

## **ANNEX XI**

The Law of the Republic of Kazakhstan N 178-II dated April 25, 2001

### **On Development Bank of Kazakhstan**

(as amended through the Laws of the Republic of Kazakhstan No 416-II, May 16, 2003; No 434-II, June 11, 2003; No 483-II, July 10, 2003; No 571-II, July 6, 2004; No 11-III, December 13, 2004; No 13-III, December 20, 2004)

#### Chapter 1. General Provisions

##### Article 1. Development Bank of Kazakhstan and its status

The Development Bank of Kazakhstan (further – Development Bank) is the Joint Stock Company with the 100% state participation.

##### Article 2. Legal regulation of the Bank's activity

1. Legislation on the Development Bank of Kazakhstan is based on the Constitution of the Republic of Kazakhstan and consists of this Law and other legal documents.

2. Legislation of the Republic of Kazakhstan, governing banking activity shall apply to the Bank in the part not covered by this Law.

3. The Bank's investment priorities, quantity restrictions on loan attractions, limits, directions, possible conditions, process and terms of financing, the placement of equity capital, co-financing, granting of guarantees, the agent functions are stated in the Memorandum on Credit Policy of the Bank (further – Memorandum), approved by the Government of the Republic of Kazakhstan.

##### Article 3. Aims and objectives of the Bank

1. Aims of the Bank's activity are to improve and increase the effectiveness of State investment activity, to develop the production infrastructure and manufacturing industry, and to promote the attraction of domestic and foreign investments into the national economy.

##### 2. Objectives of the Bank:

1) Medium- (for the period of five years and more) and long-term (for the period of ten years and more – up to twenty years) financing of investment projects;

2) Financing of export operations of the residents of the Republic of Kazakhstan with the aim to promote export of the goods produced in the Republic of Kazakhstan (further – export operations);

3) Stimulation of financing in the production sector of the economy of the Republic of Kazakhstan by granting guaranteed obligations for loans and credits extended by other credit institutions and co-financing as well;

4) Improvement of financing mechanism for investment projects, implemented by the Government of the Republic of Kazakhstan;

5) Other objectives set in accordance with legislative acts of the Republic of Kazakhstan.

#### Article 4. Functions of the Development Bank

##### 1. The Bank fulfils the following functions:

- 1) Selection and financing -including co-financing- of investment projects and export operations - except national and regional investment projects – in accordance with the Memorandum;
- 2) Acting as an agent for servicing the national and regional investment projects financed on return base as well as projects financed out of proceeds of loans guaranteed by the Government;
- 3) Carrying out the bank examination of the national and regional investment projects, offered for financing on return base as well as projects provided for financing out of proceeds of loans guaranteed by the Government;
- 4) Monitoring of the Bank borrowers' financial conditions and implementation of the national and regional investment projects serviced by the Bank as well as projects financed out of the proceeds of loans;
- 5) Taking measures for the insuring of the fulfillment of obligations by the Bank borrowers;
- 6) Receiving, servicing and the repayment of non-governmental loans, including those guaranteed by the Government;
- 7) The fulfillment of agent functions in service of loans guaranteed by the Government, the return of the funds taken from the Republican budget to carry out the obligations on state guarantees and the fulfillment of other debt liabilities of juridical persons by the Government of the Republic of Kazakhstan.

2. The function of the Bank stated in this Article 1 (2), is related to its exclusive competence with the exceptions when the budget financing is realized through organizations specifically established by the Government of the Republic of Kazakhstan.

#### Article 5. Powers of the Bank

The Development Bank has a right:

1. to define its credit policy for fiscal year in accordance with the Memorandum;
2. to define the advisability of financing the investment projects on return basis according to the results of the bank examination and analysis of borrower's creditworthiness;
3. to attract experts and consultants for the bank examination;
4. to attract loan funds, including the loans funds of republican and local budgets, within the limits defined in the Memorandum;
  - 4.1 to place free funds, including loan funds, on the foreign and domestic markets of high liquid financial instruments within the limits and procedures defined in the Memorandum.
5. to select investment projects, except national and regional investment projects and their financing including co-financing within the limits defined in the Memorandum.
6. to grant its own guarantees, the total sum of which is defined in the Memorandum;

7. to act as an organizer and participant of borrowing with involvement of domestic and foreign banks and other financial institutions.

