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Preface

Public-private partnerships (PPP) are one of the key mechanisms of development of the national economy's infrastructure, improvement in the standard of life of the nation on the basis of better quality public services and an enhanced business climate and better investment environment, recognized as priority tasks of the socio-economic development of Ukraine in the Program of Economic Reforms for 2010–2014 titled “Wealthy Society, Competitive Economy, Effective Government” and the Annual Address of the President of Ukraine to the Parliament of Ukraine titled “On the Internal and External Situation for Ukraine in 2012.” The PPP mechanism has gained ground in most world countries of the world where it is regarded as a key instrument of economic progress. Public-private partnerships allow the public and private sectors to join their financial, administrative, and technological resources to achieve common benefits by combining the efforts to resolve socially significant tasks of the nation's socio-economic development with the interests of business and the community.

Mission: to create a modern mechanism of effective PPP-based interaction between the public and the private sector in implementing innovation investment projects aimed at infrastructure development and delivery of public services to achieve the strategic goal of sustainable development of Ukraine.

The priority areas for fostering PPPs in Ukraine are manufacturing infrastructure and high-tech production (transport and transport infrastructure, energy sector, machine building, and telecommunications); construction and the housing and communal sector (HCS) (formation of the market of affordable housing; technical upgrade and the efforts to improve the resource and energy efficiency of the HCS; municipal waste disposal, and municipal outdoor improvements); social infrastructure and human development (healthcare, education, culture, tourism, and sports).

In future, PPP mechanisms should be extended to the technical research and innovation area; information area; agriculture and village infrastructure; environment protection; and forestry.

Implementation Results of the Strategy (Values):

- improved PPP legislative and regulatory framework;
- improved organizational mechanism of PPP development public management;
- PPP projects prepared and launched;
- improved PPP public support mechanism;
- increased institutional capacity of the public and private sectors in terms of better application of modern PPP mechanisms; and
- created conditions for involving enabling institutions and non-governmental associations in the efforts to form the necessary institutional environment and implementing PPP projects.

International experience knows three basic PPP development phases for a country: the preparation, implementation, and improvement. The preparation phase

involves studying international experience and the current legislative and regulatory framework and determining the configuration of the PPP national policy. The implementation stage is about forming a PPP legislative and regulatory framework, developing a methodological basis, creating a special authorized body, expanding the PPP area of application, and so on. The improvement stage is characterized by intensified PPP activities and increased complexity of PPP projects, and envisages further efforts to improve the legislative-regulatory, methodological, and organizational support for PPP.

The PPP development process in Ukraine is now in the implementation stage characterized by the presence of a PPP legislative and regulatory framework and methodology and the lack of a systemic approach to public management of the development of PPPs and pilot PPP projects.

Despite the lack of PPP ideology and a uniform PPP project implementation mechanism, there have been some isolated attempts in Ukraine to involve business in the efforts to develop national economic sectors. According to the World Bank, 40 infrastructure projects involving the private sector have been implemented in Ukraine in the period of 1990–2011, and investments in those projects totaled USD 12.1 billion, with nearly 90.0 percent of the amount in the telecommunications sector¹. Of the said 40 projects, only 18 actually had PPP project traits and were implemented in the form of concessions, greenfield projects, management and lease agreements.

The key problems holding back the development of PPP in Ukraine are:

- low investment attractiveness of the national economy and a difficult business environment;
- contradictory and inconsistent legislative and regulatory framework for PPPs;
- no effective PPP public support mechanism;
- complicated and inconsistent tariff regulation;
- poor qualification level of public sector workers and low awareness of the private sector as regards PPP specifics;
- the lack of a consistent PPP development national policy and governance;
- poorly developed PPP risks management system, and so on.

The indicated problems are possible to overcome if there was a comprehensive national policy and a systemic approach to PPP development in Ukraine. The Public-Private Partnership Development Strategy for Ukraine for 2012–2017 (hereinafter referred to as the Strategy) should become an important component of such a policy. It is a political and legal document, according to which the central executive body authorized to carry out the public PPP policy in Ukraine determines its medium-term (long-term) development prospects and directions in accordance with the provisions of the Public-Private Partnership Development Concept for Ukraine for 2012-2017.

¹ Private Participation in Infrastructure Database. - [Electronic resources]. – available at: http://ppi.worldbank.org/explore/ppi_exploreCountry.aspx?countryID=97

Strategy implementation indicators

These indicators are required to be included in the mandatory reports of economic entities operating in the public and private economic sectors, prepared to the standards of international and national statistic and financial reporting:

- number of PPP projects per economic sector (units);
- amount in financing for PPP projects (mln UAH);
- gross investment in fixed capital for the account of PPP projects (mln UAH, % of the total investment);
- amount in loans for PPP projects (mln UAH);
- Proceeds generated by PPP projects to budgets of all levels in taxes, duties, and fees (mln UAH);
- value of assets created under PPP projects (mln UAH);
- number of jobs created under PPP projects (units); and
- the level of public satisfaction with the prices for and quality of public services (conventional units).

Financial indicators of Strategy implementation

No	Indicator
1	Fulfillment of the spending part of budgets of all levels to finance PPP-based programs (as compared with the approved and adjusted year-end data), %
2	Actual share of budget outlays intended to support PPP projects, as compared with the approved budget, %
3	Actual fulfillment of the PPP projects financing plan by private entities, %
4	Amount in debts to PPP projects incurred by private partners, thous. UAH
5	Amount in debts to PPP projects incurred by public partners, thous. UAH
6	Changes in amounts in PPP project financing by financing sources, thous. UAH
7	Volume of operations financed from public and private sources, mln UAH
8	Cost estimate of the financial risks associated with PPP projects, according to feasibility studies, thous. UAH
9	Estimation of available funds to assume the obligations to support financial commitments of PPP participants, %
10	Payroll under PPP projects, mln UAH
11	Average salary under PPP projects, UAH

The legal foundation of the Strategy is the Constitution of Ukraine, Commercial Code of Ukraine, Civil Code of Ukraine, Law of Ukraine “On Local Self-Governance,” Law of Ukraine “On Public-Private Partnership,” and other legislation regulating economic activities of and interrelations among state executive authorities, local self-government bodies, business entities, and civil society institutions.

I. Implementation Mechanism of the Public-Private Partnership Development Concept for 2012-2017

1.1 Institutional Part.

Problems

The quality of the PPP institutional environment in Ukraine is characterized by a low level of personal-to-person trust and trust of the citizens in public authorities, non-governmental and political organizations, no partnership ideology in the society, underestimation of the potential of PPP projects on the part of specialists working for state authorities and local self-government bodies, no specialized PPP enabling institutions, a low level of public awareness of the advantages and risks of PPP mechanisms, a lack of PPP specialists working with state authorities, insufficient crediting in the real sector of economy, and so on.

The result of the said problems is the untapped potential of PPPs as a mechanism ensuring the infrastructure development of the national economy and improvement in provided public services. The national PPP policy is characterized by inconsistency, no systematic steps towards creating PPP favoring conditions, unclearly described functions of the public authorities involved in the PPP promoting efforts, ineffective coordination of the activities of the relevant state authorities, and insufficient attention to PPP development problems at the local level.

International experience proves that the body responsible for PPP development in the country may be a governmental institution, public enterprise, state agency, and so on². The activities of such bodies may be financed both from the state budget and for the account of contributions made by the private sector. According to the European Investment Bank, the staff of such an authorized body responsible for PPPs in the EU countries ranges from one person to 45 persons, and averages 8–10 persons³. The functions of such authorized bodies vary substantially from country to country, ranging from forming and ensuring the implementation of the PPP national policy to passing the final approval of contracts, directly supervising and controlling the project implementation, and providing PPP training sessions and courses⁴. The effectiveness of the management of PPP processes is secured by reliable and transparent budgeting mechanisms and fiscal control over the flow of obligations and debts at various project implementation stages and those reflected in the results presented in financial statements.

The authorized state body responsible for PPP development in Ukraine is the Ministry of Economic Development and Trade of Ukraine whose terms of reference include working out proposals and carrying out measures to form and implement a uniform national PPP policy, preparing and implementing PPP development programs, changing current programs; supporting the PPP implementation at the central and local levels; performance monitoring of state executive authorities and local self-government authorities as regards PPPs.

² Dedicated Public-Private Partnership Units. A Survey of Institutional and Governance Structures, OECD, 2010.

³ Stein B. PPP Units and Related Institutional Frameworks. Lessons Learned. - European Investment Bank, Kyiv, 2012.

⁴ In the same place.

The public bodies that are not only authorized to undertake specific PPP projects but also have a significant influence on the development of the PPP institutional environment are the Cabinet of Ministers of Ukraine, the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine, the Ministry of Energy and Coal Industry of Ukraine, the Ministry of Infrastructure of Ukraine, the Ministry of Education and Sciences, Youth and Sports of Ukraine, the Ministry of Health of Ukraine, the State Agency on Investments and Management of National Projects of Ukraine, the State Agency of Motor Roads of Ukraine, the State Property Fund of Ukraine, just to name some. The main task set for the State Agency on Investments and Management of National Projects of Ukraine is working out a national policy of attracting foreign investments, as well as preparing and implementing national projects that can be based on PPP principles. The State Property Fund of Ukraine is the state authority responsible for privatization and state property management.

