

Legal and regulatory barriers to effective public-private partnership governance in Kazakhstan

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**LEGAL AND REGULATORY BARRIERS TO EFFECTIVE PUBLIC-PRIVATE
PARTNERSHIP GOVERNANCE IN KAZAKHSTAN**

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Introduction

Collaborative growth initiatives have emerged over the last 20 years between public institutions and private actors. A public-private partnership (PPP) exists where the public and private sector partners share resources, responsibility and risk for the public service provision (Klijn, 2010). In an attempt to improve service delivery efficiency, lower costs, secure innovation, increase customer satisfaction and attract private funding, governments have embraced PPPs (Hofmeister and Borchert, 2004). Typically, in a PPP, the private sector partner constructs or renovates an asset, such as a stadium or a hospital, at its own expense. A private party then assumes responsibility for the public service delivery with the use of this asset for a certain time that often ranges between 10 and 30 years. To recover its investment and operating expenses (e.g., for the service provision and facility maintenance), a private company receives user fees and/or payments from the government (Mouraviev *et al.*, 2012).

PPP development in Kazakhstan began in 2006 when the government adopted the law on concessions. Subsequently, the government formed the National PPP Centre and two regional centres and approved seven PPP projects, although later some have shut down (Mouraviev *et al.*, 2012). This article highlights PPP implementation in Kazakhstan in the literature review section. Despite government efforts to expand PPP implementation in Kazakhstan, private investor interest remains small and the number of partnerships is not increasing (Kazakhstan Public-Private Partnership Centre, 2011; Mouraviev, 2012). What are the impediments to swift PPP employment in the nation? What are the obstacles that reduce the efficiency of PPP operations?

The article explains the principal legal and regulatory barriers to effective PPP governance in Kazakhstan. With the use of data from in-depth interviews, the article's objective is to identify

and critically assess constraints to PPP development and effective management that relate to imperfections in partnership laws and regulations.

The article begins with the literature review from which we develop propositions. The review highlights PPP implementation in Kazakhstan and focuses on two themes that are critical for PPP development in the nation. We then outline the research methodology and move on to discuss the findings in two areas including the legal and institutional framework for PPP governance and the role of government regulation for successful PPP management. In each theme, we test a certain proposition and draw a conclusion regarding whether the study confirms a proposition. The concluding section highlights the significance of some legal and regulatory barriers to PPP development as opposed to others. We close by elucidating the article's contribution to theory, research methodology and praxis.

Literature review and propositions

Highlights of PPPs in Kazakhstan and theme selection

A large body of literature focuses on PPP development in transitional countries (see, for example, Pongsiri, 2003; Jamali, 2004a; Bult-Spiering and Dewulf, 2006; Urio, 2010; Mouraviev, 2012), whilst these studies typically emphasise organisational and financial arrangements that underpin partnerships. Studies that reflect the beginning partnership development stage and emerging Kazakhstan's PPP experience are rare (see, for example, Mouraviev *et al.*, 2012; Mouraviev and Kakabadse, 2013, 2014). In Kazakhstan, the government-formed PPPs are all in a concession form. In the transportation sector these include a railroad in Eastern Kazakhstan between Shar and Ust-Kamenogorsk and an airport in Aktau. In the energy sector, there is the construction and operation of an inter-regional electrical grid

between Northern Kazakhstan and the Aktobe region. In the social sector, there is the construction and operation of eleven kindergartens in Karaganda (Kazakhstan Public-Private Partnership Centre, 2011). Moreover, the Kazakhstan government plans a large number of PPP projects such as toll roads, hospitals, schools and kindergartens (Kazakhstan Public-Private Partnership Centre, 2011). Table 1 summarises available information about concessions that the Kazakhstan government has approved.

