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Topical issues of management of public-private partnership in Republic of Kazakhstan

At the present stage of the economic development of the Republic of Kazakhstan, mutually beneficial cooperation of state bodies and entrepreneurs in the sectors traditionally attributed to the state responsibility on the basis of a balanced distribution of risks, benefits and costs, rights and obligations defined in the relevant contracts is quite attractive niche for research. In this regard, the authors of the article carried out a research in the study of topical issues, from the point of view of modern management in the study of public-private partnership. The authors of the article have identified the need and characteristic features that make it possible to single out partnership as an independent economic category. Authors draw a parallel of economic and legal aspects of functioning of state bodies and entrepreneurs in solving key issues. The article substantiates the fact that the partnership between the state and business is a positive development in the country's economy. Conceptually, it is shown that, within the framework of public-private partnership, each form of cooperation has its own specific features, in particular, in matters of property, which requires an individual approach to each individual link. A number of normative and legislative documents, recently adopted in Kazakhstan for supporting and developing entrepreneurial activity, have been also considered. In results of the research problematic issues were identified, including that it was revealed that institutional changes are required in the process of interaction between the state and business.

Keywords: economy, structural changes, public-private partnership, cooperation, legislation, concession, contract, entrepreneurial activity.

New economic relations are formed in Kazakhstan, and, respectively, the economy becomes more integrated into the world community, so there is an urgent need for structural changes and closer interaction between the state and the private sector. The role of public-private partnership has appeared and is beginning to become topical. The increased interest in this interaction between the state and private business is explained by the fact that in many countries it allows to effectively solve major social and economic problems by combining the resources of the public and private sectors.

Public-private partnership - represents a set of forms of medium- and long-term interaction between the state and business for solving socially significant tasks on mutually beneficial terms.

Public-private partnership is an institutional and organizational alliance of state power and private business with the aim of implementing socially significant projects in a wide range of activities, from the development of strategically important sectors of the economy to the provision of public services across the country or individual territories.

The rapid development of diverse forms of public-private partnership in all regions and their wide distribution in various sectors of the economy make it possible to interpret this form of interaction between the state and business as a characteristic feature of the modern mixed economy. This is a partnership between the state and the private sector, usually referred to as the Public-Private Partnership.

The essence of public-private partnership is the redistribution of responsibilities and risks for the development of sectors, which usually fall under the responsibility of the state.

The goal of public-private partnership is to unite the best sides of the state and private sectors for mutual benefit, and the variety of forms and models of the use of public-private partnership make it a universal mechanism for solving a number of long-term tasks - from the creation and development of infrastructure to development and adaptation of new promising technologies. To ensure the participation of the private sector in the implementation of socially important infrastructure projects, the state must create a balance of risks and benefits acceptable to both sides [1].

Entrepreneurship should become a full-fledged and determining subject of the developing market economy of the republic, which, by solving the objectives of increasing the profitability of its activities on the basis of increasing competitiveness, the release of new and sought-after innovative products, will become an active participant in the innovation process [2].

The interaction of the state and the private sector for solving socially significant tasks has a long history, including in Kazakhstan. However, the most urgent public-private partnership has become in recent decades. On the one hand, the complication of social and economic life makes it difficult for the state to perform socially significant functions. On the other hand, business is interested in new objects for investment. Public-private partnership is an alternative to privatization of vital, strategically important objects of state property. The classification characteristic of state-business cooperation is shown in Table 1.