The activities of the said authorities in the PPP field are not systemic, not sufficiently coordinated by the authorized state body, and the functions and powers of specific state bodies as regards public property management are based on different legislative and regulatory acts that need to be reconciled and as such, in certain cases, do not make it possible to identify a state partner for a PPP and an appropriate method of coordinating the interrelations between the parties.

The efforts of local self-government bodies to engage the private sector in PPP projects remain at an extremely low level, whereas the bulk of the potential of infrastructure development and improvements in the quality of public services is at the local level. The poorly developed PPP processes at the local level in Ukraine are connected with systemic shortcomings of applicable legislation, little knowledge of PPP mechanisms in local authorities and businesses, limited investment resources in business support programs, a lack of qualified staff in local self-government authorities to prepare and perform PPP projects, and so on. The level of preparedness of the private sector for active participation in PPP-based infrastructure and public services projects in Ukraine remains low, a fact supported by the results of a poll completed under USAID sponsorship⁵. According to this poll, only 3.0 percent of the polled business representatives have taken part in projects bearing PPP traits and only 39.0 percent of the polled business representatives are actually interested in PPP projects, an indicator that is significantly below the same indicator showed by local authorities (62.0 percent).

Goal and Tasks:

To improve the quality of the PPP public management system, creating an effective organizational structure of interaction among executive authorities, business, civil society institutions, and representatives of the expert community by way of:

- extending the powers of the authorized state body in charge of PPP development management;

⁵ O. Besiedina, D. Nizalov, R. Semko “Basic Opinion Poll Regarding Public-Private Partnership Awareness” – Public-Private Partnership Development Program, USAID. – Kyiv, 2012.

- effective and transparent coordination of the authorities responsible for developing the national policy in this area and authorized to control the preparation and implementation of PPP projects;
- forming institutional principles for the financial sector of the economy to provide support for PPP projects; and
- creating conditions to attract private investors to PPP-based infrastructure development and public services projects.

Steps to be taken

1) Increasing the administrative role of the Ministry of Economic Development and Trade (MEDT) as an authorized state body in the part concerning its interaction with line ministries and other state executive bodies that are authorized to take part in PPP projects as partners, which implies:

- concretizing the functions and powers of the MEDT in the part related to its administrative role in the PPP area; incorporating the administrative components of the Strategy in the functions and powers of the management and units of the MEDT;
- singling out within the MEDT's current special PPP unit the functions and structural units engaged in the formation of the public PPP policy, expert examinations of PPP projects, and provision of PPP projects with a methodological basis;
- establishing quantitative and qualitative performance criteria for the PPP unit of the MEDT;
- providing methodological and consulting support for projects that includes keeping records of PPP agreements at the central and local levels by regions, territories, and types of economic activity;
- applying the MEDT's functions related to approving a PPP feasibility study at the preparation stage exclusively to projects implemented by central executive bodies; and
- monitoring and controlling PPP projects at the central and local levels.

2) Implementing the coordination of administrative functions at the national and local levels to ensure the steady orientation of PPP projects to the strategic goals of national economic development by:

- determining the functions and powers of central executive bodies in the part related to executing and supporting PPP agreements, taking into account the strategic planning role of the MEDT;
- at the instruction of the Cabinet of Ministers of Ukraine, assigning the functions of the preparation and feasibility study of PPP projects involving the Cabinet of Ministers of Ukraine as a partner to the appropriate central executive bodies; and
- creating a public council under the Ministry of Economic Development and Trade of Ukraine for consultations regarding the MEDT's interaction with local self-government bodies and representatives of the business and the expert community.

3) developing institutional principles for the financial sector of the national economy to support PPP projects, including in particular:

- identifying institutional entities of the financial sector for long-term financing of PPP projects and changing the functional structure of their activities to minimize the involved risks;

- developing a system of re-financing credit organizations by public PPP project promotion institutions within the framework of applicable law; and
- developing measures to stimulate the engagement of joint associations of enabling institutions operating in various activity areas on association conditions (consortiums, provisional joint projects, associations).

4) creating favorable conditions to attract private investors to PPP-based infrastructure development and public services projects, specifically:

- promoting the forms of state non-financial support for PPP projects;
- measures to be carried out by central and local authorities to spread information about promising regional development investment projects involving the private sector;
- providing clear rules, procedures, an exhaustive list of required documents, and permit issue deadlines, as well as supporting private partners in obtaining all permits required for PPP projects;
- allotting land plots for PPP projects to the public partner in PPP projects; and
- implementing pilot projects to create a foundation for increasing public trust in private capital and outline development directions for the PPP legislative and regulatory framework in Ukraine.

1.2 Financial Part

Problems

The financial capacity of PPP projects depends on the investment potential of the private sector, fiscal scope of the state, lending capacity of financial institutions, and effective interaction between the project parties.

A widespread factor in the world to draw private investments to PPP-based infrastructure development and public services delivery projects is the mechanism of public financial support. The national policy as regards financial support for PPPs should be aimed at supporting innovative technologies of infrastructure development and delivery of public services. In the conditions of increased pressure on budgets of all levels, the public financing of PPP projects should be supported by private investments. The state financial support for PPPs should consist of the following components: direct financial support through subsidies; reimbursement for the expenses for construction, participation in tenders, and maintenance of PPP projects; investments in the authorized capital; application of taxation leverage to encourage investments, introduction of mechanisms of state crediting for and insurance of investment equipment imports; reimbursements from the state budget for payments for services provided to consumers; state guarantees for loans, reimbursement for currency exchange rate fluctuation losses, commodity acquisition commitments, and so on.

The main problems plaguing public PPP support in Ukraine are the single year budgeting and annual readjustment of the financial directions and priorities of budget programs, which means there is no guarantee that the budget-financed programs will continue throughout the entire PPP project implementation term; no clearly established methodology of state budget support for PPP projects; the principles and approaches applied in this area are different from international ones; the limited possibility of obtaining state guarantees for PPP projects at the local level (a paid basis, counter-guarantee requirements, impossibility of using state budget money to repay loans).

In addition, when executing long-term PPP agreements, the parties may encounter the problem of the public partner's default on its financial obligations due to the imperfect legislation, especially in the part related to budget process regulation. Enforcing the financial commitments of a public partner through a court is a problematic issue as such financing is made primarily within the limits of the budget allocations for the purposes of satisfying payment enforcing decisions of courts.

Goal and Tasks

To improve the PPP financial support mechanisms through:

- improving the effectiveness of budget spending and avoiding the fiscal risks while financing PPP projects;
- intensifying the process of involving enabling institutions in financing PPP projects; and
- implementing modern long-term project financing instruments for PPP.

Steps to be taken

1) Improving the effectiveness of budget spending and avoiding fiscal risks in financing PPP projects by way of:

- planning budget allocations for the entire implementation term of PPP investment projects, taking into account the dynamics of prices and privileged taxation sources in accordance with the approved budget programs; and

- annual approval of state financial support amounts for PPP projects, taking into account their implementation results on the basis of an introduced register of PPP investment projects⁶ which will specify the public support amounts and forms.

2) Intensifying the process of involving enabling institutions in financing PPP projects.

The engagement of enabling financial institutions in this process should be carried out observing the requirements for financial stability, resource diversification, and investment risk mitigation, as well as administrative influence and corruption risks. To provide support for PPP projects and optimize budget spending for investment purposes, it makes sense to:

- create a public bank for reconstruction and development and authorize it to provide financial support within the limits of its authorized capital for PPP projects and assist project participants in the financing support procedure;

- encourage public banks to provide consultancy as regards evaluation of the PPP projects fulfillment and crediting effectiveness; and

- create specialized leasing centers based on the public-private partnership principles to stimulate investments in the real sector on a leasing basis, providing a simplified procedure for the privileged importation of high-tech equipment and improvements in the legislation that regulates leasing operations.

3) The implementation of modern instruments of long-term PPP project financing implies:

- improving the mechanism of state and local guarantees for PPP projects by limiting the application of the paid-basis terms and counter-guarantee requirements; setting specific limits of the local debt and debt guaranteed by the Autonomous Republic of Crimea and local self-government bodies by adjusting the standards introduced by the budget legislation;

- developing the market of local loans by diversifying repayment sources which are currently dominated by proceeds from communal property alienations and non-farming land sales; introducing a list of activities which are allowed to be financed by foreign currency and hryvnia loans;

- forming mechanisms of assuming by a public partner (a local self-government body) long-term budget obligations (which exceed the current budget) and their fulfillment under PPP agreements; providing a fair reimbursement to a private partner for the account of the public partner (a local self-government body) for any documented losses incurred by the private partner as a result of early termination of a PPP agreement;

⁶ The register of PPP investment projects in Ukraine may be a part of the State Register of Investment Projects and Project (Investment) Proposals whose keeping procedure is approved by Resolution No 650 of the Cabinet of Ministers of Ukraine, dated July 18, 2012.

- cash flow securitization within PPP projects (financing the assets of a project company through securities issued by this company), which requires appropriate amendments to be made to the Law of Ukraine “On Securities and Stock Market” and singling out the functions of using financial instruments in the PPP area to improve the regulation of and supervision over the financial sector in Ukraine.

1.3 Legal Part.

Problems

In an effort to further the legislative regulation that have generally standardized the relations between the government and business in Ukraine, an attempt was made to improve the legislative and regulatory framework regulating the state-business relations, legally establishing the PPP institute by adopting the Law of Ukraine “On Public-Private Partnership.” This law outlines the public-private partnership principles and basic provisions based in international practice. However, these efforts proved to be of little effect from the viewpoint of PPP project implementation support.

