

Annex VIII

LAW OF THE REPUBLIC OF KAZAKHSTAN

On Amendments and Addenda to Legislative Acts of the Republic of Kazakhstan on the Activity of Subjects of Natural Monopolies

Article 1. To change and amend the following legislative acts of the Republic of Kazakhstan:

1. In the Law of the Republic of Kazakhstan “On Natural Monopolies” of July 9, 1998 (Gazette of the Parliament of the Republic of Kazakhstan, 1998, N 16, p. 214; 1999, N 19, p. 646; 2000, N 3-4, p. 66; 2001, N 23, p. 309; 2002, N 23-24, p. 193; 2004, N 14, p. 82):

1) paragraph 1 of Article 2

to change the word "regulates" with the words "applies to";

2) Article 3 to reword as follows:

"Article 3. Basic concepts used in the present Law

The following basic concepts shall be used in the present Law:

1) *affiliated person of the subject of natural monopoly* – a person (with the exception of state bodies carrying out regulation of its activities within the limits of the granted authorities), which can directly and (or) indirectly make decisions, and (or) influence the decisions made by the subject of natural monopoly, including those, made on the basis of an agreement, a verbal agreement included, or those made on the basis of other transaction, as well as any person, in relation to which the subject of natural monopoly has such a right;

2) *temporary compensatory tariff* – a tariff (price, fee rate) established by an authorized body with the purpose of compensating consumers' losses caused by a subject of natural monopoly;

3) *temporary decreasing coefficient* – a value established by an authorized body and applied to the tariff (price, fee rate) with the purpose to protect interests of consumers and a subject of natural monopoly;

4) *universal services* – provision of services (goods, works) by subjects of natural monopolies to all consumers within a certain territory of the Republic of Kazakhstan where subjects of natural monopolies carry out their activity and are able to provide services (goods, works);

5) *a group of persons* – an aggregate of natural and (or) juridical persons, possessing ten or more percent of voting shares (equities) of a subject of natural monopoly, who jointly based on an agreement, have a right to directly or indirectly make decisions and (or) influence the decisions made by the subject of natural monopoly;

6) *long-term period* – a time interval longer than five years;

7) *natural monopoly* – a state of the market of services (goods, works), when the creation of competitive conditions for satisfaction of demand for a certain type of services (goods, works) is impossible, or is economically inexpedient due to the technological characteristics of production and provision of a given type of services (goods, works);

8) *investment program* – a program of investment and return of funds directed towards creation of new assets, extension, recovery, renewal, and support of existing assets, reconstruction and technical re-equipment of fixed assets of a subject of natural monopoly for short-term, medium-term, and long-term periods, to attain technical and economic impact, that includes one or several investment projects;

9) *investment project* – a complex of measurements, providing for investments into establishment of new, and extension and renewal of existing productions;

10) *investment tariff (price, fee rate)* – a tariff, or its maximum value, for regulated services (goods, works) of a subject of natural monopoly, rendered at newly established objects, effective

until full payback of investments, and approved by an authorized body within the framework of one investment project;

11) *short-term period* – a time interval of up to one year, inclusive;

12) *non-purpose-oriented use of funds of amortization charges* – directing the funds stipulated in the approved tariffs (prices, fees rates), and (or) in tariff estimates, on the account of amortization charges, towards purposes that are not related to capital investments into fixed assets to be used in rendering of regulated services (goods, works) and with repayment of principal on attracted credit resources;

13) *consumer* – natural or juridical person, that uses regulated services (goods, works) of a subject of natural monopoly;

14) *maximum tariff (prices, fee rates) rate* – a maximal value of a tariff (price, fee rate) for a regulated service (good, work) of a subject of natural monopoly, approved for a medium-term or long-term period;

15) *public hearings* – a procedure of discussion of a draft tariff (price, fee rate), or its maximum rate, for regulated services (goods, works) of a subject of natural monopoly, with involvement of deputies, representatives of state bodies, consumers and their associations, independent experts, mass media, and subjects of natural monopolies;

16) *regulated services (goods, works) of a subject of natural monopoly* – services (goods, works) provided by a subject of natural monopoly in the field of natural monopoly, that are subject to state regulation by an authorized body, including the cases of provision of services (goods, works) in the form of transfer of certain products to the consumer;