Table 1. Concessions approved by the Kazakhstani government as of January 2014

No.	Project title	Project cost (million U.S. dollars)	Concession term	Project status	Organisational arrangement with government: public sector partner
1	Construction and operation of a railroad between the station of Shar and the city of Ust-Kamenogorsk in Eastern Kazakhstan	\$202.5	23 years, from 2005	Concession contract signed 6 July, 2005. Construction has been completed; services are being provided	Kazakhstan Temir Zholy (100% government-owned national railroad company) and Investment Fund of Kazakhstan (the government agency)
2	Construction and operation of inter-regional electrical grid from Northern Kazakhstan to Aktobe region	\$165.82	17 years, from 2005	Concession contract signed 28 December, 2005. Construction has been completed; services are being provided	Kazakhstan Electric Grid Operating Company (KEGOC) – 100% government-owned national power transmission company
3	Construction and operation of the passenger terminal of an international airport in the city of Aktau	\$65.5	30 years, from 2008	Concession contract signed 3 December, 2007. Construction has been completed;	Regional government of the <i>Mangistausskaya oblast'</i>

				services are being provided	
4	Construction and operation of eleven kindergartens in the city of Karaganda	\$39.12	14 years, from 2011	Concession contract signed in November 2011. Construction is on hold	Regional government of the <i>Karagandinskaya oblast'</i>

Source: Compiled by the authors from Tilebaldinov, 2008; Kazakhstan Public-Private Partnership Centre, 2011; Regional Centre for Public-Private Partnership of the Karagandinskaya Oblast', 2011; Mouraviev *et al.*, 2012, p. 413.

As the progress with PPP formation in Kazakhstan is slow (i.e., there are just three active PPP projects since 2005 and one project is currently on hold), the question regarding constraints and impediments to partnership proliferation becomes increasingly important. This section focuses on two themes that have critical importance for rapid PPP implementation in developing economies including:

- legal and institutional framework as a critical success factor for PPP governance; and
- the role of government regulation for successful PPP management.

The two themes emerged from the interviews in connection with the study's propositions and we selected them for the study because of the significance that the interviewees attached to them. After we highlight the literature pertinent to each theme, we develop a proposition from the literature. We then test the study's propositions against the research findings in order to better understand constraints and impediments to effective PPP governance in Kazakhstan.

Legal and institutional framework as a PPP critical success factor

This theme in the PPP literature highlights the significance of the legal and institutional framework for the partnership development. The critical success factors (CSFs) are those principal areas that are crucial for reaching the stated project's goals (Rockart, 1982). Many

researchers and official guidelines point out the significance of creating a clear legal framework and solid institutional basis for successful PPP project initiation and implementation (Boyfield, 1992; Stein, 1995; Guidelines for successful public-private partnerships, 2003; Klijn and Teisman, 2003; Grimsey and Lewis, 2004; Harris, 2004; Guidebook on promoting good governance in public–private partnerships, 2008; Mouraviev *et al.*, 2012).

Some legal framework issues are common for emerging economies, such as the protection of the private sector interests; bureaucracy involved in obtaining permits and consents; and excessive restrictions on public procurement that may seriously undermine PPP implementation (Grimsey and Lewis, 2004). The first and foremost prerequisite for PPP development is to adopt relevant national PPP laws that set the basic framework for partnership formation and permit the government authorities to engage in a PPP arrangement and extend long term payment guarantees (Mouraviev *et al.*, 2012). For example, Ismail (2013) identified a favourable legal framework as one of the top CSFs of PPP implementation.

Additionally, a critical condition for successful partnership development is establishing the national PPP unit as a centre that provides a methodology and guidance for project selection and design; assists in contract preparation and project assessment; and facilitates the general PPP activity, e.g., by initiating necessary changes in legislation and regulations (Asian Development Bank, 2008; Guidebook on Promoting Good Governance in Public–Private Partnerships, 2008).

Much discussion regarding the legal, regulatory and institutional framework for PPP development is country-specific (see, for example, Qiao *et al.*, 2001; Jefferies *et al.*, 2002; Klijn and Teisman, 2003; Li *et al.*, 2005; Mouraviev, 2012), whilst generalisations are hardly possible because the contextual political, economic, legislative, social and cultural environment shape the unique features of each nation's PPP framework. Owing to the uniqueness of each country's

setting, delineation of commonalities and differences in PPP frameworks between countries is normally beyond the researchers' scope. However, a promising research opportunity manifests itself in the field of cross-country comparisons of PPP critical success factors including those that relate to the legal and institutional framework. This opportunity is particularly relevant to research in countries such as Kazakhstan, Russia and Ukraine because they share a common Soviet legacy, including Russian as a widely spoken language, similar educational, cultural and social realities, and aligned economic, financial, taxation, regulatory and customs systems (Urio, 2010; Mouraviev *et al.*, 2012), although the contextual environment may still dominate the design of the legal framework.

