



On equity participation in housing construction

Unofficial translation

The Law of the Republic of Kazakhstan dated April 7, 2016, № 486-V LRK.

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This Law regulates public relations associated with the activities of equity participation in housing construction of residential buildings (residential housing) by attracting the money of individuals and (or) legal entities, and establishes guarantees for protection of the rights and legitimate interests of the parties to the contract on equity participation in housing construction.

Chapter 1. General provisions

Article 1. Basic definitions used in this Law

The following basic definitions are used in this Law:

1) guarantee - the obligation of the Housing Construction Guarantee Fund for organization of completion of construction of a residential building (residential housing) upon the occurrence of a guarantee event and the transfer of a share in a residential building (residential housing) to equity holders under contracts on equity participation in housing construction;

2) guarantee event - an event or a set of events defined by this Law, with the onset of which the Housing Construction Guarantee Fund has an obligation to complete construction of a residential building (residential housing) and liability to equity holders under a guarantee contract of equity participation in housing construction;

3) guarantee fee - the amount of money paid by an authorized company to the Housing Construction Guarantee Fund under a guarantee contract of equity participation in housing construction;

4) guarantee period - the term of operation of construction objects of a residential building (residential housing), set up in accordance with the Civil Code of the Republic of Kazakhstan and the legislation of the Republic of Kazakhstan on architectural, town-planning and construction activities, during which the developer, authorized company and contractor (general contractor) guarantee the quality indicators of the object of construction of a residential housing (residential building) in accordance with the design and estimate documentation and the contract of equity participation in housing construction;

5) a suspensive condition - a condition or a set of conditions with the onset of which the parties have rights and obligations under the trust management agreement with voting shares (shares in the authorized capital) of the authorized company in the event of a guarantee event;

6) a share in a residential building (residential housing) - residential or non-residential premises, transferred to an equity investor in pursuance of the contract on equity participation in housing construction, which is part of the constructed residential building (residential housing);

7) the project cost of a residential building (residential housing) (hereinafter referred to as the project cost) - the cost of construction and installation works, the costs of project management, author's and technical supervision, remuneration for loans and other expenses provided for in this Law;

8) the framework of a residential housing (residential building) - is a load-bearing system (framework), taking up the loads and impacts, providing strength, rigidity and stability of a residential housing (residential building), having load-bearing structures, floor and roof structures;

9) the Housing Construction Guarantee Fund (hereinafter referred to as the Guarantee Fund) - a non-profit organization in the organizational and legal form of a joint-stock company with direct or indirect state participation in the authorized capital, guaranteeing completion of construction and transfer of a share in a residential housing (building) to equity holders in the event of a guarantee event;

10) equity participation in housing construction - the relations of the parties, based on the contract on equity participation in housing construction;

11) a guarantee contract of equity participation in housing construction (hereinafter referred to as the guarantee contract) - a contract concluded between the Guarantee Fund, the developer and the authorized company in the manner and under the terms determined by this Law;

12) participants in equity participation in housing construction - developer, authorized company, contractor (general contractor), second-tier bank, engineering company, Guarantee Fund and equity holder;

13) engineering company in the field of equity participation in housing construction (hereinafter referred to as an engineering company) - a legal entity, rendering engineering services in architecture, town planning and construction accredited in accordance with the legislation of the Republic of Kazakhstan and in accordance with the requirements of this Law;

14) engineering services in equity participation in housing construction - a set of engineering services in architectural area, town-planning and construction activities, including monitoring of the progress of construction of a residential building (residential housing) and monitoring of the targeted use of money allocated for construction of a residential housing (residential building);

15) a developer in the field of equity participation in housing construction (hereinafter referred to as the developer) - a legal entity that exercises activities to organize equity participation in housing construction of residential building (residential housing) at the expense of own and (or) attracted money through participation in the authorized capital of an authorized company;

16) an authorized body in the field of equity participation in housing construction (hereinafter referred to as the authorized body) - central executive body that administers, and within its competence conducts an inter-sectoral coordination in the field of equity participation in housing construction;

17) a contract on equity participation in housing construction - an agreement concluded between an authorized company and an equity investor regulating the legal relationships of the parties related to the equity participation in housing construction in which one party undertakes to ensure construction of a residential building (residential housing) and to transfer the share in a residential building (residential housing) to the second party upon completion of construction, and the second party - to make payment and receive a share in the residential building (residential housing);

18) an authorized company - a legal entity, one hundred percent of the voting shares (shares in the authorized capital) of which belong to the developer who carries out activities to ensure the shared construction of a residential housing (residential building) and the sale of shares in a residential housing (residential building), which is not entitled to be involved in any other commercial activities, except for the activities in special economic zones;

18-1) an authorized organization - a legal entity, one hundred percent of voting shares (participatory interests in the authorized capital) of which are directly or indirectly owned by the state, carrying out activities to ensure the completion of construction of problematic housing projects in the capital, cities of republican significance or other administrative-territorial units in the frames of the state programs of housing construction;

19) equity holder - an individual (with the exception of temporarily staying foreigners) or a legal entity that concluded a contract on equity participation in housing construction to obtain a share in a residential building (residential housing);

20) low-rise construction - low-rise residential building (residential housing) with a height of no more than three above-ground floors (without the attic), including the blocked residential building (residential housing), each of which has direct access to the near-apartment plot.

Footnote. Article 1 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 2. Legislation of the Republic of Kazakhstan on equity participation in housing construction

1. Legislation of the Republic of Kazakhstan on equity participation in housing construction is based on the Constitution of the Republic of Kazakhstan and consists of the Civil Code of the Republic of Kazakhstan, this Law and other normative legal acts of the Republic of Kazakhstan.

2. Legislation of the Republic of Kazakhstan on housing relations and on architectural, town-planning and construction activities extends to equity participation in housing construction in the part not regulated by this Law.

3. If an international treaty ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law, the rules of the international treaty shall apply.

Article 3. Scope of this Law

1. This Law applies to relations in which one party is obliged to ensure construction of a residential building (residential housing) and to transfer residential or non-residential premises in the residential building (residential housing) to the second party after completion, and the second party - to pay and accept residential or non-residential premises in residential building (residential housing).

2. It is prohibited to attract money from individuals and legal entities for construction of residential buildings (residential housing) in violation of the requirements, set up by this Law. Transaction to attract money from individuals and legal entities for construction, committed in violation of the requirements of this Law, shall be held invalid.

Provisions of this paragraph shall not apply to the activities of authorized organizations that attract money from individuals and legal entities to complete construction of problem housing projects.

3. Provisions of this Law with regard to the conclusion of contracts on equity participation in housing construction also apply to counter-parties of the developer and (or) the authorized company in the event of paying them through providing the shares in a residential building (residential housing).

4. This Law does not apply to relations associated with:

1) public procurement;

2) by investing in housing construction or by organizing construction by legal entities whose controlling stake is directly or indirectly owned by the state, without the right to sell residential and (or) non-residential premises in the construction object before commissioning, except for the Guarantee Fund and authorized organizations;

3) acquisition by legal entities of only residential and (or) non-residential premises in a residential building (residential housing) under construction without the right to sell (assign claims) the residential and (or) non-residential premises in a residential building (residential housing) under construction to individuals and (or) legal entities before putting it into operation;

4) low-rise construction.

