

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN UKRAINE

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>Ukraine has several laws that pertain and are applicable towards PPPs. The two that are of most importance are a) Law of Ukraine “On Public Private Partnership” No. 2404-VI; b) Resolution of Cabinet of Ministers of Ukraine “Certain Issues of Organization of Implementation of Public-Private Partnership” and c) Law of Ukraine “On Concessions” No. 997-XIV . The Ukrainian PPP Law establishes the organizational and legal framework of the interaction of public partners with private partners and the basic principles of the public-private partnership on a contractual basis, while Resolution No. 384 regulates each step of the tender procedure. The Concession law regulates the implementation of concession projects. Below is a further list of laws and regulations that are related to the procurement of PPP’s: 1) Law of Ukraine “On Public-Private Partnership” dated 01.07.2010 No. 2404-VI (the “PPP Law”) 2) Law of Ukraine “On Concessions” dated 16.07.1999. No. 997-XIV (the “Concession Law”);3) Resolution of Cabinet of Ministers of Ukraine “Certain Issues of Organization of Implementation of Public-Private Partnership” dated 11.04.2011 No. 384 (the “Resolution 384”)4) Order of Ministry of Infrastructure of Ukraine “On Approval of Regulation of Bidding Commission for Conducting Concession Tender to Build and Operate Highways” dated 28.01.2014 No. 61;5) Resolution of Cabinet of Ministers of Ukraine “On Approval of Procedure for the Private Partner to Provide Information to the Public Partner on Implementation of the Agreement Concluded in the Framework of Public-Private Partnership” dated 09.02.2011 No. 81 (the “Resolution 81”);6) Resolution of Cabinet of Ministers of Ukraine “On Approval of Procedure on Provision of State Support for Implementation of Public-Private Partnerships” dated 17.03.2011 No. 279;7) Law of Ukraine “On Concession for Construction and Operation of Highways” dated 14.12.1999 No. 1286-XIV;;8) Order of Cabinet of Ministers of Ukraine “On Approval of the Conception of Public-Private Partnership in Ukraine for 2013-2018 years” dated 14.08.2013 No. 739-p; 9) Resolution of Cabinet of Ministers of Ukraine “On Approval of Standard Concession Agreement” dated 12.04.2000 No. 643;10) Order of the Ministry of Economic Development and Trade of Ukraine “On Approval of the Form to Submit Proposals for Implementation of Public-Private Partnership” dated 16.08.2011 No. 40;11) Order of the Ministry of Economic Development and Trade of Ukraine “Certain Issues of Conducting Analysis of the Efficiency of Implementation of Public-Private Partnership” dated 27.02.2012 No. 255;</p>
and provide a link to a government-supported website where the mentioned regulatory framework is	<p>(1) http://zakon4.rada.gov.ua/laws/show/2404-17;(2) http://zakon3.rada.gov.ua/laws/show/997-14/print1443612398227267;(3) http://zakon2.rada.gov.ua/laws/show/1286-14;(4) http://zakon2.rada.gov.ua/laws/show/2624-17;(5)</p>

available or provide an electronic copy of it:	http://zakon3.rada.gov.ua/laws/show/3687-17;(6) http://zakon4.rada.gov.ua/laws/show/384-2011-%D0%BF;(7) http://zakon4.rada.gov.ua/laws/show/z0399-12;(8) http://zakon2.rada.gov.ua/laws/show/279-2011-%D0%BF/print1443084690819855;(9) http://zakon3.rada.gov.ua/laws/show/232-2011-%D0%BF.
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	<p>Yes</p>
Please describe:	<p>In May 2016 the Law “On Amending Certain Legislation of Ukraine Regarding Elimination of Regulatory Barriers for the Development of State-Private Partnership and Stimulation of Investing in Ukraine” entered into force. The respective amendments are aimed at elimination of regulatory barriers and improvement of mechanisms for protection of private partners rights and guarantees. In particular, the amendments elaborated the order of acquisition of property rights to the objects created within the PPP project implementation, established additional obligations of a public partner towards provision of necessary assistance to private partner within the framework of PPP, extended the list of forms of state support provided for implementation of PPP projects, introduced certain financial incentives to participate in PPP, etc.</p> <p>In November 2016 the Ministry of Infrastructure of Ukraine established the Project Office of development of public-private partnership and launched the System of applications’ filing for funding of infrastructure projects by international financial institutions (http://mtu.gov.ua/en/timeline/)</p>
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	<p>Yes</p>
Please describe:	<p>According to the Ministry of Trade and Economic Development of Ukraine, the new wording of the Concession Law is currently being elaborated (no details available yet). There are also two draft laws which are currently considered by Ukrainian Parliament and may be adopted during 2017-2018. The first bill is a Draft Law “On Amending Certain Laws of Ukraine Concerning Lease and Concession” is currently under Ukrainian Parliament consideration. The said law will be aimed at improvement of financial conditions within concession-lease relationships in the field of fuel and energy. Another bill under Ukrainian Parliament consideration is the Draft Law “On Amending Budget Code of Ukraine with Respect to Ensuring the Undertaking of Long-Lasting Obligations within the Frameworks of Public-Private Partnership”. Furthermore, Order of the Cabinet of Ministers of Ukraine “On Approval of the Middle-Term Priority Action Plan for the Government in 2020 and the Government’s Priority Action</p>

