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PECULIARITIES OF STATE-PRIVATE PARTNERSHIP IN INFRASTRUCTURAL PROJECTS: A CASE OF KAZAKHSTAN

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In today's difficult economic situation in Kazakhstan state-private partnership can become a quite productive form of cooperation between the state and business, as in a state of crisis, stability of demand from the state is a crucial instrument for reducing the risk of investment and building the confidence of credit institutions.

However, despite the recognition of this form of cooperation in foreign countries one of the most important tools for improving national (and regional) competitiveness, introduction of mechanisms of public-private partnerships in the Kazakhstan practice is slow. Pendency of a number of methodological issues of the transition to a partnership between the state and business, lack of experience of such partnerships, underdeveloped legislative and regulatory framework at all levels, bureaucratic obstacles hindered the implementation of public-private partnership in Kazakhstan.

Keywords: *economy; public-private partnership; concession; concession projects; matrix of public-private partnerships; Kazakhstan*

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ОСОБЕННОСТИ ГОСУДАРСТВЕННО-ЧАСТНОГО ПАРТНЕРСТВА В ИНФРАСТРУКТУРНЫХ ПРОЕКТАХ: ПРИМЕР КАЗАХСТАНА

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В сегодняшней сложной экономической ситуации государственно-частное партнёрство в Казахстане может стать вполне продуктивной формой сотрудничества государства и бизнеса. Это обусловлено тем, что в условиях кризиса стабильность спроса со стороны государства является ключевым инструментом для снижения рисков инвестирования и построения доверия со стороны кредитных организаций. Однако несмотря на признание данной формы сотрудничества в зарубежных странах в качестве одного из важнейших инструментов повышения национальной (и региональной) конкурентоспособности, внедрение в практику механизмов государственно-частного партнёрства в Казахстане происходит очень медленно. Нерешённость ряда методологических вопросов, связанных с переходом к партнёрству между государством и бизнесом, отсутствие опыта реализации таких партнёрств, неразвитость законодательной и нормативной базы на всех уровнях, бюрократические препоны затрудняли реализацию государственно-частного партнёрства в Казахстане.

Ключевые слова: экономика; государственно-частное партнёрство; концессии; концессионные проекты; матрица государственно-частного партнёрства; Казахстан

Introduction

Fundamental changes in the global economy are compounded by geopolitical crisis and sanctions policy of the leading powers, adjustments in economic policy of Republic of Kazakhstan. In today's world, an essential condition for normal functioning of mixed economy is the constructive interaction of business and state structures. Nature of this interaction, methods and specific forms can vary considerably depending on maturity and national characteristics of market relations (*Chamberlin, 2015; Delmon, 2015;*

Dobrovolskienė et al., 2017). The state is never free from socially responsible performance of its functions related to national interests, and business, in turn, always remains the source and motor of development and increment of social wealth (*Meņšikovs et al., 2014; Estache et al., 2015; Shevyakova, 2015; Boronenko & Lavrinenko, 2015; Olefirenko et al., 2016; Strielkowski et al., 2016; Bordea and Pelligrini, 2016; or Bordea et al., 2017*).

In the last decade economies of several developed and developing countries actively develop a special quality of interaction between business and state, called public-private partnership. World practice shows that one of the alternative tools provide the necessary financial base for establishing, upgrading, maintenance and operation of facilities, in an environment of limited public resources is the mechanism of public-private partnership (hereinafter PPP).

When using PPP there is a possibility of increase of efficiency of mutually beneficial cooperation between the state and private sector, improving quality of services, accelerating modernization of infrastructure necessary for diversification of economy. In the development and implementation of innovative development strategies in advanced Western countries the importance given to creation of organizational and legal prerequisites for establishment of partnerships that combine in various combinations of private-industrial companies, universities, government departments and independent research laboratories for the joint achievement of specific scientific and technological results (*Strielkowski & Bilan, 2016; Jankelová et al., 2017*). In recent years, in developing countries the private sector invests in infrastructure constantly increasing business participation in the joint government infrastructure projects bringing good results, for example, facilitation of introduction of new technologies, reduction of fiscal burden, enhance of control over the clarity of execution of projects.