Footnote. Article 3 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Chapter 2. State regulation in the field of equity participation in housing construction

Article 4. Competence of the Government of the Republic of Kazakhstan in the field of equity participation in housing construction

The competence of the Government of the Republic of Kazakhstan in the field of equity participation in housing construction includes:

- 1) development of the main directions of the state policy in the field of equity participation in housing construction and organization of their implementation;
- 2) establishment (definition) of the Guarantee Fund;
- 3) exercising other functions entrusted to it by the Constitution of the Republic of Kazakhstan, other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

Article 5. Competence of an authorized body

An authorized body:

- 1) implements the state policy in the field of equity participation in housing construction;
- 2) develops and approves the standard form of a contract on equity participation in housing construction;
- 3) develops and approves the standard form of a guarantee contract;
- 4) develops and approves the rules for recording of contracts on equity participation in housing construction by local executive bodies, as well as contracts on assignment of claims on them;
- 5) develops and approves a standard form of a land plot pledge agreement together with an object of unfinished construction;
- 6) develops and approves the standard form of the pledge agreement for voting shares (shares in the authorized capital) of the authorized company;
- 7) develops and approves the standard form of a contract of trust management of voting shares (shares in the authorized capital) of the authorized company;
- 8) develops and approves the procedure for determining the amount of the guarantee fee;
- 9) develops and approves the methodology for determining the capital adequacy ratio;
- 10) develops and approves the methodology of calculation and formation of a reserve for settlement of guarantee cases;

11) develops and approves the rules for issuing permits to attract money from equity investors;

11-1) develops and approves the rules for changing the ways of organizing participation in shared housing construction;

11-2) develops and approves the rules for maintaining a unified information system of participation in shared housing construction;

12) exercises other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Footnote. Article 5 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 6. Competence of local executive bodies of regions, cities of republican significance, the capital, districts, towns of regional significance

Local executive bodies of regions, cities of republican significance, the capital, districts, towns of regional significance in the field of equity participation in housing construction:

1) carry out state regulation of activity of participants of construction of objects of equity participation in housing construction in accordance with the legislation of the Republic of Kazakhstan on architectural, town-planning and construction activities;

2) issue permits to attract money from equity investors;

3) keep records of issued permits to attract money from equity investors;

4) quarterly, not later than the 15th day of the month following the reporting period, provide information on the issued permits to attract money from equity investors to the authorized body;

5) request the necessary materials and documents from developers, authorized companies, engineering companies and the Guarantee Fund to monitor the progress of construction of objects of equity participation in housing construction;

6) carry out state control and supervision in the field of equity participation in housing construction;

7) carry out interaction and cooperation with state bodies on issues within their competence;

8) interact with participants of equity participation in housing construction;

9) keep records of contracts on equity participation in housing construction, as well as contracts on assignment of claims on them;

10) in the interests of local public management, exercise other powers vested in local executive bodies by the legislation of the Republic of Kazakhstan.

Chapter 3. Organization of equity participation in housing construction

Article 7. Ways to organize equity participation in housing construction

1. Equity participation in housing construction is organized in one of the following ways:

1) obtaining the guarantee of the Guarantee Fund;

2) participation in a second-tier bank's project;

3) attraction of money of equity investors after construction of the framework of a residential building (residential housing).

1-1. It shall be allowed to change the methods of organizing participation in shared housing construction in accordance with the procedure determined by the authorized body.

2. It is prohibited to attract money from individuals and legal entities for construction of residential housing (residential buildings) by other means not provided for in this article.

Footnote. Article 7 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 8. Organization of equity participation in housing construction by obtaining guarantee from the Guarantee Fund

1. In order to carry out activities related to organization of equity participation in housing construction by means of obtaining a guarantee from the Guarantee Fund, the developer must comply with the following requirements:

1) to have experience of the completed construction objects of residential housing (residential buildings), including as a customer, contractor (general contractor) in aggregate, not less than three years, with a total area of not less than eighteen thousand square meters when building in cities of republican significance, the capital and not less than nine thousand square meters in construction in other administrative-territorial units;

2) have assets remaining after deducting short-term and long-term liabilities for the last two financial years according to its financial statements, confirmed by an audit report;

3) the amount of the coefficient calculated by the ratio of debt to equity capital should not exceed seven during the entire period of construction of a residential building (residential housing) prior to its commissioning.

2. In order to carry out activities related to organization of equity participation in housing construction by means of obtaining a guarantee from the Guarantee Fund, the developer establishes an authorized company that simultaneously exercises activities for not more than one construction project.

The project of construction of a residential building (residential housing) may provide for several construction objects on one land plot (allotment).

The developer has the right to involve an authorized company which fulfilled its obligations to transfer the shares to equity holders in a residential building (residential housing) in accordance with Article 15 of this Law.

3. To organize equity participation in housing construction by way of obtaining a guarantee from the Guarantee Fund, an authorized company must have:

1) a land plot belonging on the basis of the right of temporary paid land use (rent) granted by the state, or on the basis of the right of ownership;

2) design and estimate documentation of the project of construction of a residential building (residential housing) with the positive conclusion of a comprehensive extra-departmental expertise;

3) the money planned for expenditure in accordance with Article 20 of this Law, and (or) construction in progress, confirmed by the acts of work performed, in the amount of not less than ten percent of the project cost if the land plot belongs on the basis of the right of ownership, or not less than fifteen percent of the project cost in the event that the land plot belongs on the basis of the right of temporary paid land use (rent) granted by the state;

4) money for payment of fee for consideration of documents, guarantee fee under a guarantee contract;

5) a contract for construction of a residential building (residential housing).

4. The property specified in paragraph 3 of this article shall be free from any encumbrances, rights and claims of third parties.

Construction and installation work in progress, referred to in subparagraph 3) of paragraph 3 of this article, must be paid in full by the developer and (or) an authorized company before submitting an application to the Guarantee Fund and confirmed by acts of reconciliation of settlements between the customer and the contractor.

5. If the developer and the authorized company comply with the requirements set forth in this article, the Guarantee Fund shall verify documents on the project for construction of a residential building (residential housing) in the manner approved by the authorized body and conclude a guarantee contract.

6. The concluded guarantee contract is the basis for attracting the money of the equity holders and does not require the developer and the authorized company to obtain permission from the local executive body to attract the money of the equity holders.

7. In order to fulfill the requirements of this Law, the developer shall submit to the Guarantee Fund an annual financial report, confirmed by an audit report, and the authorized company shall submit to the Guarantee Fund the quarterly financial statements in accordance with the legislation of the Republic of Kazakhstan on accounting and financial reporting during the term of the guarantee agreement.

Footnote. Article 8 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 9. Organization of equity participation in housing construction through participation in a second-tier bank's project

1. In order to carry out activities related to organization of equity participation in housing construction through participation in a second-tier bank's project, the developer must have the experience of completed construction projects for residential buildings (residential housing), including as a customer, contractor (general contractor) in aggregate, for at least three years, on a total area of at least eighteen thousand square meters when building in cities of republican significance, the capital and at least nine thousand square meters in construction in other administrative and territorial units.

2. To organize equity participation in housing construction by participating in a second-tier bank's project, the developer establishes an authorized company that simultaneously works for not more than one construction project.

The project of construction of a residential building (residential housing) may provide for several construction objects on one land plot (allotment).

The developer has the right to involve an authorized company that has fulfilled its obligations to transfer shares to equity holders in a residential building (residential housing) in accordance with Article 15 of this Law.

3. To organize equity participation in housing construction by way of participation in a second-tier bank's project, an authorized company must have:

1) a land plot belonging on the basis of the right of temporary paid land use (rent), granted by the state, or on the basis of the right of ownership;

2) design and estimate documentation of the project for construction of a residential building (residential housing) with the positive conclusion of a comprehensive extra-departmental expertise.