	Plan for 2017” No.275-p dated 3 April 2017 sets implementation of PPP projects as the Government’s priority.
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	Yes
If yes, specify and provide the relevant legal/regulatory provisions:	Under Article 4(2) of the PPP Law, the PPP may be implemented in any sector except for those, in which only state entities may conduct business activities. The relevant restrictions are set out in specific laws regulating the relevant sectors, e.g: (a) production of ethyl alcohol (paragraph 1 of Article 2 of the Law of Ukraine “On State Regulation of Production and Circulation of Ethyl Alcohol,

	Cognac and Fruit Alcohols, Alcoholic Beverages and Tobacco Products”); (b) forensic medical and criminal examinations (Article 7 of the Law of Ukraine “On Forensic Examination”); (c) testing, manufacturing and launch of rocket launch systems (Article 4 of the Law of Ukraine “On Entrepreneurship”).
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes
If yes, please specify and provide the relevant legal/regulatory provision (if any):	<p>Product sharing agreements as a contractual form of PPP Ukrainian tax legislation contains specific incentives for certain contractual forms of PPP. In particular, the special tax regime is applied to the exploitation of natural resources under the product sharing agreements (the “PSA”). The PSA is an arrangement that applies in specially designated areas of Ukraine and facilitates the exploration and production of natural resources. Under the PSA an investor carries out the activities at its own cost and risk and is reimbursed for its investment from extracted production. The remaining production is shared on an agreed basis between the state of Ukraine and the investor. Pursuant to the article 335.2 of the Tax Code of Ukraine (the “Tax Code”) the investor acting under the PSA pays only corporate income tax (“CIT”), VAT and subsoil use fee in Ukraine. The investor also acts as a tax agent for purposes of withholding a personal income tax due on employee remunerations as well as for payment of unified social contribution. In accordance with the article 335.1 of the Tax Code payment of all other state or local taxes and mandatory charges is substituted with sharing of extracted production between the state of Ukraine and the investor on the terms of the PSA. In addition, the Tax Code in articles 336.1 and 337.2 provides for the following tax incentives for investors acting under the PSA: - goods and services imported to the investor for purposes of performing the PSA are exempted from VAT;- goods produced under the PSA and exported by the investor from Ukraine are exempted from customs duties, excise tax and subject to VAT at the rate of 0%; - income generated under the PSA and repatriated by foreign investor’s permanent establishment is exempted from Ukrainian withholding tax; - financing provided by a foreign investor to its Ukrainian permanent establishment for purposes of performing the PSA is exempted from CIT. Furthermore, the Tax Code in the article 340 guarantees that tax laws effective as of the date of the PSA will apply during the entire term of the PSA (except for the rates of taxes and duties, which are reduced or abolished). Concessions as a contractual form of PPP The Tax Code also contains certain tax incentives with respect to taxation of operations under the concession agreements. In particular, under the article 196.1.2 of the Tax Code transfer of property owned by state or local authorities under the concession agreements is exempted from VAT. In addition, concession payments are exempted from VAT pursuant to article 196.1.15 of the Tax Code provided that: (i) concession payments are made for concession of integral property complex owned by state or municipal enterprise; (ii) the grantor of concession is state or local authority; and (iii) concession payments are credited to the state or local budget. Joint activity as a contractual form of PPP A joint activity</p>

	<p>as one of contractual forms of PPP is not subject to a separate tax regime and incentives under the Tax Code. The joint activity does not have a status of separate taxpayer in Ukraine although certain joint activity agreements must be registered with Ukrainian tax authorities for VAT purposes (article 64.6 of the Tax Code). The income of joint activity is allocated on pro rate basis to its participants and subject to CIT at the standard rate of 18%. Income of joint activity distributed to its foreign participants is subject to Ukrainian withholding tax at the rate of 15% unless a double tax treaty provides for a lower rate (article 141.4 of the Tax Code). Participants of joint activity should designate a responsible participant who will keep and maintain records of joint activity and is liable for payment of VAT to the state budget within the course of joint activity.</p>
<p>5. Please identify the PPP procuring authorities in Ukraine and provide their website(s) (if available):</p>	<p>In the case when PPP project is regulated by general PPP legislation (the “PPP project”), the authority that may be treated as a PPP procuring authority differs depending on the form of the ownership of PPP object:</p> <ol style="list-style-type: none"> 1) Re state-owned property: central executive bodies (including the Ministry of Economic Trade and Development (the “MEDTU”), other ministries and agencies) which exercise managing functions over particular state-owned assets (for instance, highways) or CMU (in case no specific organ is empowered to manage the property at issue); 2) Re communal (local communities’) property: local councils; 3) Re property of Autonomous Republic of Crimea (the “ARC”): bodies authorised by the Council of Ministers of ARC. <p>If the highway is transferred into concession (which is special form of the PPP) regulated by concession legislation (the “concession project”), the PPP procuring authority may be CMU or body designated by CMU (for instance, State Agency of Automobile Roads of Ukraine).</p> <p>It is worth adding that the CMU (http://www.kmu.gov.ua/) is the principal (highest) authority for PPP purposes. The CMU may both elaborate PPP regulations taking principal decisions in the field of PPP and act in the capacity of a PPP pitching authority or delegate the respective powers to other governmental authority (for instance, CMU may act as the PPP procuring authority in accordance with prescriptions of Highway Concession Law).</p>
<p>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</p>	<p>Yes</p>
<p>If yes, please indicate its name, and its website (if available):</p>	<p>PPP division in the Department of Attracting Investments of the Ministry of Economic Development and Trade. Link: http://www.me.gov.ua/</p>
<p>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</p>	<p>Yes</p>