As of the moment of adoption of this law in 2010, Ukraine had a legislative framework regulating contractual relations between the public and the private sector in the areas of concession, lease, joint venture operations, and so on, but it had no holistic vision of the interaction between the public and the private sector on the basis of the PPP principles. The adopted law was intended to create framework conditions for the establishment of the PPP institute in Ukraine.

Pursuant to Article 5, the PPP law is the basic legislative act applicable to all PPP forms, including concession agreements, joint venture agreements, and other agreements (in particular, lease and property management ones). At the same time, each of the said types of agreements is subject to a separate law.

The PPP law as a framework law contains many referenced provisions. When selecting a specific PPP form for their project, stakeholders need to study numerous mutually contradicting legislative acts. The great number of law regulating the PPP relations and the contradictions among them make the implementation of PPP projects in Ukraine a difficult task. In addition, at the local self-government level, investment projects bearing PPP traits are subject to numerous local acts that often contradict the provisions of the PPP law.

The major contradictions and shortcomings of the legislative regulation of PPPs in Ukraine include:

- the discretion powers of the public partner as regards application of the PPP law provisions, which allow the public partner to arbitrarily decide whether to apply critical provisions of the PPP law to specific projects or not;
- the lack of reconciliation between the PPP law provisions and the provisions of the special laws regulating concessions, lease, joint venture operations, and other PPP forms recognized by the effective PPP law; no effective mechanism of fair reimbursement for losses incurred by the partners as a result of early termination of PPP agreements;
 - no effective mechanism regulating the public partner’s assumption of long-term budget obligations and their fulfillment;
 - no effective mechanism of reimbursing the private partner for the difference between the approved and economically reasonable tariffs, considering that the tariff regulator is obligated to cover this difference;
 - no effective mechanism of replacing the private partner if it defaults on its assumed obligations;

- the need for local self-government bodies to obtain approval for a PPP project from the authorized state body responsible for PPP development, which contradicts the principles of local self-governance;
- the impossibility for the parties to set prices for public services and correct them on the basis of PPP agreements; and
- imperfect regulation of public support for PPP projects, including for the medium and long term.

Goal and tasks

The creation of an effective system of legislative regulation of PPP relations implies a series of tasks to be resolved. These are:

- putting in order the PPP project management legislation at the central and local levels;
- improvement in the legislative regulation of state financial support for PPP projects; and
- putting in order the legislative and regulatory framework regulating the creation and functioning of enabling institutions within the PPP framework.

Steps to be taken

1) Putting in order the PPP legislation at the central and local levels by:

- improving the PPP law by defining more clearly the powers of the authorities that become involved in PPP projects at all stages at both central and local levels; extending the timeframe for PPP relations; more accurate formulation of PPP specifics as regards delegating the functions and powers of the government related to infrastructure development and public services to the private sector; improving the list of PPP agreement application areas; introducing the possibility of institutional partnership, including the creation of a public-private joint venture for a specific project; and granting the right to public (communal) enterprises to act as parties to PPP agreements;

- reconciling the provisions of the PPP law with the provisions of the special laws that regulate the contractual relations between the public and private sectors in the field of concessions, joint venture operations, lease, and so on by appropriately amending the Laws of Ukraine “On Concessions,” “On Concessions for the Construction and Operation of Motor Roads,” “On the Specifics of Leasing Out or Granting Concessions for Communal Centralized Water and Heating Supply and Drainage Facilities,” “On the Specifics of Leasing Out or Granting Concessions for Public Fuel and Energy Facilities,” “On Lease of State and Communal Property,” “On Financial Leasing,” “On Land Lease,” “On Management of Public Properties,” “On Seaports,” “On Local Self-Governance,” “On Housing and Communal Services,” “On Heating Supply,” “On Drinking Water and Drinking Water Supply,” “On Wastes,” “On Natural Monopolies,” “On Public Procurement,” the Civil Code of Ukraine, and others;

- making amendments to bylaws in execution of the Law of Ukraine “On Public-Private Partnership” to improve the Methodology of Public-Private Partnership Feasibility Study⁷, Methodology for Identifying and Assessing the Risks Associated

⁷ Approved by Order No 255 of the Ministry of Economic Development and Trade of Ukraine, dated February 27, 2012

with Public-Private Partnership and Determining the Management Approach to Them⁸; abolishing the provision that requires the Ministry of Economic Development and Trade of Ukraine to approve a PPP feasibility study for projects implemented by local self-government bodies for the account of local budgets⁹; improving the mechanism of public support for PPP projects¹⁰ and the procedure for competitions to select private partners for PPP purposes¹¹, and so on;

- improving the legislative and regulatory basis of the sectoral competition procedures intended to select private partners for PPP projects;

- introducing instruments of methodological support for PPP projects under agreements of specific types; these instruments should be of an advisory nature, developed by the authorized body, and include model agreements, and PPP project selection, preparation, financing, implementation, and monitoring manuals;

- legislatively regulating the issues of title to any assets created under a PPP project; and

- improving the mechanism of settling disputes arising out of any PPP agreement entered with a non-resident or an enterprise with foreign investments, which mechanism should include the possibility of the dispute to be referred to an international court of arbitration;

2) Improving the legislative regulation of state financial support for PPP projects by:

- improving the fiscal legislation (including in the part regarding financial support for the rights and obligations of state and municipal entities acting as parties to PPP agreements) to improve the investment climate and form an effective mechanism of public support for PPP;

- improving bylaws (including Resolution No 279 of the Cabinet of Ministers of Ukraine, dated March 17, 2011) to simplify the mechanism of public support for PPP projects.

3) Putting in order the legislative and regulatory framework regulating the creation and functioning of enabling institutions within the PPP framework, including by:

- legislatively forming the structure and operating fundamentals of PPP enabling financial institutions;

- revising and preparing amendments to the provisions of domestic legislation which regulate the operation of universal and special development banks, export-import banks, public leasing companies, development foundations and agencies, and so on.

⁸ Resolution No 232 of the Cabinet of Ministers of Ukraine “On Approving the Methodology for Identifying and Assessing the Risks Associated with Public-Private Partnership and Determining the Management Approach to Them,” dated February 16, 2011

⁹ Public-Private Partnership Feasibility Study Procedure approved by Resolution No 384 of the Cabinet of Ministers of Ukraine, dated April 11, 2011.

¹⁰ Public-Private Partnership State Support Procedure approved by Resolution No 279 of the Cabinet of Ministers of Ukraine, dated March 17, 2011.

¹¹ Competition Procedure to Select Private Partners for Public-Private Partnerships Regarding Facilities of Public and Communal Ownership and Facilities Belonging to the Autonomous Republic of Crimea approved by Resolution of the Cabinet of Ministers of Ukraine No 384, dated April 11, 2011

1.4 Informational Part.

Problems

One downside of the process of national policy implementation and formation of a PPP management system is the low level of professional qualifications of public officials, which is explained by the absence or inconsistency of steps to ensure the proper PPP management organization and logistics on the part of central executive bodies and local self-government authorities.

The ineffective information exchange covering the PPP implementation practice within the framework of applicable law between central executive and local self-government bodies adds to the inconsistency of the legislative regulation of PPP relations. The imbalances in the existing communication models, a lack of systemic approach to gathering information needed for effective PPP management have a negative impact on the quality of decisions made at all hierarchical levels of state governance.

Inconsistency is plaguing the implementation of communication networks that link the government and the public together by information flows. The underdeveloped connections and mechanisms among the government, business circles, and non-governmental organizations, as well as poor usage of technical means and information technologies, do not allow unleashing to the full extent the potential of the private sector as a positive partner of the government in terms of PPP implementation and make it impossible for business representatives to establish partnership relations with the government, and for government representatives with business and civil society.

Goal and Tasks

To form an information environment to support the interaction among stakeholders interested in PPP projects employing modern information instruments and communication technologies by addressing the following tasks:

- forming a modern professional and interpersonal communication culture in public officials at all governance levels as regards studying PPP experience as a change management component in the economic reform process;
- implementing the most effective communication connections and overcoming information barriers throughout the entire cycle of the creation and implementation of the PPP institute in Ukraine; and
- introducing information models as part of PPP management mechanisms, which will allow systemic monitoring of information needed for decision-making, excluding unnecessary duplication of information and any redundant information that reduces the efficiency of business operations in PPP projects.

Steps to be taken

1) Forming a modern professional and interpersonal communication culture in public servants at all governance levels as regards studying PPP experience as a change management component in the economic reform process through the introduction of a systematic study by public servants of the world's best PPP practices, which includes the following measures:

- familiarizing public servants with analytic materials produced by leading research, expert, and professional organizations;
- arranging visits for them to leading PPP centers operating within public authorities in European countries;
- providing opportunities for them to upgrade their PPP qualifications, including within the framework of special PPP training programs for public workers and workers of local self-government authorities;
- holding regular information and experience exchanges at conferences, roundtables, forums, and so on.

2) Implementing the most effective communication connections and overcoming information barriers throughout the entire cycle of creation and implementation of the PPP institute in Ukraine through:

- putting in order formal communications between the government and the public by introducing organizational (for example, based on organizational charts) and functional (for example, based on structural unit regulations) arrangements both at the vertical and horizontal levels of the governance hierarchy;
- supporting the system of informal communications between representatives of state institutions and institutions of civil society on grounds provided by PPP promoting non-governmental organizations and public authorities, and arrangement by local authorities for the possibility of public feedback with regard to the preparation and implementation of PPP projects.

