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Project: MEMORANDUM on the Public-private partnership sector in Ukraine

In mid-June 2025, the Parliament adopted in the second reading and in general bill No. 7508- an initiative designed to reform the public-private partnership (PPP) sector in Ukraine and accelerate the restoration of infrastructure damaged by the war.

The project was adopted as a basis back in October 2022, and since then discussions and work on its improvement have continued.

Draft Law No. 7508 is a step towards the modernization of the public-private partnership (PPP) sector in Ukraine, especially in the context of post-war reconstruction. It opens up new opportunities, as it expands the scope of PPP and the list of public partners and sources of financing. At the same time, it provides for the reduction and simplification of project preparation. In addition, the adopted Law partially fulfills Ukraine's obligations under the Ukraine Facility program regarding harmonization with EU legislation.

WHAT'S NEW IN THE FINAL VERSION?

The first and most obvious innovation is the change in the name of the bill. Previously, the emphasis was on improving the mechanism for attracting private investment using public-private partnerships to accelerate the restoration of war-damaged facilities. Instead, in the final version, the draft received the short title "On Public-Private Partnership".

Along with the name, the rest of the terminology related to "public-private partnership" was changed, bringing it into line with EU law, which uses the term public-private partnership (PPP).

The legislators decided to get rid of not only the old terminology, but also the Law "On Public-Private Partnership" in general - it will cease to be valid when the new law comes into force - on October 31 of this year. This decision seems rational, because even in the draft version before the first reading, the draft amended almost all articles of the current law.

The final version of the draft law has expanded and clarified the list of potential public partners*. It includes business entities from the state and municipal sectors of the economy that operate to provide socially significant services (for example, water, gas, electricity supply, transportation, postal services, etc.) and are managers or recipients of budget funds. This will simplify the opportunity for such enterprises to attract private investment to develop their own infrastructure.

Individuals will also be able to participate in tenders for the conclusion of contracts within the framework of public-private partnership. At the same time, like the applicant companies, in case of victory they will be obliged to create a special legal entity that will function exclusively for the purpose of implementing the relevant PPP project. In addition, the requirements for such legal entities have been clarified: after Ukraine becomes a member of the European Union, only residents of Ukraine or an EU member state will be able to be private partners.

The draft law excludes any mention of private initiators. Therefore, the preparation of PPP projects will be handled exclusively by public partners, which reduces the risks of any of the competition participants gaining an advantage.

The selection of private partners will be carried out according to updated competitive procedures - open bidding, restricted bidding or competitive dialogue - which will be conducted using an electronic system. At the same time, in the final version of the draft law, the deadline for the implementation of these changes has been postponed to early 2027 due to the need to develop the appropriate functionality of the electronic system and the regulatory framework.

The voted version of the bill has established a number of provisions specifying the requirements for the tender documentation. In particular, it must contain technical criteria that describe all the characteristics necessary for the implementation of the PPP project (including the level of service quality, design and safety requirements, operational characteristics, environmental and climate efficiency indicators). At the same time, it is expressly prohibited to refer to specific brands or manufacturers. In addition, the content of the tender announcement has been clarified, which must contain detailed information about the public partner, the essence and term of the PPP project, provide for forms of state support, as well as the deadline for submitting tender proposals.

In previous versions of the bill, it was possible to determine the term of the public-private partnership beyond that actually required by the private partner to recoup the investments made and obtain the expected level of profit. In the final version, the term of the PPP will be limited and will necessarily be determined taking into account the term required for:

- creation and maintenance of the PPP facility;
- management (operation) of the PPP facility or provision of socially significant services to achieve the goals and objectives of the project;
- effective transfer of operational risk (technical maintenance risk of the PPP facility) to the private partner;
- reimbursement of investments made in the PPP facility and obtaining a certain level of profit.

Among the significant innovations of the final version of the bill, one can also highlight the possibility of appealing competitive procedures for selecting a private partner to a specially formed commission under the Antimonopoly Committee of Ukraine. Previously, the bill provided for the only way to resolve disputes arising in connection with a competition to determine a private partner - in court. However, judicial review for some disputes, which in particular concern the procedure for conducting a competition, may be ineffective, since the court may complete the consideration of the case after determining the winner of such a competition and concluding a contract with him. At the same time, the rules on appealing to the commission under the Antimonopoly Committee of Ukraine will come into force only within a year from the date of entry into force of the law.

Other key changes include:

- **Localization clauses in contracts have been eliminated**- in particular, requirements regarding the mandatory use of raw materials, materials, technologies, machinery and equipment of Ukrainian origin or production, as well as the hiring and employment of Ukrainian citizens during the implementation of the PPP project;
- a reference to the sharing of risks between the public and private partners has been added as an essential condition of the public-private partnership agreement;
- **the possibility of making payments in favor of the concessionaire is excluded** in the event that the latter does not receive full reimbursement for the investments made by it at the expense of users (consumers) of services, as well as payments made by the concessionaire in favor of the concession grantor in the event that actual demand and/or supply indicators exceed the expected indicators;
- **the public partner will have the right to terminate the contract** public-private partnership, if it became known to it that at the time of determining the winner of the competition, the private partner did not meet the qualification criteria or there were grounds for restricting its participation in the competition.

RESULTS FOR FOREIGN INVESTORS

For foreign companies considering participating in Ukrainian infrastructure projects, the new law creates a new logic of interaction with the state, changing entry points, requirements for structuring deals, expectations regarding financial models, and channels of communication with public partners.

Private companies can no longer independently initiate PPP projects. The law explicitly abolishes this possibility, leaving it to the public side. The public partner can accept, modify, or reject proposals or concepts received from private entities.

All PPP contracts and concessions are subject to regulation exclusively by the law of Ukraine. The law does not prohibit arbitration as a method of dispute resolution, however, the subject matter of the obligations themselves and the implementation procedures are subject to the law of Ukraine.

The prohibition of making changes to the agreed risk allocation makes it necessary to clearly define the risk structure (construction risks, operational risks, currency fluctuations, changes in legislation, etc.) even at the approval stage.

For foreign companies that have experience working with state-owned corporations in their own jurisdictions, an important innovation is that public sector companies can now act as public partners in PPPs. This allows projects to be implemented in cooperation with such entities even in cases where ministries or municipalities are not the direct customers.

CONCLUSION

Public-private partnerships are one of the mechanisms that Ukraine could potentially use to overcome the consequences of a full-scale war. In conditions of budget deficits, its advantage lies in reducing the costs of rebuilding destroyed infrastructure and its further maintenance.

The legislative framework in this area needed improvement, and Bill 7508 is an attempt to breathe new life into public-private partnerships. First of all, by expanding its scope, the list of public partners and sources of financing, as well as simplifying and shortening the procedures for preparing PPP projects.

With the adoption of Bill No. 7508, Ukraine has also partially moved closer to fulfilling one of the indicators of the Ukraine Facility macro-financial assistance program, which provides for the alignment of legislation in the field of public procurement, in particular concessions and public-private partnerships, with the EU acquis.

The voted draft law contains a number of risks, which are mostly related to excessive discretion of the competition commissions in determining private partners.

However, the introduction of an alternative method of appealing the decisions, actions and inaction of the commissions can partially eliminate these risks.

At the same time, ensuring the transparency of competitive procedures and maintaining a balance of interests of the public and private partner when providing state support for the implementation of PPPs remains a challenge. In any case, whether PPPs will get a new lease of life will be shown by the practice of implementing the new Law.

*Sincerely,
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