Article 6. The relationship of the Development Bank with the governmental structures of the Republic of Kazakhstan

1. In accordance with the legislation of the Republic of Kazakhstan, Governmental institution having the right to and possess the state shareholdings of the Bank:

1) it coordinates and involves in the Bank's interrelations with governmental institutions concerning legal, financial and other security of its activity in accordance with the legislation of the Republic of Kazakhstan.

2) it controls the observance of the Memorandum by the Bank.

2. The authorized state body on the regulation and supervision of the financial market and the financial organizations and the National Bank of the Republic of Kazakhstan within the limits of the powers determined by legal acts of the Republic of Kazakhstan, exercise the control of execution by the Development Bank of the legislation of the Republic of Kazakhstan that regulated the activity of the financial organizations, except for normative legal acts on the prudential regulation of banks and reserve requirements.

3. Other powers of governmental organizations regarding the relationships with the Bank are executed in accordance with the legislation of the Republic of Kazakhstan.

4. Any intervention of the State organizations and its officials into the Bank's activity is prohibited except cases set forth in the legislative acts of the Republic of Kazakhstan.

## Chapter 2. The Development Bank's activity

Article 7. Operations of the Bank:

The Bank conducts the following operations to fulfill its functions in national and foreign currencies without the license of the authorized state body on regulation and supervision of the financial market and the financial organizations:

1) borrowed function: the granting loans in the monetary form on conditions of paying, recurrency to juridical persons in view of the restrictions stated in Article 15, (1) of this Law;

2) the issues of banking warrants in the monetary form to juridical persons in view of the restrictions stated in Article 15, (1) of this Law;

3) the issues of banking guarantees and other liabilities in the monetary form for juridical persons excepting the entities stated in Article 15, (1) of this Law;

4) the opening and confirmation of the letter of credit and discharge of obligations on it;

5) Opening and management of correspondent accounts of the banks and organizations which are carrying out some types of banking operations, with a view of liquidity management of the Development Bank;

6) the opening and management of the bank accounts for crediting of the Bank's loans, other loans and funds of the Republican and local budgets to realize payments and money transfer provided in the agreements concluded within investment projects and export operations serviced by the Bank. With all this cash amount on the bank accounts should not exceed the volume of respective transactions stipulated in this point;

- 7) the opening and management of special accounts of conditional deposits and reserve accounts in accordance with agreements on loans guaranteed by the Government;
- 8) the opening and management of the bank accounts for transfer of funds with a view of the maintenance of obligations of juridical persons before the Bank;
- 9) the implementation of estimations on the instructions of Bank's borrowers, banks - correspondents, the organizations which are carrying out some types of banking operations, under their bank accounts;
- 10) transfer operations: the fulfillment of instructions of juridical persons on remittance;
- 11) reception for collection payment documents (except for bills) for the benefit of borrowers of the Bank;
- 12) Reception of deposits of banks with a view of maintenance of liquidity of the Development Bank;
- 13) dealing operations with government securities, as well as other securities in the cases established by the banking legislation of the Republic of Kazakhstan, the present Law and the Memorandum;
- 14) leasing activity;
- 15) the issue of emissive securities;
- 16) the leasing of the Bank's property.

#### Article 8. Conducting the bank examination by the Bank

1. The Bank conducts the bank examinations of the projects stated in Article 4 (point 1.3) of this Law.
2. The Bank's conclusions on the outcome of investment project examinations should contain the results on project effectiveness, borrower's creditworthiness and solvency, the security of loan repayment, the type and terms of financing and also on the advisability of investment project financed on return basis.
3. The consideration of investment projects offered for financing on return basis out of the funds of state budget or proceeds of loans guaranteed by the Government is accomplished according to the legislation of the Republic of Kazakhstan with the Bank's positive conclusion on the results of bank examination.
4. The Bank holds investment projects examination on long-term basis with account of restrictions stated in the Memorandum.

#### Article 9. Loans used and attracted by the Bank out of the funds of Republican and local budgets

1. The Bank obtains loans from the Republican and local budgets exclusively on conditions of payment, terms and return.
2. The order and conditions of loan granting, using and repayment obtained by the Bank from the Republican and local budgets are determined by the legislation of the Republic of Kazakhstan.