3) Introducing information models as part of PPP management mechanisms, which will allow systemic monitoring of flows of information needed for decision-making, excluding unnecessary duplication of information and any redundant information flows that affect the effectiveness of business operations in PPP projects through:

- regular coverage of the completion of key stages of PPP projects in mass media, with accents on social, economic and organizational effects;
- improving the quality of the technological process of PPP information exchange within the framework of applicable law between the authorized state body, central executive bodies, and local self-government bodies through more intensive application of technical means and information technologies, as well as interpersonal communications in the process of implementing PPP projects; and
- information support for management decisions regarding the implementation of the PPP strategy.

II. Implementation Stages and Resources

1. As of the beginning of 2012, Ukraine had formed the PPP institute as an important instrument of strategic development and modernization of the national economy, which allowed starting actions of a strategic nature in this direction.

The first instances of activity within PPP projects in Ukraine took place in the 90s as part of the attempts to build mechanisms of long-term economic cooperation between the government and business as partners, facts supported by information sources of the

World Bank¹². The further progress of interaction between business entities and public authorities of all levels allowed developing PPPs in Ukraine from the early 2000s as an institute of state governance. After the national PPP legislation was adopted to replace various quasi-PPP forms, a uniform conceptual and terminological framework meeting the standards of international practice was introduced.

2. *After the Public-Private Partnership Development Strategy for Ukraine for 2012-2017 was adopted in 2012 following years of searches for the right approaches to using PPP mechanisms in the system of state governance and the adoption of a framework law (first stage of PPP establishment in Ukraine), a new groundbreaking stage of PPP development began in the country. This second stage will make it possible to ultimately formalize the criteria and implementation conditions of PPP projects, outline the PPP application areas, and create PPP enabling institutions and infrastructure by way of:*

2.1 adopting administrative documents of the Cabinet of Ministers of Ukraine (CMU AD) that include provisions introducing functional subordination degrees or a mandatory requirement for central executive bodies to agree PPP decisions with the MEDT, and amending the provisions on central executive bodies, dividing state authorities by specific activities in the PPP area;

2.2 passing administrative documents by central executive bodies in fulfillment of the aforementioned CMU AD, containing a detailed description of the functional distribution in the area of PPP project management among structural units and established positions;

2.3 preparing amendments to Law of Ukraine No 280/97-BP “On Local Self-Governance in Ukraine,” dated May 21, 1997.

Since approving relevant administrative decisions is a prerogative of the President of Ukraine, the CMU AD provide the possibility of formulating proposals to be submitted to the President of Ukraine in accordance with the applicable regulations of legislative and regulatory initiative.

By the end of 2012, the MEDT has to:

- analyze the performance status of the functions of the central authorized body in charge of PPP issues and prepare a Strategy Implementation Plan to reinforce the relevant units of the MEDT to ensure the functional capacity of the authorized body.

3. *Coinciding with 2013, the third stage of the Public-Private Partnership Development Strategy for Ukraine for 2012-2017 envisages steps to be taken to make more effective and transparent the coordination of the activities of the authorities responsible for developing the national policy in this area and authorized to control PPP project preparation and implementation. For this purpose,*

3.1 by issuing CMU AD, a list will be compiled of attractive national PPP projects to be financed by international enabling financial institutions;

¹² Private Participation in Infrastructure Database. - [Electronic resource]. - available at: http://ppi.worldbank.org/explore/ppi_exploreCountry.aspx?countryID=97

3.2. amendments will be worked out to CMU resolutions issued to detail and concretize the Law of Ukraine “On Public-Private Partnership” to improve the procedures for a feasibility study and risk assessment, public support for projects, and competition procedures, bringing them into compliance with international practice and applicable law;

3.3 amendments to the Laws of Ukraine “On Public-Private Partnership” and “On Public Procurement” will be prepared and submitted to the Parliament of Ukraine to implement a transparent competition procedure for private partners expressing a desire to take part in PPP projects; outline the powers of the authorities that become involved in PPP projects at all stages at both central and local levels; extend the timeframe for PPP relations; provide a more precise formulation of PPP specifics as regards delegating the functions and powers of the government related to infrastructure development and public services to the private sector; improve the list of PPP agreement application areas; introduce the possibility of institutional partnership, creating, as a result, a special public-private project joint venture; and grant the right to state (communal) enterprises to act as parties to PPP agreements;

3.4 the provisions of the Law of Ukraine “On Public-Private Partnership” will be harmonized with the respective provisions regulating the powers of local authorities to improve the legislative and regulatory basis of competition procedures intended to select private partners for PPP projects at the local level;

3.5 to amend the domestic legislation to improve the mechanism of settling disputes arising out of any PPP agreement entered with a non-resident or an enterprise with foreign investments, which mechanism should include the possibility of the dispute being referred to an international court of arbitration;

3.6 amendments will be made to the financial legislation to improve the effectiveness of budget spending and avoid fiscal risks in financing PPP projects, and a section will be made in the draft Law of Ukraine “On Public Support” that describe preparation procedures for administrative decisions concerning PPP development; and

3.7. the provisions of the framework PPP legislation will be harmonized with the provisions of the special laws that regulate the contractual relations between the public and private sectors in the field of concessions, joint venture operations, lease, and so on.

In addition:

- amendments will be made to the applicable legislation, and administrative documents of the MEDT, Ministry of Finance, and other central executive bodies will be issued to provide methodological principles of PPP project monitoring and control at the level of central executive bodies;

- preparations for approving administrative documents of local self-government authorities will be made, observing the MEDT’s recommendations regarding PPP project monitoring and control;

- the public council under the MEDT will acquire advisory functions as regards the MEDT’s interaction with local self-government bodies and representatives of business and the expert community;

- a network of PPP project support institutes will start to develop;

- due to the joint administrative documents to be submitted by the supervision authorities in charge of the financial sector, measures will be implemented to encourage the involvement of joint associations of enabling institutions in various activity areas on association conditions (consortiums, provisional joint projects, associations);

- an information environment will be formed for supporting interaction among all stakeholders interested in PPP projects on the basis of modern information instruments and communication technologies by issuing administrative documents of the MEDT, Ministry of Finance, and other central executive bodies, approving administrative documents of local self-government authorities, observing the MEDT recommendations regarding summarization of the best international experience, and holding training events, upgrading the qualifications required for implementing PPP mechanisms, sorting out formal communications between state authorities and civil society by introducing organizational (for example, based on organizational charts) and functional (for example, based on structural unit regulations) arrangements both at the vertical and horizontal levels of the governance hierarchy and quality information support for administrative decisions concerning the implementation of the PPP Strategy.

4. The central task of the fourth stage of the Public-Private Partnership Development Strategy for Ukraine for 2012-2017 will be further formation of PPP enabling financial institutions and creation of an effective system of legislative regulation of PPP relations.

The plans for 2014 include:

4.1. issuing a relevant CMU AD providing basic principles of planning and monitoring selected financial indicators for the MEDT, Ministry of Finance of Ukraine, and State Statistics Committee of Ukraine to implement systemic measures ensuring PPP financing predictability and control;

4.2 amending the legislation and bylaws that regulate the legal relations of property use and disposal to legislatively regulate the issues of state ownership of assets created under PPP projects;

In addition, the following is in the plans:

- promoting various forms of state non-financial support for PPP projects by amending legislative acts and bylaws to improve the application of PPP mechanisms to stimulate innovation activities: innovation clusters and networks, innovation enabling institutions (business incubators, techno parks, investment banks, and so on), and national targeted programs, and create joint innovation companies, including public corporations;

- completing in general the formation of state institutes aimed at creating favorable conditions attracting private investors to PPP-based infrastructure development and public services projects.

5. The fifth stage of the Public-Private Partnership Development Strategy for Ukraine for 2012-2017 to be held in 2015 will focus on polishing the financial leverage of PPP management and forming a PPP institutional system in Ukraine.

For this purpose, it is necessary to:

5.1 by amending the Budget Code of Ukraine, improve the mechanisms of state and local guarantees for PPP projects by limiting the application of the paid-basis terms and counter-guarantee requirements; setting specific limits of the local debt and debt guaranteed by the Autonomous Republic of Crimea and local self-government bodies by adjusting the standards introduced by the budget legislation;

5.2 amend the Law of Ukraine “On Public-Private Partnership” to reconcile the powers of the authorities that become involved in PPP projects at all stages at both central and local levels with the provisions of the fiscal legislation;

5.3 amend the regulatory acts that govern the process of assuming by a public partner (a local self-government body) long-term budget obligations and their fulfillment under PPP agreements, according to which such partners could assume payment obligations (direct or conditional) that exceed the current budget; providing a fair reimbursement to the private partner for the account of the public partner (a local self-government body) for any documented losses incurred by the private partner as a result of early termination of a PPP agreement (based on the termination reasons);

5.4 issue NBU (National Bank of Ukraine) and CMU AD to authorize public banks to provide consulting assistance in evaluating the PPP effectiveness and credit PPP projects.

In addition, it is necessary to:

- create a Public Bank for Reconstruction and Development (PBRD) to provide financial support for PPP projects; and

- continue amending the applicable legislation to polish the procedure for channeling budget funds through the Public Bank for Reconstruction and Development to PPP projects.