To summarise, the PPP literature emphasises a need for governments to create a solid legal and institutional basis for PPP development (Qiao *et al.*, 2001; Jamali, 2004a; Urio, 2010), although borrowing legal and organisational solutions from another country's experience is hardly possible due to the critical significance of the political, social and economic context. Realising a need to set the basic framework for partnership formation, the government in Kazakhstan adopted a national law on concessions in 2006 (The Law of the Republic of Kazakhstan "On Concessions", 2006) and formed the key elements of an institutional PPP framework, including the National PPP Centre in 2008, and two regional PPP centres (in the *Karagandinskaya oblast'* in 2010 and the *Vostochno-Kazakhstanskaya oblast'* in 2011). After the government has seemingly designed critical elements of the nation's PPP legal and institutional framework, which is what the literature suggests, the government anticipates faster PPP development in the country. Hence, the literature review permits us to put forward the following propositions:

P1: The government in Kazakhstan supports extensive PPP development by designing a clear and effective PPP legal framework.

P1b: The national government of Kazakhstan unambiguously supports PPP development, without compromising the future of partnerships.

The role of government regulation for successful PPP management

The government regulation in PPPs depends on an industry's nature. The government regulates some sectors, such as the oil and gas sector, more, whilst other sectors may enjoy less regulation. The nature and scope of government regulation including price setting, determination of import and export quotas and customs duties, environmental control, safety standards and administrative procedures influence interaction between PPP partners. However, studies conclude that in some sectors, such as construction, the involved parties pay little attention to PPPs' relational aspects and rather focus on contractual arrangements in which the government spells out its regulations (Egan, 1998; Doree, 2004; Bult-Spiering and Dewulf, 2006).

The scope and tools of government regulation play a certain role in PPP management. Teisman and Klijn (2002) argue that government organisations may view PPP complexities as a threat. In this case, the government is likely to use traditional decision-making procedures that typically apply to contracting-out schemes. 'The interaction with the private sector can be defined in terms of a principal-agent relation. The government decides what it wants and the private sector decides what it can deliver and at what price' (Teisman and Klijn, 2002, p. 199). Hence, the government may choose to strictly regulate PPP tariffs, parameters of the service delivery, PPP budget, a number of employees and other elements of PPP business. Some regulated elements, such as tariffs and the service quality features, are part of output, rather than

input, specification, which scholars view as a PPP distinct advantage because it permits a private operator to innovate and find the most efficient solutions to deliver the specified public service (Pierre and Peters, 2000).

Output specification in PPPs, which defines the service's elements and its delivery parameters, becomes more important than input specification, i.e., how much a private partner has to spend on asset construction or maintenance, how exactly the construction should be done or how many staff should be hired (Morallos and Amekudzi, 2008, p. 116). Hence, output management in PPPs, as opposed to input-oriented management in the public sector that focuses on institutions (Bult-Spiering and Dewulf, 2006), may have significant positive influence on the overall PPP performance. As the government sets the output specifications, it is in the position to increase or decrease its influence on successful PPP management.

Other partnership specifications, such as number of employees in a PPP and their wage rates, refer to partnership inputs, which the government may also choose to regulate. However, the literature does not provide evidence that this kind of government regulation is one of the success factors for PPPs. Researchers conducted a considerable number of studies that identified critical factors that ensure management success in PPPs in the context of different economies including the UK, China, India, Egypt, Lebanon and Malaysia, among others (see, for example, Gupta and Narasimham, 1998; Jamali, 2004b; Zhang, 2005; Jacobson and Choi, 2008; Chan *et al.*, 2004; Li *et al.*, 2005; Chan *et al.*, 2010; Gupta *et al.*, 2013). None of the studies identified any significance of the government regulation for effective PPP management, whilst certain findings pointed out exactly the opposite, such as the importance of 'entrepreneurship and leadership' (Tiong, 1996) and 'built-in flexibility for future growth and changes' (Gupta and Narasimham, 1998).

Hence, empirical evidence reflected in the literature does not support a need for the government to regulate PPP inputs, as opposed to the PPP output specification by the government, which the literature views as highly desirable because it offers incentives to a private partner to perform better. From the literature appraisal on the theme of government regulation we develop the following two propositions:

P2a: Effective government regulation of PPP tariffs has positive impact on partnership management and overall PPP performance.

P2b: The government regulation of PPP workers' wage rates has negative impact on partnership management.