4. The property specified in paragraph 3 of this article shall be free from any encumbrances, rights and claims of third parties, except for a land plot, which may be pledged to a second-tier bank, financing the construction.

5. If the developer and the authorized company comply with the requirements established by this article, the developer and (or) the authorized company shall apply to the second-tier bank to receive a decision of the second-tier bank on the readiness to finance the construction of a residential building (housing) in an amount sufficient to complete the construction.

In case of readiness to finance the residential building (residential housing), the second-tier bank concludes a contract with an engineering company.

6. In the event that the developer and the authorized company comply with the requirements set forth in this article, the developer and the authorized company shall apply to

the local executive body of the region, city of the republican significance, the capital, district, town of regional significance for obtaining permission to attract the money of the equity holders in the procedure established by Article 18 of this Law.

7. A second-tier bank has the right to make a decision on the use of money of equity holders from the bank account of the authorized company, taking into account the requirements established by Article 20 of this Law, only after erecting the framework of a residential building (residential housing), confirmed by an engineering company.

8. The property specified in subparagraphs 1) and 2) of paragraph 3 of this article shall be deemed to be pledged to equity holders from the moment of registering the contract on equity participation in housing construction in the local executive body.

9. When a second-tier bank makes a decision to sell the pledged property specified in subparagraphs 1) and 2) of paragraph 3 of this article, the money received from the sale of the pledged property is sent to meet the requirements of equity investors who submitted a demand for a refund and a second-tier bank. If there is a shortage of money received from the sale of the pledged property, the difference after deduction of the amounts necessary to cover expenses related to foreclosure of this property and its sale is distributed among the equity holders and the second-tier bank in proportion to the size of their claims by the time these requirements are met.

10. The money, due and payable to equity holders, who did not articulate their claims before the date of public tenders, where the pledged property was sold, is sent to the bank deposit account in accordance with the condition of the contract on equity participation in housing construction.

Since the conclusion of the contract on equity participation in housing construction, a second-tier bank is recognized as a trustee of equity holders when applying for foreclosure of the pledged property and its sale.

11. From the moment of transfer of a share in a residential building (residential housing) by an authorized company to an equity holder in accordance with the procedure established by Article 17 of this Law, the right to pledge is terminated.

Footnote. Article 9 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 10. Organization of equity participation in housing construction by attracting money of equity investors after construction of the framework of a residential building (residential housing)

1. In order to carry out activities related to organization of equity participation in housing construction by means of attracting the equity investors' money after the construction of the framework of a residential building (residential housing), within the past five years, the

developer is obliged to build and commission, including as a customer, a contractor (general contractor), residential housing (residential building) on the territory of the Republic of Kazakhstan with a total area of at least sixty thousand square meters when building in cities of republican significance, the capital and not less than thirty thousand square meters in construction in other administrative and territorial units. At the same time, the total experience of the developer's subsidiaries is taken into account.

2. To organize equity participation in housing construction by attracting the equity investors' money after construction of the framework of the residential building (residential housing), the developer establishes an authorized company that simultaneously works for not more than one construction project.

The project of construction of a residential building (residential housing) may provide for several construction projects on one land plot (allotment).

The developer has the right to involve an authorized company that has fulfilled its obligations to transfer the shares in a residential building (residential housing) to the equity holders in accordance with Article 15 of this Law.

3. To organize equity participation in housing construction by means of attracting the money of equity investors after construction of the framework of a residential building (residential housing), the authorized company must have:

1) a land plot belonging on the basis of the right of temporary paid land use (rent), granted by the state, or on the basis of the right of ownership;

2) design and estimate documentation of the project for construction of a residential building (residential housing) with the positive conclusion of a comprehensive extra-departmental expertise;

3) existence of the completed construction of the framework of the residential building (residential housing), confirmed by the report of the engineering company;

4) a contract with an engineering company.

4. The property specified in paragraph 3 of this article shall be free from any encumbrances, rights and claims of third parties.

5. In the event that the developer and the authorized company comply with the requirements set forth in this article, the developer and the authorized company shall apply to the local executive body of the region, the city of republican significance, the capital, the district, the town of regional significance for obtaining permission to attract the money of the equity holders in the procedure established by Article 18 of this Law.

6. After obtaining permission to attract money of equity holders, the authorized company organizes construction of a residential housing (residential building) by attracting the money of equity holders in accordance with the requirements of Article 20 of this Law.

7. The property specified in subparagraphs 1), 2) and 3) of paragraph 3 of this article shall be deemed to be pledged to equity holders from the moment of recording the contract on equity participation in housing construction in the local executive body.

8. Transfer of property specified in subparagraphs 1), 2) and 3) of paragraph 3 of this article as a pledge is not allowed.

9. If the authorized company fails to fulfill or improperly fulfills its obligations to complete construction of a residential building (residential housing), the equity holders have the right to initiate the bankruptcy procedure of the authorized company in accordance with the legislation of the Republic of Kazakhstan on rehabilitation and bankruptcy.

10. In the event of bankruptcy of an authorized company, to complete construction of a residential building (residential housing), the equity holders are entitled to form a housing construction cooperative in accordance with the housing legislation of the Republic of Kazakhstan.

11. From the moment of transfer of a share in a residential building (residential housing) by an authorized company to an equity holder in accordance with the procedure established by Article 17 of this Law, the right to pledge is terminated.

Chapter 4. A contract on equity participation in housing construction

Article 11. A contract on equity participation in housing construction

1. A contract on equity participation in housing construction is concluded in writing and is considered to be concluded from the moment of its registration in the local executive body at the location of the residential building (residential housing) in accordance with the procedure provided for in Article 12 of this Law.

2. The parties to the contract on equity participation in housing construction shall inform each other of the change in the actual address and (or) other personal data in writing within thirty calendar days.

Article 12. Registration of contract on equity participation in housing construction

1. An agreement for participation in shared housing construction, the amendments and (or) additions to it, as well as the agreement on assignment of the right to claim under it shall be recorded in the local executive body at the location of the residential house (residential building) upon presentation of an authorized company using unified information system of participation in the shared housing construction.

2. Registration of contracts on equity participation in housing construction is carried out in accordance with the rules of registration of contracts on equity participation in housing construction, as well as contracts for assignment of claims for them, approved by the authorized body.

Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 13. Change and cancellation of a contract on equity participation in housing construction

1. A contract on equity participation in housing construction after its conclusion, by agreement of the parties, may be amended and / or added in the manner provided for by the civil legislation of the Republic of Kazakhstan. In such cases, additional agreements to the contract on equity participation in housing construction are also subject to registration in local executive bodies.

2. Concession of the right of claim by an equity holder under a contract on equity participation in housing construction is allowed only after payment of the contract price or simultaneously in the event of the consent of the authorized company with the transfer of the debt to a new equity holder in accordance with the civil legislation of the Republic of Kazakhstan in a non-cash form.

3. Concession of the right of claim by an equity holder under a contract on equity participation in housing construction is allowed from the moment of registration of the contract on equity participation in housing construction in the local executive body at the location of the residential building (residential housing) until the parties sign the transfer act on transferring the share in the constructed residential building (residential housing).

4. In the event of the death of an equity investor - individual or declaring him deceased - the rights and obligations under a contract on equity participation in housing construction are transferred to the heirs in accordance with the civil legislation of the Republic of Kazakhstan.

Article 14. Rights and obligations of equity holder

1. An equity holder has the right:

- 1) to receive information specified in Article 22 of this Law;
- 2) to concede the right of claim under the contract on equity participation in housing construction in the manner determined by the civil legislation of the Republic of Kazakhstan;
- 3) to require the proper performance by the authorized company of the terms of the contract on equity participation in housing construction.