17) *medium-term period* – a time interval longer than one year and up to five years, inclusive;

18) *a subject of natural monopoly* – an individual entrepreneur or a juridical person, dealing with manufacture of products, performance of works, and (or) provision of services to consumers in the conditions of natural monopoly;

19) *field of natural monopoly* – field of social relations, arising on markets of services (goods, works), on the basis of which an individual entrepreneur or a juridical person may be qualified as a subject of natural monopoly;

20) *tariff (price, fee rate)* – monetary expression of the value of regulated services (goods, works) of a subject of natural monopoly, approved by an authorized body;

21) *tariff estimates* – indicators of revenue and expenditures items, volumes of rendered regulated services (goods, works), and other economic indicators of the activity of a subject of natural monopoly, to be approved by an authorized body annually and (or) for medium-term, or long-term period, in the context of regulated services (goods, works), in accordance with the form approved by the authorized body;

22) *technical evaluation* – analysis of technical condition (technical characteristics) of used assets and the necessity to carry out works that ensure maintenance of assets in working condition, as well as analysis of efficiency of technological process, including conformity of established norms of material and labor costs, production technology, evaluation of necessity to implement investment programs and (or) investment projects, the level of use and correctness of distribution of fixed assets by types of rendered regulated services (goods, works);

23) *authorized body* – a state body that carries out control and regulation of activities in the field of natural monopoly;

24) *financial evaluation* – analysis of financial and economic activity of a subject of natural monopoly with the purpose to assess the execution of the legislation of the Republic of Kazakhstan concerning natural monopolies and the decisions made by an authorized body; analysis of distribution of revenues, expenditures and used assets by each type of regulated services (goods, works), and in general by other types of activity in accordance with the procedure approved by an authorized body; as well as analysis of the influence of the applied tariffs (prices, fees rates) on financial indicators of the activity of a subject of natural monopoly,

examination (appraisal) of implementation of tariff estimates and observance of accounting policy, as well as of implementation of investment programs and (or) investment projects;

25) *emergency regulating measures* – measures taken by an authorized body with the purpose to protect life and health of citizens, property of natural and juridical persons, as well as for the environment protection.";

3) Article 4 to reword as follows:

"Article 4. Fields of Natural Monopolies

1. The following services (goods, works) are classified in the Republic of Kazakhstan as natural monopolies:

1) transportation of oil and (or) oil products through the main pipelines;

2) storage and transportation of gas or gas condensate through the main pipelines and (or) distribution pipelines, operation of gas-distribution units and connected gas-distribution pipelines;

3) transmission and (or) distribution of electricity and heat;

4) production of heat;

5) services in technical dispatching of release and consumption of electric energy;

6) services of the main-line railway networks;

7) services of the spur tracks;

8) air navigation services;

9) services of seaports and airports;

10) telecommunication services in cases where there was no competition between communication operators due to either technological unfeasibility or to economic inexpedience of rendering of this type of services, with the exception of universal telecommunication services;

11) services related to the proprietary renting (leasing) and provision of access to cable channels or other fixed assets that are technologically combined with connecting telecommunication network to universal telecommunication network;

12) services of water management and (or) sewerage systems;

13) public postal services.

2. An authorized body carries out the analysis of the fields of natural monopolies listed in paragraph 1 of the present Article, with the object of qualifying services (goods, works) rendered by subjects of natural monopolies within the framework of these fields, as regulated ones.

The list of regulated services (goods, works) shall be approved by the Government of the Republic of Kazakhstan upon submission by an authorized body.

3. Subjects of natural monopolies shall be listed in the State Register of Subjects of Natural Monopolies which consists of national level and local level chapters, with indication of the specific types of regulated services (goods, works) rendered.