In order to test our propositions we conducted a qualitative study that embraces interviewees from PPP projects in Kazakhstan as well as from national and regional PPP centres. The article moves on to discuss the research methodology, and then delineates the research findings.

Research methodology

The data collection method in this qualitative study is in-depth semi-structured interviews. The study participants include eleven respondents from two PPP projects and two government agencies as follows:

- a PPP that involves constructing and operating a railroad segment in Eastern Kazakhstan (four interviewees including department managers and senior experts);
- a PPP aimed at constructing and maintaining eleven kindergartens in the city of Karaganda (two interviewees both of whom are managers);
- the National PPP Centre in Astana, the capital city (three respondents including a department head and senior experts); and

- the Regional PPP Centre of the *Karagandinskaya oblast'* (two respondents both of whom are senior experts).

The study employed a purposeful sampling with the goal of selecting those interviewees who are in the position to discuss the projects, their issues and possible solutions (Patton, 2002; Neuman, 2007). The overall picture of the study participants includes:

- project workers at the senior level (head of a department or a section),
- project staff members at the level of a lead expert (e.g., an expert in a tariff setting or procurement) and
- experts from PPP centres in an advisory role.

Table 2 summarises the study's sample.

Table 2. Research sample: Details of organisations and respondents

An organisation or a project	Number of participants	Participant's position
PPP contractor (railroad construction and operation)	4	<ul style="list-style-type: none"> • Department managers • Senior experts
PPP contractor (kindergartens' construction and operation)	2	<ul style="list-style-type: none"> • Company managers
National PPP Centre	3	<ul style="list-style-type: none"> • Department head • Senior experts

Regional PPP Centre	2	• Senior experts
Total:	11	

Source: Compiled by the authors.

Although the sample size is relatively small, it nevertheless has allowed us to successfully reach data saturation (Patton, 2002; Flick, 2009). There was no major discrepancy in the interview data which the study participants from the private sector organisations provided. Additionally, the government sector employees commonly shared opinions and perceptions between them. However, the study has identified the contradictory points of view between the public sector workers, on the one hand, and the private sector workers, on the other. In this study, the contradictory experiences and perceptions served as a data triangulation method (Neuman, 2007; Flick, 2009), which allowed us to contrast and compare the data from different sources, hence, ensuring data validity.

The study's research approach is based on the two propositions that we have generated from the literature appraisal and then tested against the findings that we have unveiled during in-depth interviews. The following section presents the research findings and includes the comments regarding whether the study confirms a relevant proposition.

Research findings

We have categorised the interview data by the following themes:

- Irregularities in the PPP legal framework; and
- Issues of tariff and wage-rate setting.

Each theme relates to a proposition that we have developed from the literature, and the detailed discussion follows.

***Irregularities in the PPP legal framework and lack of government commitment to PPPs:
testing Propositions 1a and 1b***

In this theme, we highlight certain issues in the legal and institutional framework that remain unresolved in Kazakhstan. Interviewees pointed out irregularities in the legal framework that governs PPPs. In Kazakhstan, there is no general law that defines a PPP, its legal status and the principal legal provisions governing PPP employment in the country. The law on concessions that the nation adopted in 2006 filled the legal gap only in part (The Law of the Republic of Kazakhstan “On Concessions”, 2006). Interviewees asserted that the law on concessions is incomplete and is not harmonised with other national laws. In particular, the law on concessions contradicts the provisions of the budget law that permit the government to extend the payment guarantees for a maximum of three years. The following quote shows that a public organisation’s commitment, especially at the regional level, to extend payments to a PPP during a long period is highly questionable.

‘When a regional government grants a concession for many years, how can it guarantee that it will actually pay? It gives its guarantee in writing, but where can it get the money in the future? The regional government gets funds from the national government, but the national government does not give any guarantee. This is confusing, isn't it?’

Participant 1

Another interviewee expressed similar concerns regarding the validity of long-term PPP contracts that regional governments sign:

'Regions [in Kazakhstan] don't impose their own taxes. The regional governments are financed by the national government. The latter decides how much money each region receives. So, when a region engages itself in partnerships, it essentially counts on more money from the national government in the future. But who can argue with confidence that the national government will give this money to the region?'