6.2 PPP capacity building for other public authorities.	Yes
6.3 PPP promotion among the public and/or private sectors in national and international forums.	Yes
6.4 Technical support in implementing PPP projects.	No
6.5 Identification and selection of PPP projects from the pipeline.	No
6.6 Revision of fiscal risks born by the Government.	No
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	No
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	Yes
6.11 please specify:	(1) Keeping records of all executed PPP agreements; (2) Promoting the protection of rights of public and private partners in the implementation of public-private partnership
Please provide the relevant legal/regulatory provisions:	(1) Articles 21 and 22 of the PPP Law;(2) Paragraphs 4(2.8)-4(2.10) of Order of the President of Ukraine No. 634/2011, dated 31 May 2011 http://zakon3.rada.gov.ua/laws/show/634/2011/print1452626886238761
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to section 13 of the Procedure of carrying out the assessment of efficiency of realization of PPP approved by the CMU Regulation "On Certain Questions of Organization of Realization of Public-Private Partnership" of 11 April 2011 No 384 (the "Assessment Procedure No. 384") in cases where (i) the PPP refers to state owned objects or (ii) realization of the PPP project requires state support, the procuring authority shall provide the conclusion on the results of economic efficiency of PPP project accompanied by technical and economic justification for further approval by the MEDTU as well as the Ministry of Finance of Ukraine to comment on potential financial risks and the expediency of state support. According to the CMU Regulation "On Approval of the Procedure of Provision of State Support of Realization of Public-Private Partnership" of 17 March 2011 No. 279, the private partner may ask for state support at any stage of the realization of the PPP project. The MEDTU and the Ministry of Finance should approve the provision of state support.
8.1. Does the Ministry of Finance or Central Budgetary	No

Authority approve the PPP project before signing the PPP contract?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to section 2 of the State Support Procedure, during the preparation of the draft of state budget of Ukraine for each year, the MFU shall provide for expenditures on provision of state support of PPP.
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	No
Accounting and reporting according to other international standard (e.g. European System of Accounts).	No
Please specify:	n/a
Other.	No
Please specify:	n/a
9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	No

If yes, please specify the relevant authority	n/a
and provide the relevant legal/regulatory provisions (if any):	n/a
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
10. Does the procuring authority use transaction advisors during the PPP project cycle?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Clause 10(9) of Resolution No. 384, the procuring authority is entitled to involve experts, consultants, in each case having relevant experience in the field of the PPP and/or in the professional field, where the private partner is going to be involved.
11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework prescribes the need for PPPs to be consistent with all other	No

investment priorities without establishing a specific procedure to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	Yes
If yes, please elaborate:	Despite a number of concepts, explanatory notes to draft laws and other declarative documents insist on improvement of conditions for PPP projects implementation, there is no explicit legislative provision stating that PPP implementation must be prioritized against other government investment priorities. Hence, procuring authorities often understand the significance and benefits of such form of investing into strategic assets as PPP. At that, it worth mentioning that at the conducting efficiency analysis the procuring authority should assess the potential benefits of PPP comparing to other forms of the project implementation. Therefore, PPP is not considered as an unconditionally prioritized form of the projects implementation.
The procuring authority does not evaluate PPPs against existing government priorities.	No
Please elaborate and provide examples:	n/a
11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?	No
If yes, please specify:	n/a
If no, please elaborate:	Resolution 739-p is a legal act, approving the concept of PPP development. It contains only general framework and directions of the PPP development in Ukraine. There are grounds to conclude that provisions of Resolution 739-p are rather of an advisory than binding nature.
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis	Yes

of the socio-economic impact of the PPP project)	
Relevant legal/regulatory provision (if any)	<p>Pursuant to Article 11 of the PPP Law, an analysis of the efficiency of public-private partnerships and identification of potential risks associated with its implementation, is accomplished by the following methods: A Detailed study of socio-economic and environmental effects of the implementation of public-private partnerships; Comparison of the key indicators of the project (profitability, costs, quality of service, etc.) involving the private partner without such involvement; Identify the types of risks of public-private partnership to assess and determine the form of risk management.</p> <p>Furthermore, Pursuant to Article 12 of the PPP Law, the justification socio-economic and environmental effects of the implementation of public-private partnership, is done using the following analysis: Economic and financial performance implementation of partnership, including a comparison of its implementation of the use of public-private partnerships, including the projected costs and benefits of its implementation; Social impact of the partnership; Risks associated with the implementation of the partnership, given the various means of distribution between public and private partners and the impact of the allocation of risk to the financial obligations of the public partner; Environmental effects of partnership given the possible negative impact of the project on the environment.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Table 4 of Order of the MEDTU No. 255/2012 contains methods to check availability, completeness and adequacy of information on basic socio-economic indicators of PPP.
Is the assessment done in practice?	Yes
Details:	<p>Verification, completeness and adequacy of information on basic socio-economic indicators of PPPs: 1) The size of the territory will be in the sphere of influence of PPP 2) Population size (total, according to relevant strata, groups, categories, if necessary)3) The assumption of social acceptability or conflict of PPPs 4) Population groups concerned with the implementation of PPPs (in terms of maintenance and non-sustainability)5) the acceptability of PPP in terms of cultural, historical, ethno-demographic and socio-economic situation 6) There may be social harm (violation of the usual way of life, cultural traditions and life support systems) and targeted ethnic and social groups, which will affect it 7) Analysis of the population of the region on the attitude to the project and the identification of the possibility of compensatory and preventive measures to neutralize the negative impact 8) The quality of goods, work, services produced is provided as of the date of proposal preparation, and the expected level of impact of PPP implementation on their quality 9) Information on prices, tariffs for goods, works, services at the time of proposal preparation and the impact of PPP implementation on such prices 10) The degree of influence of PPP implementation on related industries 11) Possible negative social consequences or benefits of implementing public-private partnerships</p>