The procedure for entering and exclusion of subjects of natural monopolies from the State Register shall be established by an authorized body.";

4) in Article 5:

in the heading, to change words "of natural monopoly" with words "of natural monopolies";

in paragraph 1:

sub-paragraphs 1) and 2) to reword as follows:

"1) render services and carry out any other activity that is not classified as a natural monopoly, with the exception of the following activities:

technologically connected with regulated services (goods, works);

established by the legislation of the Republic of Kazakhstan concerning postal services;

in case when revenues from rendering of regulated services (goods, works) that belong to the field of natural monopoly, do not exceed one percent of revenue from all activities of the market entity over one calendar year;

in case when revenues from other activity do not exceed five percent of all activities of the subject of natural monopoly over one calendar year;

in case of unfeasibility of organizational and territorial isolation of a structural subdivision that renders services (goods, works) within the field of natural monopoly;

2) to possess property, on the basis of ownership and (or) economic management right, that is not connected with production and rendering of regulated services (goods, works) by a subject of natural monopoly, as well as not connected with carrying out activities allowed to the subject of natural monopoly in accordance with the present Law;"

in sub-paragraph 4):

to change the word "rendered" with the word "regulated";

to insert the word "regulated" after the words "payment for";

to insert words ", or their maximum rates";

sub-paragraph 5) to reword as follows:

"5) to impose conditions for access to regulated services (goods, works) of subjects of natural monopolies, or to perform other actions that lead to discrimination of consumers;"

to insert sub-paragraph 5-1) as follows:

"5-1) to transfer the property belonging on the basis of ownership right or other legitimate grounds, that is used in technological cycle when manufacturing and (or) rendering of regulated services (goods, works), in trust management, proprietary renting (lease), including leasing;"

sub-paragraph 6) to reword as follows:

"6) to transfer the right of claim, connected with regulated services (goods, works) rendered, to third parties;"

in sub-paragraph 7):

to insert the word "regulated" after the words "rendering of";

to insert the word "regulated" after the words "of the volume";

in sub-paragraph 8):

to change words "services (goods, works)" with words "or their maximum rates for regulated services (goods, works)";

to insert sub-paragraph 9) as follows:

"9) to request payment for the rendered regulated services (goods, works) that do not satisfy requirements to the quality of regulated services (goods, works), established by state bodies within their authority."

paragraph 2 to reword as follows:

"2. Restrictions, stipulated in sub-paragraph 5-1) of paragraph 1, of Article 5 of the present Law, shall not apply to the subjects of natural monopolies that render regulated services (goods, works), in accordance with sub-paragraph 11) of paragraph 1, of Article 4 of the present Law."

5) in Article 6:

sub-paragraph 1-1) to reword as follows:

"1-1) to reduce tariffs (prices, fee rates) for regulated services (goods, works) for all consumers within the period of validity of tariffs (prices, fee rates), in accordance with the procedure approved by the authorized body;"

to insert sub-paragraph 1-3) as follows:

"1-3) to submit an application for approval of a tariff (price, fee rate), or its maximum rate, for regulated services (goods, works), to an authorized body for consideration;

to insert sub-paragraph 5-1) as follows:

"5-1) to increase tariffs (prices, fee rates), or their maximum rates for the regulated services (goods, works) rendered for all consumers, in accordance with the procedure established by an authorized body, in case of corresponding change to the tax legislation of the Republic of Kazakhstan, in the result of which the cost of expenditures incurred by the subject of natural monopoly increases;"

6) in Article 7:

sub-paragraph 2) to reword as follows:

"2) to provide universal service to the consumers of regulated services (goods, works) in compliance with requirements to the quality of rendered regulated services (goods, works), that

are established by the state bodies within their authority, taking into consideration the tariffs (prices, fee rates), or their maximum rates, approved by the authorized body for the regulated services (goods, works) rendered;";

to insert sub-paragraph 2-1) as follows:

"2-1) to provide reception of payments from consumers for regulated municipal services (goods, works) rendered to them, through their own cash desks, as well as banks and organizations that carry out certain types of banking operations. This requirement does not apply to the subjects of natural monopolies indicated in paragraph 3 of Article 15 of the present Law;";

in sub-paragraph 3):

to insert the word "regulated" after the words "to consumers"

to insert the word "regulated" after the words "rendering of";

to insert the words ", including equal conditions of access to regulated services (goods, works), in accordance with the procedure approved by an authorized body ";

to insert sub-paragraph 3-1) as follows:

"3-1) in case of approval of a maximum rate for a tariff (price, fee rate), to render regulated services (goods, works) to all consumers on the basis of blanket rates of tariffs (prices, fee rates) that do not exceed the maximum rate of the tariff (price, fee rate);";

sub-paragraphs 4) and 5) to reword as follows:

"4) to procure services (goods, works), which costs are counted when approving the tariff (price, fee rate), or its maximum rate and tariff estimates for regulated services (goods, works) of the subject of natural monopoly, in accordance with the procedure established by the present Law and other legislative acts of the Republic of Kazakhstan;

5) to present financial reporting and other required information on paper and (or) an electronic version at request of an authorized body within the time limit established by the authorized body, but no less than five working days;";

in sub-paragraph 7):

to change words "in accordance with the additional requirements to the agreement on conduction of an audit, established by the legislation of the Republic of Kazakhstan on natural monopolies" with words ", with the exception of the subjects of natural monopolies, indicated in paragraph 3, of Article 15 of the present Law, that conduct mandatory audit once every three years";

sub-paragraph 7-1) to reword as follows:

"7-1) to carry out separate calculation of revenue, expenditures and used assets for each type of regulated services (goods, works), and in general for other types of activities, in accordance with the procedure approved by the authorized body;";

sub-paragraphs 8) and 9) to reword as follows:

"8) to make individual agreements with consumers for each type of regulated municipal services (goods, works), as well as for each type and (or) the aggregate of other types of the rendered regulated services (goods, works), in accordance with the model agreements approved by the Government of the Republic of Kazakhstan;

9) to purchase and install measuring devices for the regulated municipal services (goods, works);";

to insert sub-paragraph 9-1) as follows:

"9-1) if the measuring device becomes unserviceable, to charge payments for regulated municipal services (goods, works) rendered, by average monthly readings on the devices, in accordance with the procedure established by the authorized body;";

sub-paragraph 10) to reword as follows:

"10) to coordinate with the authorized body the investment programs and (or) investment projects that are taken into account when approving tariffs (prices, fee rates), or their maximum rates and tariff estimates, as well as carrying out revaluation of fixed assets, in accordance with the procedure established by the legislation of the Republic of Kazakhstan;";

in sub-paragraph 12):

to insert the word "regulated" after the words "rendering of";

in sub-paragraph 13):

to insert words "no later than" after the words "tariffs (prices, fee rates)";

to insert sub-paragraphs 14) - 16) as follows:

"14) to conduct an independent evaluation of its own activity in compliance with the requirements established by the authorized body:

financial – no less frequently than once every two years;

technical – no less frequently than once every five years;

15) to reduce tariffs (prices, fee rates) or their maximum rates for the rendered regulated services (goods, works), for all consumers in accordance with the procedure established by the authorized body, in case of corresponding changes to the tax legislation of the Republic of Kazakhstan, as a result of which the cost of expenditures of the subject of natural monopoly decreases from the day of entering of the said changes into force;

16) to alienate property intended for production and rendering of regulated services (goods, works), through the tender, with the exception of cases when the property is transferred to the state ownership.";

7) sub-paragraph 1) of Article 10 to reword as follows:

"1) to buy regulated services (goods, works) of a subject of natural monopoly in accordance with the procedure and by tariffs (prices, fee rates) that are established by an authorized body, to request installation of measuring devices, or to purchase and install them independently;"

8) in Article 11:

to eliminate paragraph 2;

in paragraph 3:

to insert words "(goods, works)" after the word "services";

9) sub-paragraph 4) of Article 13 to reword as follows:

"4) elaborates, approves and applies non-discriminatory methodologies for calculation of tariffs (prices, fee rates), or their maximum rates for regulated services (goods, works) of a subject of natural monopoly;"

10) in Article 14:

in paragraph 1:

to insert words "and controlling" after the word "regulating" in sub-paragraph 2);

to insert words "and control" in sub-paragraph 3);

to insert sub-paragraph 4-1) as follows:

"4-1) to conduct financial and (or) technical evaluation of activities of subjects of natural monopolies, when necessary;"

sub-paragraph 6) to reword as follows:

