



TURKISTAN INTERNATIONAL AIRPORT: FIRST AIRPORT IN KAZAKHSTAN CONSTRUCTED UNDER PPP MODEL

Turkistan International Airport welcomed its first scheduled flight on December 1, 2020. The significance of this event is emphasized by the fact that the Turkistan International Airport is the first newly constructed airport facility from the day Kazakhstan got its independence. The airport claims the Guinness World Record as the fastest airport facility construction in the world.

The passenger terminal is capable to handle up to three million passengers annually and has a capacity of 450 passengers per hour. The airport has a runway with a length of 3,300 meters and width of 45 meters. Runway Classification Number (PCN) 60/R/A/W/T. The airport covers a total area of 905.3 hectares. The terminal area is 10.5 thousand square meters. Investment in the airport amounts to almost 69 billion KZT (approximately 160 million U.S. dollars).

This project is also unique as it is the first airport construction project in Kazakhstan successfully implemented based on the public-private partnership (PPP) model. The project was implemented within the framework of the private financial initiative without holding an open tender.

The investor of the project is the Turkish company YDA Group. The private partner in the project is a specially created project company Turkistan International Airport LLP, while the public partner is the State Institution «Department of Passenger Transport and Roads of Turkestan Region».

Our legal experts as the local legal advisers of the public partner during implementation of the project have analysed compliance of the key provisions of the PPP contract with the applicable legislation of the Republic of Kazakhstan, developed proposals and recommendations on the key and critical provisions of the PPP contract and directly participated in negotiations on the PPP contract with the private partner.

Given that this project is one of the first PPP projects in the airport construction sector of Kazakhstan, there were a lot of complex legal issues at each stage of development of the legal structure of the project. The arising issues, in particular, related to determining the mechanism for compensation of costs of the private partner, the institutional scheme of the project, responsibility of the project partners, sovereign immunity of the partner, arbitration issues, difficulties related to special economic zone regulations, PPP object ownership issues, specific issues of air traffic regulation in Kazakhstan and other.

We would like to address your attention to some general legal issues which has been raised within this particular project and other similar PPP projects implemented under the private finance initiative scheme. Thus, one of the key issues encountered by the parties during implementation of the PPP projects through private financial initiative is the development of a feasibility study and a business plan. Please find below selected questions on this topic and our respective comments.

TURKISTAN INTERNATIONAL AIRPORT: FIRST AIRPORT IN KAZAKHSTAN CONSTRUCTED UNDER PPP MODEL

- **Is a feasibility study mandatory for a private partner within private finance initiative scheme?**

The PPP Law in terms of the procedure for carrying out direct negotiations does not require obligatory development and submission of a feasibility study neither by a potential private partner nor by a potential public partner.

Nevertheless, for the purpose of a deeper and more comprehensive justification of the effectiveness of the project, especially for the large projects, the private partner may develop and submit together with the business plan a feasibility study of the project confirmed by the necessary state expertise and approvals.

- **How the figures specified in the business plan shall be confirmed (feasibility study, design estimate, etc.)?**

The "Rules for Planning and Implementation of Public-Private Partnership Projects" (hereinafter - "Rules 725") does not provide that the financial section of the business plan should contain indicators of a feasibility study or design estimate. According to the Rules 725, the financial section shall contain information on the volume of investments planned to be invested in the project.

According to the general requirements, the financial section of the business plan shall include financial and economic models, graphs, diagrams, drawings and other materials, confirming the information stipulated in the business plan. However, there is no direct requirement that such information must be confirmed by relevant technical documentation (i.e. feasibility study or design estimate). Thus, the figures indicated in the business plan can be confirmed by own calculations of the private initiator of the PPP project, which may be also prepared based on analogous projects.

- **What are the conditions for amending the business plan when it is finalised? Does the investor have the right to change the provisions of the business plan?**

In general, the law does not limit the number of amendments that can be introduced to an unapproved business plan, as well as there is no explicit prohibition on making changes to the provisions not affected by comments to the previous version of the unapproved business plan.

At the same time, if the business plan is duly approved and accepted by the public partner, then, according to the Rules 725, it is not further allowed to make changes and additions to the approved business plan without carrying out additional expert examination.



TURKISTAN INTERNATIONAL AIRPORT: FIRST AIRPORT IN KAZAKHSTAN CONSTRUCTED UNDER PPP MODEL

Despite the existing historical shortcomings of the PPP Law, this project instilled confidence that it is capable to govern large infrastructure projects, such as the construction of airports provided that the project is wisely managed and there is a professional legal support in place. Our experts have gained unique experience from participating in this huge project and are ready to apply it in the future PPP and concession projects in Kazakhstan.

© 2021 Unicase Law Firm

Юридическая фирма Unicase благодарит Вас за внимание и надеется, что данная информация окажется полезной для Вас. Информация, содержащаяся в данной публикации, предоставлена в сокращенной форме и предназначена лишь для общего ознакомления Клиентов. Просим обратить внимание, что она не может рассматриваться в качестве правового анализа и служить основанием для вынесения профессионального суждения. Юридическая фирма Unicase не несет ответственности за ущерб, причиненный каким-либо лицам в результате действия или отказа от действия на основании сведений, содержащихся в данной публикации.

© 2021 Unicase Law Firm

Unicase Law Firm thanks you for your attention and hopes that this information will be useful to you. The information contained in this publication is provided in an abbreviated form and is intended only for general familiarization of customer. Please note that this information cannot be considered as a legal analysis and serve as the basis for professional judgment. Unicase Law Firm is not liable for damage caused to any person as a result of an action or refusal of action based on the information contained in this publication.