2. An equity holder is obliged:

- 1) to transfer money to the bank account of the authorized company in a non-cash form in accordance with the contract on equity participation in housing construction;
- 2) timely comply with the terms of the contract on equity participation in housing construction;
- 3) to receive a share in a residential building (residential housing) in the presence of a registered certificate of acceptance of a residential housing (residential building) for operation within thirty calendar days from the date when the equity holder receives notification from the authorized company with the signing of a share transfer agreement;

4) in case of changing the actual address and (or) other personal data, notify the authorized company in writing about it within thirty calendar days.

Article 15. Execution of obligations under the contract on equity participation in housing construction

1. Payment by the equity holder of the value of the share provided for by the contract on equity participation in housing construction is made by making payments in the terms specified by the contract to the bank account of the authorized company.

2. The obligations of an equity investor are considered fulfilled from the moment of payment in full of the value of the share and its acceptance in the residential building (residential housing) in accordance with the contract on equity participation in housing construction.

3. The obligations of the developer and / or the authorized company to transfer the share in the residential building (residential housing) are considered to have been fulfilled from the moment of acceptance of the residential housing (residential building) and signing of the contract by the parties on the transfer of the share in the residential building (residential housing).

4. The obligations of the contractor (general contractor) for the guarantee period are considered fulfilled after implementation of obligations to eliminate the guarantee period violations of compliance of the construction parameters of the residential housing (residential building) specified in the design and estimate documentation and in the contract on equity participation in housing construction.

5. The risk of accidental loss or damage to a share in an erected residential building (residential housing) prior to its actual transfer to an equity holder is borne by an authorized company. After the actual transfer of a share in the residential building (residential housing), the risk of accidental loss or accidental damage passes to the equity holder.

Article 16. Responsibility of the parties to a contract on equity participation in housing construction

1. An authorized company is responsible for ensuring control over the progress and quality of construction.

2. The authorized company, on the terms specified in the contract on equity participation in housing construction, controls the money paid for construction of a residential housing (residential building) and is liable under the legislation of the Republic of Kazakhstan or the contract on equity participation in housing construction for:

- 1) the targeted and timely use of money of equity holders;
- 2) compliance with the requirements of regulatory and technical documents for construction of the facility;

3) quality of used building materials, structures, equipment and maintenance of construction and installation works;

4) the deadline for commissioning the facility;

5) transfer of a share to the equity holder.

3. The authorized company is responsible for selection of the contractor (general contractor) through the submitted qualification requirements.

4. The authorized company must notify the equity holder by mail that the next payment has not been made. Such notification should be in the form of a registered letter with a list of enclosures or handed to the equity holder personally on receipt.

To recognize the refusal of an equity holder to fulfill contractual obligations, it is necessary to have at least three notifications of non-payment with a total period of delay of payment (payments) of at least three months.

5. In the event of failure to make a regular payment by an equity holder and the absence of a written request within the period specified in paragraph 4 of this article, according to the terms of the contract on equity participation in housing construction, the authorized company has the right to take one of the following decisions:

1) to receive financing (money) from a third party to pay such a share, with subsequent assistance in processing the assignment of the right of claim (with the return of the money deposited to the previous equity holder);

2) to terminate the contract and sell the share to a third party and within three months from the date of acceptance of the residential housing (residential building) for operation to return the money received from the sale to the equity holder or to ensure their storage in the bank account until the former equity holder comes.

Article 17. Transfer of a share in a residential building (residential housing)

1. The authorized company is obliged to transfer a share in the constructed residential building (residential housing) to the equity holder not later than the period stipulated by the contract on equity participation in housing construction.

2. Transfer of a share to an equity holder in a residential building (residential housing) is carried out by an authorized company after signing the act of acceptance into operation of the completed residential building (residential housing).

3. After signing the act of acceptance of the constructed residential housing (residential building), the authorized company has the right to fulfill ahead of schedule the obligation to transfer the shares in the residential building (residential housing) to equity holders.

4. The authorized company is obliged to send a letter to the equity investor about completion of construction of a residential housing (residential building) in accordance with the contract on equity participation in housing construction and on the readiness of a share for the transfer, as well as to warn the equity investor about the need to accept the share and

about the consequences of the inaction of the equity participant stipulated in the contract on equity participation in housing construction. The letter should be sent by mail by a registered letter and with a notification of receipt of the letter by the addressee or handed to the equity holder personally on receipt.

5. An equity holder, who received a written notification from the authorized company about completion of construction of a residential housing (residential building) and the readiness of a share in the residential building (residential housing) for the transfer, is obliged to proceed to its acceptance in the period provided for in the contract on equity participation in housing construction or, if, such period was not established, within ten working days from the date of receipt of the said notice.

6. An equity holder who during the acceptance of the work discovered deviations from the design and estimate documentation and the contract on equity participation in housing construction has the right to demand from the authorized company, in the period agreed upon by the parties, to eliminate the identified shortcomings.

Chapter 5. Order and features of equity participation in housing construction

Article 18. Procedure for issuing a permit to attract money of equity holders when organizing the shared housing construction by participating in a second-tier bank's project or after erecting the frame of a residential building (residential housing)

1. Equity holders' money is attracted by the authorized company on the basis of the permission of the local executive body of the region, the city of republican significance, the capital, the district, the town of regional significance for attracting the money of equity investors.

2. A permit to attract money of equity holders is issued in accordance with the Law of the Republic of Kazakhstan "On Permissions and Notifications".

3. In order to obtain permission to attract money of equity holders, the developer and the authorized company send an application to the local executive body with copies of documents confirming compliance with the requirements specified in paragraphs 1 and 3 of article 9 and paragraphs 1 and 3 of article 10 of this Law.

4. The local executive body within ten working days from the receipt of the documents specified in paragraph 3 of this article from the developer and the authorized company is obliged to issue a permit to attract the money of the equity holders or send a written reasoned refusal.

5. The reason for refusal to issue a permit by the local executive authority to attract the money of equity investors is the non-compliance of the developer and (or) the authorized company with one or more of the requirements set forth in paragraphs 1 and 3 of Article 9 and paragraphs 1 and 3 of Article 10 of this Law.

6. The developer and the authorized company shall have the right to appeal a reasoned refusal to issue a permit to attract money of equity holders in court.

7. The developer and the authorized company shall have the right to re-apply for a permit to attract the money of the equity holders after elimination of the remarks indicated in the reasoned refusal.

8. Permission to attract money of equity holders is issued by the local executive body for the entire period of construction of a residential building (residential housing) before putting it into operation.

9. Suspension of the operation and forfeiture of the permission to attract money of equity investors are carried out in accordance with the Law of the Republic of Kazakhstan "On Permissions and Notifications".

Article 19. Features of organizing equity participation in housing construction

1. The risk of an accidental rise in the cost of construction and installation works of a residential building (residential housing) is borne by the contractor (general contractor), except for the case provided for in paragraph 2 of this article.

2. The contractor (general contractor) has the right to demand revision of the estimate, if for reasons beyond its control, the cost of construction and installation works exceeded the estimate by at least ten percent. In this case, the risk of an accidental rise in the cost of construction and installation works in an amount exceeding 10 percent of the estimate is borne by the authorized company.

3. Payment for the work performed by the contractor (general contractor) under the construction contract in accordance with the design and estimate documentation is made from the bank account of the authorized company on the basis of acts of the works performed, confirmed by the engineering company.