Table 1

Basic Types of Public-Private Partnership

No.	Explanation	Description
1	Build, Operate, Transfer	The concession mechanism: the creation, the right to use (without the right of ownership) during the term of the agreement and the transfer to the state
2	Build, Own, Operate, Transfer	Similarly to the above, but the ownership of the time of the contract is owned by a private partner
3	Build, Transfer, Operate	Similarly to clause 1, only the object is transferred to the state immediately after construction. The private partner serves the facility during the term of the agreement, and the public reimburses the costs by regular payments (life cycle contract)
4	Build, Own, Operate	Similar to clause 2, but after the expiration of the agreement the object remains in the ownership of a private partner
5	Build, Operate, Maintain, Transfer	Emphasis on maintaining the viability and maintenance of the facility. The right of ownership remains with the public partner
6	Design, Build, Own, Operate, Transfer	Similar to clause 2, but it is the private partner's responsibility to design the object of the agreement
7	Design, Build, Finance, Operate	Emphasis on the obligation of a private partner to finance construction and maintenance activities. The public partner reimburses the costs by regular payments

Note. Prepared by the authors of the source [2].

In a broad sense, the main forms of public-private partnership in the sphere of economy and public administration include:

- any mutually beneficial forms of interaction between the state and business;
- governmental contracts;
- lease relations;
- financial lease (leasing);
- public-private enterprises;
- production sharing agreements;
- concession agreements.

There are three forms (types of contracts) of public-private partnership:

- contract for management and leases;
- contract for operation and maintenance;
- the concession.

Legislation of the Republic of Kazakhstan in the field of public-private partnership is based on the Constitution of the Republic of Kazakhstan and consists of the Civil Code of the Republic of Kazakhstan, this Law and other normative legal acts of the Republic of Kazakhstan [3, p.1, art.2].

Currently there is a Joint Stock Company «Kazakhstan Center for Public-Private Partnership» (hereinafter referred to as the Public-private partnership Center) in the Republic of Kazakhstan that actively participates in the development and support of Kazakhstan legislation in the field of public-private partnerships. In the period of 2011-2016, a number of amendments to the Law of the Republic of Kazakhstan «On Concessions» were drafted and adopted, providing for a number of new financial and legal mechanisms:

- new types of concession contracts;
- one - and two-stage competitions;

- protection of state concession obligations from sequestration;
- direct agreements with creditors;
- payment for accessibility and many others;
- simultaneously with amendments to the basic law on concessions, amendments were introduced to the Budget and Tax Codes, legislation in the sphere of natural monopolies, a package of by-laws was developed.

In 2015, an absolutely new law on public-private partnership was adopted, developed with the involvement of specialists from the public-private partnership Center. The new law provides for the removal of restrictions on the scope of public-private partnership application, expands the subject composition of public-private partnership participants, increases the role of the private sector in initiating and preparing public-private partnership projects. Simultaneously, a package of bylaws defining the order of planning and implementation of public-private partnership projects with the use of competitive dialogue, private financial initiative of improved competitive procedures was developed [4; 2]. The purpose and objectives of the Law «On public-private partnership» are shown in Table 2.

Table 2

The purpose and objectives of the Law «On public-private partnership»

Aim	Tasks
Formation and strengthening of long-term cooperation between the state and the private sector by pooling resources to improve the level of accessibility and quality of public goods and services	<ul style="list-style-type: none"> – involvement of the private sector in the management of state assets; – reducing the burden on the budget; – attraction of investments; – expansion of interaction models; – state and business

The main provisions of the law are shown in Figure.