"6) to submit mandatory instructions to the subjects of natural monopolies, state bodies in cases of violation of the legislation of the Republic of Kazakhstan on Natural Monopolies, including instructions on reorganization of the subjects of natural monopolies and (or) on alienation of property;"

in sub-paragraph 9-1): to insert the words "regulated services (goods, works)" after the word "consumers";

sub-paragraphs 9-2) and 9-3) to reword as follows:

"9-2) to initiate change in tariffs (prices, fee rates) for regulated services (goods, works) of subjects of natural monopolies, or of their maximum rates and tariff estimates of subjects of natural monopolies, in accordance with the procedure established by it;

9-3) to carry out control over procurement, which costs are counted when approving tariffs (prices, fee rates), or their maximum rates and tariff estimates, for regulated services (goods, works) of a subject of natural monopoly;"

to eliminate sub-paragraph 9-4);

in sub-paragraph 9-6): to insert the word "regulated" after the words "(prices, fee rates) for ";

to insert sub-paragraphs 9-7), 9-8), 9-9), 9-10), 9-11) and 9-12) as follows:

"9-7) to approve the procedure for carrying out separate calculation of revenues, expenditures, and used assets for each type of regulated services (goods, works), and in general for other types of activities;

9-8) to coordinate the candidature of the rehabilitation manager to be appointed, and the rehabilitation plan for a subject of natural monopoly;

9-9) to approve tariffs (prices, fee rates), or their maximum rates, for regulated services (goods, works) of a subject of natural monopoly, taking into account quality requirements established by state bodies within their competence;

9-10) to coordinate the methodologies for carrying out separate calculation of revenues, expenditures, and used assets by type of regulated services (goods, works) of subjects of natural monopolies, in accordance with the procedure established by the authorized body;

9-11) to coordinate investment programs and (or) investment projects, to be counted when approving tariffs (prices, fee rates), or their maximum rates and tariff estimates, as well as to approve the procedure for carrying out the monitoring of efficiency of investment programs and investment projects implementation by subjects of natural monopolies;

9-12) to approve the procedure and conditions for carrying out revaluation of fixed assets of a subject of natural monopoly, in coordination with an authorized body in the field of evaluation activities;"

11) in Article 14-1:

sub-paragraph 1) to reword as follows:

"1) to make a decision on approval of a temporary compensatory tariff to compensate losses to consumers, inflicted by a subject of natural monopoly due to illegal overrating of a tariff (price, fee rate), or its maximum rate, and (or) insertion of the cost of actually non-executed works into the tariff (price, fee rate), or into its maximum rate, by non-purpose-oriented use of amortization charges funds stipulated by tariff estimates, by deviation of implementation of expenditure items of the tariff estimate for more than five percent of approved amounts;"

in sub-paragraph 2): to insert words ", or their maximum rates";

to eliminate sub-paragraph 3);

sub-paragraphs 5) and 6) to reword as follows:

"5) to hold public hearings when reviewing applications of subjects of natural monopolies for approval of tariffs (prices, fee rates), or of their maximum rates;

6) to determine the procedure for:

approval of tariff estimates, tariffs (prices, fee rates), or their maximum rates;

submission of draft tariff estimates, tariffs (prices, fee rates), or their maximum rates;

approval of the temporary decreasing coefficient.";

12) in Article 15:

in paragraph 1:

to insert sub-paragraphs 1-1) and 1-2) as follows:

"1-1) approval of the maximum rate of a tariff (price, fee rate);

1-2) approval of the investment tariff (price, fee rate);";

in sub-paragraph 3):

to change the word "the establishment of" with the word "the approval of";

in sub-paragraph 4):

to change words "in accordance with the special procedure" with words "by an approval of the special procedure";

to insert sub-paragraphs 5) - 7) as follows:

"5) by approval of the procedure for carrying out of separate calculation of revenues, expenditures, and used assets, for each type of regulated services (goods, works), and in general, for other types of activities;

6) by coordination of the accounting policy;

7) by approval of a temporary compensatory tariff.";

to insert paragraph 3 as follows:

"3. A simplified procedure of state regulation, to be approved by the Government of the Republic of Kazakhstan, is applied to the activities carried out by subjects of natural monopolies, whose annual revenue from rendering of regulated services (goods, works) do not exceed 350,000 Monthly Calculation Indices, or 50,000 Monthly Calculation Indices for each type of regulated services (goods, works). The list of specified subjects of natural monopolies shall be approved by an authorized body upon submission by the akims of oblasts (the city of republican subordination, the capital).";