4. The use of equity investors' money is carried out by an authorized company for the purpose of constructing a residential building (residential housing), taking into account the requirements provided for in article 20 of this Law.

5. The owner of the unfinished construction is an authorized company.

6. Civil-legal transactions with unfinished construction for other obligations of the developer and the authorized company, except for attraction of a bank loan and obtaining a guarantee from the Guarantee Fund, are prohibited.

7. During the guarantee period, the contractor (general contractor), the developer and the authorized company, guarantee the preservation of the quality of indicators of the residential housing (residential building), specified in the design and estimate documentation, and the possibility of operating a residential building (residential housing) in accordance with the contract on equity participation in housing construction.

8. The developer and the authorized company are obliged to conduct the audit of the annual financial statements.

9. The authorized company is obliged to sell a unit of the areas of the share in a residential building (residential housing) not lower than the cost determined by the ratio of the project cost to the total area of the residential building (residential housing).

10. The developer for the obligations of the authorized company shall bear subsidiary liability to equity holders.

11. The failure to fulfill or improper fulfillment by the authorized company of the obligation to complete construction of a residential housing (residential building) provided for in Articles 9 and 10 of this Law is a violation of the deadline for acceptance of a residential building (residential housing) for operation. Three-time extension of the construction period is allowed for three months each from the period specified in the design and estimate documentation of the construction object.

Footnote. Article 19 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 20. Ensuring the targeted use of money in equity participation in housing construction

1. In order to ensure the targeted use of money allocated for construction of a residential building (residential housing), the authorized company and the contractor (general contractor) are obliged to open no more than one bank account in only one second-tier bank.

2. The use of money from the bank account of the authorized company is carried out in accordance with the terms of the bank account contract for financing purposes in accordance with paragraph 8 of this article on the basis of the acts of the work performed, confirmed by the engineering company.

3. When carrying out the activities related to organization of equity participation in housing construction by obtaining a guarantee from the Guarantee Fund, the bank account is used to place money of an authorized company in accordance with subparagraphs 3) and 4) of paragraph 3 of Article 8 of this Law, the money received to pay for shares in a residential housing (residential building), the borrowed funds (if any) and spending money in accordance with the acts of the works performed in accordance with the design and estimate documentation.

4. When carrying out the activities related to organization of equity participation in housing construction by means of participation in a second-tier bank's project, a bank account is used to place and use the money received in payment for shares in a residential building (residential housing) and spending money according to the acts of the works performed in accordance with the design and estimate documentation.

5. When carrying out the activities related to organization of equity participation in housing construction by means of attracting the money of equity investors after construction of the framework of a residential building (residential housing), the bank account is used to place money of the authorized company received in payment for shares in a residential building (residential housing) and spending money according to the acts of the works performed in accordance with the design and estimate documentation.

6. The authorized company provides the management of money on the bank account in terms of:

- 1) own money, invested in accordance with the requirements of this Law;
- 2) the money received in payment for shares in a residential building (residential housing), including in the context of the payments from each equity investor;
- 3) the borrowed funds (if any) provided for the purpose of financing the construction of a residential building (residential housing).

7. The basis for crediting the equity holder's money for the payment of shares in the residential building (residential housing) is the concluded contract on equity participation in housing construction.

8. Observance of targeted spending of the funds by an authorized company is ensured by their spending on:

- 1) construction and installation works, project management costs, author's and technical supervision;
- 2) payment of a commission for bank accounts and fees for servicing a bank loan;
- 3) other expenses of the authorized company, related to the construction of a residential house (residential building) and the sale of the project, in the amount of not more than ten percent of the project cost, including advertising, maintenance of management personnel, utilities, telecommunications services, costs associated with office rent, expenses for production of technical passports for quality control, laboratory tests, taxes and other obligatory payments to the budget, mandatory pension contributions and mandatory professional pension contributions, contributions for compulsory social health insurance to the Social Health Insurance Fund.

9. Monetary transactions between the authorized company and its contractor (general contractor) prior to the acceptance of the residential building (residential housing) for operation are carried out exclusively through a bank account.

10. In case of revealing misuse of money of equity investors, the engineering company informs the Guarantee Fund, the local executive body or the second-tier bank within three working days (depending on the way of organizing the equity participation in housing construction).

11. The money of an authorized company placed on a bank account may not be the subject of other civil transactions of the developer or the authorized company, not provided

for by this Law, with third parties prior to the acceptance for operation of the residential building (residential housing) under construction.

Footnote. Article 20 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Article 21. Features of activities of engineering companies in the field of equity participation in housing construction and certified experts

1. Activities of an engineering company in the field of equity participation in housing construction and certified experts are carried out in accordance with the rules of rendering engineering services in architectural area, town-planning and construction activities.

2. An engineering company monitors the progress of construction, the targeted use of equity investors' money, the verification of the amount of work performed within the project cost.

3. An engineering company is obliged to report monthly according to the form approved by the authorized body, about the results of monitoring the progress of construction of a residential housing (residential building) to the Guarantee Fund, a second-tier bank or a local executive body (depending on the way of organizing equity participation in housing construction).

4. The heads of an engineering company and certified experts for rendering engineering services for construction project should not be affiliated with the management of the Guarantee Fund, the developer, the authorized company, the contractor (general contractor) of this construction project.

5. The management of an engineering company and certified experts are obliged to observe confidentiality, official and commercial secrets, unless otherwise stipulated by the legislative acts of the Republic of Kazakhstan.

6. A certified expert is prohibited:

1) to perform engineering services if a certified expert took part in development of design and estimate documentation for this construction project;

2) to be in labor, financial or other dependent relations with the developer or an authorized company and with other participants of equity participation in housing construction.

7. An engineering company must comply with the following requirements:

1) to have experience in rendering engineering services for the commissioned construction projects in the Republic of Kazakhstan and providing at least three customer feedback on the engineering services rendered;

2) to have at least three certified experts for the right to render engineering services in architectural area, town-planning and construction activities;

3) to employ a specialist to monitor the targeted use of money.

8. The engineering company has the right to insure its civil liability for fulfillment of obligations, determined by agreement of the parties.

Article 22. Information provided by an authorized company

1. The authorized company provides the following information for review to individuals and legal entities that applied for the purpose of concluding a contract on equity participation in housing construction:

1) about the name and legal address of the developer and the authorized company;

2) about availability of a certificate confirming state registration (re-registration);

3) about availability of a guarantee contract concluded with the Guarantee Fund and its basic conditions in the case of organization of equity participation in housing construction by obtaining a guarantee from the Guarantee Fund;

4) about availability of permission of the local executive body to attract the money of the equity holders in the case of organizing equity participation in housing construction by participating in a second-tier bank's project or by attracting the money of equity investors after construction of the framework of a residential building (residential housing);

5) about the projects of construction of residential housing (residential buildings) implemented by the developer;

6) about the object of construction of a residential housing (residential building), proposed for construction;

7) about availability of a document confirming the relevant right of an authorized company to a land plot.

2. Information about construction object includes:

1) notice of the beginning of construction and installation works;

2) indication of the location and description of the facility in accordance with the design and estimate documentation;

3) information on the timing of its completion;

4) basic information about the contractor (general contractor), including the name, experience in this area, the availability of a license, information on the commissioned construction objects, where he acted as a contractor (general contractor).

3. The authorized company on its own Internet resource places information about:

1) the name of the object and its location;

2) the progress of construction, confirmed by a photo-report, updated at least once a month;

3) the timing of completion of construction.