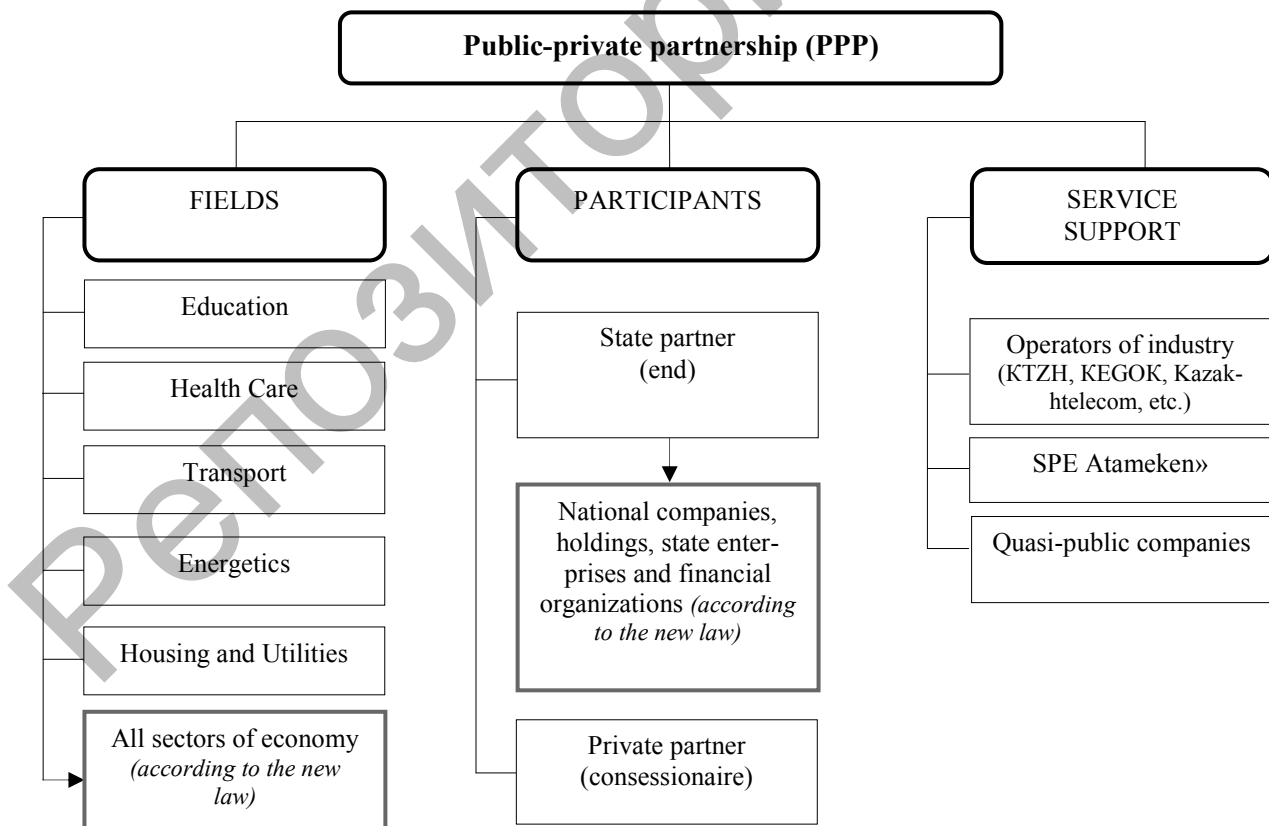


Figure. The main provisions of the Law of Republic of Kazakhstan «On public-private partnership»

The significance of the adopted public-private partnership Law is defined as follows:

- restrictions on the application of public-private partnership (all sectors of the economy) are lifted;
- new types of contracts are introduced (service contracts, lifecycle contracts, contracts for innovation);
- the circle of public-private partnership participants is expanding (national companies and holdings, state enterprises and financial organizations are included).

In terms of applying the provisions of the new law on public-private partnership, a package of by-laws has been developed:

- procedure for planning public-private partnership projects;
- the procedure for holding a tender for the definition of a private partner;
- the procedure for monitoring public-private partnership contracts;
- the procedure for selecting public-private partnership projects to provide or increase the amount of government guarantees;
- criteria for assigning a public-private partnership project to a project of special significance;
- requirements for the examination of the public-private partnership project concept, tender documentation, draft public-private partnership agreement [5; 240].

The rights of entrepreneurs are one of the basic civil rights of citizens and legal entities that carry out this activity. According to Art. 10 of the Civil Code of the Republic of Kazakhstan, the state guarantees freedom of entrepreneurial activity and ensures its protection and support. Entrepreneurship is the initiative activity of citizens and legal entities, regardless of the form of ownership, aimed at obtaining a net income by satisfying the demand for goods (works, services) based on the right of private ownership (private business) or on the right of economic management or operational management of a state enterprise state enterprise).