12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	Table 11 of Order of the MEDTU No. 255/2012 conducts an analysis on several parameters to verify the conditions of funding the PPP. Furthermore, point 5 of Table 15 examines the minimum amount of investment in the implementation of PPPs. Furthermore,
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Table 11 of Order of the MEDTU No. 255/2012 conducts an analysis on several parameters to verify the conditions of funding the PPP. Furthermore, point 5 of Table 15 examines the minimum amount of investment in the implementation of PPPs.
Is the assessment done in practice?	Yes
Details:	n/a
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 11 of the PPP Law, an analysis of the efficiency of public-private partnerships and identification of potential risks associated with its implementation, is accomplished by the following methods: A Detailed study of socio-economic and environmental effects of the implementation of public-private partnerships; Comparison of the key indicators of the project (profitability, costs, quality of service, etc.) involving the private partner without such involvement; Identify the types of risks of public-private partnership to assess and determine the form of risk management.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Annex 1 of Order No. 232/2011 contains a risk identification matrix, where it describes and evaluates various risks posed by a PPP project. The eight types of risk that are evaluated include: a) Permits and Licenses, b) Design and Construction, c) Market Demand, d) Operational Risks, e) Legal Risks, f) Financial and Macroeconomic risks, g) Social and Political Risk (including objections/resistance from key stakeholders), and h) Force Majeure and other unforeseen events with significant impact. Furthermore, Order No. 231/2011 also outlines methods to "Identify Risks of PPP to assess and determine the forms of management"
Is the assessment done in practice?	Yes
Details:	n/a
12.4. Comparative assessment to evaluate whether a PPP is the best	Yes

option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	
Relevant legal/regulatory provision (if any)	Article 11.1 of the PPP Law requires to include in the Analysis of the Public-Private Partnership Implementation Efficiency a “comparison of main project implementation indicators (cost effectiveness, level of expenditures, quality of services etc.) with and without involvement of the private partner. Detailing this provision, Article 12 of the PPP Law establishes that the substantiation of the socio-economic and ecological implications of the public-private partnership shall be made on the basis the analysis of the economic and financial indicators “including comparison of these implementation indicators when using the public-private partnership regarding estimated expenditures and benefits of its implementation with the indicators of the same activities in conditions other than involvement of the public-private partnership”.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	According to point 3.1 of Order No. 255/2012, checks possible (alternative) options to achieve the goal PPP is not appropriate to achieve the goal without the implementation of PPPs (e.g. through direct budgetary funding or public procurement). In an analysis checks the information on the comparison of alternatives on key parameters (issues) listed in Table 9 of Order No. 255/2012. The parameters/points in Table 9 help assess the viability of the PPP procurement as compared to other procurement methods.
Is the assessment done in practice?	Yes
Details:	n/a
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	According to point 3.2 on “Financial Analysis of PPP” of Order No. 255/2012, a financial analysis is conducted where the purpose of financial analysis is to assess the financial feasibility of achieving the goal through PPPs in terms of each of the parties concerned. The analytical part of the assessment should include a table showing the financial structure including sources of funding.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Table 10, titled “Measurements of key financial indicators of basic financial model” of Order No. 255/2012 contains key indexes that should be covered within the financial analysis. These include: profitability index, net present value (NPV), internal rate of return (IRR) and the discounted payback period.
Is the assessment done in practice?	Yes
Details:	n/a
12.6. Market sounding and/or assessment (showing	No

evidence of investors' interest in the market for the project)	
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 11 (1) of the PPP Law, a detailed study of socio-economic and environmental impacts of the public-private partnership implementation shall be conducted, which includes: a study on the environmental impact of a public-private partnership implementation, including possible negative impact to the environment.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Table 8 of Order of the MEDTU No. 255, titled "Parameters of Checking of Environmental Conditions Availability of PPP Implementation" evaluates: appropriate measures to control and reduce the potential effects of PPPs for the environment; existence of a system of environmental surveillance, including monitoring of the functioning of the PPP
Is the assessment done in practice?	Yes
Details:	n/a
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an	Yes

Information Memorandum to the bidders)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 13 of Resolution No. 384, the competitive documentation shall include: opinion on the results of the analysis of the efficiency of public-private partnership for the object that is exposed to competition;
and specify which of the assessments are included in the request for proposals and/or tender documents:	Socio-economic analysis, comparative assessment, risk identification, allocation and assessment, affordability assessment, financial viability assessment and environmental impact assessment.
13.1. Are the assessments published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 11 (4) of the PPP Law, The conclusion of the analysis of public-private partnership performance on the state-owned facilities is to be published in the official web-site of the central executive body responsible for forming and implementing state policy in public-private partnership.
specify the website	http://www.me.gov.ua/?lang=uk-UA
please specify which of the assessments are published online:	The entire assessment report is published.
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 13 of the "Competition Procedure No 384", published on April 11, 2011, competitive documentation includes: Instructions for applicants; Conditions of competition; Draft agreement indicating the essential terms and conditions; that may be changed during the competition; Opinion on the results of analyzing the effectiveness of the implementation of public-private partnership for the object that is exposed to competition; List of risks identified by the results of the analysis of the efficiency of public-private partnerships and methods/strategies for mitigating such risks; Competitive documentation published on the website not later than three days after its approval by the authority.
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to the paragraph 3, Article 15 of the PPP Law, all announcements regarding PPP projects shall be published on the official web-site of respective public partner. The information which should be in the announcement is as follows: (i) terms of the PPP, (ii) public partner, (iii) amount of the state aid, (iv) deadline for the application submission, (v) main criterions for the participants (private partners) and their determination.
and please specify the website:	The website depends on the procuring authority.
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	Yes

