



Society Member :
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Society Member Number:
Nº62

Sections:
Legal

Country:
Kazakhstan

Paper Title :
Regulation of PPPs in Kazakhstan Healthcare Sector – what is still missing?

YEAR 2 – BOOK 2
Barcelona 16th October 2020 to 16th November 2020
(papers published during 1 month time – ongoing session)
Final print 16th November 2020 with ISBN Number

The ISPPPS Papers
“The PPP Think Tank”

Article number 22 – Book 2

Regulation of PPPs in Kazakhstan Healthcare Sector – what is still missing?

Why PPP could be viewed as a solution?

Currently, in the healthcare sector of the Republic of Kazakhstan the population has uneven access to medical services. In particular, this problem concerns access to high-quality medical services in rural and sparsely populated areas. In this regard, for several years now there has been a discussion at both the public and private level about the construction, modernization and reconstruction of medical facilities, including multi-profile hospitals.

As part of the implementation of «the Plan of the Nation - 100 concrete steps» there was listed some sets of actions such as a development of the private health sector, adoption of corporate governance and conducting the privatization of public hospitals.

The main purpose of those sets of actions is creating and maintaining the infrastructure and material base of healthcare institutions to ensure the quality and availability of medical care based on modern advanced technologies and scientific know-how, conducting clinical and laboratory research with the transfer of results to practical healthcare, ensuring the quality of clinical training of university students and retraining of doctors. It is understood that the development of such infrastructure will require high costs, which is a burden on the state budget. In this connection Kazakhstan Government believes that using public-private partnership (PPP) schemes could be one of the bests mechanisms for attracting investment and to reduce the burden on the budget by involving the private sector to manage the state assets.

The existing various state programs and strategic documents are aimed to develop cooperation between the state and the private sector for the implementation of projects in the healthcare system. In particular, the state program for the development of healthcare in the Republic of Kazakhstan for 2020-2025 provides as the main directions for improving the provision of medical care creating a single digital space for the healthcare industry, improving the investment climate in the medical industry, and effective management of state governing bodies. Also, according to the program, over the next seven years, it is planned to take measures to implement 14 large PPP projects. In the official messages of the President of the Republic of Kazakhstan as of 31 January 2017 and 30 November 2015, it was announced that “PPP should become the main mechanism for the development of infrastructure, including social” and “to “unload” expenditures within the budget, and it is necessary to actively use the mechanisms of public-private partnership”.

Legislative challenges with the introduction of PPP schemes in the healthcare sector

Based on the experience of countries that actively employ PPP mechanisms in the healthcare system, it is possible to identify the main risks that can inhibit the spread of PPPs. As such risks, the long payback period of social projects is highlighted. In Kazakhstan, in addition to this risk, there are also such barriers as the imperfection of the legislative and regulatory framework both at the level of general PPP legislation and at the level of specialized legislation in the sector itself. Kazakhstan has made substantial progress through constant work to remove many of the barriers that have negatively affected the planning or implementation of PPP projects. In particular, in the process of implementing PPP projects over the course of several years, a huge number of legal obstacles have been identified that hindered their active use. And to eliminate such barriers, legislation is systematically amended and supplemented. At the same time, there are several challenges in the sector-specific legislation, which must be addressed already now. For example, in the healthcare sector, one of the issues that arise already at the planning stage of PPP projects is the following - when it comes to the planning of the costs associated with the future operation and maintenance of facilities by the private partner (concessionaire) the current laws do not divide and distinguish between such costs and the costs that are already compensated by the state budget to the existing hospitals within the tariffs for the guaranteed package of free medical care. This situation leads to duplication of budgetary payments for the same work/service under the PPP project due to the fact that when the compensation for operation costs is paid to the concessionaire, such compensation also includes the costs of maintenance of the facility under the existing tariffs for the guaranteed package of free medical care.

The absence of an industry operator in the healthcare sector also makes it difficult to tackle many health problems successfully. The constantly growing demand for medical services faces several unresolved issues. For instance, there is no essential comprehensiveness in the management and development of whole infrastructure, and there is an uneven use of the capacities of existing facilities. In the practice of a number of countries, monitoring of such issues is given to industry operators, which makes it possible to eliminate the existing imbalances in the development of social infrastructure between regions of the state.

Recently comprehensive amendments to the legislation of the Republic of Kazakhstan were introduced to introduce a national medical operator who is responsible for investment programs and PPP projects in healthcare, determine its authority and the procedure for its establishment.