13) in Article 15-1:

in the heading, to change words "for services" with the words ", or their maximum rates, for regulated services (goods, works)";

in paragraph 1:

to change words "for services" with the words ", or their maximum rates, for regulated services (goods, works)";

to insert the word "regulated" after the word "rendering";

in paragraph 2:

in the first paragraph of part one, to insert words ", or its maximum rate," after the words "tariff (price, fee rate)";

to insert words ", or its maximum rate," to sub-paragraph 1);

to insert words ", or its maximum rate," to sub-paragraph 3);

to insert words ", or its maximum rate," to sub-paragraph 4);

paragraph 3 to reword as follows:

"3. Expenditures for purchase and installation of measuring devices shall be included into the tariff (price, fee rate), or its maximum rate, for regulated services (goods, works) rendered by a subject of natural monopoly, in accordance with the procedure established by an authorized body ";

14) in Article 16:

to insert words ", or their maximum rates and tariff estimates," in the heading;

in paragraph 1:

to change words "approval (changes) of tariffs (prices, fee rates) for the rendered" with the words "approval of tariffs (prices, fee rates), or their maximum rates, for the rendered regulated";

in paragraph 2:

to change words " tariff estimates and drafts" with the words "drafts of tariff estimates and";

to change words "their own" with the word "regulated";

to insert part two as follows:

"In case of approval of a maximum rate for a tariff (price, fee rate), the subject of natural monopoly shall submit an application for consideration of a tariff (price, fee rate) to an authorized body 180 days prior to it's introduction.";

to insert words ", or their maximum rates and tariff estimates," after the words "tariffs (prices, fee rates)" in the part two;

in paragraph 3:

to insert the word "regulated" after the words "tariffs (prices, fee rates) for ";

to insert words ", and in case of approval of the maximum rate for tariffs (prices, fee rates) during 165 days" after the word "days";

to insert words "or their maximum rates and tariff estimates" after the words "tariffs (prices, fee rates)" in the second sentence;

15) in Article 17:

to insert words "or their maximum rates and tariff estimates" in the heading;

paragraphs 1 and 1-1 to reword as follows:

"1. In cases when applications for changes in current tariffs (prices, fee rates), or in their maximum rates and tariff estimates for regulated services (goods, works) of subjects of natural

monopolies, were accepted for consideration, the authorized body, if necessary, carries out an additional financial and (or) technical evaluation of the drafts tariffs (prices, fee rates), or their maximum rates and tariff estimates, and for this purpose it engages independent experts, state bodies, consumers and their public associations, and the applicants.

1-1. When holding public hearings, the authorized body shall to publish the information on the date and place of the hearings in periodical publication no later than ten days prior to the event.

Public hearings shall be held:

1) when approving maximum rates for tariffs (prices, fee rates) for regulated services (goods, works) of a subject of natural monopoly, no later than 15 days prior to the adoption of final decision on the approval;

2) when approving tariffs (prices, fee rates) for regulated services (goods, works) of a subject of natural monopoly, no later than 7 days prior to the adoption of final decision on the approval.

The procedure for holding public hearings shall be determined by the Government of the Republic of Kazakhstan.";

16) in Article 18:

to insert words "or their maximum rates and tariff estimates" in the heading;

in paragraph 2:

to change words "for services (goods, works)" with the words "or their maximum rates and tariff estimates for regulated services (goods, works)";

paragraph 3 to reword as follows:

"3. Approval of tariffs (prices, fee rates), or their maximum rates and tariff estimates for regulated services (goods, works) of a subject of natural monopoly may not be carried out more often than once every two quarters. Introduction of new tariffs (prices, fee rates) shall be carried out since the first day of a quarter.";

in paragraph 4:

to insert words "or their maximum rates" after the words "tariffs (prices, fee rates)";

part one of paragraph 5 to reword as follows:

"5. The approval of tariffs (prices, fee rates) and tariff estimates for regulated services (goods, works) in accordance with the simplified procedure shall be carried out for:

1) regulated services (goods, works) of a newly created subject of natural monopoly;

2) new types of regulated services (goods, works) included pursuant to paragraph 2 of Article 4 of the present Law;

3) new types of regulated services (goods, works) rendered by the subject of natural monopoly that has already been listed in the State Register of Subjects of Natural Monopolies by other types of regulated services (goods, works).