4. In the event that the authorized company provides incomplete and unreliable information established by this Law, the equity holder has the right to apply to the court with a claim to recognize the contract on equity participation in housing construction as invalid.

Article 23. Features of advertising associated with organization of equity participation in housing construction

The developer and / or the authorized company have the right to advertise the project for construction of a residential housing (residential building), indicating that the contracts on equity participation in housing construction will be concluded only after conclusion of a guarantee contract with the Guarantee Fund or issuance of a permit to attract money of equity investors by a local executive body. The advertisement should contain information about the developer and the authorized company.

Chapter 6. Guarantee Fund

Article 24. Guarantee Fund

1. The Guarantee Fund carries out its activities on the basis of this Law, the Charter and other normative legal acts of the Republic of Kazakhstan.

2. The main activity of the Guarantee Fund is the provision of guarantees for completion of construction of a residential building (residential housing).

3. Financing and material and technical support of the activities of the Guarantee Fund shall be carried out at the expense of guarantee fees and other sources not prohibited by the legislation of the Republic of Kazakhstan.

4. The bodies of the Guarantee Fund are:

- 1) the general meeting of shareholders is the supreme body;
- 2) the Board of Directors - the management body;
- 3) the board is the executive body.

The Guarantee Fund may set up other bodies in accordance with its charter.

Article 25. Objectives and functions of the Guarantee Fund

1. The main objectives of the Guarantee Fund are:

1) ensuring the stability and effectiveness of the system of guaranteeing the equity participation in housing construction;

2) protection of the rights and legitimate interests of equity holders in the event of a guarantee event;

3) other objectives performed to stimulate the market of the shared housing construction.

2. To fulfill the main objectives, the Guarantee Fund exercises the following functions:

- 1) considers the application of the developer and his authorized company for organization of equity participation in housing construction by obtaining a guarantee from the Guarantee Fund;
- 2) guarantees completion of construction of a residential building (residential housing), its acceptance into operation upon occurrence of a guarantee event and the transfer of shares in a residential building (residential housing) to equity holders;
- 3) analyzes the reports of the engineering company;
- 4) forms and manages the reserve intended for settlement of guarantee cases, at the expense of guarantee fees;
- 5) interacts with participants of equity participation in housing construction and local executive bodies on the issues within the competence of the Guarantee Fund;
- 6) exercises other functions to implement the objectives defined by this Law.

Article 26. Rights and obligations of the Guarantee Fund

1. The Guarantee Fund shall have the right:
 - 1) to have unimpeded access to the territory of the construction site with prior notification to the authorized company not later than one working day prior to the expected date of the site visit in compliance with the requirements of the legislation of the Republic of Kazakhstan on occupational safety and health;
 - 2) to request from the developer, the authorized company, any information on construction of a residential building (residential housing), including the progress of construction, contracts on equity participation in housing construction concluded and other information necessary to exercise functions defined by this Law;
 - 3) to coordinate changes in design and estimate documentation;
 - 4) to perform the functions of an administrator - temporary administrator, temporary administrator (through a representative) in accordance with the legislation of the Republic of Kazakhstan on rehabilitation and bankruptcy against the developer – debtor;
 - 5) to organize the sale of the unsold shares in a residential building (residential housing), as well as voting shares (participation interests in the authorized capital) of an authorized company to recover its expenses for completion of construction;
 - 6) to refuse to conclude a contract on granting a guarantee on the reasons specified in paragraph 3 of Article 32 of this Law;
 - 7) to submit claims to the developer, the authorized company to reimburse the expenses of the Guarantee Fund spent for completion of construction of a residential building (residential housing), upon the occurrence of a guarantee event, after the acceptance of the residential building (residential housing) for operation;
 - 8) to exercise other powers that do not contradict the objectives and tasks defined by this Law.

2. The guarantee fund shall be obliged to:

1) take measures to complete construction of a residential building (residential housing) upon occurrence of a guarantee event;

2) conclude a guarantee contract with the authorized company and the developer if the application is approved;

3) in accordance with the civil legislation of the Republic of Kazakhstan to conclude a contract with an engineering company to provide engineering services in equity participation in housing construction to ensure control over the progress of construction, compliance with state standards in architecture, urban planning and construction areas, as well as the targeted use of money in accordance with the design and estimate documentation;

4) keep record of guarantee contracts;

5) notify the local executive body about the facts of violation of the requirements of the legislation of the Republic of Kazakhstan on equity participation in housing construction by a developer, an authorized company and an engineering company, not later than one working day from the moment of revelation of the violation;

6) post information on the progress of construction of a residential building (residential housing), including reports of an engineering company, on its own Internet resource;

7) publish monthly the register of contracts on granting guarantees on its own Internet resource in Kazakh and Russian languages in the manner determined by the internal documents of the Guarantee Fund;

8) to post on its Internet resource the documents that determine the process of issuing a guarantee;

9) to estimate the budget documentation at the stage of the documents' verification for construction of a residential building (residential housing).

Article 27. Statute of the Guarantee Fund

1. The Statute of the Guarantee Fund shall provide for:

1) the name, including the organizational and legal form, the object and purpose of the Guarantee Fund;

2) the legal address of the Guarantee Fund;

3) the structure, order of formation and competence of the management bodies of the Guarantee Fund;

4) the rights and obligations of the members (participants) of the Guarantee Fund;

5) sources of formation of the assets of the Guarantee Fund;

6) conditions for reorganization and termination of the activities of the Guarantee Fund;

7) provisions on the voting procedure, non-payment of dividends and other requirements established by the legislative acts of the Republic of Kazakhstan.

Article 28. Requirements for the Guarantee Fund

1. For the purposes of ensuring financial stability, the Guarantee Fund complies with the capital adequacy ratio established by the normative legal act of the authorized body.
2. With the expected change in the value of the standard specified in paragraph 1 of this article, in the direction of deterioration and achievement of the threshold value, the authorized capital of the Guarantee Fund should be increased in accordance with the procedures established by the legislation of the Republic of Kazakhstan.
3. The Guarantee Fund forms a system of risk management and internal control.
4. The Guarantee Fund has software and hardware and other equipment necessary to carry out its core business.
5. The Guarantee Fund for calculating the capital adequacy ratio uses:
 - 1) own capital of the Guarantee Fund;
 - 2) contingent liabilities (obligations under the issued guarantees), weighted by the degree of risk.
6. The capital adequacy ratio is calculated as the ratio of own capital to contingent liabilities, weighted by the degree of risk.
7. The threshold value of the capital adequacy ratio should not be less than 0.05.
8. The consolidated financial statements prepared in accordance with the International Financial Reporting Standards are used to calculate the capital adequacy ratio.
9. The Guarantee Fund is obliged to audit the annual financial statements.

Article 29. Reserve of the Guarantee Fund for settlement of guarantee cases

1. To carry out activities to ensure the guarantee for completion of construction of residential buildings (residential housing) provided for in this Law, the Guarantee Fund shall form a reserve for settlement of guarantee cases at the expense of:
 - 1) a part of guarantee fees of authorized companies;
 - 2) money received by the Guarantee Fund in order to meet the requirements for payments for completion of construction of residential building (residential housing);
 - 3) a part of the investment income received from investing the assets of the Guarantee Fund into financial instruments (deposits, securities and other tools).
2. The reserves for settlement of guarantee cases can be used solely for the purpose of executing expenses related to fulfillment of obligations of the Guarantee Fund under guarantee contracts.
3. Requirements for formation, calculation methodology and the targeted size of the reserve for settlement of guarantee cases are established by normative legal acts of the authorized body.

