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# PPP in Kazakhstan

## I OVERVIEW

Since 1991, Kazakhstan, Central Asia's largest economy and oil producer, has had to rely on the deteriorating infrastructure it inherited from the Soviet Union. As a result, 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 authorities have come to recognise that they cannot finance the necessary investments in public infrastructure from current budgets and that a major part of future financing must flow from the private sector. The need for the inflow of capital is becoming even more pressing because of sharp decline of the Kazakhstani commodity revenue. As a result, the authorities in Kazakhstan are trying to offer some fiscal incentives and optimise the legal framework to encourage private investment in public assets, including by way of PPPs.

Although Kazakhstan developed some experience of PPP-based projects during the 1990s, it became obvious that the successful implementation of such projects would not be effective without a more comprehensive statutory legislative package on concessions and PPP procurement. The first law, On concessions in the Republic of Kazakhstan, was adopted on 23 December 1991 and aimed to regulate administrative, economic and legal environment concession agreements in Kazakhstan only for foreign investors. The frameworks have been proofed and applied in at least four infrastructure projects with the Development Bank of Kazakhstan and three concession projects supported by the government of the Republic of Kazakhstan. This first concession law was already deemed invalid by April 1993. Despite the absence of any specific law on concessions in the period of 1993–2006, several concession projects occurred during that time relying on general provisions of the Civil Code of Kazakhstan, namely: (i) 6 July 2005 – execution of the concession agreement on construction and operation of the railway 'Shar-Ust-Kamenogorsk Station' and (ii) 28 December 2005 – execution of the concession agreement on construction and operation of the inter-regional power line 'North Kazakhstan – Aktobe Region'.

On 7 July 2006 the Law of the Republic of Kazakhstan On Concessions No.167-III 3PK (the Concession Law) was adopted, which enabled in 2007 execution of the now specifically recognised by Kazakh law concession agreements on the Passenger Terminal of International Airport in Aktau City, the Yeraliyev-Kuryk railway line, Electrification of the Makat-Kandygash railway line and in 2008 execution of the concession agreements on Gas Turbine Plant in Kandygash City of Aktobe Oblast and Railway Line Korgas-Zhetygen.

To the best of our knowledge, as of the beginning of 2016, therefore, there are six concessional projects that are currently being implemented in Kazakhstan. Three concession facilities are already functioning: (1) North Kazakhstan–Aktobe region power line; (2) Shar-Ust-Kamenogorsk railway; and (3) the passenger terminal of the airport in Aktau. However most if not all of them did less well than expected. This was partly caused by bad structuring of these concession projects and there is apparent lack of proper balance of the risk sharing between an investor and the state. The railway, for example, has seen lower than expected freight volumes, and several of the enterprises expected to use the power line were out of action or operating below full capacity.

The lack of popularity of concessions<sup>2</sup> so far, however, is also due to excessive regulation of concession relationships by the relevant legislation, which diminishes the parties' flexibility in determining project terms and because the process for granting concessions in Kazakhstan is very bureaucratic and time consuming.<sup>3</sup>

In order to address this issue, on 31 October 2015 the Republic of Kazakhstan enacted a new law, On Public-Private Partnerships No. 379-V 3PK (the PPP Law). Public-private partnerships can now be structured not only as concessions and can be used to implement projects under the PPP Law framework in any sector of the economy, though declared priorities are education,

healthcare, transport, power industry and housing and public utilities.

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