Subjects of natural monopolies specified in the part one of the present paragraph are liable to submit an application for revision of tariffs (prices, fee rates) and tariff estimates within six months in accordance with the general procedure.

Procedure for approval of tariffs (prices, fee rates) in accordance with the simplified procedure shall be determined by the authorized body, with the exception of the cases stipulated in paragraph 3 of Article 15 of the present Law.";

to insert paragraph 5-1 as follows:

"5-1. A subject of natural monopoly, who has received assets into his ownership following the concluded transaction or selling of assets of a bankrupt - being a subject of natural monopoly, declared bankrupt – shall render regulated services (goods, works) to consumers according to the tariffs (prices, fee rates), or their maximum rates and tariff estimates, that were approved earlier by an authorized body for the owners of these assets or property, to be recovered in the course of the bankruptcy proceedings, until an application for approval of tariffs (prices, fee rates) and tariff estimates for regulated services (goods, works) is submitted, but no longer than for six months.";

in paragraph 6:

to insert words "and tariff estimates" after the words "tariffs (prices, fee rates)";

to insert paragraph 7 as follows:

"7. Validity terms of certain rate of a tariff (price, fee rate) are established when an authorized body approves the maximum rate of a tariff (price, fee rate).

Maximum rate of tariffs (prices, fee rates) is introduced from the 1st January or the 1st July of the corresponding year.";

17) in Article 18-1:

in paragraph 1:

in the first paragraph to change the word "services" with the words "regulated services (goods, works)";

sub-paragraph 1) to reword as follows:

"1) by alienation and (or) making other transactions with property of the subject of natural monopoly, if the book value of the property being alienated or of the property of the subject of natural monopoly, in respect of which the other transactions are being made, that is recorded in the accounting book as of the beginning of current year, exceeds 0.05 percent of the book value of its assets according to the accounting balance as of the beginning of the current year, provided that they will not entail an increase in tariffs (prices, fee rates), or their maximum rates, for the regulated services (goods, works) rendered by the subject of natural monopoly, or violation of agreements with consumers, disturbance of a unified technological system, interruption or a significant decrease in the volumes of the rendered services (produced goods, works);";

to insert sub-paragraph 2-1) as follows:

"2-1) by renting by a subject of natural monopoly of property used for rendering of regulated services (goods, works), the book value of which, recorded in the accounting book as of the beginning of the current year exceeds 0.05 percent of the book values of its assets according to the accounting balance as of the beginning of the current year, provided that making an agreement on proprietary renting does not entail an increase in tariffs (prices, fee rates), or their maximum rates, for regulated services (goods, works) of the subject of natural monopoly, or in violation of agreements with consumers, disturbance of a unified technological system, interruption or a significant decrease in the volumes of the rendered services (goods, works);";

sub-paragraph 3) to reword as follows:

"3) by carrying out by a subject of natural monopoly of other type of activity allowed under the present Law";

to insert sub-paragraph 4-1) as follows:

"4-1) by acquisition by natural or juridical person (or a group of persons) of more than ten percent of the voting shares (equities) in the charter capital of the subject of natural monopoly";

to insert sub-paragraph 1-1 as follows:

"1-1. List of types of activities that are technologically connected with regulated services (goods, works) shall be approved by an authorized body jointly with the corresponding state body within the limits of its competence, or by local executive authority, if the subject of natural monopoly is listed in the chapter of the State Register of Subjects of Natural Monopolies and (or) is in the municipal property, with the exception of cases when the state body is determined by the Government of the Republic of Kazakhstan at proposition made by the local representative and executive authorities.";

paragraph 2 to reword as follows:

"2. To perform actions specified in sub-paragraphs 1) - 4), 5) of paragraph 1 of the present Article, a subject of natural monopoly is obliged to submit a petition to an authorized body regarding a consent for performing these actions and to give information that is necessary for decision making.