Participant 4

In Kazakhstan, the high degree of political and administrative centralisation leads to some contradictions within the PPP legal framework, namely between the national and regional legislation. An interviewee describes the problem as follows:

'Some regions [in Kazakhstan] have formed their own PPP centres and adopted regional rules and regulations. I'm not sure that these regulations are really helpful. Kazakhstan has a unitary system. Everything is prescribed by the national government. Regional regulations may simply repeat the national laws, but the former may not replace the latter, and may not fill some existing gaps in the national legislation. For example, the national law does not specify what a PPP means or what an asset life cycle contract means. So, the regional law cannot help here at all.'

Participant 11

Another interviewee asserted that the government tools and possibilities for supporting and/or penalising a PPP are vaguely defined and their implementation is lacking procedures and guidelines.

'I think the government staff sometimes simply don't know what [legal provisions] they can apply to a PPP and what they can't apply. They always refer to the law, but there is more than one law governing partnerships. They point to one law for some reason and then they say about another one: 'No, we cannot use these provisions'. Normally – unfortunately – there are no explanations.'

Participant 9

Findings in this theme support the notions expressed in the literature regarding the significance of a clear legal, regulatory and institutional framework for PPP development (Boyfield, 1992; Stein, 1995; Osborne, 2000; Grimsey and Lewis, 2004; Ismail, 2013). Where the private sector partners are concerned with reliability of government payment guarantees to PPPs over the long term, this inevitably diminishes the private investors' interest. The same applies to the ambiguity of national and regional PPP laws and regulations: the larger the ambiguity, the smaller the private investors' interest, as the literature asserts (Mouraviev, 2012).

In summary, the range of the regional government's privileges and responsibilities regarding PPP formation and management remains ambiguous. These privileges and responsibilities are even less clear at the municipal government level. This suggests that PPP development at the country's local level may be stalled.

Hence, the study findings have not confirmed Proposition 1a, which we generated from the literature, that the government in Kazakhstan supports extensive PPP development by designing a clear and effective PPP legal framework. In contrast to Proposition 1a, the findings demonstrated that lack of progress with PPP development in Kazakhstan stems, in part, from imperfections in the PPP legal and institutional framework. Also, the findings demonstrated ambiguity of Kazakhstan's state government in relation to PPPs. The national government

allows regional and local authorities to launch PPPs and engage in contractually binding relations (including obligations to pay PPPs), but without a clear commitment from the central state authority. Naturally, this makes PPPs and their future unclear and uncertain. Hence, the study findings have not confirmed Proposition 1b.

The role of government regulation in PPP management: testing Proposition 2

Proposition 2 includes two parts: one refers to the government regulation of PPP tariffs, whilst the other refers to the regulation of the PPP staff's wage rates.

P2a: Effective government regulation of PPP tariffs has positive impact on partnership management and overall PPP performance.

Interviewees noted that among the legal and regulatory barriers to effective PPP governance, in their experience, bureaucratic tariff regulations for partnership services was one of the biggest challenges. This often falls in the domain of the country's anti-monopoly agency. Interviewees believe that tariff setting is lengthy, criteria for approvals are blurred and the procedures are cumbersome. An interviewee suggests the following:

'There should be a totally different process for tariff setting. The anti-monopoly agency may need to monitor tariffs. However, the tariff setting should not be between an operator and the anti-monopoly agency. It should be between a service provider and customers. At this point, there are no negotiations between a supplier and a customer. So, how does the anti-monopoly agency know what tariff level it should deem acceptable and what level is unacceptable?'

Participant 2

Another interviewee reinforces the importance of direct tariff setting between a PPP operator and a customer:

'We [a PPP operator] formed a tariff that is much higher than the allowed limit. But we are convinced that this is the right tariff. However, the anti-monopoly agency allows an actual tariff to exceed what it considers a 'target tariff' by no more than 5%. Well, we got the fine from the agency for exceeding the 5% limit. I don't really understand who needs these 'target tariffs' and why we [an operator] have to pay the fine. What company will want to be in business like that, where some government agency regulates its prices?'

Participant 1

The above excerpt shows an interviewee's clearly negative perception of the government's bureaucratic tariff regulation in cases where tariff setting is a part of anti-trust policy and is a responsibility of the public anti-monopoly agency. In contrast to this perception, a staff member in the National PPP Centre argues the following:

'Without government regulation tariffs may increase very quickly. Think about a railroad, for example. A railroad operator is a monopolist and its tariffs may be very high. I don't think that customers will appreciate this.'