However, despite the recognition of this form of cooperation in foreign countries one of the most important tools for improving national (and regional) competitiveness, introduction of mechanisms of public-private partnerships in the Kazakhstan practice is slow. Pendency of a number of methodological issues of transition to a partnership between the state and business, lack of experience of such partnerships, underdeveloped legislative and regulatory framework at all levels, bureaucratic obstacles hindered the implementation of public-private partnership in Kazakhstan, which determines the relevance of the study of this problem.

Issues of economic development through novel strategies and business models are widely discussed in contemporary literature (e.g. *Janda et al., 2013; Lisin & Strielkowski, 2014; Strielkowski & Weyskrabova, 2014; Akhmadeev & Manakhov, 2015; Lisin et al., 2015; Beifert, 2015; Aleksejeva, 2016; Lisin et al., 2016; Gavurova et al., 2017; Monni et al., 2017; Čirjevskis, 2017; Dobrovolskienė et al., 2017*).

The authors of this paper used theoretical and methodological development of international organizations (IMD, WEF, OECD, UN, IMF, WB, etc.), records of the national statistical services, and also materials of periodicals.

Methodological approach and analysis

Kazakhstan has accumulated rich experience of economic reform: had to overcome a lot of difficulties, to correct errors, to eliminate the defects, to review some initial setup.

There were received some positive results of economic reforms: achieved high growth rates of production, increased the living standards of population. There remains the influence of braking: it is needed to improve sectorial structure of economy, satisfactory level of economic efficiency of production.

The leading role belongs to institutional reforms, including real property rights, effective anti-trust legislation and control over its implementation, strict banking supervision, Deposit insurance, etc. in their absence there is a “systemic vacuum”, directly leading to the criminalization of economic life, growth of clan and shadow economy, growth of non-payments.

The legislative basis for the use of PPPs in Kazakhstan was founded in 1991 as part of the settlement of relationships arising under contracts of concession. Public-private partnership was regarded as an element of the management of state assets. The main legal acts regulating these relations was the Civil code of the Republic of Kazakhstan dated December 27,

1994, laws of the Republic of Kazakhstan dated December 23, 1995 «On privatization» dated May 13, 2003 «On joint stock companies», dated July 21, 2007 «On public procurement».

The first legal framework governing public-private partnership in Kazakhstan, offered to investors an only instrument – a concession. For this purpose, on December 23, 1991 there was adopted the First Law of the Republic of Kazakhstan «On concessions», which was repealed in 1993. It regulated organizational, economic and legal conditions for granting concession facilities only to foreign investors on the territory of the Republic of Kazakhstan.

Concession in its original version was considered as a surrender of the foreign legal entity or physical person – a concessionaire – lease of property, land, and natural resources. In other words, concession was determined through the prism of lease contract (property hiring), but also in concession relations could present elements of construction contracts, insurance, labor contracts.

Currently, various state objects are in property hiring (rent of non-residential funds, equipment, land) or trust management on the basis of concluded contracts.

«Pioneers» of contracts in which there used the term «concession» are steel transmission projects in «INTERGAS Central Asia» JSC gas pipeline system of Kazakhstan and concession of Shulbinskaya, Ust-Kamenogorskaya and Bukhtarminskaya hydroelectric power plants (HPP).