3. Loans attracted from the Republican and local budgets are utilized for Bank's financing of the projects selected independently by it in accordance with the Memorandum.

#### Article 10. The Bank's fulfillment of agent functions

1. The Bank fulfills the agent functions on investment projects stated in Article 4 (point 1.3) of this Law in accordance with agreements concluded for agent servicing.

2. The financing of investment projects – where the Bank acts as an agent – out of the funds of the Republican and local budgets is realized by the administrators of budget programs through the funds transfer to the Bank.

3. At the termination or pre-term cessation of investment project implementation, the Bank returns the remaining funds to the corresponding budgets.

4. The Bank fulfills the agent functions for non-governmental loans guaranteed by the Government, attracted to finance the projects according to the legislation of the Republic of Kazakhstan.

#### Article 11. Monitoring of investment projects implementation, serviced by the Bank

1. The Bank can conduct the monitoring of investment projects serviced by it in accordance with agreements on agent servicing:

- 1) the financing schemes of project implementation;
- 2) borrowers' financial conditions;
- 3) actual work done, services provided for project implementation.

2. In accordance with agreements on agent servicing the Bank annually conducts the analysis of implementation and the financing of investment projects with the assessment of results confirming to projects technical-economical indices and presents corresponding conclusion to authorized entity for economic planning.

#### Article 12. Loan granting by the Bank

1. The Bank finances investment projects and export operations in accordance with the order and terms set by the Memorandum. The size of fee rates on granted credits is calculated according to the average value of loan and operational expenses of the Bank.

2. Loans granted by the Bank should be provided with highly liquid assets (government securities, issuers' securities, guarantees of the second-tier banks and other methods to secure the fulfillment of the obligations provided by the legislation) in accordance with the Memorandum.

#### Article 13. The loan attraction by the Bank

1. The Bank obtains loans guaranteeing the loan return from its own assets or at state guarantees of the Republic of Kazakhstan.

1-1. Debt securities issued by the Bank are the agent bonds from the moment when the Bank receives the status of financial agency within the Laws of the Republic of Kazakhstan on Securities Market.

2. The rights of the Government of the Republic of Kazakhstan and local authorities to claim the debts of the Bank are terminated for reasons, stated by the civil legislation of the Republic of Kazakhstan.

3. The Bank has a right within the laws of the Republic of Kazakhstan to trust to its agents all or a part of the operations connected with the placing, the repayments of securities and other debt obligations of the Bank as well as fee payments.

Article 14. The Bank's participation in the Charter capital of juridical persons

The Bank within the Memorandum and legislation of the Republic of Kazakhstan participates in the charter capitals of other juridical persons in cases:

- 1) the Bank recovers for participation or juridical persons shares previously formed by the Bank as a collateral with the aim of its further realization;
- 2) the participation in the charter capital of juridical persons, which established by professional participants of security market (stock exchange, central depository);
- 3) the participation in the charter capital of leasing companies.

Article 15. The restrictions of the Bank's activity

The Bank is prohibited to:

- 1) grant credits and guarantees to natural persons and second- tier banks, credit associations, non-governmental pension funds, pension funds companies, investment funds, insurance organizations, leasing companies and other credit organization;
- 2) attract deposits, open bank accounts to natural and juridical persons, except cases stated in Article 7, (5-8,12) of this Law;
- 3) grant loans without securing of their return;
- 4) maintain cash-settlement servicing and participate in the charter capital of juridical persons, except cases stated in this Law;
- 5) make additional foreign and domestic borrowings with the presence of overdue (more than one year) obligations for the previously attracted loans.

Chapter 3. The Bank's capital and income

Article 16. The Charter capital of the Bank

1. The charter capital of the Bank is not less than 30 billion tenge and it is formed by the Republican and local budgets;
2. The Government is the shareholding of the Bank;
3. The order and terms of the Charter capital formation is defined by the incorporation documents of the Bank.
4. The Charter capital of the Bank cannot be used for financing, except the financing of export operations in accordance with the Memorandum, and it is invested on the foreign and domestic markets of high liquidity financial instruments, including for purchasing the shares in accordance with the Article 14 of this Law.