Entrepreneurial activity is carried out on behalf of, for the risk and under the property responsibility of the entrepreneur. The rights of entrepreneurs carrying out activities not prohibited by law are protected: the possibility of carrying out entrepreneurial activities without obtaining anybody's permission, except for licensed types of activities; as simple as the simple procedure for registering all types of entrepreneurship in all spheres of the economy in one registering body; restriction by legislative acts of inspections of entrepreneurial activity carried out by state bodies; compulsory termination of entrepreneurial activity only by a court decision rendered on the grounds provided for by the legislative act; the establishment by legislative acts of a list of works, types of goods and services that are prohibited for private entrepreneurship, are prohibited or restricted for export or import.

Also involving government agencies, officials, and also other persons and organizations in the property liability established by the legislation to entrepreneurs for unlawfully obstructing their activities; prohibition to executive control and supervising bodies to enter into contractual relations with business entities for the fulfillment of duties that are the functions of these bodies.

The public-private partnership Law allows entrepreneurs who own facilities (kindergartens, medical institutions, etc.) to initiate a public-private partnership project and, in the absence of alternative proposals, to conclude a contract without holding a tender on the basis of direct negotiations.

As a result of monitoring, most entrepreneurs appreciate the importance of the tested areas of state support. The most important are financial and credit support and support in the form of tax incentives for start-up entrepreneurs. Approximately the same number of entrepreneurs of the Republic of Kazakhstan (about 70 %) include property support, information, consulting support and protection of entrepreneurs from bureaucratic arbitrariness in the category of the most important.

63 % of Kazakh businessmen believe that it is important to form favorable public opinion among the population about entrepreneurs.

In general, the importance of various areas of state support was noted to a greater extent by those entrepreneurs whose experience of entrepreneurial activity is more than 6 years. Statistically significant differences in the perception of the importance of various areas of state support in the context of the regions of Kazakhstan are not recorded [6; 101].

At present Kazakhstan has a high potential for public-private partnership development. According to experts from the Kazakhstan public-private partnership Center, the volume of public-private partnership projects by 2023 could reach 10-15 % of the total infrastructure development needs. At the same time, the overall assessment of international financial institutions of Kazakhstan's infrastructure needs until 2040 will be about 38 trillion tenge. Thus, the share of public-private partnership in this amount of the total demand can be from 4 to 6 trillion tenge in the perspective up to 2040, or 130 billion tenge annually.

It is obvious that even with a planned policy of full financing of the infrastructure from the budget, its colossal overload will occur. And in this case we do not invent a bicycle, offering as a solution to attract investors through the introduction of the mechanism of public-private partnership.

It is important to note that with the qualitative selection of public-private partnership projects and their effective structuring, state obligations can amount to about 50 % of the amount of projects, which will be about 2-3 trillion tenge. Given the forecast for GDP growth, this will be less than 5 % of GDP. This level of commitment by the state is quite safe for the economy of the country and will not lead to a rapid growth of public debt.

Problems of public-private partnership formation in Republic of Kazakhstan:

1. Society, power and business have a weak, distorted and incomplete understanding of the essence of concessions, the practice of their application, possible socio-economic short-, medium- and long-term consequences. The transition to a concession system does not mean replacing one stamped paper with the name «License» with another name «Concession», as it seems to many in Republic of Kazakhstan, but a change in the essence of relations between the state and business, both in legal and economic contexts.

2. Lack of an integrated approach. The development of the problem of concessions is not conducted systematically in the country: the power concentrates mainly on legislative issues, not paying due attention to economic and social problems, the mechanism of functioning and regulation of concessions. At the same time, the problem of concessions is not limited to one or several laws. It has a complex, institutional character and should be solved on the basis of a systematic approach.

Thus, despite the difficulties of implementing the public-private partnership tool, it allows achieving optimal results of high quality. The success of its implementation largely depends on the legislative framework, institutional environment, economic and organizational solutions of all aspects of existing problems.