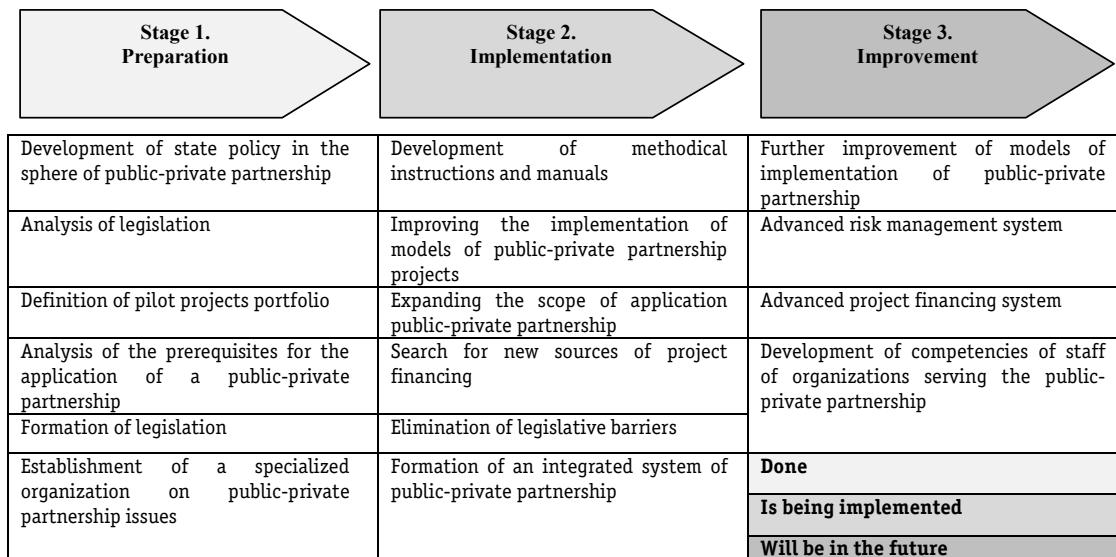


Figure 1. Stages of development of public-private partnership in Kazakhstan
Source: composed by the authors

The key dates for the development of public-private partnerships in Kazakhstan:

- July 6, 2005 – conclusion of the first concession agreement on the project «Construction and operation of new railway line «Shar Station – Ust-Kamenogorsk»;
- December 28, 2005 – conclusion of concession agreement for the project «Construction of interregional transmission line «North Kazakhstan – Aktobe region»;
- July 7, 2006 – adoption of the Law of the Republic of Kazakhstan «On concessions»;
- 2007 – conclusion of concession contracts for the project «Passenger terminal of international airport Aktau», «Railway section Yeralievo – Kuryk», «Electrification of the railway section Makat – Kandyagash»;
- 2008 – conclusion of concession contracts for projects «Gas turbine power plant in Kandyagash city of Aktobe region», «Railway section Korgas – Zhetygen»;
- July 17, 2008 – adoption of resolution of the Government of the Republic of Kazakhstan on creation of the Kazakhstani center for public-private partnerships in the form of joint stock companies (PPP Centre) (Decree of the government of the Republic of Kazakhstan No. 693, 2008);

- June 29, 2011 – adoption of the Decree of the Government of the Republic of Kazakhstan program on development of public-private partnership in the Republic of Kazakhstan for 2011 – 2015 (resolution of the Government of the Republic of Kazakhstan No. 731 2001).

Development of PPP in Kazakhstan can be divided into three stages, presented in Figure 1 above. At the moment, it can be argued that the preparatory stage in Kazakhstan was passed and we are in the process of implementation of PPP. Furthermore, implementation of some activities of implementation stage indicating the beginning of active phase of the second stage, namely:

- there is legislation on concessions;
- on the stage of public discussion of the draft law on some issues of PPP, which will allow to implement new forms of relations between the state and investor;
- creation of PPP center as a specialized organization for the concession;
- preparation and realization of concession projects.

With the adoption of the new Law of the Republic of Kazakhstan «On concessions» in 2006 (further – the Law), opportunity of transfer on creation of objects of state ownership of not only foreign investors but also to legal entities - residents of the Republic of Kazakhstan (*Law of the Republic of Kazakhstan No. 167, 2006*).

The law stipulated legal conditions of concessions, types of state support for the concessionaire and regulation of public relations arising in the process of conclusion, performance and termination of concession contracts. Definition of concession based on current Kazakhstan legislation – transfer under a concession agreement of state property objects for temporary ownership and use for the purposes of improving and effective operation as well as the rights to creation (construction) of new objects at expense of means of concessionary or on the terms of co-financing by the concedent with subsequent transfer of such objects to the state granting of rights of possession to the concessionaire, used for further operation, as well as provision of state support or without it.