4. In case of insufficient funds of the reserve for settlement of guarantee cases, the Guarantee Fund is entitled to use the funds of the authorized capital.

Article 30. Guarantee fee

1. Guarantee fee is paid as a lump sum.

The guarantee fee is established in accordance with the Methodology for determining the amount of the guarantee fee, approved by the authorized body.

2. The guarantee fee paid by an authorized company in accordance with the guarantee contract is not refundable.

3. In case of a rise in the cost of the project cost due to the increase in the cost of construction and installation work following the results of a comprehensive non-departmental expertise of design and estimate documentation for ten percent or more, during the validity of the guarantee contract, the amount of the guarantee fee is subject to revision.

Chapter 7. Features of organization of equity participation in housing construction with participation of the Guarantee Fund

Article 31. Application for conclusion of a guarantee contract

1. The developer and the authorized company for construction of a residential housing (residential building) by attracting money from equity investors shall apply to the Guarantee Fund with an application for concluding a guarantee contract. The application is considered by the Guarantee Fund in accordance with the procedure for reviewing documents for construction of a residential building (residential housing) to conclude a guarantee contract, approved by the authorized body and posted on the Internet resource of the Guarantee Fund.

2. The application is attached with:

- 1) constituent documents of the developer and authorized company;
- 2) documents confirming the developer's compliance with the requirements of paragraph 1 of Article 8 of this Law;
- 3) documents confirming fulfillment by the authorized company of the requirements provided for in paragraph 3 of Article 8 of this Law;
- 4) document on payment of the commission for consideration of the application;
- 5) notification on the beginning of construction and installation works;
- 6) plan for financing the construction project.

Article 32. Consideration of an application

1. Consideration of the application by the Guarantee Fund includes the following stages:

1) checking the completeness of the submitted documents for the project for construction of a residential building (residential housing);

2) adoption of a decision on conclusion or refusal to conclude a contract to provide a guarantee.

2. The decision of the Guarantee Fund on conclusion or a reasoned refusal to conclude a guarantee contract is based on the results of checking the submitted documents.

3. The Guarantee Fund must refuse to conclude a guarantee contract on one or more of the following reasons:

1) non-compliance of the developer, the authorized company with the requirements established by this Law;

2) untimely conclusion by the developer, by the authorized company of the contracts specified in paragraph 5 of this article, with the Guarantee Fund;

3) the existence of outstanding tax arrears and other mandatory payments to the budget in the amount of more than 6-fold monthly calculated index as of the filing date of the application;

4) availability of court decisions to initiate proceedings for rehabilitation or bankruptcy against the developer, the authorized company;

5) according to the results of the inspection of the documents for the project for construction of a residential building (residential housing) in accordance with the procedure approved by the authorized body.

4. The period for consideration of an application shall not exceed fifteen working days from the date of application of the developer and the authorized company to conclude a guarantee contract. If there are any comments on the application in question, the Guarantee Fund has the right to send relevant documents for finalization with the fixing of the deadline for elimination of comments not more than five working days. At that, the period for consideration of the application is suspended.

5. When the Guarantee Fund adopts a decision to conclude a guarantee contract on provision of engineering services in shared housing construction, a land plot pledge agreement together with an object of unfinished construction specified in subparagraph 1) of paragraph 3 of Article 8 of this Law, with an authorized company, a pledge agreement of voting shares (shares in the authorized capital) of an authorized company, a contract for trust management of voting shares (shares in the authorized capital) of an authorized company with the developer must be concluded before conclusion of the guarantee contract.

At that, a contract on equity participation in housing construction, design and estimate documentation of the project for construction of a residential building (residential housing), as well as a contract agreement, are integral parts of the guarantee contract.

Article 33. Verification of documents for construction of a residential building (residential housing)

1. Verification of documents for construction of a residential building (residential housing) is conducted to assess the developer and the authorized company for compliance with the requirements established by Article 8 of this Law.

2. Verification of documents for construction of a residential building (residential housing) includes a financial and legal assessment, the procedure of which is established by this Law.

3. The financial assessment provides for:

1) analysis of financial statements, calculation of key indicators that characterize the financial condition of the authorized company and the developer;

2) analysis of sources of financing for the project;

3) analysis of the adequacy of the pricing policy of an authorized company;

4) comparison of the executed works on the unfinished object in accordance with the state normative documents in architecture, town-planning and construction areas.

A comparison of the work performed on the acts with the actual work performed on the site is made after the measurement of the performed work volumes and inspection by the engineering company of the assembled structures for defects without laboratory studies;

5) assessment of completeness of the necessary work to complete construction;

6) analysis of justification of the budget (estimate) of construction: the volume and cost of construction.

4. Legal assessment and establishment of the presence (absence) of legal, reputational risks for the project are conducted by:

1) review of title documentation of the developer and the authorized company;

2) review of documents on corporate governance, decisions of collegiate management bodies and the main powers of attorney of the authorized company;

3) analysis of title documentation to the property of an authorized company, proposed for transfer to trust management in accordance with Article 35 of this Law;

4) analysis of the legality of formation of the authorized capital of the authorized company, information about the participants (shareholders), information about the affiliated persons of the authorized company;

5) availability of necessary permits for the authorized company and contractor (general contractor);

6) analysis of the basic provisions of a construction contract of the authorized company with the contractor (general contractor);

7) presence or absence of court proceedings of a property nature;

8) study of the information about the authorized company and the developer from officially recognized sources about the existence (absence) of tax debts and other mandatory payments to the budget.

Article 34. Guarantee contract

1. A guarantee contract is concluded in writing on the basis of a standard contract approved by the authorized body and is considered concluded from the moment of payment of the guarantee fee.

2. Obligatory conditions of the guarantee contract in accordance with the provisions of this Law are:

- 1) the object of the guarantee is the subject of the contract;
- 2) the terms of the guarantee;
- 3) the amount of the guarantee fee;
- 4) guarantee case and liability under guarantee;
- 5) the procedure for fulfillment of obligations by the Guarantee Fund;
- 6) the rights and obligations of the Guarantee Fund;
- 7) the rights and obligations of the developer, the authorized company;
- 8) responsibility of the developer, authorized company.

3. The concluded guarantee contract is the basis for attracting the money of the equity holders.

Article 35. Securing obligations under a guarantee contract

1. In order to ensure fulfillment of obligations of the developer and the authorized company under the guarantee contract, the Guarantee Fund concludes a contract with the authorized company on the pledge of the land plot together with the object of unfinished construction, as well as with the developer, the pledge contract of voting shares (shares in the authorized capital) of the authorized company in accordance with the civil legislation of the Republic of Kazakhstan.

2. For the purpose of the Guarantee Fund's fulfillment of obligations under the guarantee contract, the Guarantee Fund concludes with the developer a contract of trust management of voting shares (shares in authorized capital) of an authorized company with a suspensive condition. Such a trust management contract takes effect in case of occurrence of a guarantee event.

3. The provisions arising from the pledge contracts arising under this Law shall be governed by the provisions of the Civil Code of the Republic of Kazakhstan, taking into account the specifics set up by this Law.

4. In accordance with this Law, an encumbrance, foreclosure within the activities of the developer, the authorized company may not be imposed on the property which is the subject to the trust management contract with voting shares (shares in the authorized capital) with a suspensive condition.

5. Property that is the subject of a trust management contract with a suspensive condition in accordance with this Law may not be included in the bankrupt estate in the insolvency of

the developer in accordance with the Law of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy".