6. Within the framework of the final stage of the Public-Private Partnership Development Strategy for Ukraine for 2012-2017 to be held in 2016-2017, the creation of a holistic national system of PPP institutions will be finalized, as well as their formalization within applicable legislation, in particular:

6.1 amendments will be made to the applicable legislation regarding the procedures for indirect financing of investment PPP projects through the acquisition of securities and the PBRD’s provision of loans and guarantees;

6.2 administrative documents issued by the CMU and bodies in charge of financial sector regulation and supervision will provide for cash flow securitization under PPP projects (financing the assets of a project company through securities issued by this company);

In addition, the plans include:

- identifying institutional units of the financial sector for long-term financing of PPP projects and changing the functional distribution of their activities to minimize the risks;

- creating a network of specialized leasing centers to stimulate investments in the real sector of the economic on the conditions of leasing as a PPP form;

- creating a market of local borrowings by diversifying repayment sources and introducing a list of activities which are allowed to be financed by foreign currency and hryvnia loans;

- developing a national legislation in the PPP area to regulate business relations between the public and private sectors in the context of supranational economic agreements; and
- legislatively establishing the structure and operating fundamentals of PPP enabling financial institutions;

Financial sources should be identified on an annual basis in accordance with the indicators of the cumulative, state, and local budgets for the medium-term and long-term, and sources of private investments should be identified on the results of expert evaluations and statistical studies.

The volume of logistic resources is determined on the basis of the amount in declared needs of ministries, departments, and local self-government bodies (in relevant quantitative units of measure) and for private enterprises and non-governmental organizations - on the results of expert evaluations and statistical studies.

The amount of workforce is determined on the basis of the number of specialists engaged in state governance, according to the organizational, structural, and staff changes in ministries, departments, and local self-government bodies, and for private enterprises and non-governmental organizations - on the results of expert evaluations and statistical studies.

III. Implementation Results

The implementation results of the Strategy are determined on an annual basis in accordance with the indicators of the cumulative, state, and local budgets for the medium-term and long-term, and for private sector performance indicators - upon the results of expert evaluations and statistical studies.

№	Indicator	Unit of measure	Forecast by Strategy stages										
			2012	2013	Accrued total	2014	Accrued total	2015	Accrued total	2016	Accrued total	2017	Accrued total
1	Number of PPP projects by economic sectors	Unit											
2	Total amount in PPP project financing	mln UAH											
3	Gross investments in fixed capital as a result of PPP projects	mln UAH, % of total investment											
4	Total loans extended for PPP projects	mln UAH											
5	Total fiscal proceeds (taxes, duties, fees) to budget of all levels from PPP projects	mln UAH											
6	Value of assets created and transferred to the state under PPP projects	mln UAH											
7	Number of jobs created under PPP projects	unit											
8	Level of public satisfaction with the price and quality of provided public services	conventional unit											

IV. Implementation Monitoring and Evaluation

The monitoring of PPP processes requires a specially set up standing system of observations, information gathering, analysis, and dissemination, and prediction of key Strategy implementation processes.

1. Combining the goal, tasks, and methods, including monitoring planning and implementation arrangements, the MEDT, central executive bodies, local self-government bodies, and other authorized state bodies should provide in their administrative documents, in accordance with the key goals and tasks of the Strategy:

- the general PPP processes performance and financial indicators that are provided in the text of the Strategy, taking into account their annual values and totals accrued from project commencement to completion, per economic sector and per PPP project; and
- a legislative acts and bylaws preparation schedule in accordance with the Strategy Implementation Plan.

2. By gathering, analyzing, and interpreting the data envisaged in Clause 1, the said bodies should evaluate on an annual basis the current progress status of each project and the Strategy in the part related to their terms of reference, and so on. For this purpose, it is necessary to:

- identify and evaluate intermediate results and achievements;
- identify any deviations from the set targets;
- ensure publication of the results of completed Strategy measures;
- create conditions to ensure regular feedback at all levels (between the decision-making and decision fulfilling levels); and
- make corrections to the Strategy Implementation Plan as necessary and within their powers.

3. Within the framework of strategic management, the MEDT is required to timely assess any changes threatening to slow down the fulfillment of the Strategy Implementation Plan, taking into account factors of external and internal influence. Reasonable and grounded critical ideas should be included in the Strategy Implementation Plan as direct corrections. Acting within its powers, the MEDT should forecast and evaluate events, including crisis ones, which affect the fulfillment of the Strategy, threatening any deviations temporary and permanent, local and systemic, extensive and intensive by nature. The quantitative assessment of the aforementioned changes should be envisaged within the Strategy implementation indicators presented in the introductory part of this document. Any additional indicators introduced to reflect changes in the Strategy should correspond to the adopted statistical characteristics of economic processes, including, crisis and emergency ones, at both supranational and national levels.

4. The Strategy implementation effectiveness indicators and Strategy implementation cost-effectiveness indicators should be predicted for the period until 2017, with annual adjustment of their values. General indicators are entered into the sections of documents that reflect the quantitative characteristics of strategic goals (Address of the President of Ukraine), and financial indicators are entered into the target and forecast indicators of documents passed by the government. At the same time, the

aforementioned quantitative indicators are entered into relevant statistic and financial reporting forms which economic agents operating at the public level and in the business environment are required to complete. The fulfillment evaluation of the indicators is done on an annual basis. If factual indicators deviate substantially from the forecast values, the MEDT is required to submit its evaluation of such deviations to the CMU for consideration and making tactical or strategic administrative decisions, depending on the deviation degree. The MEDT should determine in its administrative document the approach to managing potential changes in the Strategy on the basis of the following components:

4.1 Realizing the changes and the need to take specific actions to carry them out

This component requires that measures should be taken to ensure the collection of trustworthy, all-round, objective, and updated information for systemic analysis and evaluation to prepare grounds for proposals and decisions to correct the PPP Strategy.

4.2 Realizing the differences in the management style and forms under normal and emergency conditions.

5. As the MEDT, central executive bodies, and local self-government bodies monitor the Strategy implementation process, they will be noticing deviations from the set targets. Such a situation dictates two scenarios 1) continuing with the Strategy implementation into the coming periods without any revision of the projected targets, tasks, and measures (in this case the Strategy differs from other documents that determine the socio-economic policy for the short-term only by the term for which it has been developed); 2) thorough correction of the Strategy for the whole future period at every moment of its revision (in this case, the revised Strategy will by no means be linked to the implementation results of the previous periods, which means that a new Strategy has actually been adopted).

6. Central executive and local self-government bodies are obligated to prepare correction proposals for the Strategy to change its indicators and measures planned for remote future periods as the correction moment approaches them.

7. The MEDT is obligated to evaluate the degree and tactics of such changes at various Strategy implementation stages.

7.1 The identification of the degree and character of changes that require editing the Strategy at the macro and micro levels, as well as the selection of specific steps, will be carried out with respect to the below types of strategic changes:

- partial active changes (non-strategic management components) which allow correcting the completion status of specific stages and items of the Strategy Implementation Plan without any sharp changes;

- partial reactive changes (tuning in) which allow adjusting the Strategy Implementation Plan to changes in the external and internal environment.

8. The MEDT and other state authorities will track a specific set of key Strategy fulfillment parameters and, if they deviate from the set targeted parameters, influence these parameters, bringing them back to the target values. The possibility of this Strategy correction approach implies flexibility of the parameters provided in it, as well as the powers in the responsible state authority and business partners to immediately respond to changes in circumstances and independently make corrections to the

quantitative parameters of the Strategy. It is necessary to take into consideration the informational asymmetry risks and identify in this connection special interest groups that are not interested in providing exhaustive and accurate information.

9. After determining the nature of changes, the MEDT and other authorized state bodies should select a tactics of changes in the Strategy Implementation Plan. It should imply the identification and quantity and quality assessment of such parameters, specifically:

- change timeframes (situation-dependant);
- pitfalls and crisis situations during the time of changes implementation;
- possible solutions;
- expected spending of all resources;
- expected mechanism of changes;
- expected results of changes;
- temporary signals and other assessment parameters;
- changes in the changes implementation sequence (possible channels of switching from one strategy of changes to another);
- complete or partial involvement of the staff in the process of changes;
- short-term results (benefits); and
- involvement of external experts or forces.

10. Selection and preparation of influence agents in the context of changes in the Strategy.

After the qualitative and quantitative assessment of the changes tactics, it is necessary to select and prepare influence agents in the context of changes. If the nature and character of changes and the changes management process cannot be completely transparent, it is necessary to formulate a context of changes acceptable for the whole system. After this it is necessary to select and prepare agents of changes, people who will support changes in the organization, carry out work to implement the changes, and implement them professionally.

When introducing changes, it is necessary to communicate the information about envisioned prospects and changes strategies to public officials through official training sessions and communication networks, inviting public and private sector representatives to such events.

11. The procedure for concretizing the Strategy and determining the psychological and organizational basis of changes should be described in administrative documents of the MEDT, central executive bodies, and local self-government bodies. For this purpose, it is necessary to:

11.1 determine a standard set of procedures and elements of management decisions to make changes and reflect them in appropriate documents as factors of change arise along with the need to correct the Strategy Implementation Plan;

11.2 compile additional calendar schedules of events involving non-governmental organizations, if introducing permanent long-term procedures of changes. In this case, the MEDT and other authorized state bodies should formulate for public sector workers organizational tasks, targets, and obligations, and the expected effect of the results of

the change implementation efforts on public and private partners, reflecting the aforementioned and personal vision of the prospects in official documents.

11.3 such actions need to be accompanied by the creation of a patronage system for people without experience and new employees. Patrons may be officially or informally appointed.