At first glance in the past 15 years has been done considerable work, but currently there are only 41 existing concession projects: the most significant are railway line «Shar Station – Ust-Kamenogorsk», power line North Kazakhstan – Aktyubinsk oblast and a passenger terminal in Aktau (see table 1), with most of the implementation of projects started exactly in 2016. There are also 61 projects that have passed the stage of development and examination of documentation.

It should be noted that for the period from 2015 to 2017 the situation has changed for the better and by the state for the first half of 2017 at the regional level there are 335 projects, of which:

- 41 projects (12.2%) – concluded contracts (85.08 billion euro);
- 61 projects (18.2%) – at the stage of the competition / announcement of the tender (0.19 billion euro).
- 233 projects (69.6%) are only at the development stage of documentation, most of the projects have been submitted for consideration again since 2016.

At the planning stage, according to the scheme of concession there are more than 60 projects in transport and social spheres, with a total projected investment in the construction of more than 0.19 billion euro, but, in practice, the actual working volume of contracts made and 10% of the planned amount. Projected distribution of PPP projects by regions and sectors of Kazakhstan is shown in table 2. This low effectiveness of public-private partnerships in fairly prosperous years for the national economy cannot but cause concern. A distinctive feature of Kazakhstan is the fact that none of the forms of PPP (except the simple) are not spelled out in the legislation with a proper degree of completeness, which would open up the possibility of wide application in the practice of economic relations with the participation of both the state and private business.

As a result, in Kazakhstan so far, every single project format for PPP is making headway with great difficulty, requires numerous and burdensome approvals at every stage and in all of this, unfortunately, is never flawless from a legal point of view. It is the absence of

well-defined legal framework significantly increases the risks of projects in Kazakhstan for a private business and the state, which is one of the main brakes of development of this effective form of implementation of major projects in Kazakhstan.

An important factor in the successful development of PPPs is the coordination of actions of state bodies in the development and implementation of projects. Such a consistency does not exist in Kazakhstan yet. Each Ministry is trying to supervise their projects and create their own programs. The lack of a unified system of management – one of the main reasons hindering development of PPP system in Kazakhstan.

Among the most serious obstacles there are proponents of specific PPP projects in Kazakhstan (however, in most countries with economies in transition) have to face at different stages of their implementation, are the following, presented in tables 1–3.

Table 1

The most significant concession projects in Kazakhstan

No.	Project name	Project description	Project term, years	Concessionaire	Cost of construction (million euro)	Status of implementation
1	Acting					
1.1	Construction and operation of new railway line «Shar Station - Ust-Kamenogorsk»	railway line – 150,92 km	23	«Doszhan Temir Zholy» JSC	177.88	Object of the concession is in temporary operation
1.2	Construction and operation of interregional power line power transmission «North Kazakhstan - Aktobe region»	PL – 486,66 km	17	«Batys tranzit» JSC	128.13	Object of concession is in constant operation
1.3	Construction and operation of the passenger terminal the international airport of Aktau	passenger terminal	30	«ATM Grup Uluslararası Havalimani Yapım Yatırım ve İşletme LTD.Sti.»	33.79	Object of concession is in constant operation
	Total				339.80	
2	With documentation designed					
2.1	Construction and operation of a gas turbine power plant in Kandyagash in Aktobe region				120.45	Start date of construction identified in 2011, construction has not begun
2.2	Construction and operation of railway lines «Yeralievo - Kuryk»				59.19	Start date of construction is not defined
2.3	Construction and operation of a complex of kindergartens in Karaganda				42.56	Start date of construction identified in 2012, construction has not begun
	Total				222.20	