<p>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</p>	<p>According to Article 5, Section 1, of the PPP Law, PPPs may be formalized using the following types of agreements: (i) concession contract; (ii) cooperation agreement (joint activities); (iii) other agreements. As of today only a standard form of concession agreement has been adopted by Resolution of the Cabinet of Ministers of Ukraine "On Approval of Standard Concession Agreement" dated 12.04.2000 No. 643. Therefore, development of standardized contracts is envisaged only in the sphere of concessions (this can be found in Article 9 (4) of the Law of Ukraine "On Concessions"). The CMU Regulation of 04 October 2000 No. 1519 "On Approval of the Standard Concession Agreement on Construction and Exploitation of a Motor Road" contains the regulations that are applicable to highways.</p>
<p>16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)</p>	<p>No</p>
<p>Private Partner</p>	<p>Yes</p>
<p>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</p>	<p>No</p>
<p>To be established in the contract</p>	<p>No</p>
<p>Relevant legal/regulatory provision (if any)</p>	<p>Ukrainian legislation does not impose this obligation on a specific party to PPP agreement. At the same time, under Clause 17 of the Standard Concession Agreement, which is a recommended form of agreement, the private partner shall bear the obligation to obtain all necessary permits</p>
<p>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</p>	<p>No</p>
<p>Private Partner</p>	<p>Yes</p>
<p>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</p>	<p>No</p>
<p>To be established in the contract</p>	<p>No</p>
<p>Relevant legal/regulatory provision (if any)</p>	<p>Ukrainian legislation does not impose this obligation on a specific party to PPP agreement. At the same time, under Clause 17 of the Standard Concession Agreement, which is a recommended form of agreement, the private partner shall bear the obligation to obtain all necessary permits</p>
<p>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</p>	<p>No</p>
<p>Private Partner</p>	<p>Yes</p>

Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 11 of the Concessions Law, the private partner must obtain all licenses required under Ukrainian law for carrying out specific type of activities.
16.4. Obtaining the required land: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 8 (1) of the PPP Law, If a land lot is required to implement a public-private partnership, the public partner shall transfer according to the Land Code of Ukraine to the private partner a land lot, where the facilities of public-private partnership are located, together with the facilities of public-private partnership for the period set by the contract concluded under the public-private partnership, or provides not later than the term when the contract concluded under the public-private partnership comes into force the acquisition by a private partner of right to use the land lots, provided according to the law for the construction of public-private partnership facilities.
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 8 (4) of the PPP Law, If the contract on public-private partnership includes use (operation) or management of power lines, communications, pipelines and other linear communications, laying and operation of which have been established to be subject to servitude, such servitude may be implemented on behalf of the public partner by the private partner. Existence of such servitudes shall be stated in provisions of the bidding on the private partner designation and the contract concluded under the public-private partnership.

PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	If the PPP object is owned by the state, a bid evaluation committee should include representatives of the procuring authority, the Ministry of Economic Development and Trade of Ukraine, the Ministry of Finance of Ukraine, the State Property Fund of Ukraine, the State Agency for Land Resources of Ukraine. (Article 9 of the Competition Procedure No. 384)
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to have any specific qualifications.	No
Please elaborate and provide examples:	n/a
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	The information for potential bidders about the tender should be posted on the web-site of the public partner and the Ministry of Economy or other responsible authority and in local printed mass media and newspaper "Golos Ukrainy" and "Uryadovi Kurier". It should be done at least one (1) month prior to the deadline for the submission of tender applications by bidders. The announcement should include general information about the tender (type of agreement, PPP object, deadlines for submitting proposals, etc.); Article 15 of the PPP Law and Regulation of the Cabinet of Ministers of 11.04.2011, № 384 "On Certain Issues Related to PPP" Furthermore, Pursuant to Article 15.3 of the PPP Law the announcement of the competition to determine the private partner shall be published in the newspaper "Governmental Courier" or "Voice of Ukraine" or official printed mass media the relevant local authority.
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	http://www.kmu.gov.ua/ , http://www.me.gov.ua/?lang=uk-UA , http://www.dzo.com.ua/

20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Paragraph 6 of the CMU No. 384, a bidding period of at least 30 calendar days starting from the date of issuance of a public procurement notice shall be included in the decision to launch a public call for tenders.
and the time in calendar days:	30
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.2. Restricted tendering (with pre-qualification stage): Available	No
Default	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Paragraphs 13 and 15 of CMU No. 384/2011, pre-qualification criteria shall be included in the tender documents.
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.4. Competitive dialogue: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a

22.6. Direct negotiation with only one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	n/a
Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Resolution No. 384 tender documents shall provide details of the tender procedure. Further to that, (i) tender documents shall be published at the website of the respective public partner, and (ii) shall be provided in the written form upon request (Article 13 of Resolution No. 384). Tender documents include:(1) instructions for bidders (i.e. clarification of procedural issues, including, among others, deadline and address for submission of applications and bids (proposals); conditions of applications and bids (proposals) registration and dismissal; requirements as to documents and information, which should supplement the application etc.);(2) conditions of bidding procedure (including, among others, criteria and order of bid evaluation and rendering an award);(3) draft PPP agreement;(4) results of the PPP efficiency analysis; and(5) proposal on distribution of risks, based on the results of the PPP efficiency analysis.
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Paragraphs 13 and 15 of CMU No. 384/2011, pre-qualification criteria shall be included in the tender documents.
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Pursuant to section 16 CMU Resolution No. 384/20116 qualification requirements shall meet criteria with regard to participant's:(1) equipment and material and technical base; (2) respectively qualified staff with the necessary knowledge and experience; (3)documented experience and financial capacity.