#### Article 17. The Bank's forming reserves

The Bank forms reserves for classified assets and contingent liabilities in accordance with statutory acts of the National Bank of the Republic of Kazakhstan.

#### Article 18. The distribution of Net Income

The Net Income of the Bank goes directly to the forming of reserve capital reported in the Bank's annual report.

### Chapter 4. Accounting, report and independent audit of the Bank

#### Article 19. Accounting policy of the Bank

1. The Board of Directors of the Bank confirms the accounting policy of the Bank annually.
2. The Development Bank of Kazakhstan conducts the accounting according to the National accounting standards.

#### Article 20. Reporting policy of the Bank

The Bank provides the reports on:

- 1) the expenses of the Republican budget funds to the Ministry of Finance of the Republic of Kazakhstan monthly;
- 2) the expenses of the local budgets funds to the local authorities monthly;
- 3) the implementation of loan funds from the Republican budget to the authorized structures responsible for the budget implementation and the budget planning; from the local budget to the local executive powers monthly;
- 4) the annual financial report audited and then approved by General Stockholders' Meeting, not later than April 1st – to the Parliament and Government of the Republic of Kazakhstan.

#### Article 21. Audit of the Bank

1. The audit (outside audit) of the Bank's operations is conducted annually by the audit organization (auditor), chosen by General Stockholders' Meeting.
2. The contract on the audit of the Bank's activity is concluded with the auditor by the Chairman of the Board of Directors and approved by the Board of Directors.
3. The annual financial statement of the Bank is examined and approved by General Stockholders' Meeting on the completion of the audit.

### Chapter 5. Management of the Bank

#### Article 22. Stockholders of the Bank

The stockholders of the Bank are the Government of the Republic of Kazakhstan and local authorities of the Republic of Kazakhstan.

#### Article 23. The Bank's Units

1. The bodies of the Bank are:

- 1) The Supreme body – General Stockholders' Meeting;
- 2) The Management body – the Board of Directors;
- 3) The Executive body – the President of the Bank;
- 4) The Control body – Inspection committee (auditor).

2. The functions, full rights and operations of the Bank's bodies are considered and approved by this Law and the Charter of the Bank.

#### Article 24. The Board of Directors of the Bank

1. The Board of Directors of the Bank consists of seven members including the Chairman who are elected by General Stockholders' Meeting of the Bank.
2. The President of the Republic of Kazakhstan nominates three persons to the Board of Directors of the Bank.
3. The Government of the Republic of Kazakhstan:
  - 1) nominates four persons to the Board of Directors of the Bank.
  - 2) recommends to General Stockholders' Meeting the candidature of the President of the Bank of a list of members of the Board of Directors.
4. The Chairman of the Board of Directors of the Bank is elected by General Stockholders' Meeting of the Bank for not more than two years.
5. General Stockholders' Meeting elects the Board of Directors from candidates determined according to the rules, stated in this Article 2, 3.

The members of the Board of Directors can be non-governmental officials.

6. The Board of Directors of the Bank confirms the budget of the Bank for each fiscal year and other rules, governed the activity of the Bank. It also appoints and dismisses Vice-Presidents of the Bank, head of the structural division of the internal audit, as well as realizes other powers stated in the legislation of the Republic of Kazakhstan.

#### Article 25. The President of the Bank

1. The President of the Bank is the executive body of the Bank and the member of the Board of Directors.
2. The President of the Bank is appointed and dismissed by General Stockholders' Meeting on recommendation of the Government of the Republic of Kazakhstan.
3. The President of the Bank, according to the Charter, has the powers to make operative and executive decisions on the Bank's activities, to make deals and agreements on behalf of the Bank.

#### Chapter 6. Additional Provisions

Article 26 has been eliminated under the Law of the Republic of Kazakhstan No 11-III of December 13, 2004 (effective since 01.01.05)



Article 27. The responsibility of the Bank and settlement of disputes

1. The Bank is responsible for non-fulfillment of its obligations, specified in the legislation of the Republic of Kazakhstan.
2. All disputes that may arise between the Bank and local authorities, government organizations, juridical persons are to be settled under the Law of the Republic of Kazakhstan.
3. Persons who are guilty in this Law infringement are responsible, according to the legislative acts of the Republic of Kazakhstan.

President of the Republic of Kazakhstan

Nursultan A. Nazarbayev