Table 2
Current number of PPP projects in Kazakhstan

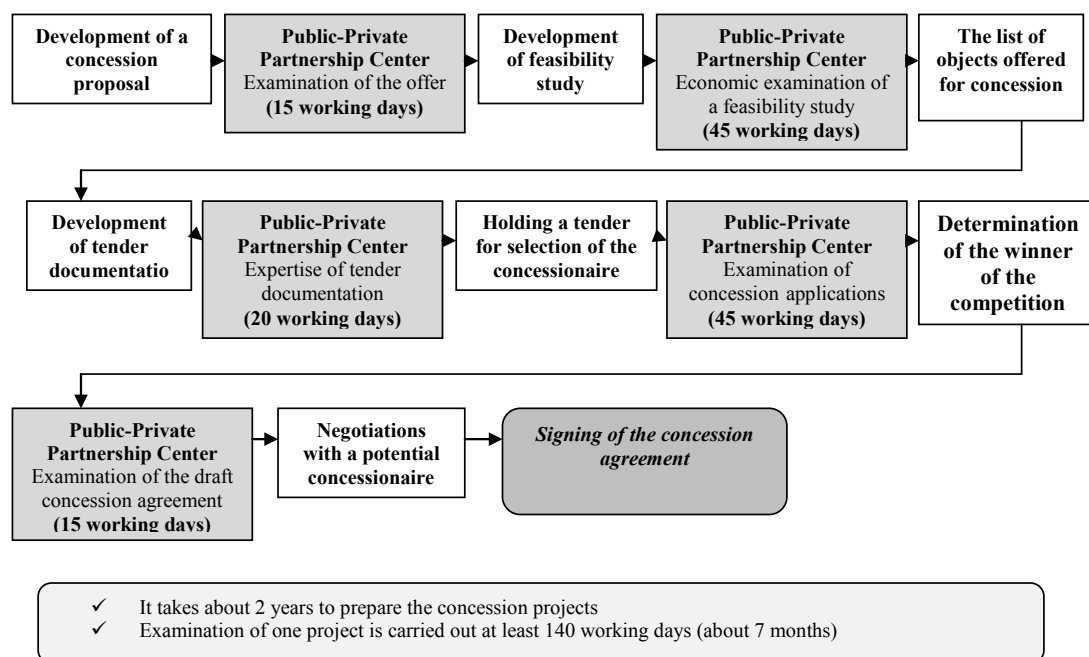
Regions of Kazakhstan	Regions													Total			
	Astana	Almaty	Akmola	Aktobe	Almaty	Atyrau	East Kazakhstan	Zhambyl	West Kazakhstan	Karaganda	Kostanay	Kyzylorda	Mangystau		Pavlodar	South Kazakhstan	North Kazakhstan
The agreements are concluded			2	7	8		11				8	1	1			3	41
Contract at the stage of imprisonment				2									6			2	10
Competition announced			4	2	3	1					9		3			1	23
At the announcement stage of the contest	10			14									4				28
Preparation of documentation	8	20	46	14	3	6	12	21	4	22	37	4	18	13	5		233
Total amount	18	20	52	39	14	7	23	21	4	22	54	5	32	13	5	6	335

Table 3

Problems of implementation of PPP projects in Kazakhstan over 2005–2016 years

Internal factors	External factors
Tight on time current system of projects (see Fig. 2)	The global financial crisis of 2008–2009
Low attractiveness of projects in the infrastructure sector (a large area – 9 in the world, but a small population, only 2 cities with a population of over 1 million people, low traffic, the need to ensure the lowest possible rate for population)	Reduction in investment resources and capital markets and, as a consequence, a sharp reduction of capital flows to developing countries

As shown by the analysis, preparation of a concession project takes at least 2 years that has a negative impact primarily on the willingness of investors to invest their money in such projects.

**Figure. 2.** Current system of passing concession projects in Kazakhstan

The existing procedure of consideration, examination and approval of the concept and tender documentation of a PPP project has a number of disadvantages:

- 1) some norms of the Rules of planning and implementation of PPP projects are not transparent and carry corruption;
- 2) existing wording of many provisions of the legislative framework in the field of public-private partnerships is difficult to understand;
- 3) project concepts and tender documentation are considered by consistently relevant state bodies and RPE;
- 4) if there are comments or in case of a negative opinion it is necessary to present documents for examination again;
- 5) Local Executive bodies are often not interested in the rapid implementation of PPP projects and the deadline for the draft local budget of the Commission is not defined.