If no, please elaborate:	n/a
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to paragraph 10 of Resolution of the CMU No. 384 as of 11.04.2011 "On some aspects of PPP realization", the bid evaluation committee provides respective clarifications with regard to proposal preparations. According to paragraph 14 of Resolution of the CMU No. 384 as of 11.04.2011 "On some aspects of PPP realization, instruction for bidders shall include a clarification procedure.
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
24.2. Based on your experience, is it always the case that this disclosure of	n/a

information is done in practice?	
If yes, please specify:	n/a
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	According to Paragraph 25 of Resolution No. 384, bid proposal shall exclusively include the following: (1) thematic proposals (commercial, engineering, financial, ecological and social); (2) proposals concerning conditions of a PPP contract; (3) annotation of a bid proposal up to 4 pages.
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 28 of Resolution No. 384 provides exhaustive list of criteria for evaluations of tender bids. Such criteria can be generally divided into five groups: (1) technical and engineering characteristics, (2) financial and commercial characteristics, (3) environmental and social characteristics, (4) criteria of compliance of the bid to requirements of Resolution No. 384, and (5) other criteria depending on object, essential terms and type of PPP agreement. Although, unlike other criteria, the fifth criteria is not clearly stated in Resolution No. 384, since it varies on case by case basis, the procuring authority must specify this criteria on the stage of approval of the tender documents (since this is a requirement of Article 10 of Resolution No. 384). Therefore, at the stage of evaluation the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents.
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one): The procuring authority follows a specific procedure before awarding a	No

PPP contract where only one proposal is submitted.	
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	Yes
Please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 14 of the PPP Law, If upon having announced the bidding on the private partner designation for the implementation of public-private partnership, only one bidder has applied to participate in the bidding, the relevant contract can be concluded by the authorized body with this bidder by agreeing with it essential terms of the contract, unless otherwise provided by laws regulating relations arising from conclusion and execution of the contracts specified in paragraph one of Article 5 of the PPP Law.</p> <p>Pursuant to Section 23 of Resolution No. 384, In the case where the announcement of the competition to determine the private partner for the implementation of public-private partnerships application for participation in that competition gave only one bidder that meets the qualification requirements, the treaty can be signed by an authorized body with the challenger by agreeing with him essential terms of the contract, unless otherwise provided by laws regulating relations arising in the conclusion and implementation of concession agreements, joint venture or other agreements.</p>
The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>According to the Article 16 of the PPP Law: the results of the competitive bid evaluation to designate a private partner for the implementation of public-private partnership shall not be subject to disclosure prior to the date of the bidding winner designation, except as prescribed by law. The body, which has held the bidding, shall, within ten days from the date of the winner designation, publish information and substantiated explanation on the reasons for designating the winner and rejection of other bidders. Regulation No. 384 also provides for the obligation of the tender committee to publish the information concerning the propositions that were adopted as well as the propositions that were rejected. The information should also contain the</p>

	reasoning that justified such decision-making. The publication shall be made in such newspapers as Uryiadoviy Kukier (publication of the Cabinet of Ministers of Ukraine) or in Golos Ukrainy (publication of the Ukrainian Parliament)
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	http://www.kmu.gov.ua/ , http://www.me.gov.ua/?lang=uk-UA , http://www.dzo.com.ua/
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Clause 35 of Resolution No. 384, the procuring authority must send:(1) one original of the minutes of the procuring authority's meeting adopting the results of the tender procedure within one day from the date, when the decision was made; and (2) a written notification with information on the results of the tender procedure to other participants within five days from the date of determination of the winner. Each participant is entitled to request a copy of the minutes of the procuring authority adopting the results of the tender procedure.
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Clause 35 of Resolution No. 384, the procuring authority must send to the winner the minutes with the results of the tender procedure. Additionally, each participant of the tender procedure may request a copy of such minutes. Considering that according to Clause 33 of Resolution No. 384, the minutes with results of the tender procedure must indicate, inter alia, the grounds for the selection of the winning bid, each participant can obtain information on such grounds.
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a

31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Paragraph 39 of CMU No 384/2011, the governing body shall, within three days, send the contract (copy of partnership) to MEDTU by registered mail (with a return receipt). The MEDTU is then obligated to publish the contract on its website within three working days of the receipt of the agreement.
32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	No
Publication of the full PPP contract without including all its annexes and appendixes	No
Publication of a summary of the PPP contract without publishing the full PPP contract	Yes
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	No
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	No

32.2. If yes, is it published online?	Yes
If yes, please specify the website:	http://www.me.gov.ua/?lang=en-GB
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	n/a
Relevant legal/regulatory provisions (if any):	n/a
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	n/a
Relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document	n/a
Relevant legal/regulatory provisions (if any):	n/a
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	n/a
Relevant legal/regulatory provisions (if any):	n/a

Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	n/a
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.1. If yes, is the PPP contract construction performance information made available to the public?	n/a

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	n/a
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 21 of the PPP Law and the CMU Regulation “On Approval of the Procedure of Provision of the Information by Private Partner to State Partner on Realization of the PPP contract” of 09 February 2011 No. 81.</p> <p>More specifically, Article 21 of the PPP Law states the control over the implementation of the contracts concluded under the public-private partnership shall be executed by the central executive body authorized by the Cabinet of Ministers of Ukraine, other state and self-government bodies and their officials in accordance with their powers in the manner prescribed by law. Private partners shall provide relevant information on the execution of the contract, concluded under the public-private partnership, to public partners in the manner (No. 81-2011-P) and in accordance with the form approved by the Cabinet of Ministers of Ukraine. On the other hand, CMU Regulation No. 81 discusses the private partners obligation to provide contract performance information to the public partner and the timelines for providing such information.</p>
43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a