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Қазақстан Республикасындағы мемлекеттік-жекешелік әріптестікті басқарудың заманауи тәсілі

Қазақстан Республикасының экономикасының дамуының заманауи сатысындағы мемлекеттік мекемелер мен әртүрлі саладағы кәсіпкерлердің өзара тиімді әріптестігі, тиісті келісімшарттарда анықталған дәстүрлі көзқарастағы жауапкершілік шегіндегі тәуекелдің теңестіріле бөлінуі, пайдасы мен зияны, құқықтары мен міндеттемелері тартымды салада зерттеу жұмыстарын жүргізу үшін жеткілікті болып табылады. Осы орайда мемлекеттік-жекешелік әріптестікті қазіргі заманғы менеджменттің тұрғысынан зерттеуде, өзекті сұрақтарды талдау барысында мақала авторлары бірқатар жұмыстарды жүзеге асырды. Олар тәуелсіз экономикалық санаттағы әріптестікті бөлуге мүмкіндік беретін қажеттіліктер мен сипаттамаларын анықтады. Бұдан бөлек кәсіпкерлер мен мемлекеттік мекемелердің басты міндеттерін шешу мақсатында экономикалық-құқықтық аспектілердің қызметтерін тексеруді жүргізді. Елдің экономикалық дамуына мемлекет пен бизнес серіктестігінің оң әсер ететін құбылыс екендігі туралы нақты дәлелдер мақалада келтірілген. Концептуалды түрде мемлекеттік-жекешелік әріптестік шеңберінде әрбір жеке қарым-қатынас нысаны жеке ерекшеліктерге ие, атап айтқанда, жеке меншік мәселелер бойынша әрбір жеке байланысқа жеке көзқарас қажет екенін көрсетті. Соңғы уақыттарда кәсіпкерлік қызметті қолдау мақсатында Қазақстанда қабылданған бірқатар нормативті-заңды құжаттар қарастырылды. Авторлық

зерттеу жұмыстарының нәтижесінде күрделі мәселелер анықталды, оның ішінде мемлекет пен бизнес арасындағы қарым-қатынас үдерісінде институционалды түбегейлі өзгерістердің қажет екендігі дәлелденді.

Кілт сөздер: экономика, құрылымдық өзгерістер, мемлекеттік-жекешелік әріптестік, ынтымақтастық, заңдылық, концессия, келісімшарт, кәсіпкерлік қызмет.

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Актуальные вопросы управления государственно-частным партнерством в Республике Казахстан

На современном этапе экономического развития Республики Казахстан взаимовыгодное сотрудничество государственных органов и предпринимателей в отраслях, традиционно относящихся к сфере ответственности государства, на условиях сбалансированного распределения рисков, выгод и затрат, прав и обязанностей, определяемых в соответствующих договорах, является достаточно привлекательной нишей для проведения исследовательской работы. В связи с этим авторами статьи проведена определенная работа в исследовании актуальных вопросов с точки зрения современного менеджмента в изучении государственно-частного партнерства. Обоснована необходимость и выявлены характерные черты, которые позволяют выделить партнерство в самостоятельную экономическую категорию. Проводится параллель экономико-правовых аспектов функционирования государственных органов и предпринимателей в решении ключевых вопросов. Определен факт, что партнерство государства и бизнеса является положительным явлением в развитии экономики страны. Концептуально показано, что в рамках государственно-частного партнерства каждая форма сотрудничества имеет свои специфические особенности, в частности и в вопросах собственности, что требует индивидуального подхода к каждой отдельно взятой форме сотрудничества. Рассмотрен ряд нормативно-законодательных документов, принятых в Казахстане в последнее время для поддержки и развития предпринимательской деятельности. По результатам проведенного авторского исследования определены проблемные вопросы, в том числе выявлена, необходимость институциональных преобразований в процессе взаимодействия государства и бизнеса.

Ключевые слова: экономика, структурные изменения, государственно-частное партнерство, сотрудничество, законодательство, концессия, контракт, предпринимательская деятельность.

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