11.4 compile job descriptions for each major area of work to activate public workers in carrying out the change procedures. Special attention should be paid to those functions that do not fall within the limits of the existing functional duties, that is, to the processes that are intended to implement coordination with other units or hierarchical levels, as well as to effective principles of delegating and vesting powers.

12. Decisions to make changes to the Strategy Implementation Plan will need to be backed by the MEDT's public council which will take into account expert opinions of the society and private partners in view of their possible expectations and the volumes of information flows that may be necessary for private contractors. For this reason, using the procedures for passing administrative decisions as necessary, administrative documents should be used to introduce criteria assessing the needs and expectations of private contractors on a permanent basis, with appropriate monitoring of changes in them and expectation trends.

13. The process of making decisions to amend the Strategy Implementation Plan should be coordinated on the basis of clearly declared priorities and observing the principle "not everything that can be done adds value." It makes sense to give priority to the most important aspects that add to the value of specific PPP measures tangible for the private partner and producing a measurable socio-economic effect. To achieve such goals, it is necessary to create favorable conditions for PPP participants, enabling them to be up to new tasks in the process of changes. It is also necessary to enrich and expand the area of their production activities, adding responsibility in the areas that require new skills and capabilities.

V. Strategy Implementation Plan

This Plan should list actions and responsible executors, fulfillment timeframes, and expected results. The Plan should take into account the need to further agree the project with responsible executors (ministries, departments, and so on) and stakeholders; its content should be based on the existing distribution of powers between ministries and departments, existing programs and plans of action, expert opinions and consultations with stakeholders.

The methodology of identifying resources for the Strategy Implementation Plan is as follows:

I. Using budget financing sources.

According to the approved projected spending of the state and local budgets for the appropriate years and the medium-term, a list of financing items and amounts to be invested in state targeted programs should be provided.

Within the established financing limits, the PPP mechanisms application areas should be concretized. The amounts in required financing from budgets of appropriate levels are calculated depending on PPP application methods, including drawing budget

money to finance the project, increasing the chances of contracting loans for projects by securing state guarantees, and so on.

II. Using private financing sources

According to the list of investment state targeted programs which envisages the application of PPP mechanisms, the amounts in needed financing from private sources are calculated.

III. Unified cost estimates of investment state targeted programs (of the national and local levels) should be compiled, envisaging the application of PPP mechanisms.

In these cost estimates, it is necessary to highlight

- the direct and indirect expenditures to finance the actions envisaged in the project documentation, assuring the achievement of the goals set in the state and/or local targeted programs; and

- the expenses required to cover specific items of the Strategy Implementation Plan.

These unified cost estimates of PPP programs should list sources of national, local, and private financing, which are determined individually for each target fulfillment indicator. The amounts in budget and other state financing should be within the limits set by the relevant legislative and other regulatory acts.

Thus, financing sources for the Strategy Implementation Plan will be created as a result of:

- saving budget and other state financial resources through additional attraction of private capital; and

- potential profits of private business as a result of an expanded space for free flows of capital and its penetration into earlier inaccessible areas, transaction savings due to simplified licensing and permissive documentation obtaining procedures, favorable opinions of supervisory bodies, elevated project statuses thanks to the participation of the government, and a created positive image of the involved company.

The flows of national and local funds should be documented in accordance with the budget legislation, and the flows of mixed and private financial resources in accordance with the rules similar to those that regulate the use of funds of public corporations and special budget funds. The financial reporting to reflect cash flows related to the fulfillment of PPP projects and the Strategy Implementation Plan envisages specific entries to be created in the fiscal and statistical databases. The provision of relevant information is based on the mandatory reporting procedures established for economic entities of the private and public sectors.

Implementation Plan of the Public-Private Partnership Development Strategy for Ukraine for 2012-2017

No	Goal	Tasks and measures	Responsible executor	Fulfillment time	Fulfillment indicator
I. Institutional part					
To improve the quality of the PPP state management system, creating an effective organizational structure of interaction among executive authorities, businesses, civil society institutions, and representatives of the expert community					
1	Extending the powers of the authorized state body in charge of PPP development management	1.1 Concretization of the functions and powers of the MEDT regarding its strategic administrative role in the PPP area			Adopted administrative documents of the Cabinet of Ministers of Ukraine (CMU AD) that include provisions introducing functional subordination degrees or a mandatory requirement for central executive bodies to agree PPP decisions with the MEDT, and amending the regulations of central executive bodies, dividing state authorities by specific activities in the PPP area (including in accordance with the procedure for advancing proposals to Presidential Decrees, if the relevant provisions are subject to Presidential Decrees) Prepared amendments to the Law of Ukraine
		1.1.1 Identification and formation of closed lists of powers, functions, and administrative services in the PPP area for the MEDT, including in the context of determining distinctions in management functions of strategic nature	Prime Minister of Ukraine MEDT	November 2012	
		1.1.2 Identification and formation of closed lists of powers, functions, and administrative services in the PPP area for central executive bodies	Prime Minister of Ukraine MEDT central executive bodies	November 2012	
		1.1.3 Establishment of the strategic planning role of the MEDT when local self-government bodies exercise their powers to make their own decisions regarding the expediency and implementation of PPP projects	Prime Minister of Ukraine MEDT Local self-government bodies	December 2012	
		1.2 Introduction of the managerial components of the Strategy in the functions and powers of the management and organizational units of the MEDT	MEDT Deputy minister with the appropriate functions	December 2012	
		1.3 Singling out within the present special PPP unit of the MEDT the functions and	MEDT Deputy minister with the	December 2012	

	structural units engaged in forming the state PPP policy, expert examinations of PPP projects, and provision of a methodological basis of PPP projects	appropriate functions		No 280/97-BP "On Local Self-Governance in Ukraine," dated May 21, 1997
	1.4 Introduction of quantitative and qualitative performance criteria for the PPP unit of the MEDT	MEDT Deputy minister with the appropriate functions	December 2012	Passed administrative documents of central executive bodies in execution of the aforementioned CMU AD, determining the PPP project management functional distribution among structural units and established positions Amendments made to Law of Ukraine No 2404-VI "On Public-Private Partnership," dated July 1, 2012
	1.5 Application of the MEDT's functions related to approving PPP feasibility study at the preparation stage exclusively to projects implemented by central executive bodies	CMU MEDT	December 2012	
	1.6 Provision of methodological and consulting support for projects, involving accounting for PPP agreements at the central and local levels by regions, territories, and types of economic activity	MEDT Ministry of Justice	December 2012	
	1.6.1 Determining legal and organizational forms and directions of public support for PPP projects	MEDT Ministry of Justice	December 2012	
	1.6.2 Implementation of the PPP forms application criteria: execution of PPP project agreements, creation of appropriate PPP institutional entities, and so on	MEDT Ministry of Justice	December 2012	
	1.6.3 Implementation the procedure for obligatory evaluation of competitive advantages of applied PPP mechanisms as compared with other technologies of organizing and financing investment projects	MEDT Ministry of Finance	December 2012	
	1.7 Organizing PPP project fulfillment monitoring and control at the central and local levels	MEDT Ministry of Finance Ministry of Justice central executive bodies local self-government bodies	March 2013	

		1.7.1 Development of methodological principles of PPP project fulfillment monitoring and control at the level of central executive bodies	MEDT Ministry of Finance Ministry of Justice central executive bodies	March 2013	Issued administrative documents of the MEDT, Ministry of Finance, and central executive bodies on the consent of the Ministry of Justice Approved administrative documents of local self-government bodies, with observed recommendations of the MEDT for the Strategy refinement methodology and PPP project fulfillment monitoring and control
		1.7.2 Development of methodological principles of PPP project fulfillment monitoring and control at the level of local self-government bodies, observing the principle of the strategic planning role of the MEDT	MEDT Ministry of Finance Local self-government bodies	March 2013	
		1.7.3 Implementation of the Strategy refinement methodology	MEDT central executive bodies local self-government bodies	March 2013	
2	Making more effective and transparent the coordination of the activities of the authorities responsible for developing the national policy in this area and authorized to control PPP project preparation and implementation.	2.1 Determining the functions and powers of central executive bodies in the part related to executing and supporting PPP agreements, taking into account the strategic planning role of the MEDT	MEDT Ministry of Finance Ministry of Justice central executive bodies	March 2013	Issued administrative documents of the MEDT, Ministry of Finance, and central executive bodies on the consent of the Ministry of Justice
		2.2 At the instruction of the Cabinet of Ministers of Ukraine, assigning the functions of preparation and feasibility study of PPP projects involving the Cabinet of Ministers of Ukraine as a partner to the appropriate central executive bodies	MEDT Ministry of Finance Ministry of Justice central executive bodies	March 2013	
		2.3 Assigning the advisory functions to the Public Council under the MEDTU	MEDT	March 2013	Issued administrative document of the MEDT