The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	Private partners shall provide public partners with information on the performance of a PPP contract. (Article. 21 (2) of the Law of Ukraine “On Public-Private Partnership”). The private partner provides the public authority with a respective report per quarter and annually. Next, the public partner sends the Ministry of Economic Development and Trade information on the performance of the PPP contract. (Paragraph. 5 of Resolution of the CMU No. 81 as of 09.01.2011 “On adoption of the Procedure on how a private partner provides a public partner with the information on the performance of a PPP contract”).
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to the National Bank of Ukraine Resolution “On Resolving the Situation in the Monetary and Foreign Exchange Markets of Ukraine” dated 13.12.2016 # 410 purchase of foreign currency for the purposes to repatriating of the dividends is forbidden.
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	No

<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).</p>	<p>n/a</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</p>	<p>n/a</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>In other cases, flexibility to change the ownership structure and/or assign the contract.</p>	<p>n/a</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>According to Paragraph 4 of Article 17 of the Law of Ukraine "On public-private partnership", in the event of a significant change in circumstances, a contract may be altered, amended or terminated by the mutual consent of the parties involved or by a court order, unless otherwise specified in the contract or due to the essence of commitment.</p>

46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the financial and/or economic balance of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.3. Can the procuring authority unilaterally modify a PPP contract?	No

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Material Adverse government action .	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article. 20, Paragraph 5 of the PPP Law, if a state or municipal authorities adopt decisions violating the rights of private partners, the losses incurred by such decisions must be compensated in full.
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 20 (4) of the PPP Law, the rights and obligations of the parties under the PPP contract shall be governed by laws effective as of the date of the execution of the contract (date of signing of contract). Such guarantees shall apply to any changes in civil and commercial legislation, but shall not apply to any changes in the legislation which regulates defense, national security, civic order, environmental protection, quality standards, tax, currency, customs law, licensing law and other spheres where public and private partners are not legally equal.
Refinancing.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Pursuant to Article 20 (3) of the PPP Law, If prices (tariffs) for services of the private partner are subject to state regulation, the prices (tariffs) have to include funds for reimbursement of the value of investments (investment component) made by the private partner, unless otherwise provided by the contract concluded within the framework of the public-private partnership.</p> <p>The size of the investment component shall have to ensure reimbursement during the period of the private partner’s expenditure contract for investment activities.</p> <p>If prices (tariffs) for services provided in the implementation of public-private partnership have been established at a level lower than economically justified costs for their production (supply), the private partner, it this is provided by the contract concluded under public-private partnership, may reject the contract or to stop it, if other is not provided by the law, refuse to perform</p>

	investment obligations until the economically feasible prices (tariffs) are set and/or prices (tariffs) are included into investment and/or profit constituent, or until including suggested by private partner amendments to the contract concluded under public-private partnership on the scope and terms of investments into the facility of public-private partnership.
Subcontracting and replacement of the subcontractors.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	The PPP Law does not establish a specific dispute resolution mechanism for PPPs. Article 10 of the Concession Law provides that the dispute resolution mechanism is an essential provision of a concession agreement. Furthermore, Article 16 of the Concession Law envisages that disputes which arise from concession agreements must be resolved by Ukrainian courts. When a foreign entity or its subsidiary (if the foreign entity's shareholding amounts to at least 10% of the charter capital) is a party to a concession agreement, the disputes may be resolved by international arbitration as provided under the concession agreement. Foreign investors may also resort to dispute resolution mechanisms envisaged by international investment agreements (IIAs) if the state breaches investment protections under IIAs. Currently, there are 57 Bilateral Investment Treaties (BITs) effective for Ukraine (including BITs with Germany, the Netherlands, Switzerland, Sweden, US, UK, etc.). Ukraine is also party to the Energy Charter Treaty. Additionally, parties to PPPs (if all of them are Ukrainian entities) should be able to agree to domestic arbitration in a PPP contract based on the Law of Ukraine "On Arbitration Courts" (the "Domestic Arbitration Law"). However, the jurisdiction of domestic arbitration courts is rather limited (e.g., disputes involving state and municipal authorities and disputes relating to state needs do not fall within the jurisdiction of domestic arbitration courts under Article 6 of the Domestic Arbitration Law).
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes

Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	No
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	The PPP Law does not establish a specific dispute resolution mechanism for PPPs. Article 10 of the Concession Law provides that the dispute resolution mechanism is an essential provision of a concession agreement. Furthermore, Article 16 of the Concession Law envisages that disputes which arise from concession agreements must be resolved by Ukrainian courts. When a foreign entity or its subsidiary (if the foreign entity's shareholding amounts to at least 10% of the charter capital) is a party to a concession agreement, the disputes may be resolved by international arbitration as provided under the concession agreement. Foreign investors may also resort to dispute resolution mechanisms envisaged by international investment agreements (IIAs) if the state breaches investment protections under IIAs. Currently, there are 57 Bilateral Investment Treaties (BITs) effective for Ukraine (including BITs with Germany, the Netherlands, Switzerland, Sweden, US, UK, etc.). Ukraine is also party to the Energy Charter Treaty. Additionally, parties to PPPs (if all of them are Ukrainian entities) should be able to agree to domestic arbitration in a PPP contract based on the Law of Ukraine "On Arbitration Courts" (the "Domestic Arbitration Law"). However, the jurisdiction of domestic arbitration courts is rather limited (e.g., disputes involving state and municipal authorities and disputes relating to state needs do not fall within the jurisdiction of domestic arbitration courts under Article 6 of the Domestic Arbitration Law).
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Domestic arbitration awards are enforceable in Ukraine under Article 56 of the Domestic Arbitration Law.
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	section VIII of the Civil Procedural Code of Ukraine
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	According to Article 390 of the Civil Procedural Code of Ukraine, decision of an international arbitration body can be recognized and enforced in Ukraine, if its recognition and enforcement is prescribed by international treaty mandatory for Ukraine, or under the principle of reciprocity. Ukraine is a party to (i) 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, under which foreign arbitral awards must be enforceable in Ukraine without their re-examination or re-litigation in Ukraine, and (ii) Convention on the Settlement of Investment Disputes Between States and Nationals of Other