There are also a number of problematic issues that reduce investor interest in PPP projects:

- absence of a list of clear criteria, characterizing the efficiency of management of PPP;
- lack of market analysis, needs of population in the regions;
- lack of analysis of risks and opportunities for potential investors;
- transfer of obsolete (3–5 years old), previously unrealized projects in PPP;
- estimates of PPP projects do not take into account inflation and devaluation;
- limitations on sources of credit, financial model does not take into account the current and future state of the lending market;
- absence of any guarantees/security from the state to investors and potential private partners.

The backlog of Kazakhstan in this sphere is contrary to international trends. Currently, in some countries the PPP is up to 20% of GDP. There is a correlation between the level of development of the country and sector that you choose to attract investment through PPP.

In the countries of «Big seven» (G7) most projects implemented in the areas of health (184 of 615) education (138 of 615), the third place – road (92 of 615). Each of the G7 countries has its own priority sector for the use of PPP. In the United States, there is the highway (32 out of 36 projects) in the UK – health (123 of 352 projects) and education (113 out of 352 projects), in Germany – education (24 out of 56 projects), Italy, Canada and France – health.

In other developed countries – Austria, Belgium, Denmark, Australia, Israel, Ireland, Finland, Spain, Portugal, Greece, South Korea, Singapore - number of PPPs are in the scope of construction and reconstruction of roads (93 projects), then, with a very significant margin, health care (29 projects), education (23 projects) and accommodation facilities (22 projects). Priority sectors of health and education in the G7 and other developed countries due to politics of these countries and the high level of their socio-economic development.

In developing countries and countries with economies in transition there mentioned fields (except roads) will not be a priority. A lower level of economic development of such countries in the first place displays the transport infrastructure, namely the construction and reconstruction of roads, ports, railways. In particular, countries with economies in transition (37 out of 915 projects) for the application of PPP in the lead of roads, construction of bridges and tunnels, light surface metro, airports in developing countries (22 out of 915 projects) – highways, as well as airports, prisons and water treatment plants. This distribution reflects primarily the interest of the countries in the development of these sectors (individual countries) because PPP allows attracting private sector investments, reduction of the cost of public sector to share the risks between partners.

Also, we should note that the devaluation of the national currency in August 2015 has led to the emergence of additional problems in the field of PPP development in Kazakhstan:

- reduced the number of potential investors (volatility of the tenge (Kazakh national currency) exchange rate now is very high, which increases the financial risks of potential projects);
- there is a need of recalculation of the cost of previously developed feasibility studies of concession projects.

Analysis of world experience in similar situations shows that it is necessary to observe the optimum level of participation of the state, organizationally and financially – state funding should be at least 40-50 %, but avoid excessive regulation of concession activities. It is also to be mentioned that in 2015 there was made intensified work to increase the attractiveness of PPP projects in Kazakhstan. First, there was extended the range of PPP contracts for a more flexible structuring of projects. There were implemented over 5 major types of more complex contracts.

Secondly, there was expanded the scope of application of PPP by removing restrictions on transfer of concession facilities, medical devices, and organization of secondary education, social protection, water treatment and supply. In addition, in order to increase the

attractiveness of PPP for investors in accordance with international practice, introduced a new mechanism to support the implementation of PPP projects – «pay per availability» for socially important little payback projects such as the construction and maintenance of roads with low traffic, schools, kindergartens, hospitals, polyclinics. This tool allows the government to ensure uniform return of expenses of the concessionaire for construction, operation and management of such facilities for the concession period, providing quality service. State reserves the right of charging fees to consumers. For investors in the framework of social obligations of the state there was introduced state support “guarantee of consumption” To ensure the financial sustainability of housing projects in the long term there is the possibility of stable fixation of tariff regulation in contracts.

Thirdly, threshold of investment by the concessionaire’s own funds in a PPP project has been reduced from 20% to 10% of the value of concession object. To increase the attractiveness of capital intensive projects such as BAKAD, for financing by international financial institutions and other investors, taking into account the proposals of IFC and EBRD, law introduced the possibility of concluding a Direct agreement between lender, grantor (government) and concessionaire under concession projects of special importance, as well as the possibility of recourse to international arbitration.