Participant 6

The interviews have highlighted two varying perspectives on tariffs. The first perspective focuses on the perceived need for PPP operators to deal directly with clients, so that two parties may be able to negotiate tariffs directly, i.e., without government involvement. The other perspective focuses on desirable pricing for users and takes into account that PPPs may engage in monopoly pricing, which may be damaging for users of partnership services. The first

perspective is associated with the needs of a private operator (i.e., when it pushes for higher tariffs in order to generate higher revenue), whilst the second perspective is societal (when the government aims to ensure that public services remain low-priced and, hence, affordable for all users).

The study revealed that the two perspectives – that of a private operator and the societal perspective – are opposing. From the operator's perspective, the government regulations seriously limit a private partner's possibilities to maximise profit. Interviewees from the private sector asserted that the government regulation of partnership tariffs does not effectively contribute to PPP management. They argued that, as a result of government regulation, certain PPP advantages, such as a profit-driven private partner's initiative that aims at finding most efficient solutions, are largely lost. To summarise, those interviewees who emphasised the operators' perspective ("PPP operators should be able to directly negotiate tariffs with clients") in effect called for loosening government regulations and giving private firms greater flexibility in tariff setting.

In contrast, from the societal perspective the government pursues a goal of keeping prices for the public services low. As a PPP often becomes a monopoly, the government is interested in regulating monopolistically provided services in order to not allow monopolistic trends to emerge and grow, namely in the field of price setting. From this perspective, which is societal, rather than corporate, the tight government regulation of tariffs contributes to the overall PPP successful performance as the citizens would benefit from low-priced privately provided public services. As the societal perspective prevails over corporate, the study has confirmed Proposition 2a.

The following comments aim to emphasise the effectiveness of government regulation of PPP tariffs. As Kazakhstan's economic development has been accompanied by relatively high inflation rate of seven to eight per cent a year for a long time (i.e. longer than 10 years), the government is naturally concerned with how to combat inflationary pressures. Whilst prices within the public sector remain under the central government control and PPPs are subjected to the public sector's regulations, the government uses price controls to keep prices for public services low. Not only it ensures affordable prices for users, both individual and corporate, but also it quite effectively curbs inflationary processes in the nation. Furthermore, by not allowing the public sector companies including PPPs to raise tariffs, the government creates incentives for these companies to reduce costs, optimise their cost structure and seek ways to increase their own efficiency. Hence, the findings confirmed Proposition P2a, i.e. that the government regulation of PPP tariffs should be viewed as effective and the one that has positive impact on partnership performance.

P2b: The government regulation of PPP workers' wage rates has negative impact on partnership management.

In Kazakhstan, another area that the Agency for Regulation of Natural Monopolies keeps under its tight control is wage rates. The latter are subject to regulation in cases where a government-owned company, even in part, has formed a PPP operator. For interviewees, it remains unclear why the government needs to regulate the operator's wage rates. An interviewee provides the following comment:

'If we set our wage rates ourselves, what's wrong with that? With or without government regulation, we have to pay our workers at market rates; otherwise no one

would want to work for us. We also need to pay bonuses for good performance. Again, nothing is wrong with that because it's a standard practice. So, why government regulation? How does it help? And whom?'

Participant 3

The excerpt shows that the interviewee is not supportive of government regulation and perceives it as an impediment to the operator's flexibility regarding hiring and retaining a qualified workforce. His comment implies that the wage rate-setting power should belong to an operator. In contrast, another interviewee who works for the regional PPP Centre expressed a different opinion regarding why the government regulates wage rates of PPP staff:

'There is a concern in the government that a PPP may pay high wages to its own workers, which means that the PPP costs will be rising. This may drive PPP prices up and customers may be disadvantaged.'

Participant 7

However, most interviewees took a different view, i.e., that a PPP should be able to set wage rates on its own, based on prevailing market rates in order to attract the most capable employees. The findings are aligned with the literature about the meaning and principal advantages of the PPP arrangements: it is the private partner's initiative driven by the profit motive that permits a PPP to find the most efficient business solutions and cut costs whilst it delivers the public service (Colman, 2000; Hofmeister and Borchert, 2004; Klijn, 2010; Mouraviev and Kakabadse, 2012). Once this initiative is constrained, the core advantage of engaging the private sector partner in the delivery of public services becomes severely undermined (Wettenhall, 2003; Williams, 2003). When the government regulation does not permit a private operator to hire and retain the most capable workers at market wage rates, this may lead to the PPP's inability to employ

qualified staff and is likely to have negative impact on the PPP's overall performance. Hence, the study has confirmed Proposition 2b.

