitration’. With respect to concession projects of special importance, in case where at least one of shareholders (participants) of a concessionaire is a non-resident of the Republic of Kazakhstan, arbitration shall be determined by agreement of parties.

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

Violation of the legislation of the Republic of Kazakhstan on concessions is subject to liability established by laws of the Republic of Kazakhstan.

**Article 29. Procedure for Entry of this Law into Force**

1. This Law shall enter into force since its official publication.
2. Concession agreements concluded prior to the enactment of this Law shall remain in force until expiry of a term established in these agreements.

The President of the Republic of Kazakhstan

N. NAZARBAEV

Astana, Akorda, 7 June 2006
No. 167-III ZRK

Notice:

This is an unofficial English translation of the Law, prepared by GRATA International Law Firm. We are in the process of reviewing and improving this translation. We kindly request your comments and suggestions. Please send them in writing to Mr. Shaimerden Chikanayev at Schikanayev@gratanet.com

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