	States, which requires recognition and enforcement of ICSID awards in Ukraine.
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Although Ukrainian law does not provide for specific restructuring framework for PPPs, the following pre-insolvency restructuring mechanisms can be used for the restructuring of a PPP private partner (SPV) if it is a Ukrainian entity:(i) pre-trial rehabilitation provided under the Law of Ukraine “On Restoring Debtor’s Solvency or Declaring it Bankrupt”; and(ii) financial restructuring provided under the Law of Ukraine “On Financial Restructuring”.
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to the Procedure of substitution of a private partner under the agreement executed in the framework of public-private partnership approved by the Resolution of CMU No. 298 dated 26.04.2017 the lender (other financing party) may initiate the substitution of private partner in case the latter fails to fulfill its obligation under PPP project. In this case, public partner commences separate tender procedure in order to choose another private partner. The representative of the lender which initiated the substitution may step-in rights of the private partner but only for limited period of time (i.e. by the time new private partner is elected) (section 9 of the Procedure).
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	According to the Resolution of CMU as of 26.04.2017, No. 298 concerning the “Order of the Private Partner Replacement Under Agreement in Frameworks of Public-Private Partnership” a lender sends a proposal to public partner concerning the replacement of private partner which contains (1) reasons for replacement; (2) information about lender’s representative capable to take on certain obligations until the determination of a new private partner (in cases where a lender’s right to determine such representative is provided by the

	contract); (3) information about the authorized representative of the creditor to participate in review of the proposal by the Commission
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	No
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 17 (4) of the PPP Law provides that a PPP contract can be terminated in case of material change in circumstances by mutual consent of the parties or a court decision. Article 15 of the Concession Law expressly establishes grounds for the termination of a concession agreement, namely: (i) expiration of the term of the agreement, (ii) liquidation of a concessionaire by a court decision, including in connection with its bankruptcy, (iii) cancellation of the concessionaire's license, and (iv) loss of a concession object.
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	The PPP Law does not expressly provide for consequences of the termination of a PPP contract (hence, this will be subject to specific contractual provisions and general rules under the Civil Code of Ukraine and the Commercial Code of Ukraine). Pursuant to Article 15 of the Concession Law, a concessionaire (private entity) must return a concession object to a public partner upon the termination of a concession contract. Moreover, the concessionaire must compensate for any losses if it caused the deterioration or destruction of the concession object. At the same time, the concessionaire is entitled (i) to

	demand the reimbursement of costs in connection with substantial improvements of property which were approved by the public partner, and (ii) to demand the reimbursement of the value of the property created to the extent it was not recovered by the concessionaire as a result of concession activities.
Unsolicited Proposals	
34. Are unsolicited proposals in Ukraine: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	Under Article 10 of the PPP Law private partners may submit unsolicited bids and initiate PPP competition related to state owned property, municipal property and property of the Autonomous Republic of Crimea.
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	The assessment is a mandatory requirement to realization of every PPP project irrespective the fact who has launched the process of cooperation. Pursuant to Articles 11 and 12 of the PPP Law. Article 11: Analysis of the efficiency of public-private partnerships and identification of potential risks associated with its implementation, accomplished by the following methods: A Detailed study of socio-economic and environmental effects of the implementation of public-private partnerships; Comparison of the key indicators of the project (profitability, costs, quality of service, etc.) involving the private partner without such involvement; Identify the types of risks of public-private partnership to assess and determine the form of risk management. Article 12: Justification socio-economic and environmental effects of the implementation of public-private partnership, using the following analysis: Economic and financial performance implementation of partnership, including a comparison of its implementation of the use of public-private partnerships, including the projected costs and benefits of its implementation; Social impact of the partnership; Risks associated with the implementation of the partnership, given the various means of distribution between public and private partners and the impact of the allocation of risk to the financial obligations of the public partner; Environmental effects of

	partnership given the possible negative impact of the project on the environment.
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to section 11 of Resolution No. 384, an authorised body can refuse to review the proposal and carry out its assessment if the proposal (i) contains false information, or (ii) does not comply with the requirements for the proposal.
36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 11 of the PPP Law based on the results of the analysis of the effectiveness of the implementation of public-private partnership, a conclusion is prepared.
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	No
Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	There is no difference in launching a PPP competition initiated by a private or state partner. The PPP procurement procedure is competitive except in the cases specified by law (i.e. the case when only one bid was submitted for consideration). The guidelines can be found on Articles 10 and 14 of the PPP law, as well as in Resolution No 384/2011.
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Paragraph 6 of Resolution No. 384/2011, the decision of the authorized body on conducting the procurement procedure, in particular, sets the terms of submitting of proposals.
and the time in calendar days:	30
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	No
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a