Study summary

Table 3 summarises the study's propositions, relevant findings and whether the study has confirmed a proposition.

Table 3. The study's propositions and findings

Propositions	Findings	Comments
P1a: The government in Kazakhstan supports extensive PPP development by designing a clear and effective PPP legal framework.	Lack of progress with PPP development in Kazakhstan stems, in part, from imperfections in the PPP legal framework.	The study has not confirmed P1a. In Kazakhstan, there is no general law that defines a PPP, its legal status and the principal legal provisions governing PPP implementation in the country. The law on concessions is incomplete and is not harmonised with other laws. Regional PPP regulations and procedures are ambiguous.
P1b: The national government of Kazakhstan unambiguously supports PPP development, without compromising the future of partnerships.	There is ambiguity of Kazakhstan's state government in relation to PPPs. The national government allows regional and local authorities to launch PPPs and engage in contractually binding relations, but without a clear commitment from the central state authority.	The study has not confirmed P1b. Some interviewees view long-term PPP contracts as legally invalid. Naturally, this makes PPPs and their future unclear and uncertain.
P2a: Effective government regulation of PPP tariffs has a positive impact on partnership management and overall PPP performance.	The government aims to ensure provision of affordable public services and a slow down of inflationary pressure in the economy.	The study has confirmed P2a. From the societal perspective, the tight government tariff regulation contributes to successful PPP performance as the citizens would benefit from low-priced public services.

<p>P2b: The government regulation of PPP workers' wage rates has negative impact on partnership management.</p>	<p>The private partner's initiative driven by the profit motive appears severely constrained.</p>	<p>The study has confirmed P2b. The government seriously constrains a private partner's flexibility in management by not permitting a private operator to hire and retain the most capable workers at market wage rates.</p>
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Source: Compiled by the authors.

Discussion and conclusion

Based on the thorough analysis of partnerships in both industrialised nations and emerging markets, Grimsey and Lewis (2004) convincingly argue that PPPs should be seen as a process of identifying the service needs and matching them with the most efficient delivery mechanisms. 'If this process is applied rigorously to each contract, then it will inevitably result in a different approach for every project' (Grimsey and Lewis, 2004, p. 245). As the study's findings showed, many interviewees tended to disregard or downplay the case-by-case approach to PPP implementation. Instead, they mostly focused on creating the basic conditions for PPPs, such as the legal and institutional framework and streamlining government tariff setting. This means that certain principal elements in the PPP governance in Kazakhstan are currently missing (e.g., the general law that would define a PPP) or require serious improvement (e.g., PPP tariff and wage rate setting).

The interviewees placed much emphasis on ensuring greater private party flexibility in business management. Justifying restrictions on PPP operations, such as government regulation of contractor workers' wage rates, is a challenging endeavor. In a market-oriented economy, attracting a highly qualified workforce requires each company to pay workers at market or above-market rates, whilst administrative restrictions may simply lead to staff attrition. From

this perspective, government regulation of wage rates seems excessive and unnecessary and is difficult to justify.

However, in another area of partner interaction – tariff setting – interviewees expressed the private operators' perspective that we view as opportunistic because operators call for tariff setting directly between themselves and customers, without an approval from the anti-monopoly agency. As partnerships' services are often monopolistic (e.g., a railroad, a toll road, a water-treatment facility or a stadium), the risk of market failure where a monopoly increases the price without losing customers is high (Stiglitz, 2000; Hyman, 2002). The threat of monopolistic manipulation with the service price, quality and quantity requires mitigation by the government regulation of tariffs; otherwise citizens may witness shrinking volumes and rising prices for traditional public services. Hence, we should view the government tariff regulation as effective in terms of reducing the private partners' opportunistic behaviour, i.e. pursuit of self-interest. Nevertheless, the government should ensure that procedures for submitting and processing new tariff applications are streamlined and shortened.