List of documents for making a petition, and procedure of submission and consideration shall be determined by the authorized body.

To perform actions specified in sub-paragraph 4-1) of paragraph 1 of the present Article, a natural or a juridical person is obliged to prior submit the information to the authorized body.";

18) to eliminate Article 18-2;

19) in paragraph 3 of Article 18-3:

to insert the word "regulated" after the word "rendered";

20) in Article 18-4:

paragraph 1 to reword as follows:

"1. Procurement of services (goods, works), the expenditures for which are counted when approving tariffs (prices, fee rates), or their maximum rates and tariff estimates, for regulated services (goods, works) of the subject of natural monopoly, is carried out in the tender, with the exception of cases stipulated in paragraphs 4 and 5 of the present Article.";

paragraph 3 to reword as follows:

"3. Procurement procedure shall be determined by an authorized body.

This requirement does not apply to the cases of procurement in accordance with the legislation of the Republic of Kazakhstan on Government's Procurement by state bodies, state institutions, as well as state enterprises, juridical persons, fifty or more percent of shares (equities) or the controlling block of shares of which belongs to the state, and by juridical persons affiliated with them.";

to insert paragraph 3-1 as follows:

"3-1. A subject of natural monopoly has a right to act as the sole organizer of a competition for its own affiliated persons.";

paragraph 4 to reword as follows:

"4. In cases stipulated by the legislation of the Republic of Kazakhstan, the authorized body has a right to give its consent to the subject of natural monopoly to carry out procurement through the closed competition, procurement from one single source, as well as for attraction of grants, loans and credits that are provided by international financial organizations.";

to insert paragraph 5-1 as follows:

"5-1. Two and more affiliated persons of a subject of natural monopoly have no right to participate in the tender (lot) conducted by the stated subject of natural monopoly, with the exception of cases established by the Government of the Republic of Kazakhstan.";

in paragraph 8:

to insert words "or their maximum rates" after the words "tariffs (prices, fee rates)";

paragraph 9 to reword as follows:

"9. The requirements of the present Article shall not be applied to the subjects of natural monopolies carrying out procurement of the balancing electric energy, or electric energy at centralized tenders, at spot market, in accordance with the legislation of the Republic of Kazakhstan on Electric Power Industry.";

21) in Article 19:

in paragraph 1:

to insert words "state bodies," after the word "monopolies," in paragraph one;

to insert sub-paragraph 4) as follows:

"4) to revoke or amend an act that is not in compliance with the present Law.";

in paragraph 2:

to insert words ", as well as following the results of analysis of the tariff estimates fulfillment by a subject of natural monopoly ";

22) to insert Article 19-1 as follows:

"Article 19-1. Instructions of the authorized body

1. Subjects of natural monopolies, state bodies, and their heads should execute the instructions of the authorized body within the period of time stipulated in the decisions (instructions), but no later than thirty days since the date of their receipt.

2. In case when state bodies fail to fulfill the directives regarding revocation or amendment of the acts, that were adopted with violation of the present Law, or regarding restoration of the

initial conditions, the authorized body shall have the right to refer a claim to the court on acknowledgement of the stated acts as (fully or partially) invalid and (or) on compulsion to restore the initial conditions.

3. In case when a subject of natural monopoly fails to fulfill the instructions, the authorized body shall have the right to refer a claim to the court on compulsion of the subject of natural monopoly to carry out the actions specified in the instructions.";

23) in Article 21:

to insert words "or their maximum rates" after the words "tariffs (prices, fee rates)";

to change the word "services" with the words "regulated services (goods, works)".

2. In the Law of the Republic of Kazakhstan "On Audit Activity" of November 20, 1998 (Gazette of the Parliament of the Republic of Kazakhstan, 1998, N 22, p. 309; 2000, N 22, p. 408; 2001, N 1, p. 5; N 8, p. 52; 2002, N 23-24, p. 193; 2003, N 11, p. 56; N 12, p. 86; N 15, p. 139):

to eliminate paragraph six of part two of paragraph 2 of Article 4.

Article 2. The present Law enters into force since the day of its official publishing.

**President
of the Republic of Kazakhstan**

N. NAZARBAYEV

Astana, December 9, 2004
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