



On approval of the Rules for the selection and conditions for the implementation of the activities of a temporary executor under the basic contract with project financing with the participation of the state

Unofficial translation

Decree of the Government of the Republic of Kazakhstan dated April 26, 2012 No. 532

Unofficial translation

In accordance with paragraph 3 of Article 6-9 of the Law of the Republic of Kazakhstan dated February 20, 2006 “On project financing and securitization”, the Government of the Republic of Kazakhstan **DECIDES**:

1. Approve the attached Rules for the selection and conditions for the implementation of the activities of a temporary executor under the basic contract with project financing with the participation of the state.

2. This Resolution shall be enforced upon the expiration of ten calendar days from the date of the first official publication.

Prime Minister

Republic of Kazakhstan

K. Massimov

Approved

by the Decree of the Government of the
Republic of Kazakhstan
dated April 26, 2012 No. 532

**Rules for
the selection and conditions for the implementation of the activities of
a temporary executor under the basic contract with project financing with the participation of the
state**

1. General provisions

1. These Rules for the selection and conditions for the activities of a temporary executor under the basic agreement with project financing with the participation of the state (hereinafter referred to as the Rules) are developed in accordance with paragraph 3 of Article 6 -9 of the Law of the Republic of Kazakhstan dated February 20, 2006 “On project financing and securitization” (hereinafter referred to as the Law) and determine the procedure for selecting a temporary executor under the basic contract, as well as the conditions for the implementation of his activities.

2. The following basic concepts are used in the Rules:

1) basic contract - a written agreement under which one party undertakes to create and transfer property to the other party or provide services and (or) produce goods and (or) perform work in the process of using the created property;

2) temporary executor - a legal entity or an association of creditors on the basis of a joint activity agreement (consortium, simple partnership), temporarily managing the implementation of the base agreement in accordance with the agreement on the temporary performance of the base agreement;

3) agreement on temporary performance of the base agreement - an agreement concluded between the customer and the temporary executor, which determines the conditions for the temporary management of the implementation of the base agreement when replacing the contractor under the base agreement;

4) creditor - an individual who is a bondholder, or a legal entity that provides lending for project financing;

5) customer - an individual or legal entity, a state represented by the Government or a local executive body, as well as state bodies authorized by them, on the instructions of which the basic contract is being implemented;

6) contractor - a legal entity that, in accordance with the basic contract, creates and transfers property, as well as provides services and (or) produces goods and (or) performs work in the process of using the created property.

2. The procedure for choosing a temporary executor under the basic contract

3. A temporary executor under the basic contract may be engaged by the customer for the duration of the tender for the selection of a new executor under the basic contract.

4. The involvement of a temporary executor in the management of the implementation of the basic contract is carried out by the customer in agreement with the creditors within the time limits specified in paragraph 10 of these Rules.

5. The customer, in accordance with the procedure established by paragraph 1 of Article 6 -9 of the Law, sends creditors a notice of refusal to perform the basic contract, in which, if necessary, the candidate for a temporary executor proposed by the customer is indicated. Creditors, within thirty calendar days from the date of receipt of the notification, agree on the candidacy of the interim executor proposed by the customer, or submit their own candidature for its approval.

6. In order to manage the implementation of the base agreement, all creditors who have expressed a desire to participate in the management of the base agreement can take part as a temporary executor on the basis of a joint activity agreement (consortium, simple partnership)

7. The candidacy of a temporary executor under the basic contract is considered approved if the decision to approve the candidacy was made by the creditors, the amount of the

obligations of the executor to which is not less than two thirds of the total amount of accounts payable to creditors.

8. The following requirements are imposed on the candidacy of an interim executor:

- 1) have legal capacity (for legal entities), legal capacity (for individuals);
- 2) be solvent, have no tax debt for a period exceeding three months;
- 3) not be subject to bankruptcy or liquidation proceedings.

9. A potential temporary executor, in confirmation of compliance with the requirements provided for in paragraph 8 of these Rules, shall submit the relevant documents at the request of the customer.

3. Conditions for the implementation of the activities of a temporary executor

10. Between the temporary executor and the customer, within fifteen calendar days from the date of agreement or submission by the creditors of the candidature of the temporary executor, an agreement on the temporary performance of the basic contract is concluded.

11. The agreement on the temporary performance of the base contract determines the scope of the rights and obligations of the temporary executor, including the terms of his liability to the customer and creditors, the procedure for reimbursement of costs and other conditions.

12. Unless otherwise provided by the contract on the temporary performance of the base contract, the rights and obligations of the performer that exist at the time of the conclusion of the contract on the temporary performance of the base contract are transferred to the temporary executor in full.

13. A temporary performer is paid remuneration, if it is provided for by the contract on the temporary performance of the base contract.

14. In the case provided for by paragraph 6 of these Rules, unless otherwise provided by the agreement on joint activities, the creditor, when making decisions on managing the implementation of the underlying agreement, has the number of votes proportional to its share in the total volume of claims against the debtor.

When making decisions on behalf of bondholders, their representative shall act, determined in accordance with the legislation on the securities market. The number of votes when making decisions by the bondholders' representative is determined by consolidating the amount of claims of the bondholders on behalf of whom he acts.

15. If a new contractor is selected under the basic contract, the terms of the basic contract take into account changes related to the actually performed temporary acting duties, and proposals submitted by the new contractor containing more favorable terms compared to the previous terms of the basic contract.

16. The basic contract is considered terminated with the current contractor from the moment the basic contract is concluded with the new contractor.

17. The rights and obligations of the temporary executor terminate from the moment the basic contract is concluded between the new executor and the customer.

© 2012. «Institute of legislation and legal information of the Republic of Kazakhstan» of the Ministry of Justice of the Republic of Kazakhstan