It is worth noting the significance of another perspective that interviewees emphasised, namely that PPP operators should be able to directly negotiate tariffs with clients. At the moment, calls for loosening government regulations in tariff setting in Kazakhstan are premature as the nation is a highly centralised economy. However, interviewees have highlighted the future of the PPP governance in which the scope of central government's regulation is likely to significantly decrease. Whilst at present time operators' push for less government regulation may be viewed as pursuit of self-interest as it allows to easier raise tariffs, from the long-term perspective the operators' vision of direct tariff negotiation between a service provider and a customer is aligned with the nation's intent to build a market-oriented economy.

The creation of effective provider–customer relations might serve as a reliable foundation from which demand for PPP services evolves. Currently, PPP deployment is facilitated by the government acting as strong launching customer. For example, in a PPP that has built and now operates a 120-km railroad in Eastern Kazakhstan, the government-owned railroad company called *Kazakhstan Temir Zholy* serves in two capacities: it was one of the principal partners and investors in a PPP and it is also a customer as it now buys a large volume of transportation services that this PPP provides.

Looking ahead at how tariff regulation can be handled in the long run, a range of opportunities can be provided by political development in Kazakhstan, in particular, by the transition from a unitary state to a decentralised unitary state. Examples of the latter include nations, such as Belgium and the Netherlands (Toonen, 1987; Hulst, 2005). As transition to a decentralised unitary state often incorporates economic decentralisation, this implies a shift of functions from the public sector to the private sector due to privatisation and deregulation (Toonen, 1987; Hulst, 2005). Whilst in a decentralised unitary state certain decisions still are made at the national level, local and regional governments have extensive privileges in decision-making and, hence, many issues including tariff setting for partnerships can be negotiated easier and faster. In a more complete form of a decentralised unitary state, tariff setting might become a matter of direct negotiations between a PPP operator and clients, although at present time in Kazakhstan it is hardly possible.

The article contributes to PPP theory as the management of co-production (Klijn and Teisman, 2005) by highlighting the limitations of the government's management approach that it borrowed from its own experience of treating the private sector organisations and that the government applied to PPPs. As the study showed, the management approach to PPPs that

Kazakhstan's government currently uses manifests itself in a large number of drawbacks, such as constrained management flexibility of private operators, losses in their efficiency due to cumbersome government-set procedures (e.g., bureaucratic tariff setting and excessive procurement restrictions) and disincentives to private operators' to better manage a property due to deliberate restriction that prohibits private asset ownership. By elucidating multiple examples of overregulation and PPPs' inefficiency, the article demonstrates that the government dominance in PPP management is conceptually inappropriate. Instead, the government should adopt the concept of co-production and manage its relations with the private sector partner in a collaborative fashion.

Identifying the partners' perspectives on a range of PPP management issues was successful due to research methodology that we adopted for this study. To the best of the authors' knowledge, this study is the first to develop propositions from the literature and then test them by using a phenomenological, or an interpretive approach (Neuman, 2007) to examine the subjective experiences and perceptions of PPP actors in Kazakhstan. Furthermore, in the broader PPP management field, studies that are based on the development of propositions that are subsequently tested by qualitative, rather than quantitative, data are rare. Hence, this research contributes to qualitative inquiry within the PPP management's body of knowledge by making a methodological contribution.

Additionally, the article contributes to praxis along two dimensions. The first dimension is the set of legal and institutional impediments to effective PPP management that the findings have identified. Resolving legal irregularities might drastically improve the legal PPP framework's clarity and, hence, attract more private investors. Additionally, consistent government efforts to improve the legislative and institutional environment for PPPs would clearly demonstrate the

central government's commitment to partnerships including meeting its own financial obligations to private operators, which would attract additional investment. The second dimension of contribution to practice stems from a range of examples regarding how the government overregulates the private sector partners. The most salient examples that the findings have highlighted include cumbersome tariff setting procedures (although we view the government regulations of tariffs as highly needed), disincentives to a private operator due to its inability to set wage rates for its workers according to the market conditions. Practitioners, particularly those in the public agencies, have to be concerned with ways to reduce the government overregulation of the private operators, which is likely to result in greater PPP flexibility in management and, ultimately, higher efficiency in delivering the public services.

As this qualitative study is based on a relatively small sample, future research may overcome this limitation by embracing a larger sample and use quantitative data analysis methods to empirically test the findings. Additionally, future studies may focus on the themes that were beyond the scope of this article, such as the impact of risk allocation on PPP implementation, the role of government political and financial support for PPP expansion and the impact of partners' commitment and trust on building successful partnerships.

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