Article 36. Procedure for interaction with the Guarantee Fund

1. The guarantee contract concluded with the Guarantee Fund is the basis for conclusion by an authorized company of a contract on equity participation in housing construction with equity holders and attraction of money of equity holders.

2. To ensure implementation of engineering services, the Guarantee Fund concludes a contract with an engineering company that meets the requirements of paragraph 7 of Article 21 of this Law.

3. Preliminary payment for the work of the contractor (general contractor) under the contract agreement in accordance with the design and estimate documentation of construction is made from the bank account of the authorized company, taking into account one of the following conditions:

1) should not exceed twenty-five percent of the difference between the value of the contract of work and the amounts specified in subparagraph 3) of paragraph 3 of Article 8 of this Law, provided there is a guarantee of the second-tier bank for the return of the advance payment, which is the proper performance of the obligations of the contractor (general contractor) under the contract agreement with an authorized company.

Prepayment is subject to proportional redemption in accordance with the design and estimate documentation during the entire process of construction of a residential building (residential housing) on the basis of acts of the work performed;

2) no more than five percent of the difference between the value of the contract agreement and the amounts specified in subparagraph 3) of paragraph 3 of Article 8 of this Law, without collateral.

Subsequent payment is made in the manner provided for in article 20 of this Law.

4. Payment of interim payments for the work performed by the contractor (general contractor) under the contract agreement is made in accordance with the design and estimate documentation from the bank account by the authorized company on the basis of acts of work performed confirmed by the engineering company.

Article 37. Guarantee case

1. A decision of the Guarantee Fund on possible occurrence of a guarantee event is made based on the results of:

- 1) monitoring the construction of a residential building (residential housing);
- 2) monthly and other reports of the engineering company;
- 3) information received from an authorized company, an authorized body;
- 4) a written request of the equity holders (equity investors).

2. Upon receipt of information on possible occurrence of a guarantee event, the Guarantee Fund:

1) checks the information on non-fulfillment or improper performance of obligations by the authorized company for construction of a residential building (residential housing) within a period of not more than ten working days from the date of receipt of the information;

2) sends a request to the developer, the authorized company to clarify this information within a period not later than three working days from the date of receipt of the information.

The developer, the authorized company shall provide explanations, objections (if any) with supporting documents within a period not later than three working days from the date of receipt of the relevant request of the Guarantee Fund.

3. In case of establishing the fact of occurrence of the guarantee event, the Guarantee Fund within three working days makes a decision to recognize as a guarantee case one or more of the following cases:

1) violation of the deadline for acceptance of the residential building (residential housing) for operation. Three-time extension of the construction period for three months each is allowed from the period specified in the design and estimate documentation of the construction object;

2) use of money in violation of the requirements of Article 20 of this Law, not reimbursed by the developer and / or the authorized company, the contractor (general contractor) to the bank account of the authorized company within fifteen working days from the date of establishment of the specified fact by the engineering company;

3) insolvency of the developer - the inability, established by the enforceable court decision, to fully satisfy the requirements specified in the Law of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy" for activities not related to construction of a residential housing (residential building).

4. In case of a positive decision on recognizing the facts of non-fulfillment or improper performance of obligations by the authorized company for construction of a residential housing (residential building) as the guarantee case no later than the next working day after the decision is taken, the Guarantee Fund notifies of the occurrence of the guarantee event. The notification is carried out by placing the text of the relevant announcement on the Internet resource of the Guarantee Fund and other media.

Article 38. Procedure for the Guarantee Fund's fulfillment of obligations under the guarantee contract

1. The Guarantee Fund carries out the following activities:

1) notifies the authorized body, local executive body and participants of equity participation in housing construction about the occurrence of the guarantee event;

2) decides to replace the contractor (general contractor) by terminating the existing construction contract and entering into an agreement with another contractor (general contractor);

3) notifies the developer and the authorized company of the entry into force of the trust management contract with voting shares (shares in the authorized capital) of the authorized company;

4) notifies the second-tier bank in case of a decision to replace the management of the authorized company with the attachment of supporting documents on the appointment, as well as documents with samples of signatures, copies of identity documents of persons authorized to sign payment documents when performing transactions related to maintaining the bank account of the authorized company in the second-tier bank, in accordance with the trust management contract of voting shares (shares in the authorized capital) of the authorized company;

5) finances completion of construction of a residential building (residential housing) at the expense of the Guarantee Fund on the terms of their payment, urgency and repayment in case of insufficient funds of the authorized company;

6) carries out further monitoring of completion of construction of a residential building (residential housing), its commissioning and transfer of shares in the residential housing (residential building) to the equity holders.

2. In the case of full reimbursement of the costs of the Guarantee Fund from the funds of the authorized company, the trust management contract with voting shares (shares in the authorized capital) of the authorized company is terminated in accordance with the requirements of this Law.

3. In case of insufficient funds of the authorized company to reimburse the funds (costs) of the Guarantee Fund for completing construction of a residential housing (residential building), the obligation for their reimbursement is borne by the developer under subsidiary liability by concluding a contract on paying off the debts to the Guarantee Fund after confirmation of their validity by the conclusion of an independent audit company.

4. In case of insufficiency of the developer's funds for reimbursement of the funds (costs) of the Guarantee Fund for completion of construction of a residential housing (residential building) under a contract on repayment of debts after the actions specified in paragraphs 1, 2, 3 of this article, the Guarantee Fund initiates the developer's bankruptcy procedure in accordance with the legislation of the Republic of Kazakhstan on rehabilitation and bankruptcy.

5. The requirements of the Guarantee Fund for improper execution of the guarantee contract are not subject to the action limitation period.

Chapter 8. Final provisions

Article 39. State control and supervision in equity participation in housing construction

1. State control and supervision in the field of equity participation in housing construction shall be carried out in the form of inspection.

2. An audit is carried out in accordance with the Entrepreneurship Code of the Republic of Kazakhstan. Other forms of state control and supervision are exercised in accordance with this Law.

Article 40. The order of application of this Law

1. Relations falling within the scope of this Law, which arose before its enactment, are regulated by the civil legislation of the Republic of Kazakhstan.

2. Attraction of money of individuals and legal entities related to the right of claiming for shares in residential housing (residential buildings), which at the moment of attracting their money were not put into operation in the order established by the legislation of the Republic of Kazakhstan on architectural, town-planning and construction activities, after the enactment of this Law is allowed only on the basis of a contract on equity participation in housing construction.

Article 41. Responsibility for violation of legislation of the Republic of Kazakhstan on equity participation in housing construction

1. Violation of the legislation of the Republic of Kazakhstan on equity participation in housing construction entails responsibility established by the laws of the Republic of Kazakhstan.

2. Persons attracting money from individuals and legal entities for equity participation in housing construction in violation of the requirements established by this Law shall be liable in accordance with the laws of the Republic of Kazakhstan.

Article 42. The procedure for enactment of this Law

1. This Law shall come into force six months after the day of its first official publication.

2. Recognize as invalid from the date of enactment of this Law:

The Law of the Republic of Kazakhstan dated July 7, 2006 "On Equity Participation in Housing Construction" (Bulletin of the Parliament of the Republic of Kazakhstan, 2006, № 16, art. 101; 2007, № 2, art. 18; 2009, № 17, art. 79; № 23, art. 100; 2010, № 5, art. 23; 2011, № 6, art. 50; № 11, art. 102; № 12, art. 111; 2012, № 15, art. 97; № 21-22, art. 124; 2013, № 14, art. 72; 2014, № 1, art. 4; № 10, art. 52; № 19-I, 19-II, art. 96; № 23, art. 143; № 24, art. 144).

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