Possible forms of PPP in the Kazakhstan healthcare sector

Based on a number of approved state programs, including the framework of the state healthcare development program “Densaulyk” for 2016-2019, many forms of cooperation between the public and private sectors are presented, in particular, such as:

- expanding the participation of private medical organizations in the provision of the full range of services included in the guaranteed volume of medical care and compulsory medical insurance;
- transfer of certain types of medical and non-medical services (laboratories, radiological services, cleaning, provision of food, purchase of tangible and intangible assets, maintenance of medical equipment, etc.) into long-term outsourcing;
- transfer of state and local healthcare organizations to trust management to private companies, including foreign ones;
- attracting private investment for the construction of healthcare facilities under various concession models;
- privatization;
- involvement of private companies to ensure the equipment and effective functioning of medical equipment, laboratory services and IT systems in healthcare” and others.

In accordance with the Decree of the Government of the Republic of Kazakhstan dated 6 November 2017 No. 710 “On approval of the list of objects that are not subject to transfer for the implementation of public-private partnerships, including concession”, the organizations operating in the field of blood transfusion services and HIV/AIDS prevention, disaster medicine organizations cannot be transferred to PPP.

Possible mechanisms for implementation of PPP schemes in Kazakhstan healthcare sector

At this stage the Republic of Kazakhstan is planning a PPP project in the healthcare sector, the following mechanisms are primarily considered for use: infrastructural PPP without the provision of medical services (an attractive mechanism for large projects), PPP with the provision of medical services and without reimbursement of investment costs (an attractive mechanism for small private projects under the build-transfer-operate (BTO) scheme) and PPP with the provision of medical services and with reimbursement of investment costs (an attractive mechanism, for both small and medium-sized projects under the BTO scheme).

For the purpose of attracting foreign partners, by considering the possibilities of the current legislation, and also taking into account the fact that private partners often do not want to bear the risks of patient flow. Infrastructure PPP without the provision of medical services is the most attractive for the implementation of large projects required by the Republic of Kazakhstan.

Such a mechanism is not new and, in many countries, including European countries, in PPP projects the private sector finances builds and maintains infrastructure facilities, while the public partner reimburses the private partner for capital and operating costs and is

responsible for the provision of clinical services. Thus, a private investor is not responsible for the risks associated with the medical aspects of the clinic's activities.

At the meeting of the Government of the Republic of Kazakhstan on 6 May 2019, the Minister of Healthcare of the Republic of Kazakhstan announced that "in order to promptly resolve issues related to the implementation of projects in the health sector, it is proposed to amend the legislation to implement PPP projects based on the experience of Turkey which employed infrastructure."

On the basis of the PPP model in Turkey, investors provide financing, the creation of the facility, its maintenance and clinical support (provision of X-ray services and MRI, laboratory tests, sterilization of premises). The provision of medical services remains with the public sector. To implement a similar model in the Republic of Kazakhstan, at the end of 2019, comprehensive amendments were made to the legislation, including the legislation on concessions, to the Code of the Republic of Kazakhstan dated 18 September 2009 No. 193-IV "On people's health and the healthcare system", as well as to legislation on state property. Such amendments consolidate the grounds for the introduction of a medical operator into concession projects and the implementation of concession projects based on an infrastructure model. It anchors the mechanism for determining the medical operator by the state, its rights and obligations, the procedure for the interaction of the medical operator with the grantor and the concessionaire.

Currently, the Ministry of Health of the Republic of Kazakhstan is working out a new model for Kazakhstan on potential PPP projects, and the practice of implementation of such projects will help to identify what other barriers exist in the current legislation that hinders the successful completion of PPP projects in the field of legislation.

About the author:



Saniya Perzadayeva is a Managing Partner of Unicase Law Firm. She has an advanced expertise in PPP, Finance and Securities, Renewable Energy, its knowledge base extends to legal analysis of governmental procedures, litigation, risk assessment, financial consultancy, as well as, PPP and Renewable Energy. Saniya advises the Ministry of National Economy and Ministry of Energy of the Republic of Kazakhstan, IFIs. She offers legal services to projects that are related to Central Asia and Europe. Previously to the Unicase firm, she was a lawyer at Macleod, Denton, Coudert and KPMG. She also worked for the Eurasian development bank. Saniya graduated as a lawyer at Cardiff. She is based in Almaty in Kazakhstan.