		regarding coordination of the MEDT's interaction with local self-government bodies and representatives of business and the expert community			on the composition and activities of the Public Council under the MEDT
3	Formation of institutional principles for the financial sector of the economy to provide support for PPP projects	3.1 Identification of institutional units of the financial sector for long-term financing of PPP projects and changing the functional distribution of their activities to minimize the risk factors			
		3.1.1 Increasing the capitalization of insurance companies and at the same time introducing insurance supervision principles meeting international standards, and creating a system of guaranteeing insurance indemnification to attract long-term investments	State Commission for Regulation of Financial Services Markets of Ukraine Ministry of Finance MEDT	2016-2017	Development of conceptual principles for the planned draft Law of Ukraine "On Insurance"
		3.1.2 Introduction of a set of measures to improve financial stability of banking and non-banking financial institutions, in particular joint investment institutions, ensuring operational transparency of stock market operators and encouraging investments	NBU State Commission for Regulation of Financial Services Markets of Ukraine Ministry of Finance MEDT	2016-2017	Amendments to the Laws of Ukraine "On Business Companies," "On Securities and Stock Market," "On Institutes of Joint Investment (Unit and Corporate Investment Funds)," and certain laws of Ukraine as regards toughening requirements for the authorized capital of professional stock market players and financial institutions
		3.2 Development of a system of re-financing credit organizations by public enabling institutions within the framework of applicable law to ensure resource			

		support for PPP projects			
		3.2.1 Consideration of the issue of expediency of a venture investment state institute to be created to secure the results by increasing capitalization of investments in sectoral targeted funds and further reinvestment of earned proceeds in new development projects	MEDT Ministry of Finance	December 2013	Issued CMU AD determining the organizational status of the public company whose mission is to stimulate the creation of Ukraine's own venture financing industry and a substantial increase on the financial resources of venture funds
		3.2.2 Development of cooperation with international enabling financial institutions	MEDT Ministry of Finance Ministry of Foreign Affairs	September 2013	Issued CMU AD providing a list of attractive national PPP projects for international enabling financial institutions to finance
		3.3 Development of measures to stimulate the engagement of joint associations of enabling institutions operating in various activity areas on association conditions (consortiums, provisional joint projects, associations)	MEDT Ministry of Finance NBU State Commission for Regulation of Financial Services Markets of Ukraine SSMSCU	September 2013	Passed joint administrative documents of financial sector supervisory authorities
4	Creation of favorable conditions for attracting private investors to PPP-based infrastructure development and public services projects	4.1 Promotion of the forms of state non-financial support for PPP projects			Passed administrative documents of central executive bodies based on the uniform methodology of the MEDT regarding assessment and avoidance of the risks of negative effects on PPP projects at the macro and micro levels
		4.1.1 Supporting the viability of programs and projects, taking into account the risk classification and levels and correlation between external and internal factors	CMU MEDT State Agency for Investment and National Projects Ministry of Justice Ministry of Finance	March 2014	
		4.1.2 Creation of universal consulting organizations to provide quality PPP services to state institutions and	CMU MEDT State Agency for Investment and	March 2014	

	departments	National Projects Ministry of Justice Ministry of Finance		Passed documents of central executive and local self-government bodies based on the common methodology of the MEDT regarding PPP projects implementation standards, as well as prepared proposals to improve the legislative basis
	4.1.3. Application of PPP mechanisms to stimulate innovation activities: innovation clusters and networks, infrastructure development projects (business incubators, techno parks, investment banks, and so on), and national targeted programs, and create joint innovation companies, including public corporations	CMU MEDT State Agency for Investment and National Projects Ministry of Justice Ministry of Finance	March 2014	
	4.2 Measures to be carried out by central and local authorities to spread information about promising regional development investment projects involving the private sector	MEDT central executive bodies local self-government bodies	March 2014	Passed documents of central executive and local self-government bodies based on the common methodology of the MEDT regarding specifics of marketing actions to intensify the attractiveness of PPP projects for the private sector
	4.3 Providing clear rules, procedures, an exhaustive list of required documents, and permit issue deadlines, as well as supporting private partners in obtaining all permits required for PPP projects	First Vice Prime Minister of Ukraine MEDT State Service of Ukraine for Regulatory Policy and Entrepreneurship Development <i>If necessary:</i> <i>Local authorities</i>	March 2014	Approved law of Ukraine on amendments to be made to the Law of Ukraine "On the List of Permissive Documents Required in the Business Sphere" and other legislative acts of Ukraine regarding cutting the list of permissive documents

					by at least 70 percent, and an issued CMU AD cutting by at least 40 percent the list of the types of business activities to which the declarative principle is not applicable
		4.4 Implementation of pilot projects to create a foundation for increasing public trust in private capital and outline development directions for the PPP legislative and regulatory framework in Ukraine	MEDT	December 2013	Issued CMU AD formulating the basic status principles of pilot PPP projects, which will create a foundation for increasing public trust in private capital and outline development directions for the PPP legislative and regulatory framework in Ukraine
II. Financial Part					
Improving the PPP project financing mechanisms					
5	Improvement in the effectiveness of budget spending and avoidance of fiscal risks in financing PPP projects (Comment: the effective financing mechanisms of state targeted programs do not take into account the specifics of	5.1 Planning budget allocations for the entire implementation term of PPP investment projects, taking into account the dynamics of prices and privileged taxation sources in accordance with the approved budget programs 5.1.1 Approving budget programs and datasheets of budget programs in all areas of budget investment from the national	MEDT Ministry of Finance	March 2014	Amendments made to the Budget Code of Ukraine, Law of Ukraine No 1621-IV “On Targeted State Programs,” dated March 18, 2004, and to the draft Law of Ukraine “On State Strategic Planning”

	planning, using, and controlling funds of the state and local budgets when using them as a PPP financing source. Clause 5 contains goals whose promises a transparent mechanism of public PPP financing and explains the difference between the financing of a usual targeted budget program and the financing involving the PPP mechanism)	and local budgets for the medium-term (taking into account PPP mechanisms)			Singled out section on relevant preparatory procedures for management decisions in the draft law “On Public support”
		5.1.2 Approving the methodology of budget programs fulfillment monitoring, effectiveness evaluation, and efficiency of local budgets (taking into account PPP mechanisms)	MEDT Ministry of Finance	March 2014	
		5.2 Annual approval of the amounts in state financial support for PPP projects, taking into account the results of their implementation based on the introduction of a register of investment PPP projects ¹³ in which the public support amount and form will be specified	MEDT Ministry of Finance	March 2014	
6	Intensification of the process of involving enabling institutions in financing PPP projects	6.1 Using the mechanisms for reorganizing the existing enabling institutions, to create a public bank for reconstruction and development (PBRD) and authorize it to provide financial support within the limits of its authorized capital for PPP projects and assist project participants in the financing support procedure			Amendments to the Budget Code of Ukraine Issued CMU AD approving the amount in authorized capital, functions and procedure for the interaction with executive bodies and business entities
		6.1.1 Using the mechanisms for reorganizing the existing enabling institutions, to create a public bank for reconstruction and development (PBRD) to provide financial support for PPP projects	Prime Minister of Ukraine MEDT	March 2015	Issued CMU AD describing the forms of direct and indirect financing of investment PPP projects in priority areas
		6.1.2 to provide the procedures for channeling budget money through the PBRD to PPP projects	MEDT Ministry of Finance	June 2015	

¹³ The Register of Investment PPP Projects in Ukraine may be a part of the State Register of Investment Projects and Project (Investment) Proposals the keeping procedure for which is approved by Resolution No 650 of the Cabinet of Ministers of Ukraine, dated July 18, 2012

		6.1.3 to provide the procedures for indirect financing of investment PPP projects through the acquisition of securities and the PBRD's provision of loans and guarantees	MEDT Ministry of Finance	2016-2017	
		6.2 to authorize public banks to provide advisory assistance in evaluating the PPP performance and credit PPP projects	Prime Minister of Ukraine MEDT Ministry of Finance NBU	June 2015	Issued CMU and NBU AD
		6.3 to create specialized leasing centers based on the public-private partnership principles to stimulate investments in the real sector	Prime Minister of Ukraine MEDT Ministry of Finance	2016-2017	Issued CMU AD
7	Implementation of modern instruments of long-term PPP project financing	7.1 Improvement of the mechanism of nation-wide and local guarantees for PPP projects by limiting the application of the paid-basis terms, counter-guarantee requirements; setting specific limits of the local debt and debt guaranteed by the Autonomous Republic of Crimea and local self-government bodies by adjusting the standards introduced by the budget legislation	Prime Minister of Ukraine MEDT Ministry of Finance	March 2015	Amendments to the Budget Code of Ukraine
		7.2 Development of the market of local loans by diversifying repayment sources which are currently dominated by proceeds from communal property alienations and non-farming land sales; introducing a list of activities which are allowed to be financed by foreign currency and hryvnia loans	Prime Minister of Ukraine MEDT Ministry of Finance NBU	2015-2016	Amendments to the Budget Code of Ukraine, issued CMU and NBU AD
		7.3 Formation of mechanisms of assuming by a public partner (a local self-government body) long-term budget obligations (which exceed the current	Prime Minister of Ukraine MEDT Ministry of Finance NBU	2015-2016	Amendments to the Budget Code of Ukraine, issued CMU and NBU AD