Conclusions and recommendations

Problems of the Kazakhstan economy in the conditions of openness and integration into the world are relevant, as they require the search of an effective state and economic mechanisms to retain relative economic stability and social development.

The study also showed that the implementation of country benefits from international economic cooperation is not automatically in the context of increasing global crisis, Kazakhstan’s economy needs to have certain characteristics, components of its competitiveness, and the state should be able to influence and to promote those that produce the Kazakhstani economy opportunities for sustainable development.

Despite progress in the development of public-private partnership in Kazakhstan, it is necessary to pay attention to the following problematic issues and to work out possible ways of their solution:

1. In international practice relationship between the state and private sector in the implementation of projects, traditionally related to the sphere of state responsibility, enshrined in law countries.

Lack of a legal definition of PPP leads to the understanding that PPP arrangements are any contractual and non-contractual relationships between government and the private sector. Therefore, to determine the boundaries of application of PPP mechanisms for implementation of socially important projects, there is a need to study the issue of legislative consolidation of the concept of PPP.

2. International practice shows the applicability of PPPs in projects requiring new construction and/or reconstruction and projects requiring the improvement of management efficiency.

Therefore, in the framework of the legislation on concessions it is required to address the following questions, allowing the extension of its application:

- improvement of procedures of the contest for selection of concessionaire envisaging the possibility of applying two-stage competition;
- introduction of a mechanism of compensation for not only investment but also operating costs of the private sector with the possibility of indexation of financial measures of state support;
- development of measures of state support aimed at guaranteeing a minimum income (a certain volume of goods, works, services) consumed by the government, tax preferences and customs privileges;
- revision of the rules and approaches of tariff formation.

3. International practice, often use the model of private finance initiative (hereafter PFI). PFI are the contracts for public services and works financed by the private sector, but services are paid not by consumers but government (for example, projects for public lighting, hospitals, schools state by entering into a long-term contract places the state guaranteed the order and pays costs of upkeeping the facility, depending on the quality of services). However, the right of ownership and maintenance remains with the private party. At the end of contract term, the government may extend the contract (G. Hodge 2006). Therefore, the current law on concessions is necessary to consider the possibility of introducing this type of contract.

4. Considering PPP as a tool for the implementation of investment projects is under development, it is necessary to study the issue to improve the skills of civil servants and representatives of the private sector. Therefore, it is necessary to consider the possibility of providing training and upgrading qualifications of civil servants through workshops and trainings in the field of PPP.

5. In order to increase investment attractiveness of PPP projects and increasing the responsibility of the state when planning long-term investment projects on PPP mechanism, to reduce the risk of time lag between the occurrence and receipt of payment by the private sector, certain funds to be paid from the budget in the form of guarantees for minimum revenues, availability payments, it is necessary to study the issue of budget planning through the allocation of «reserve account» or under «current expenses» article (Miller, 2000).

6. Implementation of large-scale investment projects with the use of concessions may need financial support, which allows to attract additional investments. A possible solution to this issue could be a positive international practice in the use of project financing tools, which in the face of the concessionaire can be a special financial company (hereinafter – SFC), created by sponsors of the project for implementation of one specific project using a PPP mechanism.

Because of its flexibility, this form is an effective tool of raising funds in an unstable economy. Feature of project financing is to assess the ability of the project to generate a stable current and future cash flows, these flows become a source of funds for servicing and repayment of debt and payments of income on capital invested in the project.

To create conditions for the development of project financing tools to implement projects using the PPP mechanism should be envisaged for SFC with special legal status. In projects using the PPP mechanism, the government should set the necessary parameters and standards for the transfer of objects of state ownership under contracts, to determine the possibility, mechanisms and volumes of provision of state support measures and to retain the control function of the condition of the object of concession and the quality of services.

In conclusion, it should be noted that despite the fact that PPPs in developed and developing countries are the basic design of extra-budgetary investments in development of social infrastructure and production in Kazakhstan because of its weak competence and low willingness, government bodies, very little use of PPPs and continue to rely on traditional methods for budget financing of capital investments in public infrastructure.

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