		budget) and their fulfillment under PPP agreements; providing a fair reimbursement to a private partner for the account of the public partner (a local self-government body) for any documented losses incurred by the private partner as a result of early termination of a PPP agreement			
		7.4 Cash flow securitization within PPP projects (financing the assets of a project company through securities issued by this company)	NBU State Agency for Investment and National Projects Ministry of Justice Ministry of Finance State Commission for Regulation of Financial Services Markets of Ukraine SSMSCU	2016-2017	Amendments made to the Law of Ukraine “On Securities and Stock Market” and singling out the functions of using financial instruments in the PPP area to improve the regulation of and supervision over the financial sector in Ukraine
8					
III. Legal part					
Creating an effective system of legislative regulation of PPP relations					
8	Putting in order the PPP project management legislation at the central and local levels	8.1 Preparation, adoption, and further improvement of the PPP framework legislation to reconcile its rules with fiscal provisions; clearer formulation of the powers of the authorities that become involved in PPP projects at all stages at both central and local levels; extending the timeframe for PPP relations; more accurate formulation of PPP specifics as regards delegating the functions and powers of the state related to infrastructure development and public services to the private sector; improving	MEDT Ministry of Justice	2013-2015	Amendments to the Law of Ukraine “On Public-Private Partnership” as well as the Laws of Ukraine “On Concessions,” “On Concessions for the Construction and Operation of Motor Roads,” “On the Specifics of Leasing Out or Granting Concessions for Communal

	the list of PPP agreement application areas; introducing the possibility of institutional partnership, including the creation of a special public-private joint venture for a specific project; and granting the right to state (communal) enterprises to act parties to PPP agreements			Centralized Water and Heating Supply and Drainage Facilities,” “On the Specifics of Leasing Out or Granting Concessions for Public Fuel and Energy Facilities,” “On Lease of State and Communal Property,” “On Management of Public Properties,” and others
	8.2 Reconciliation of the provisions of the framework PPP legislation with the provisions of the special laws that regulate the contractual relations between the public and private sectors in the field of concessions, joint venture operations, lease, and so on	MEDT Ministry of Justice	2013-2015	Amendments to the Law of Ukraine “On Public-Private Partnership” as well as the Laws of Ukraine “On Concessions,” “ On Concessions for the Construction and
	8.3 Harmonization of legislative and bylaw provisions in connection with the implementation of the PPP development Strategy	MEDT Ministry of Justice	2013-2015	Operation of Motor Roads,” “On the Specifics of Leasing Out or Granting Concessions for Communal Centralized Water and Heating Supply and Drainage Facilities,” “On the Specifics of Leasing Out or Granting Concessions for Public Fuel and Energy Facilities,” “On Financial Leasing,” “On Land Lease,” “On

				Management of Public Properties,” “On Seaports,” “On Local Self-Governance,” “On Housing and Communal Services,” “On Heating Supply,” “On Drinking Water and Drinking Water Supply,” “On Wastes,” “On Natural Monopolies,” “On Public Procurement,” the Civil Code of Ukraine, and others	
		8.4 Preparation, adoption, and further improvement of the legislative and regulatory basis of competition procedures to select private partners for PPP projects	MEDT Ministry of Justice	2013-2014	Amendments to bylaws in execution of the Law of Ukraine “On Public-Private Partnership” to improve the methodology of identifying risks associated with public-private partnership and their assessment, and selecting a form of controlling them ¹⁴ in the part related to the identification, assessment, distribution, and management of risks associated with PPP projects; abrogation of the provision requiring
		8.5 Introduction of instruments of methodological support for PPP projects under agreements of specific types; these instruments should be of advisory nature, developed by the authorized body, and include model agreements, and PPP project selection, preparation, financing, implementation, and monitoring manuals	MEDT central executive bodies local self-government bodies	December 2015	
		8.6 Legal regulation of issues related to titles to any assets created within the PPP framework	MEDT Ministry of Justice State Agency of Land Resources of Ukraine Local self-government bodies	December 2014	
		8.7 Improving the mechanism of settling	MEDT	2013	

¹⁴ Resolution No 232 of the Cabinet of Ministers of Ukraine “On Approving the Methodology for Identifying and Assessing the Risks Associated with Public-Private Partnership and Determining the Management Approach to Them,” dated February 16, 2011

		disputes arising out of any PPP agreement entered with a non-resident or an enterprise with foreign investments, which mechanism should include the possibility of the dispute to be referred to an international court of arbitration	Ministry of Justice		that the Ministry of Economic Development and Trade of Ukraine approves the PPP feasibility study for projects implemented by local self-government bodies ¹⁵
		8.7.1 Harmonization of the domestic PPP legislation PPP that regulates business relations between the public and private sectors	MEDT Ministry of Justice	2013	
		8.7.2 Harmonization of the domestic legislation in the context of supranational economic agreements	MEDT Ministry of Justice	2013	
9	Improvement of legislative regulation of state financial support for PPP projects	9.1 Improvement of the fiscal legislation (including in the part regarding financial support for the rights and obligations of state and municipal entities acting as parties to PPP agreements and implementation of the long-term obligations assumption mechanisms) to improve the investment climate and form an effective mechanism of public support for PPP	MEDT Ministry of Finance	June 2013	Amendments to the laws of Ukraine on PPP, on local self-governance, and the Budget Code of Ukraine
		9.2 Improvement of bylaws to simplify the mechanism of public support for PPP projects	MEDT Ministry of Finance	June 2014	Amendments to Resolution No 279 of the Cabinet of Ministers of Ukraine, dated March 17, 2011
10	Putting in order the legislative and regulatory framework regulating the creation and functioning	10.1 Legislative formation of the structure and operating fundamentals of enabling financial institutions (EFI) in the PPP area	Prime Minister MEDT NBU State Agency for Investment and	2015-2017	Amendments to applicable legislation to harmonize the conceptual and

¹⁵ Public-Private Partnership Effectiveness Analysis Procedure approved by Resolution No 384 of the Cabinet of Ministers of Ukraine, dated April 11, 2011

	of enabling institutions in the PPP context		National Projects Ministry of Justice Ministry of Finance State Commission for Regulation of Financial Services Markets of Ukraine SSMSCU (Securities and Stock Market State Commission of Ukraine)		terminological framework of FDI activities, unification of FDI's financial support procedure and instruments
		10.2 Revision and preparation of amendments to the provisions of domestic legislation that regulate the operation of universal and special development banks, export-import banks, public leasing companies, development foundations and agencies, and so on	Prime Minister MEDT NBU State Agency for Investment and National Projects Ministry of Justice Ministry of Finance State Commission for Regulation of Financial Services Markets of Ukraine SSMSCU	2016-2017	Developed draft Law of Ukraine "On Insurance" and amendments to the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine Regarding Targeted Bonds" (to improve the mechanisms of targeted bonds issue and circulation, vesting sufficient powers in the market regulator to guarantee the protection of the legitimate rights of investors)

IV. Informational part

Formation of an information environment to support the interaction among stakeholders interested in PPP projects by employing applying modern information instruments and communication technologies

11	Formation of modern professional and interpersonal	11.1 Familiarization of public workers with analytic materials produced by leading research, expert, and	MEDT central executive bodies local self-government bodies	December 2013	Issued administrative documents of the
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	communication culture in public workers at all governance levels as regards studying experience of PPP as a changes management component in the economic reform process	professional organizations			MEDT, Ministry of Finance, and central executive bodies. Approved administrative documents of local self-government bodies, observing the MEDT's recommendations regarding the summarization of the world's best experience and provision of training events
11.2 Visits of public workers to leading PPP centers operating within public authorities in European countries		MEDT central executive bodies local self-government bodies	December 2013		
11.3 Upgrade of the qualifications required for the successful implementation of PPP mechanisms;		MEDT central executive bodies local self-government bodies	December 2013		
11.4 Regular information and experience exchange at conferences, roundtables, forums, and so on		MEDT central executive bodies local self-government bodies	December 2013		
12	Realization of the most effective communication connections and overcoming information barriers throughout the entire cycle of creation and implementation of the PPP institute in Ukraine	12.1 Putting in order formal communications between state authorities and the public by introducing organizational (for example, based on organizational charts) and functional (for example, based on structural unit regulations) arrangements both at the vertical and horizontal levels of the governance hierarchy	MEDT central executive bodies local self-government bodies	December 2013	Issued administrative documents of the MEDT, Ministry of Finance, and central executive bodies Approved administrative documents of local self-government bodies, observing the MEDT's recommendations regarding organization of communications among stakeholders in the real and virtual environment within the framework of clearly
		12.2 Support for the system of informal communications between representatives of state institutes and institutes of civil society at grounds provided by PPP promoting non-governmental organizations and state authorities, and arrangement by local authorities for the possibility of public feedback with regard to the preparation and implementation of PPP projects	MEDT central executive bodies local self-government bodies	December 2013	

					planned events, taking into account proposals of changes made by the said stakeholders
13	Introduction of information models as part of PPP management mechanisms, which will allow systemic monitoring of information needed for decision-making, excluding unnecessary duplication of information and any redundant information that affect the effectiveness of business operations in PPP projects	13.1 Regular coverage of the fulfillment of keys stages of PPP projects in mass media, with accents on social, economic and organizing effects;	MEDT central executive bodies local self-government bodies	December 2013	Issued administrative documents of the MEDT, Ministry of Finance, and central executive bodies
		13.2 Improvement in the quality of the technological process of PPP information exchange within the framework of applicable law between the authorized state body, central executive bodies, and local self-government bodies through more intensive application of technical means and information technologies, as well as interpersonal communications in the process of implementing PPP projects;	MEDT central executive bodies local self-government bodies	December 2013	Adopted administrative documents of local self-government bodies, observing the MEDT's recommendations regarding the implementation of standard models of business-processes of information services (set of roles, their functions, interconnections among the rules, functions performance rules, and uniform approaches to information interaction of standards models, including when applying the conceptual and terminological framework and using an adequate IT services management)
		13.3 Information support for management decisions regarding the implementation of the PPP strategy	MEDT central executive bodies local self-government bodies	December 2013	

